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The Legal & Moral Dilemma regarding Human Security of  
North-African boat migrants entering the EU territory  
through Italy

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“The land flourished because it was fed from so many sources-  
because it was nourished by so many cultures and traditions and  
peoples.”

— Lyndon B. Johnson

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## Abstract

Migration has always occurred throughout human history although in different shapes and for different motives. The reasons to why people choose to migrate are due to bad or inexistent: economic, environmental, health, food, personal, community and political securities. All together, these securities go under the concept of human security. This concept is beset with a broad perspective, focusing on all individuals as human right-holders independently on geographical and sovereign State borders. In current time, third-country irregular boat-migration from North-Africa to the coast-lines of Italy, is a huge challenge for Italy and the European Union (EU). Italy and the other EU member States are all bound to oblige to *the Charter of the Fundamental Rights in the EU*, which clearly states that human security/rights are to be guaranteed also to non-EU residents. At the same time, however, each single member state has its own national migration law. Therefore, due to the legal pluralism that is ruling in Italy regarding the treatment of migrants, the existing legal and moral reality can differ in practice. I will conduct an implementation study and I will use a qualitative strategy. The research material will be analyzed through a descriptive textual analysis method and an empirical case study on Italy. My study is focusing on how Italy, and in a second step, the EU are dealing with the dilemma of the legal and moral treatment of these illegal boat-migrants.

*Keywords: Legal & Moral aspects, Italy, North-Africa, Human Security, EU*

## Abbreviations

AI	-	Amnesty International
CEAS	-	Common European Asylum System
EASO	-	European Asylum Support Office
EU	-	European Union
EUROJUST	-	European Union's Judicial Cooperation Unit
EUROPOL	-	European Police Office – the EU law enforcement agency
FRONTEX	-	European Agency for the Management of Operational Cooperation At the External Borders of the Member States of the EU
HI	-	Humanitarian Intervention
HRW	-	Human Rights Watch
ICRC	-	International Committee of the Red Cross
IGO	-	International Governmental Organization
INGO	-	International Non-Governmental Organization
IOM	-	International Organization of Migration
R2P	-	Responsibility to protect
SEA	-	Single European Act
UN	-	United Nations
UNDP	-	United Nations Development Programme
UNHCR	-	United Nations High Commissioner for Refugees

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**ABSTRACT**

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## 1. Introduction

Italy is the main destination for migrants from northern Africa who want to enter the EU territory. These migrants come from countries such as Afghanistan, Eritrea, Mali, Syria, Tunisia, Morocco and Libya just to mention a few, and they all represent different social and legal cultures. What connects these migrants is that they are all fleeing with the hope of finding a better opportunity for life, not just for themselves, but for their whole families. They are mainly coming with overcrowded, non-seaworthy boats and many do not make it over the Mediterranean Sea and if they do, many of them will be sent back to the departure country or their countries of origin without regard to what they fled from to start with. In accordance with Italian law, the common European law on fundamental rights and the moral obligation each Member State in the EU holds, it is neither ethically correct nor an attempt to protect and safeguard human security, to first rescue the boat-migrants and then send them back to their countries of origin without having controlled the root causes to their migration. Furthermore, *the principle of non-refoulement* is a binding obligation in international human rights law and international refugee law, as well as in European and Italian law. This law condemned Italy in 2009 when they returned migrants to Libya in accordance with the Friendship Treaty, although the migrants would face inhuman and degrading treatment.

In this thesis I will conduct an implementation study based on descriptive research that analyzes how Italy is dealing with these migrants through a legal and a moral aspect. An implementation study tries to connect the evidence found during the research process and implement it directly where it belongs rather than just draw conclusions in the end of the research. How it is done depends on many different factors e.g. the subject of investigation. But simply said an implementation study is about putting the analyses into practice as the research is undertaken (Murray, 2014). The aim of descriptive research is to provide an “overall” picture of a recently new social phenomenon or simply a phenomenon that need to be described. It enquires about the *what* of a specific phenomenon without explaining the *why*. Therefore, descriptive research has as its main purpose the systematic description of the phenomenon and the external factors influencing it (Thyer, 2001). This influences my choice of research questions as well. My research questions are developed to refine and clarify the nature of the problem regarding the legal and moral treatment and safeguarding of human securities to the boat-migrants coming from North-Africa. Nor will my research questions necessarily lead to an hypothesis, neither will they state what is known or what can be expected.

By conducting a descriptive qualitative textual analysis on official policy documents and previous research regarding migration and human security, relating my findings to an empirical case study on Italy, I will analyze textual material through both a legal and moral aspect through a comparative theoretical framework of legal pluralism and cosmopolitanism. Both analytical aspects are to be found in my chosen theories and are applicable to the questions regarding the conduct of the critical migration situation taking place in the heart of Europe. Under the Methodology section I will provide an explanation of methods and how they will be used for my research.

Migration and human security are the main concepts and my aim is to determine if Italy is capable of dealing with the current inflow of boat-migrants from North-Africa and if human security rights can be guaranteed. In a second step, I will relate the situation to the EU as a whole since Italy is a member state and has bound itself to oblige to *The Charter of the Fundamental Rights in the EU*, which certainly impact and collide with the national Italian law system concerning asylum and migration issues. Also the R2P doctrine's main principles will be related to as possible moral sources when the gap between the plural legal standards creates obstacles in providing human securities to the boat migrants.

In 2014, more than 280 000 detections of irregular border crossing were reported. Most of these detections were reported through as part of search and rescue operations carried out by Italy and Frontex in the Central Mediterranean area, which is the area concerning the coastlines of Italy and northern Africa and Turkey. Migrants find themselves in a vulnerable situation, especially when undocumented. The access to basic human security needs is highly limited and reception centers in the host-country are often overcrowded and provide bad conditions for health issues. In many cases this becomes a risk factor both for the migrants themselves but also for the people working and living in the area (FRONTEX, 2015)

### **1.1 Significance of the Research**

The EU Charter of Fundamental Rights, which Italy is bound to apply (as well as all other EU Member States) when implementing EU law, spells out rights and principles which are relevant for border checks. However, when it comes to migration by sea the situation becomes a bit diverse in Italy. The national law of Italy demands that people that must be rescued at the Italian border cannot be rejected or refouled instantly. This means that north-African boat-migrants that arrive with non-seaworthy overcrowded boats must be rescued into the Italian territory. For most of the migrants from northern Africa, migration is the only alternative and opportunity for a better livelihood or for

protection from conflicts or violations of human rights. However, according to recent media and official reports it seems that Italy is struggling with huge difficulties, both from a legal and from a moral perspective, in protecting and safeguarding human security for the boat-migrants from northern Africa. This current dilemma may cause un-necessary harm to an already suffering category of people and to come to terms with this problem urgent solutions are required. According to estimated numbers by the UN and FRONTEX, so far this year, July 2015, around 60 000 boat-migrants reached Italy by sea. And the number is estimated to increase in a steady flow. This is why research on how migration procedures in receiving countries, in my case Italy, must be studied in order to see whether legal and moral obligations against humanity is and can be fulfilled not only in theory but also in practice.

## **1.2 Aim of Study & Research Questions**

The purpose of my thesis is to describe and study the dilemma in the legal and moral treatment of North-African boat migrants arriving in Italy. I will also relate my study of the situation in Italy in a broader context of EU since this dilemma very much is depending on the gap between the diverse legal and moral standards that the EU member states are beset with and how the EU is supposed to deal with issues of migration and burden-sharing. The current situation regarding migration by sea is not a problem to resolve for Italy alone and short-term, but in accordance with the EU as a whole and with a long-term thinking in a cosmopolitan spirit. The research questions that will lead me through my work are:

- Is Italy providing human security to the current boat-migrants from North-Africa according to relevant legal standards such as the Italian national migration law and the Charter of the Fundamental Rights in the EU?
- Is Italy living up to expectations of safeguarding human security from a moral point of view and in accordance with the R2P?
- What actions can the EU take, based on current common legal and moral obligations to overcome the dilemma situation?

## **1.3 Literature Review/Previous Research & Policy Documents**

According to Wyn Rees, author of *The External Face of Internal Security* in the book by Christopher Hill and Michael Smith: *International Relations and the European Union*, the external dimension of the EU's internal security policy is driven by two factors: the understanding of

security threats as transnational due to more sensitive state borders, and the exigencies of the EU enlargement process which exposes the EU borders towards new neighbors (Rees, 2011). The concern over migration and irregular immigration from third-countries is not a new concern for the EU members, but the irregular immigrations occurring at the southern frontiers from North-Africa, Libya in particular, puts a heavy burden on especially Italy but also on Greece and Spain. Humans, including women and children, are trafficked under terrible circumstance, and many times against their will, by organized criminal gangs earning huge amounts of money both on their trips but also while selling these unprotected people into prostitution and forced labor (Rees, 2011). Being illegal immigrants their chances of protection and human security is therefore clearly absent.

Umberto Melotti suggests in his article *Migration Policies and Political Cultures in Europe: A Changing Trend* that the migration policies of the main European states of immigration, including Italy, are intimately linked to their respective political cultures. He bases this suggestion on his own definition of what political culture is: the conceptualization of the relationship between ethnicity, nationality and citizenship and how rights and duties are attributed to native or non-native citizens (Melotti, 2006). This is kind of an interesting perspective when it comes to Italy, which is beset with an ambiguous national identity and political culture regarding first and foremost itself as a united country. Thereby, also the Italian attitude towards both internal and external migration is rather curious, because Italy just recently has become a receiving country but also because the country does not find itself in a very prosperous socio-economic period. However, its geographic position determines it to be the most crucial area for contemporary and future immigration flows.

Those boat-migrants who survive in crossing the Mediterranean Sea ends up in Italian refugee camps waiting for either asylum or to be sent back to their countries of origin. Those migrants who manage to escape, and many of them do, become irregular immigrants with no protection and human security. In the article *Migrants in Italy struggle against illegal status, exploitation* by author Kirstin Hausen, one factor that turns migrants into irregular immigrants is Italy's very strict immigration policy which entitles only migrants with an employment contract to stay. However, at this point the problem of irregular immigration is no longer a problem just for Italy but it turns into a problem for the whole European Union. Many of those who become irregular immigrants seek themselves to the north of Italy but also to other countries in Europe. In fact, there are hundreds of thousands of people without documents in Europe. Without registration in any government office these people, according to the law system, do not exist and are therefore without protection (Hausen, 2013).

In a research paper regarding Malta and the rescue of unwanted migrants at Sea, the author *Silja Klepp* arrives at the conclusion that the humanitarian law of the sea in the Mediterranean Sea, is either ignored or modified according to political considerations and the maneuvers of the coastal state governments that dominate the situation at sea. Furthermore, she recognizes the absence of the willingness of burden-sharing by the other EU member states outside Malta, Greece and Italy. Especially the Dublin Regulation is according to her an obstacle that need revision in order to make the mechanisms of the humanitarian law at sea function. As the situation is now the negotiable and political character of the implementation of law and which law to implement: international or national, is evidently an obstacle difficult to overcome (Klepp, 2011). This is also a reality Italy is dealing with everyday regarding the north-African boat-migrants. Beside Italy's own rescue operations they also achieve numerous migrants from other vessels or ships. However, the provision of human securities and protection ought not to be a commitment just for Italy, but should be divided by all member states in the EU.

A concluding summary in the UN Report by the Special Rapporteur on the human rights of migrants, François Crépeau, claims that although Italy has developed a huge apparatus of laws and policies in order to manage better irregular migration and border controls, there are still much to be done for the safeguarding of human security and respect of human rights of boat-migrants in Italy (Crépeau, 2013). One recommendation is to develop a comprehensive national system of data collection, analysis and dissemination of public information regarding immigration policies and practices, so that these can be better used by the right authorities for a constructive rights-based policy-making concerning migration (Crépeau, 2013).

Furthermore, relating to the situation in Italy, the Rapporteur also makes some recommendations to the EU as a whole. First of all the EU must ensure that a common EU framework on migration do not contribute to the restriction of human security/rights protection of migrants in the host-country/Italy. Secondly, the EU member States and Italy must ensure that the cooperation with FRONTEX also take full account of the human security/rights of migrants instead of focusing too much only on other security-related aspects such as transnational criminality, terrorism etc. Finally, the sharing of responsibility between the EU member States regarding the EUs external borders must be increased. Independently of which Member State that, due to its geographical location, is in need of help in managing its external border regarding the flow of migration should be supported in that management (Crépeau, 2013).

After the latest human tragedies in April 2015, with the death of hundreds of people in the Mediterranean Sea, Italy has put pressure on the EU to come up with a burden-shared solution to the emergency situation the boat-migrants are creating. The response from the EU is a ten-point strategy in order to better manage the situation:

- The EU must enforce their operations “Triton” and “Poseidon” in the Mediterranean Sea both economically as well as the extension of the area of intervention.
- A better systematically coordinated effort to catch and destroy the boats used for trafficking.
- Regular meetings between EUROPOL, FRONTEX, EASO and EUROJUST in order to collect information on the *modus operandi* and the funds that the traffickers of humans have at their disposition.
- EASO will deploy operational teams in Italy and Greece.
- The EU member States will take fingerprints on all migrants.
- Options for a mechanism of relocation of emergency will be taken into consideration.
- A European wide voluntary pilot program on resettlement for these in need of protection and security will be implemented.
- A new rapid program of returning irregular migrants at the border coordinated by FRONTEX will be established.
- Enforced engagement between the neighboring countries of Libya through a joint effort by the Commission and EEAS; for example, the initiatives in Nigeria must be increase.
- The EU should coordinate liaison officers into third countries playing a key role regarding migration, in order to collect information regarding the flow of migrants. At the same time the general role of the EU delegations ought to be strengthened (Rainews, 2015).

Since the current increase of boat-migrants from North-Africa is a relatively new phenomenon, research regarding human security and migration in Italy and the EU is insignificant and therefore all research regarding this particular issue fill a gap for future research. It is becoming a serious problem for the migrants, for the citizens, for the sovereign States and for the future conduct of Europe, both through a legal and a moral perspective.

#### **1.4 Disposition of the paper**

In order to be as clear and concise as possible before I draw my conclusions, I have divided the essay into different headlines so that it will be easier to follow. After the introductory part a

definition of my concepts - migration and human security - will follow. A methodology section will follow where my methods, material, limitations and ethical aspects will be presented. After that I will deal with the theoretical framework and the different analytical aspects – legal and moral- and their relevancy, will be applied on an empirical case study. In the last part I will analyze and discuss my findings before I draw my conclusions. Finally, a full bibliography list will follow.

## **2. Clarification and definitions of Concepts**

When starting a qualitative study there must be an underlying understanding of why the research subject – the empirical category - is worth examining and what concepts might be used in the guidance of the investigation. Categorizing and conceptualizing goes together because concepts define categories and the members of a category illustrate the concepts that unite them into a category (Ragin, 2011). This chapter will give some general definitions and understanding of the core concepts treated in this essay. Furthermore, these concepts will be incorporated in the discussions regarding the legal and moral dilemma regarding human rights that occurs when boat-migrants from North-Africa arrives in Italy.

### **2.1. Migration**

The first key concept, *Migration* (both regular/irregular and internal/external), impacts on how law is created and influenced by the predominant cultural values and the social interactions occurring in society, as well as how law is understood. Human migration is the movement of people from one place to another to become a permanent or semi-permanent resident of a host society, most often crossing a political boundary.<sup>1</sup> Migration is a very sensitive issue since it includes many different types of categories; asylum seekers, refugees and ordinary migrants. The phenomenon of migration is one of the biggest challenges and opportunities in current time where the world is becoming more globalized for every day. Italy and the EU states are struggling to integrate the migrants into the host country society and recognize their fundamental rights and interests while they at the same time are working to prevent irregular migration/immigration. In addition, the EU as a regional organization is trying to construct a common immigration policy that will satisfy the different legal national orders each member state is beset with (Wiesbrock, 2010).

### **2.2. Human Security**

The origin of this concept is traced back to the *Human Development Report* from 1994, issued by the United Nations Development Programme (UNDP). According to the report there are several basic areas that need to be taken into consideration to safeguard human security:

- Economic security
- Food security
- Health security

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<sup>1</sup> More info can be found at: <http://www.nationalgeographic.com/xpeditions/lessons/09/g68/migrationguidestudent.pdf>.

- Environmental security
- Personal security
- Community security
- Political security

In this essay, the latter three points are main considerations when relating legal and moral aspects on migration to human security. However, all points are of importance. **Personal security** is important because its main concern is the protection of people from state or external states physical violence, from violent individuals or sub-state factors, domestic abuse and from predatory adults. **Community security** is important since it underlines the importance of protecting people from the loss of traditional relationships and values, and from sectarian and ethnic violence, which can easily occur to migrants in the host-country. Finally, **political security** is important because it ought to ensure people the right to live and participate in a society that honors basic human rights and freedom, especially from governments that attempt to exercise control of its citizenry and their ideas and information channels (Acharya, 2011).

Based on this we can establish that human security means protecting vital freedoms. It means protecting people from critical and pervasive threats and situations, building on their strengths and aspirations. It also means creating systems that give people the building blocks of survival, dignity and livelihood. Thereby, it can be said that human security complements state security, furthers human development and enhances human rights. It complements state security by being people-centered and addressing insecurities that have not been considered as state security threats. Respecting human rights are therefore the core of protecting human security.<sup>2</sup>

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<sup>2</sup> More info at: <http://ochaonline.un.org/humansecurity/CHS/finalreport/Outlines/outline.html>.

### **3. Methodology**

Qualitative research, since it emphasizes on in-depth studies and refinement of concepts, is suitable for several goals of social research. Qualitative methods are often considered data enhancers if the right techniques and procedures are being used. Analytic induction that I will use in my analysis was once considered a method to find universals - properties that are invariant -, but is today seen as a method that makes researchers pay closer attention to evidence that either challenges or disconfirms evidence in order to find similarities, and to better define concepts (Ragin, 2011) My study is an implementation study, and I will use a qualitative descriptive textual analysis method when analyzing my concepts. In addition, I will conduct an in-depth study on Italy, as an empirical case, that will be examined and explored in a comparative framework from two different analytical aspects – moral and legal - in order to clarify and better determine whether different legal standards impact on Italy's treatment of migration and human security.

In examining whether Italy is providing human security to the north-African boat-migrants I will further frame my research by using two similar and at the same time opposing theoretical frameworks: legal pluralism and cosmopolitanism. Both theories are timely correct considering the forces of globalization that have made the world smaller and closer in a time and distance perspective. Legal pluralism is part of the legal aspect while cosmopolitanism is part of the moral aspect.

#### **3.1. Methods**

The SAGE Dictionary of Social Research Methods defines textual analysis as:

“...a method of analysing the contents of documents that uses qualitative procedures for assessing the significance of particular ideas or meanings in the document.” (Scott, 2006, p. 298)

Textual analysis has its roots in the hermeneutic tradition of textual interpretation. This means that the interpretation of a text must be undertaken from the audience standpoint. In this case it means from mine, the researcher's standpoint. Furthermore must the text be understood out of the frame of reference from which it was produced. To do so the researcher's own frames of references must be clear. (Scott, 2006) In other words, the interpretation of a text must be understood in relation to the question being investigated. In addition, the text interpreter must make a difference between perspectives such as: what does the text mean to me as a researcher and in the current time-period, what does it mean for the transmitter and what does it mean for a specific audience (Esaiasson, Gilljam, Oscarsson, & Wängnerud, 2012)? A descriptive textual analysis means that whole

documents are being examined in-depth instead of just some detailed entities. This makes the textual analysis method very useful also for future research since the result of the interpretations can be used as either independent or dependent variables in explanatory studies (Ibid). The textual analysis method is characterized by two main types of text analysis issues: systematizing the content or critically review the text. I have used both variants of the method, first I have tried to clear the thinking structure of the author of the examined text, and then critically review it. In addition, I have conducted an implementation study which means that I have tried to relate my findings directly to the data under each chapter and through a legal and moral aspect.

I have used a qualitative descriptive critical textual analysis method since I believe it would best represent my purpose of study. To give further validity to my interpretation I have also used an empirical case, as an in-depth study, that have been examined and explored in a comparative framework from two different analytical perspectives – legal and moral - in order to define which facts and data are relevant to my research questions regarding the legal and moral dilemma in providing human security to north-African boat-migrants.

The case study method is an approach that uses in-depth investigation of one or few examples of a current social phenomenon, based on a variety of sources of data (Keddie, 2006). A case study can be descriptive, exploratory or explanatory. My study is descriptive which means that it will attempt to provide a full portrayal of the empirical case, a single country case study on Italy and the treatment of the north-African boat-migrants through a legal and moral aspect. Especially in policy research case studies have a key, and they are often undertaken to provide examples on how specific policies, programmes or evaluation projects impacts on the social reality or on already existing policies (Ibid).

### **3.2. Material**

Since my thesis is completely based on textual material, I have chosen to rely on both primary and secondary sources for my textual interpretation and analysis drawing. My primary sources are official reports, statistics and policy documents concerning numbers and issues of migration and possibilities to human securities due to the legal pluralistic setting that Italy and the EU are beset with. Especially policy documents and legal frameworks regarding migration by Sea have been analyzed. These documents have I found and chosen from especially the library of the Lund University and through the search engine LUBsearch. I have searched on different keywords such as: boat-migration and human security; boat-migration and legal pluralism; human security and

Italy; migrations in Italy etc. The Internal Ministry of Italy is another official site where I have been able to find relevant and public information on legal standards and procedures concerning migration policies. Furthermore, the European Union and the United Nations are both having available material through their web sites. My secondary sources are academic books from my earlier studies in *International Relations* at the University of Dalarna, academic journals such as the *European Journal of Migration or the International Review of Sociology*, reports from *Frontex*, the *International Organization of Migration (IOM)*, newspapers and TV-channels, both Italian as well as international English written texts. The Guardian, CNN, Al Jazeera are some of the public media channels that I have used. For the moment there is not so much earlier research literature regarding my aim of study since my topic is highly contemporary and hot. Therefore, my data is mostly deriving from policy material. However, despite comparing and interpret different authors previous research material and other empirical documents, I have been able to come to similar conclusions whether Italy is providing human securities or not to the north-African boat migrants. This gives high reliability to my research since good intra-subjectivity and a close and precise interpretation of the texts is equal high reliability (Bergström G., 2005).

### **3.3. Limitations**

Limitations are always to be found in research. In my case regarding this paper, the time limit as well as the huge amount of textual material that I have been analyzing, have set some natural limits for the research. My research methods: textual analysis and case study are also beset with limitations. Textual analysis requires huge amount of data that need to be considered and it is difficult to establish when data is saturated. Conducting a qualitative case study also has its limits. Case studies are often accused of not delivering general knowledge, generalizations cannot be made and it is difficult to transform the outcomes into theories. Furthermore, although I have chosen carefully my research material, it is always possible that my own personal biases may have influenced the interpretation of the textual material. There are a range of other qualitative methods that very well could have been suitable for my research aim. For example, an ethnographic study, involving a long period of observing and living in the migrants and the Italian local environment would have been very interesting to carry out. Also an in-depth interviewing method used directly with the concerned boat-migrants and the public officials dealing with migration, is another method very suitable and empirically good for this research area. However, for this paper it was not possible, neither economically nor realistically in a time perspective to organize.

### 3.4. Ethical Aspects

When conducting social science research, especially when it regards human behavior, there are some ethical concerns that need to be taken into aspect in order to avoid ethical dilemmas (Ragin, 2011). Three major scientific norms should govern social research: **beneficence**, **respect** and **justice**. Briefly, this means protecting the statutory rights of individuals, groups and communities, and their rights to privacy. Not only must the researcher be sensitive to cultural and social differences, the researcher also must ensure that the conduct, management and administration of the research are framed by existing ethical principles (Freed-Taylor, 1994). An ethical consideration is how the collected data will be interpreted. Since this research is involving sensitive issues such as human migration, legal pluralism and human security under legal and moral aspects, great concern must be given regarding the research methods used in order to minimize the risk and harm the research strategy eventually might cause. In this paper I have therefore used a qualitative descriptive textual analysis where the interpretation of textual material such as books, academic articles, official policy documents and other official material, do not cause any personal harm neither to Italians, nor the boat-migrants from North-Africa.

## **4. Theoretical Framework**

A theoretical framework is very helpful in the interpretation and understanding of the concepts and theories relevant to the proper research. Furthermore, it helps the researcher limit the scope of the collected evidence and to determine which variables are relevant for the analysis and interpretation of the research (Peters, 1998, p. 218).

Sociology of Law as a discipline and as a field of research represents a wide range of perspectives to the study of law and society. A main concern for sociologists is how human interaction both in society as well as in legal institutions, are affected and influenced by each other. Although law and sociology have always had a troubled relationship as academic disciplines, sociologists have always recognized the centrality of law for the understanding of the modern world (Banakar, 2002).

### **4.1. Legal Pluralism – The Legal Aspect**

Legal pluralism exists everywhere and the term often refers to the interaction between different competing and conflicting official legal systems. There are municipal laws, city laws, district laws, regional laws and state laws in a variety of shapes in each country, and there are national, transnational and international laws of different kind that impact on each other. In addition, a number of other normative, exotic legal orders are currently challenging ordinary rule of law systems. Religious law, indigenous law, customary law or law connected to ethnicity are some examples that people often adhere to in order to find justice and protection (Tamanaha, 2008). This means that legal pluralism raises important questions about power and its constitution, location and form as an analytical concept (Griffiths, Legal Pluralism, 2002).

Due to globalization and the growing awareness and the need of transnational forms of law, legal pluralism has gained renewed importance as a theory. Especially issues regarding human rights/security are sensitive for legal pluralist thinking since law and legal institutions are crossing local, regional and national boundaries (Griffiths, Pursuing Legal Pluralism: The Power of Paradigms in a Global World, 2011) due to increased migration. Migrants themselves often bring with them their customary or religious law into the host-state which often opposes the receiving states national law system and to may create problems for legal professionals as well as for the migrants themselves.

In an article published in the *Oxford Journal of Legal Studies* in 2013, the author *Helene Quane* claims that although the international human rights law can provide an impetus for legal pluralism, it can also be a constraining factor of the existence of legal pluralism or its way of operating. This could explain the duality of legal pluralism and international human rights law, that sometimes seem to be mutually reinforcing at the same as they are being intrinsically incompatible (Quane, 2013). Italy and the other EU member states are also dealing with the contradictions of the legal pluralism they are beset with due to the national, regional and transnational legal orders they are bound to obey. Therefore can this theory be helpful when implementing if Italy and the rest of the EU are suffering from a legal dilemma regarding the treatment of the north-African boat-migrants and their legal rights to human security.

#### **4.2. Cosmopolitanism – The Moral Aspect**

This theory can be useful both in Sociology of Law studies as well as in International Relations studies. Cosmopolitans believe that people are to be treated equally and have equal right to human rights, security, and freedom. Although people are divided into different communities with distinct boundaries, humanity deserves to enjoy equal treatment as one single moral community that goes under the same obligations and enjoy the same rights. The approach consists of both a moral and a political/legal meaning, with a special emphasize on the responsibility not to harm and to provide assistance and hospitality to whoever needs (Shapcott, 2011). In other words, cosmopolitanism argues that political borders are morally arbitrary and that moral and legal duties transcend political associations (Helmken, 2011).

Cosmopolitanism is a perspective going hand in hand with the current era of globalization and the interconnectedness and distance shrinking the world is experiencing due to improved technology and transportation facilities. These factors have started a general movement of people trying to improve their living hood. Those people ending up on boats from North-Africa to Italy have all of them already made a long journey of migration from other parts of Africa in seek for a better future. Modern cosmopolitanism is mostly derived out of the thoughts of Immanuel Kant and his development of the concept of cosmopolitan law. Cosmopolitan law according to Kant considers both states and individuals as rights-holders; in addition, individuals have these rights as citizens of the world and not as citizens of a particular state. The Kant's doctrine is furthermore one of the underlying perspectives for current migration regimes (Kleingeld & Brown, 2014). This taxonomy of cosmopolitanism, often referred to as ethic of hospitality, is what generally defines what moral cosmopolitanism is and it is this perspective that this paper is using for its analysis (Van den Anker,

2010). Minimalist legal cosmopolitanism further claims that the normative view of law must be applied to every single person and single action independently of where the person is or where the action occurs (Helmken, 2011). However, cosmopolitanism's global moral principles are strictly limited by the fact that political actions and activities are conducted by nation-states, and as a theory it is still considered an utopia more than a true representation of social reality (Beck, 2007).

According to these perspectives of cosmopolitanism, boat-migrants from North-Africa ought to be entitled to the moral rights connected to the human security concept, both in Italy as well as in the rest of Europe. On the other hand though, it suggests that boat-migrants most probably will find themselves in a limbo situation where their access to political institutions are limited due to the leverage of other national moral aspects.

## **5. Legal & Moral Aspects of Migration & Human Security**

Requests for international humanitarian protection and security in the EU and the creation of forced migration movements are related to the negative developments occurring around the world. Armed conflicts, severe human rights violations, terrorism and persecutions are the main reasons for people to seek refuge in another state ( EASO , 2014). Different agencies has been set up by the EU in order to meet, for example, the need of migration and problems regarding migration issues, although they also are occupied with other European security concerns. **EASO** (European Asylum Support Office), **EEAS** (European External Action Service), **EUROJUST** (The European Union's Judicial Cooperation Unit), **EUROPOL** (European Police Office), and **FRONTEX** (European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union) are the most important organs working and assisting the national governments of each Member State.

In order to reconcile the freedom from fear and the freedom from want conceptions concerning migration and why people choose to move from one place to another, human security research need to focus on the political, socio-economic and ecological factors which contributes to create armed conflict and non-violent threats from the beginning (Acharya, 2011).

### **5.1. The Moral Aspect**

In response to the tragedy in Lampedusa, southern Italy, in the autumn during 2013 where more than 300 hundred boat-migrants lost their lives in the Mediterranean Sea, Italy launched the rescue operation "Mare Nostrum". Between October and December, 2013, Italy managed to save thousands of people, bringing a total of 9000 migrants to safety ( EASO , 2014). This tragedy furthermore, reignited the discussion regarding how migrants can be granted safe access to EU territory and regular asylum procedures and how the EU must work together to settle this kind of complex migration issues. One attempt of solution has been the establishment of the Task Force Mediterranean –TFM ( EASO , 2014). Besides investigating on legal channels for safe access to the EU, the TFM also focus on better resettlement efforts, a more rapid and, first of all, a more humane and dignified fashion of returning migrants, as well as a greater effort in combating human trafficking ( EASO , 2014).

*"...if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that*

*affect every precept of our common humanity?” Kofi Annan, United Nations General Assembly, 1999*

State sovereignty and clearly defined state-borders still very much exists as well as well-defined citizenships of belonging. However, asylum seekers are the evidence that some people actually do not enjoy a citizenship or that some peoples human status have gone awry. Cosmopolitanism and its values of openness, respect, inclusiveness, pluralism and freedom, further advocates that when incidents or tragedies within one nation is considered unacceptable it calls for intervention by outsiders. In order to come to terms with safeguarding human security to migrants from northern Africa in Italy, it is in place to call upon more serious interventions not only by Italy but also by the other member States of the EU, directed at the root causes to why they become migrants in the first place. A humanitarian intervention could be in place to do that. A common consensus on how to define a *Humanitarian Intervention* (HI) does not exist but some of today's important authors have made some good suggestions. Professor *Fernando R. Téson*, defines permissible HI as: “the proportionate international use or threat of military force, undertaken in principle by a liberal government or alliance, aimed at ending tyranny or anarchy, welcomed by the victims, and consistent with the doctrine of double effect” (Téson, 2003, p. 3).

There are plenty of low coercive as well as middle range coercive methods available for States to conduct. Low coercive intervention forms are speeches and broadcasts where INGO's; NGO's or other power holders are reporting and transmitting the current situation and grievances in order to soften public and political opinions. Middle range coercive interventions are of the following kind: promises of economic aid, military advisers, and support for opposition. There is still no use of force involved but the pressure is getting more intense and leadership can be questioned when opposition is being empowered. In addition, economic aid can be an important carrot in convincing a state to change its regime and conduction. Military advisers are external military or police forces are foreign experts sent to a state in order to train its local police or security forces and provide values of wrong and right (Nye, 2007).

Cosmopolitans under the label of counterrestrictionists are claiming that there are both legal and moral conditions for interventions. According to them, the UN Charter, depending on the interpretation, gives the legal rights under international law while the moral right derives from the responsibility people have not to cause suffer and harm (Bellamy, 2011). According to this consideration, cosmopolitans are positive to and argue for the right of intervention when basic human rights or violations of rights are being committed, and the host state has no will or

possibilities to intervene in order to end injustices. Cosmopolitanism therefore is not just favorable of humanitarian intervention if basic human rights are heavily violated and the state is unable to provide protection, but it also consider it an obligation to intervene if the circumstances allows and to a reasonable cost.

In addition to the above presented idea of humanitarian intervention to end human suffering, it is not to forget that there is also work to be done before as well as afterwards in order to strengthen and maintain conditions that give the opportunity to people to live in their country of origin with the right of protection and in accordance with human security. The next paragraph will talk about the different moral responsibilities Italy and the other EU member states have for protection of humans.

### **5.1.1. The Responsibility to Protect Doctrine (R2P)**

The human security paradigm is grounded in the natural law theory, the cosmopolitan ethical principles, and the universal individual rights doctrine. Sometimes States lack the power or political will to enforce and protect human securities to citizens (and non-citizens). Therefore, in 2001 the International Commission on Intervention and State Sovereignty (ICISS) issued a report *The Responsibility to Protect*, which establishes the idea that sovereignty involves the responsibility to protect humans that find themselves in a situation of threat or inhuman treatment. If the State is unwilling or unable to undertake its responsibilities, then instead the responsibility moves on to the international community (Pease, 2012). In 2005, the UN World Summit adopted a declaration that commits all member states to the R2P. This declaration was further reaffirmed by the UN Security Council in 2006 and 2009 (Bellamy, 2011). The R2P principle is grounded on the universal legal obligations under the human rights, the humanitarian laws and the human protection declarations and encompasses human security as one of its core concepts. This ethical commitment is strongly intertwined with the cosmopolitan ideas of equality and moral principles that apply to all people. According to the universal human rights doctrine, states, as members of the international community, have the responsibility to protect not only their own citizens, but also the citizens of the world (Iancu, 2014).

There are three main elements of responsibility:

- **the responsibility to prevent** - addressing root causes that expose populations to risk and suffering
- **the responsibility to react** - responding to situations of human need with adequate measures like interventions of different coercive levels

- **the responsibility to rebuild** - providing assistance with reconstruction and reconciliation after an intervention (ICISS, 2000, p. XI).

So why should Italy and the other EU Member States adhere to these moral responsibilities and provide for human security in non EU states? Through the theoretical lens of both cosmopolitanism and legal pluralism it seem quite logic. Italy and the EU as a whole ought to take on their moral responsibilities because in our current globalized interconnected world, human security is no longer indivisible and gross human rights violations can constitute a risk to people everywhere despite the legal system and despite the conduct of the State (ICISS, 2000). Furthermore, the increasing demand of possibilities of crossing the Mediterranean Sea has fuelled organized criminal networks that have developed a million-euro business in trafficking/smuggling refugees on unsafe boats risking the lives of thousands of innocent people. In addition, it seems as if they are also putting up a business in rescue operations by using merchant ships (FRONTEX, 2015).

## 5.2. The Legal Aspect

The European Union is based on the rule of law determined by treaties which each member state has voluntarily approved and accepted as equally forceful as national law, and correctly implemented in order to guarantee citizens' rights under these laws<sup>3</sup>. This fact constrains the legal policing and law-making since Europe is not just a question about the geographical position and boundaries, it is also a consequence of social construction based on issues such as common cultures, shared values and common experiences from the past (Nugent, 2004). Furthermore, third-country migration from both neighboring countries and especially from northern Africa, often politically unstable, does not only bring in new legal influences to the EU but it also impacts on human security<sup>4</sup> due to strict legal regulations on who is entitled to migrate or not.

European private law has for long taken different national legal cultures into consideration. In private law, harmonization through *Directives*<sup>5</sup> was long preferred over consolidation through

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<sup>3</sup> See this link for more info: [http://europa.eu/eu-law/index\\_en.htm](http://europa.eu/eu-law/index_en.htm)

<sup>4</sup> The concept of human security is very controversial. Traditionally it concerned the protection of territorial integrity and the protection of states from external military threats, however, today the concept challenges the state-centric notion of security by focusing on the individual as the main referent object of security. Therefore, we can say that human security is about the security for the people rather than for states or governments. (Acharya, 2011, p. 480)

<sup>5</sup> “legislative instruments that specify the aims to be achieved, but which generally leave the question of how to achieve those ends up to national governments or their agents” (Cini, 2010, p. 441)

*Regulations*<sup>6</sup> because directives enable every member state to reach a common goal within and in accordance with its respective national legal culture. Member states can establish limited exceptions to regulations promoting the European internal market based on their own legal culture, especially in the form of national values as public policy or as general interest. However, such invocations of national legal culture are subject to control and restrictions by Community Law. Finally, the discussion about a European civil code shows the power of national legal cultures. Besides invocations of national culture, the existing view is that a European legal culture is either already existent or is under construction through the Europeanization of law (Michaels, 2011).

### 5.2.1 Charter of the Fundamental Rights in the EU<sup>7</sup>

Some articles under the different Chapters are especially suitable in relation to this thesis since they spell out relevant rights and principles related to migration, legal and moral aspects and human security.

- **Article 1** *Human Dignity* clearly states that human dignity is inviolable and therefore always must be respected and protected.
- **Article 4** states that no one shall be subjected to torture or degrading treatment.
- **Article 5** is divided in three core matters: no one should be held in slavery, be required to perform forced labor, and trafficking in human beings is prohibited. Articles 18 and 19 are directly pointing at migration.
- **Article 18** states the right to asylum in accordance with the Treaty on the European Union and the Treaty on the Functioning of the European Union.
- **Article 19** talks about the protection in case of removal, expulsion or extradition. First, collective expulsions are prohibited. Secondly, no one should be expelled to a State where there is a risk that a person could be exposed to death penalty, torture or other kinds of inhuman or degrading treatment or punishment. Finally, under Chapter III of the Charter, articles relating to legal culture matters can be found.
- **Article 21** establishes the non-discrimination rule.
- **Article 22** that the EU Member States shall respect cultural, religious and linguistic differences.

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<sup>6</sup> Another legislative tool used by the EU spelling out the aim of legislation, what should be done and how it should be done. (Cini, 2010, p. 451)

<sup>7</sup> The Charter can be found here:

[http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2012.326.01.0391.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2012.326.01.0391.01.ENG)

- **Article 53** finally establishes that nothing in the Charter should be restricting human rights or fundamental freedoms in the fields of application by either Union law or international law.

In 2015, a European Agenda on Migration<sup>8</sup> has been developed in order to better manage migration in general, but also to confront the current boat-migration from North-Africa. Besides some immediate responses, a way to proceed with the future handle of migration are pointed out:

- Reducing the incentives for irregular migration
- create a stronger asylum policy
- create a new policy on legal migration
- focus on saving lives and securing the external borders

This agenda determines that the irregular boat-migration is not to be resolved by Italy alone. According to the UN, the current migration crisis is due to failure of European policy and not because of the numbers of refugees. The UNHCR claims that the EU need to work together instead of safeguarding their own borders and to open more legal ways for refugees to come to Europe. Furthermore, the EU member States need to provide for family reunification, resettlement programmes, work/education visas and humanitarian admission (Essa, 2015). In other words: the EU member States need to provide and implement human security. If the EU ten-point strategy and the agenda on migration will be implemented and successful in dealing with the implementation of human securities to north-African boat-migrants is too early to say but at least it is a first response to an increasing humanitarian tragedy.

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<sup>8</sup> A summary can be found on: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/summary\\_european\\_agenda\\_on\\_migration\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/summary_european_agenda_on_migration_en.pdf)

## 6.0 An Empirical Case

Since Italy is the main receiver of boat-migrants from the North-African coastlines, a short case study regarding the involved concepts and aspects of this paper has been conducted to give further foundation of the existing legal and moral dilemma in Italy and its spill-over effect into the EU as a whole.

### 6.1 The Responsibility of Italy – Legal & Moral Aspects

#### Legal Aspect

The EU *acquis* on migration and asylum is applicable to Italy, as an EU member state, and Italy has incorporated relevant EU directives into national legislation. The Dublin Regulation, which is an EU law that determines which European country is responsible for the asylum seekers application, entered into force in Italy in 1997 and Italy became a full member of the Schengen system on 1 April 1998. Furthermore, as an EU member State, Italy has an obligation to respect *the EU Charter of fundamental rights* when implementing EU law. Italy is a member state of the Council of Europe since 1949 and Italy is also a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms, and has ratified its Additional Protocols, and the European Social Charter. Italy has also ratified the European Convention on the Legal Status of Migrant Workers and the Convention on Action against Trafficking in Human Beings (Crépeau, 2013). Furthermore, due to the huge amount of boat arrivals along the southern coastlines of Italy, the country's asylum system was and still is suffering from extreme pressure. Therefore, since 2013 the EASO supports Italy, technologically and operationally, in the improvement and enhancement of its asylum procedures, reception conditions and local integration of refugees, and to ease the implementations of the Common European Asylum System –CEAS<sup>9</sup> instruments in Italy (EASO, 2014). Adherence to European and international regulations can be restraining in Italy's appliance of migration policies at the same time as it can be restraining for the migrants as well. For example, the Dublin regulation which determines that the migrant ought to apply for asylum or refugee status in the first country of arrival.

In Italy, migrants are divided into different categories. Migrants that enter Italian territory without permission are called illegal migrants, while migrants residing on Italian territory but with an expired permission are called irregular migrants. Irregular migrants are to be expelled and

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<sup>9</sup> Functions of CEAS: access to procedures, information and legal assistance, interpretation services, reception of applicants, detention and return, treatment of vulnerable groups etc.

accompanied at the border. Boat-migrants from northern Africa belong to the first category and are in accordance with Italian law, to be rejected and expelled directly at the Italian border. However, migrants cannot be expelled or rejected at the border if they need to be rescued, they are travelling without documents, and if they need to be detained at reception centers while being identified for expulsion (Kluwer, 2013).

The Italian legal system guarantees the right of legal representation not only for Italian citizens but also for irregular migrants and for this Italy ought to be commended. However, the mainly court-appointed lawyers that migrants usually ends up with are not specifically trained in issues regarding migration and asylum matters and full interpretation assistance is not guaranteed throughout the entire legal procedure. These flaws in addition to the fact that the Italian appeal system for either expulsion issues or detention issues are two different appeal procedures connected to the city where the orders have been issued, do not make the situation easier for the irregular migrants to recourse. Bad language skills, little accessibility to legal information and limited economic possibilities that most irregular migrants are suffering from, further complicates the legal possibilities for migrants to eventually regulate their situations. In addition, contrary for the proceedings of ordinary EU citizens, the judge deciding for expulsion or detention orders represents the justice of the Peace without possessing any particular expertise on migration matters (Crépeau, 2013). However, illegal/irregular migrants can be expelled by the Italian internal ministry on administrative basis or by an expulsion order from a judge. The motives for expulsion must, however, be security reasons regarding public order or terrorism (Kluwer, 2013). Furthermore, the principle of non-refoulement needs to be considered to avoid that the expelled migrant will not suffer inhuman treatment in the country of departure or origin.

### **Moral Aspect**

In Italy the public discourse on undocumented boat-migrants has been a core issue since the 2008 in media and political debates. In 2008, migration and how to manage it was a main element in the electoral campaigns, very much determining the outcome of the elections. There is a political will in Italy that fuelled (and fuels) the general public opinion with credence that there is a connection between undocumented migration and the propensity to commit crimes. Furthermore, media willingly reported episodes where migrants had committed crimes such as sexual abuses and rape, leading to a triggering of anti-migration feelings and a discussion on closing definitely the borders and refoule all undocumented migrants (Fasani, 2008). Today in 2015, the situation has not changed very much, nor has the general opinion regarding irregular/illegal migrants. Political party leaders

such as *Matteo Salvini*, representing *LegaNord*, uses Facebook in order to publish news about boat-migrants coming to Italy. By setting the arrivals in relation to Italians that are living in their cars without getting help from the state while migrants are being hosted in five-star hotels, feelings of racism and injustice are being fuelled. Furthermore, every time a crime is committed by a boat-migrant he publishes small news coverage to underline the fact that being a boat-migrant is almost equal of being a full criminal. A survey from 2007, regarding the Italians' attitude toward general migration established that around 60 % of the sample group believed that migrants are increasing criminality in Italy. This leads to my personal conclusion that if the survey would have concerned only boat-migration in 2015, the percentage most probably would have been even higher (Fasani, 2008).

However, Italy as any other country in the European Union has a moral obligation to protect and safeguard human security to all migrants in accordance with the R2P doctrine, but also regarding the sociology of the Italian, European and International laws that concerns migration. International organizations like the United Nations (UN) and the International Organization for Migration (IOM) have governmental mandates to make sure that human securities are being safeguarded, while International Non-governmental organizations (INGOs) like Human Rights Watch and Amnesty International (AI) try by moral means to safeguard human securities. The International Committee of the Red-Cross (ICRC) are doing their job founded on international law in order to protect and prevent human basic rights, both in Italy but also in the countries of origin. Italy ought to do the same; through direct assistance in development to improve the respect and implementation of human rights and dignity in the migrants countries of origin. In addition, Italy (as well as all other EU Member States) should address the root causes of forced migration and before removing boat-migrants make sure that Italy is following the legal pluralism of European law.

### **Contextual overview**

Since the beginning of the 1980's Italy has become a country of immigration instead of being a country of emigration. Due to the improvements in the Italian economy after the Second World War and the Marshall Plan, Italy became an important economic power in the 1980s, which worked as a pull factor for labor migration. Today, migration in Italy has changed from labor migration to asylum seeking migration. Frontex reports that through the *Central Mediterranean Route*, which is the seaway from Libya to Italy for irregular migrants, in 2008 approximately 40 000 people arrived irregularly by boat from northern Africa. In 2009, after that Italy signed a bilateral friendship agreement with Libya, the migration flow almost stopped. In the aftermath of the Arab Spring in

2011, the estimated number of migrants to Italy was around 64 000. But then again due to the fall of the Gaddafi regime, in 2012 the flow decreased again. However, in 2014 more than 170 000 migrants arrived in Italy alone, which is the largest influx of migrants into one single country in the history of the EU<sup>10</sup>.

During the last decade Italy has experienced a growing number of migrants by Sea coming from the coasts of North-Africa. This inflow of boat-migrants puts a heavy burden on Italy, which is a country currently beset with internal difficulties and instability; politically, socially and economically. In order for Italy to deal with this type of migration, the country has signed several treaties of collaboration with the countries of migrants' origin for the transit of the same. This, however, has had legal as well as moral consequences for Italy since many of the countries of origin do not respect fundamental human rights (Nascimbene, 2011). In 2011, the Italian government turned to the EU for assistance in handling the inflow of its borders, which is also the external border of the EU towards North Africa. However, when attempting to find common solutions between the Member States all their different legal cultures on migration policies and asylum came to the surface, and the solidarity clause between the States (established by the Treaty of Lisbon) showed to be questionable. All Member States were very quick to condemn the original states of the migrants but few wanted to actually deal with the migrants themselves (Nascimbene, 2011).

The International Organization for Migration reports that since the start of 2015, more than 54 000 people have reached the shores of Italy, while the UN estimates the number to 90 000. In addition, the Italian Coast Guard, Italian Navy and the Italian Guardia di Finanza have alone rescued more than 28 500 boat-migrants. The other EU vessels, mostly supplied by FRONTEX, have rescued only around 10 000 migrants. Other commercial ships have transported other 53 000 rescued migrants to Italy (Di Giacomo, 2015). Thousands have also died in their attempt to cross the Sea during the same period. The IOM has lamented the loss of life so far and they expect the number to increase as the summer progresses and more people are induced to reach the shores of Italy. The Director of IOM further laments the fact that it ought to be unacceptable that in the 21<sup>st</sup> century people fleeing from inhuman conditions are dying on the doorstep of Europe (Essa, 2015).

The increasing flow of migrants puts an enormous pressure primarily on Italy and secondly on the EU as a whole. The reality that thousands of people are in need constantly of international

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<sup>10</sup> See more at: <http://frontex.europa.eu/trends-and-routes/central-mediterranean-route/>.

protection further points to the fact that one state alone, in this case Italy, cannot face the situation by itself. Besides well-functioning accommodation facilities and protection the host-country also need to provide full respect for human securities and in accordance with the Charter of Fundamental Rights of the EU. However, the current common EU framework of Member States and cooperative assistance regarding the division of burden need to be revised in order to come to terms with the boat-migration flows. For the moment it is only working on paper but in reality it is full of flaws and slow (Nascimbene, 2011). In 2009, Italy officially asked for the Council of the EU to deal with the irregular migration from North-Africa and that the burden-sharing principles ought to be revised. In 2015, finally an agenda has been set by the Council on how to deal with irregular migration.

The Italian constitution guarantees some important rights to all people in Italy: the rights of the person, general principles of international law regarding human rights/security, the right to seek and, that the legal status of a foreign person is regulated in conformity with international treaties (Crépeau, 2013). In Italy, the Ministry of Interior is the main respondent for the protection of human civil rights concerning immigration, asylum and citizenship. There are different types of reception centers in Italy. The first kind is a reception center destined to guarantee first aid to the migrant while establishing the identity of the migrant (Centro di accoglienza, CDA). The permanence is limited for the time to make a decision of whether the migrant is entitled to stay or ought to be expelled. The second is a reception center for asylum seekers (Centro di accoglienza richiedenti asilo, CARA). These are centers where the asylum seeking migrant is supposed to be held for 20-35 days, while the procedure of recognition of refugee status will be approved. The third kind is a center of identification and expulsion (Centro di identificazione ed espulsione, CIE), where the migrant is supposed to be withheld due to an issued order from a judge, while waiting for expulsion. They are required by Italian law, aiming at preventing the dispersion of illegal immigrants on Italian territory, and allowing for the Police forces to execute the expulsion. According to a law from 2011, the time of detention at these centers has extended the maximum period of stay from 180 days until a maximum of 18 months. After that the migrant cannot be held anymore. An additional law from 2014 has established that if the detained migrant has received an expulsion order, the migrant ought not to be held at the center more than 30 days if legal contrary motivated reasons have not been presented (Kluwer, 2013). However, the centers are overcrowded and have poor access to sufficient hygiene possibilities and often internal argues occur between the migrants due to different ethnicities. Police brutalities have also been reported both in the detention

centers and during naval refoulement. HRW reports that Italian naval personnel used electric-shock batons and clubs to force off the migrants from the ship (Watch, 2009).

Regarding the burden-sharing between the EU member states due to the solidarity clause, it has so far been in-existent. The closure of the borders and the refusal of the neighboring countries Austria and France to receive boat-migrants have further impacted on the migrants human security. Hungary is constructing a wall to keep migrants away, Spain is doing the same, and United Kingdom and Germany are not willing to receive un-documented boat-migrants for the moment. This leads to a huge dilemma in both the moral and legal treatment of north-African boat-migrants not only by Italy but by the EU as a whole. In June this year, 2015, France in accordance with the Dublin regulation, closed their borders with Italy and rejected all boat-migrants. This led around 170 migrants at the cliffs on the beach in Ventimiglia, Italy, for a week (ANSA, 2015). The only protection and shelter they experienced was what the Italian Red Cross and other humanitarian organizations provided with until they were transported away by the Italian Police forces or they managed to escape. And this is just one example of border clashes. Austria also invokes the Dublin regulation in its defense when closing the border to Italy. Thousands of the boat-migrants tries to arrive in Germany by passing through the border between Italy and Austria. But since the Dublin regulation states that a migrant who has initiated his identification procedure in one country must remain in that country, Austria and France can easily escape both legally and morally from their responsibilities regarding migrants human security. Those migrants who manage to arrive at the Austrian border are immediately returned to Italy by the Austrian police (Valenza, 2015) and the same is done by the French Police. This means that Italy must suffer alone with both the legal and moral obligations towards the North-African boat-migrants. Considering the increased amount of people coming by sea there is little possibility that Italy can manage.

Anne Griffiths suggests that if the state is the central vantage standpoint from where the law is to be analyzed, the power of transnational laws deriving from the EU, the European Convention on Human Rights, religious movements etc. is either ignored or inadequately accounted for under a statist conception of law (Griffiths, *Legal Pluralism*, 2002). In the case of Italy it seems that it is the mix of the different legal standards together with a growing discontentment of the current national/transnational migration politics that are the main factors to why human security to the immigrants is not implemented neither through a legal aspect nor through a moral.

## 7.0 Analyses & Discussion

Boat-migrants from northern Africa do have legal opportunities to turn to for assistance and help in Italy, at least on the paper. Unfortunately, slow and bad coordinated administration create long waiting times for sentences on migration status and many of the boat-migrants simply evade the different reception centers and become irregular migrants. This causes the deprivation of many human securities that an asylum seeking migrant is entitled to. Furthermore, this evasion of undocumented people creates a problem for the internal security and health issues for the Italian state as well as for the rest of Europe. For example, in Bolzano, the chief town of the Italian county connected to the Austrian border, everyday hundreds of irregular migrants pass through or sleep at the train station hoping to get on a train to Germany, turning the station into an open-air refugee camp. This has led to outbreaks of scabies and tuberculosis involving the migrants, the local population and the voluntary workers. This scenario is especially applicable to Sicily and the reception centers, but also to the big cities like Rome and Milano. Furthermore, although these irregular migrants are undocumented they do not fear the Italian migration law anymore, because since they are leaving Italy they are no longer applicable. The Italian migration laws are only valid for irregular migrants who remain in Italy. This is a sign of tiredness that leads to believe that the Italian State instead of really confronting the problem of irregular migration, chooses a *laissez-faire* approach and thereby does not safeguard human security. It is also evident that Italy is facing obstacles in implementing relevant laws in the treatment of boat-migrants. The ruling legal pluralism based on different regional, national, transnational and international migration policies which were meant to safeguard human securities/basic rights are exactly doing the opposite. For example, the Italian national law states that all undocumented migrants ought to be rejected at the borders if they do not have a permission for work. This goes directly against EU law and articles 18 and 19 of the Charter that states the right to asylum and that collective expulsions are prohibited. However, in Italian national law it is further stated that if migrants need to be rescued they cannot be expelled or rejected and therefore will be received at the reception centers. Unfortunately, the Italian administration is slow and the boat-migrants are coming in huge masses and therefore these centers are overcrowded and the migrants can easily evade. This means that Italy cannot provide protection for these people during their stay. Based on this background Italy is not safeguarding human securities to the north-African boat-migrants in accordance with neither Italian legal standards nor with EU legal standards.

Boat-migrants from northern Africa coming to EU territory by entering the coastlines of Italy are fleeing from war, poverty, dictatorship, religious persecution, health issues, disease and bad living

conditions in general. The list can be made long. They are all from different nationalities but their end of means is common; better flee and risk dying than stay and dying anyway. In Italy and the rest of Europe they hope to find job, prospects of life, housing, and freedom, both for themselves but many also for their families left in their country of origin. Human security and protection by decisive reception and stay centers, is what Italy should offer to these people, both through a legal perspective as well as a moral perspective. Unfortunately, the law system based on local, national and transnational legal standards leave the interpretation of the laws open to speculation.

Through a theoretical perspective legal pluralism could be an advantage in governing a multicultural population but often it is the opposite. Sometimes it is the national legal standard that determines the treatment of the boat-migrants and sometimes it is the EU migration policies that are applied. In 2004-2005, Italy rejected by force hundreds of illegal migrants back to Libya due to an internal agreement between Italy and Libya. This is a violation against the establishment, international conventions on human rights and the current Italian legislation on migration policies. Furthermore, the migrants were denied their human securities by not being identified, not informed on their rights of asylum and not being offered any kind of legal assistance. Furthermore, Italy ignored several times the principle of *refoulement* and mass-expelled refugees back to a country, Libya, where they would most probably suffer from inhuman and degrading treatment. In addition, they would suffer from further unchecked *refoulement* back to their countries of origin since Libya does not provide with a national asylum policy and system of protection (Cutitta, 2006).

Inside Italy, the Italian internal political atmosphere is contributing to the moral treatment of the boat-migrants and their human securities, just as the behavior of the rest of the member States. Italy is currently finding itself in a situation of recession since several years and the social situation clearly shows that the rate of poverty regarding the native Italians is steadily increasing. The fact that the Italian government lately is hosting the boat-migrants in residences and five star hotels have therefore increased racism and a general discontentment in the public opinion. The closure of the borders between Italy and Austria and Italy and France, have certainly helped fuelling the debate on what the boat-migrants are entitled to not only in Italy but also in other member States. Also United Kingdom and France are currently violating international human rights law while keeping and denying some 2 500 boat-migrants arriving from Italy, stranded outside Calais (Essa, 2015). Their attempts to reach UK territory by passing through the tunnel under the English Channel have so far been rejected by responsible authorities and in accordance with national legal standards. This

points out that the EU member States in general has little interest in implementing human securities to the boat-migrants and that the ruling legal pluralism can be interpreted as it suits.

Here again, an awkward legal pluralistic law system does not set clear guidelines for which migration policy should prevail. In some cases Italy, or another member state, apply regional or national laws while in other cases they apply transnational laws. *The Telegraph* reported in April 2015, that when the Italian government asked the different Italian regions to provide with another 6 500 beds, most of them said no, referring to the bad economic and social situations they are governing already. Although there might be sympathy from the Italians, they are no longer willing to carry the huge burden of boat-migrants without help from the other member States. The small and pretty wealthy county Valle D'Aosta in the North-East of Italy accepted only 1 refugee. And the two wealthiest regions of Italy – Lombardy and Veneto - said there is no more space available. This is a moral statement underlining the fact that human securities are not being implemented to the boat-migrants<sup>11</sup>. However, in the South-Eastern region Apulia, the local, regional and national Italian authorities have understood that only a common framework will work in order to implement international protection for the boat-migrants. As late as in July this year, a common reception system has been developed in order to address the migrants needs and in accordance with territorial issues<sup>12</sup>. Space to host the boat-migrants and a model of integration is on the top of the list. This is supposed to lead to protection of human securities of the boat-migrants without denying the need of the Italians themselves.

Through a legal aspect human securities to boat-migrants are not being implemented because the legal orders that are supposed to do so instead creates legal obstacles. Legal pluralism may function well regarding other matters but in combination with human securities/rights it sometimes seems to be an opposing combination. The application of Italian regional laws can oppose the Italian national law application and in the end this means that the Italian State cannot implement correctly transnational/international laws regarding migration.

Cosmopolitanism value the human interest therefore any population finding itself in danger has a moral and legal right to claim protection from whoever is able to provide it. The winds of

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<sup>11</sup> Read the article at: <http://www.telegraph.co.uk/news/worldnews/europe/italy/11542063/Italians-revolt-against-migrant-invasion.html>

<sup>12</sup> See the Internal Ministry of Italy: <http://www.interno.gov.it/it/notizie/puglia-modello-diffuso-e-condiviso-accoglienza>

cosmopolitanism are slowly moving the focus on to humanity and the importance of safeguarding human security. With the acceptance and endorsement of the principles of the R2P, the moral obligations all states have in protecting people are merging into the legal assessments. This creates ulterior possibilities for the EU member states to find legitimacy in their decision to take action in order to protect and safeguard human securities. Unfortunately, the moral aspect regarding human securities is currently not yet taken seriously by Italy and the rest of the EU in the treatment of the boat-migrants. INGOs and NGOs are trying to ease the situation for the migrants that due to legal disorder most often find themselves without basic protection and shelter. Italy has problem with the logistics of the boat-migrants. The country has insufficient possibilities to host, although temporarily, the huge number of people in suitable structures. Access to ordinary basic needs is also insufficient and only a collaboration by the Italian State and the Italian citizens could ease the logistical pressure. This however, has turned into an immoral limbo situation where the treatment and hosting of migrants has turned into criminal activity with just one scope; earning money on already suffering people finding themselves in vulnerable situations without possibilities to protection. Furthermore, internal political elites are currently bringing in the boat-migrants in their discussions for their own advantages. The right-wing political party *Legha Nord*, for example, is using the boat-migration crisis as an opinion builder to gain votes by focusing only on the financial costs and the eventual threat these migrants are to bring about in Italy.

Italy together with the other EU States also ought to seriously take into consideration a humanitarian intervention of some level in the boat-migrants countries of origin, in order to deal with the root-causes of this current wave of migration. People will continue to try to reach Europe by dangerous boat trips conducted by human smugglers and criminal networks. Many of them will die during the trip and many will continue to die while waiting for a chance to get on a boat. Therefore, conducting a coordinated humanitarian intervention in Libya, Eritrea, Syria etc. where pressure will be put on current warlords and dictators in order to slowly arrive at improvements so that people do not need to escape. This is a moral responsibility that the EU has but foundation for an intervention can also be found in international treaties and for the safeguarding of human securities.

Furthermore, since the burden-sharing based on the EU solidarity clause has been so far inexistent, Italy has been left alone with the moral responsibility of safeguarding human securities. Many of the boat-migrants do not have Italy as their final destination. They want to arrive in for example: France, Germany, GB or Sweden since the labor market offers more or because they already have

relatives there. Neighboring countries like France and Austria invoke the Dublin Regulation in order to avoid the boat-migrants to enter their territory. By doing so they are also closing the opportunities for these people to arrive at their destination of hope and to be protected and ensured their human securities. Moutassem Yazbek is a Syrian refugee who arrived to Italy on a smuggler's ship in December 2014, and managed to get himself to Germany. In an interview with CNN in April 2015 - *How I was smuggled into Europe – and why it was worth it*<sup>13</sup>- he expresses his feelings about coming to Europe. *“I would have done anything to get to Europe. It was worth the risk, the bad treatment and the fear, hard as that may be to believe. Simply put, I have a better life now than I did before.”*

Although being aware of all the dangers and the harsh days he would have to spend on a non-seaworthy boat he still chose to pay a smuggler to bring him to Italy and Europe. Having lost his job in Dubai, Syria was not an alternative to return to due to the ongoing internal conflicts and war situation. The first boat he went on broke down and he was luckily rescued and turned back to Turkey for identification. However, he decided to try his luck again and a few days later he went on a new boat. This time, although a very tough ride, it went better and close to the Italian shore they were rescued by an Icelandic ship working in conjunction with FRONTEX and brought to Sicily.

This almost sounds like a sunshine story with a sad beginning and a happy end, but the reality for most boat-migrants is not so bright, sunny and happy. Many of them suffer, especially women and children, from violent abuses. Many of them die from diseases, bad living conditions or drown in the Mediterranean Sea, trying to follow their dreams of a better life. Despite this they continue to flee from a brutal reality where no human securities are provided and where there is no hope for the future. Europe is their hope. Europe, unfortunately in many instances, do not take its responsibilities for these people. Europe need to wake up.

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<sup>13</sup> <http://edition.cnn.com/2015/04/23/opinions/smuggled-syrian-migrant/>

## 8.0 Conclusion

The increased inflow of boat-migrants from the coastlines of North-Africa to Italy is a current, high sensitive phenomenon that requires a quick and long-term resolution. A combination which is not easy to deal with. In my humble thesis the purpose was to study and describe the dilemma in the legal and moral treatment of North-African boat migrants arriving in Italy and in a second step into the EU territory. The research questions to be assessed were:

- Is Italy providing human security to the current boat-migrants from North-Africa according to relevant legal standards such as the Italian national migration law and the Charter of the Fundamental Rights in the EU?
- Is Italy living up to expectations of safeguarding human security from a moral point of view and in accordance with the R2P?
- What actions can the EU take, based on current common legal and moral obligations to overcome the dilemma situation?

I have used two qualitative methods in my descriptive implementation study: a textual analysis and an empirical case study. The focus of my theoretical framework concerned the legal and moral aspects, represented by legal pluralism and cosmopolitanism, on the treatment of the north-African boat-migrants and their chances to human securities.

The outcome is that Italy certainly has good intentions but that the fusion of the current law system based on local, regional, national and transnational legal standards, makes it difficult to make decisions and take political action in favor of safeguarding human securities to the boat-migrants through a legal perspective and in the view of legal pluralism. Both the Italian migration policies and the Charter of the Fundamental Rights in the EU provides with theoretical legal standards to be implemented but in combination there seem to be creep holes which creates a gap between what is theoretically implemented and what is de facto implemented in the attempts to provide human security.

Also through a moral perspective Italy fails to provide human security to the boat-migrants. Also here Italy originally has good intentions, but the pace and the steady inflow of migrants have led to a point where Italy has no more assets and literally no more places where to host all these people. Through a moral perspective represented by cosmopolitanism and the R2P doctrine, each human being is entitled to protection and human security independently of ethnicity and geographical

position. Evidently this is not so *de facto*. The moral obligations stand back for the legal standards and when those standards are vague then the moral obligations become in-existent. The absence of solidarity from the other member States and the closure of the borders makes it evident that Italy is left alone in the management of the boat-migrants both through a legal and a moral aspect. Furthermore, the EU must come up with more common and parallel actions of burden-sharing and division of the already arrived migrants to overcome the dilemma situation. The member states national migration policies must be merged into a common EU migration policy at least in situations of emergency. If the legal pluralistic setting that is ruling the current migration system and treatment of the north-African boat migrants will not change, there are few chances that the legal and moral dilemma will come to end.

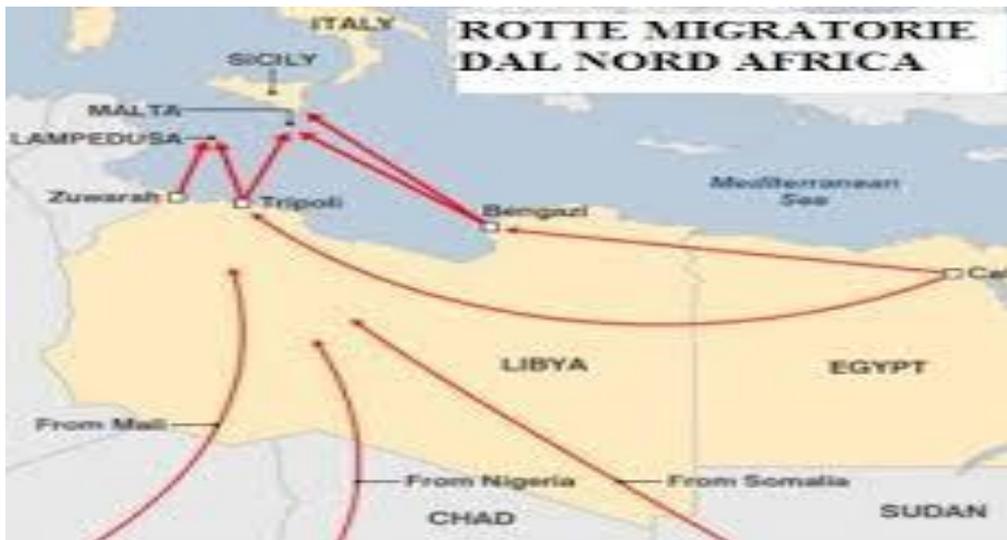
Finally, this thesis would like to suggest for future studies to seriously consider which improvements and benefits a humanitarian intervention undertaken by the EU in the failed states of Africa could bring about in order to create safe living hoods where human securities would be provided for. If there is no will to resolve the problem with the boat-migrants and their protection on European soil than maybe it would be better to do it in their place of origin. The moral obligation sovereign states have due to the R2P doctrine and the responsibilities to prevent, react and rebuild, supports the legal possibilities to conduct such humanitarian interventions although inside another state's sovereign territory.

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**The Routes**



**Lega Nord – The fastest growing political party in Italy for the moment**



**A typical over-crowded boat**



**An answer from the boat-migrants to the actual politics of Italy and the EU: Sorry if we didn't drown!!**



**Dormitory in a receiving center**