Italy's Sea Rescue Policy in Discord with International Law

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Over the last few years, Italy has been facing a giant wave of migration. African nationals are attempting dangerous and often deadly crossings of the Mediterranean Sea with hopes for a new and better life in the European country.[1] With many of these attempts resulting in catastrophe, European charity rescue ships have responded by going out into the sea and rescuing migrants from the ill-fitted boats attempting the voyage.[2]

In order to see the background for the Italian government's actions, it's important to look at the migrants that Italy is seeing come to its shores; to look at where they come from and how they attempt to cross the Mediterranean to reach Europe.

The most common countries of origin for the people traveling through the Mediterranean are located in regions of Africa that have long been affected by conflict and have seen both internal and external displacement of its people.[3] The regions that serve as the primary source of these migrants are the in the East and the Horn of Africa, with countries such as Somalia, Eritrea, Ethiopia, Sudan, and Libya seeing a large number of emigration.[4]

The migration from these regions has been steady and constant since 2014, when more than 200,000 people migrated from both West and East Africa, through North Africa, and onwards to Europe.[5] This number peaked a year later, when more than a million people were able to reach Europe.[6] These numbers would see a gradual decrease in the following years, especially during the COVID-19 lockdown period.[7] However, smugglers have adapted to bypass official

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[1] *See* Nicole Winfield, *EXPLAINER: Fewer people cross Mediterranean; many still die*, AP News (Oct. 7, 2022), https://apnews.com/article/middle-east-africa-greece-immigration-df115568e5ed7c95c1c71c112f2c0174.
[2] *Id.*
[3] *Mediterranean Sea journeys for migrants have grown more deadly: UNHCR*, UN News (June, 10, 2022), https://news.un.org/en/story/2022/06/1120132.
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Id.*

controls and the flow of migrants has once again risen, with a continuing upward trend.[8]

Smugglers, particularly in Libya, are the main method for the migrants to get across the Mediterranean Sea.[9] These smugglers take advantage of the migrants' desperation and charge anywhere from $750 to $3,500 apiece for a spot on a boat that they claim is going to Italy.[10] Obviously, these smugglers don't care whether the ship makes it to Italy or not, and they cram as many people as possible on a boat in order to maximize their profits.[11] After getting their payment, the smugglers board all the people they can on the flimsy boats, which are often unseaworthy, provide enough fuel to make it into international waters, and then abandon the boats full of people, stranding them at sea.[12] If they're lucky, the migrants' boat might be spotted by one of the charity ships carrying out rescue missions, and the migrants will be saved and brought aboard before being taken back to Europe.[13] Unfortunately, many such stories do not end in rescue.

However, Italy's right-wing Prime Minister Giorgia Meloni and her administration have had enough, resulting in the passage of a new Italian decree that prohibits vessels of search and rescue organizations from carrying out multiple rescues on the same voyage.[14] The decree requires that these search and rescue vessels – and only those vessels that are conducting such activities – to immediately go to the port allocated to them by the Italian government and to reach the port "without delay,"[15] which effectively means that the search and rescue ships must

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[8] *Id.*
[9] *See* Aryn Baker, *A week on board a refugee recovery ship*, TIME (Sept. 8, 2016), https://time.com/refugee-rescue/.
[10] *Id.*
[11] *See id.*
[12] *See id.*
[13] *See id.*
[14] Giulia Tranchina, *Italy's Anti-Rescue Decree Risks Increasing Deaths at Sea*, RELIEF WEB (Jan. 9, 2023), https://reliefweb.int/report/italy/italys-anti-rescue-decree-risks-increasing-deaths-sea-enit
[15] Urgent provisions for the management of migratory flows, § 2(d), 2023 (GU General Seriesn.1 of 02-01-2023) (Ita.).

ignore any other distress cases in the Mediterranean Sea once the ship has rescued a ship.[16]

The decree was not Italy's first response to the charity ships. After taking office, the new rightwing government led by Prime Minister Meloni instead took a more direct approach to the illegal immigration by simply refusing to let some of the charity ships from landing and letting the people onboard disembark.[17] This saw migrants stuck for up to two weeks on board four ships all seeking to make port in Italy.[18]

On November 5, 2022, Italy permitted the German-flagged Humanity 1 (operated by Berlin-based SOS Humanity) to dock in Catania and allow 144 children, pregnant women, mothers accompanying young children, and "vulnerable people" in need of urgent medical attention.[19] The next day, Norwegian-flagged Geo Barents to make port in Catania, but once again only allowed people that the Italian government deemed vulnerable or in need of medical attention to disembark.[20]

This initial approach resulted in tensions between France and Italy when France was pushed into allowing an NGO ship with more than 200 migrants to dock at the port in Toulon.[21] France is also struggling with immigration and French Interior Minister Gerald Darmanin did not mince words on Meloni's government's actions in banning the charity vessel and forcing the ship to travel from Sicily to Toulon, calling the actions "reprehensible" and "selfish."[22] Italy rejected the French criticism, claiming the reaction underscored the continent's failure to deal with the rising number of migrants.[23]

[16] Tranchina, *supra* note 14.

[17] Amy Kazmin & Giuliana Ricozzi, *Italy blocks rescued migrants from landing and orders ship to leave port*, FIN. TIMES (Nov. 7, 2022), https://www.ft.com/content/a59acc21-08ad-42b1-ba1d-fd4c21b9066a.

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] Dominique Vidalon & Marc Leras, *France to let migrant boat dock, has harsh words for Italy*, REUTERS (Nov. 10, 2022), https://www.reuters.com/world/europe/ocean-viking-migrant-ship-sails-near-frances-corsica-2022-11-10/.

[22] *Id.*

[23] *Id.*

Regardless of Italy's deflection of criticism, the Italian government did move away from banning ships and Prime Minister Meloni may believe that her administration came up with a method of ebbing the migrant flow, but, in reality, the decree conflicts with international law, namely the UN Convention on the Law of the Sea (UNCLOS), and the decree, in effect, results in even more deaths in the Mediterranean.[24]

UNCLOS is the result of the third United Nations Conference on the Law of the Sea (UNCLOS III), which took place between 1973 and 1982.[25] UNCLOS defines the rights and responsibilities of states in their use of the world's oceans.[26] Italy ratified the UNCLOS in January of 1995.[27]

Italy's decree contradicts with the UNCLOS when it comes to Article 98, which mandates that every state require flying their flag to "render assistance to any person found at sea in danger of being lost."[28] Prime Minister Meloni used this article to say that the flag states of the NGO ships – notably, Norway and Germany – were responsible for the migrants being rescued, but NGOs, Germany, Norway, and legal experts have all rejected this interpretation.[29] Legal experts have said that flag nations are not responsible for disembarkation or asylum.[30]

The practical effect of the decree is that the charity ships are ordered to sail to distant ports, meaning that they spend more time reaching the ports with the passengers of the first boat they rescue, instead of rescuing any other boats that are in danger.[31] Not only does this decrease

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[24] *See* Kazmin & Ricozzi, *supra* note 17.
[25] *About the UNCLOS*, Inst. for Mar. & Ocean Aff., https://www.imoa.ph/treaties/unclos/unclos-history/ (last visited Jan. 29, 2023).
[26] *Id.*
[27] Tullio Scovazzi, *The Italian exclusive economic zone*, Questions of Int. L. (Jan. 31, 2022, 11:08 A.M.), http://www.qil-qdi.org/the-italian-exclusive-economic-zone/.
[28] U.N. Convention on the Law of the Sea art. 98.
[29] Frederico Maccioni, *Explainer: Italy's new government challenges sea of maritime laws*, Reuters (Nov. 11, 2022), https://www.reuters.com/world/europe/italys-new-government-challenges-sea-maritime-laws-2022-11-11/.
[30] *See id.*
[31] *See* Tranchina, *supra* note 14.

the likelihood of saving migrants, but it increases costs in fuel, food, and other expenses for the charity ships and can even increase the suffering of the rescued migrants on board.[32]

As of December 2022, more than 103,000 migrants arrived in Italy, an increase of 55% over the year before.[33] Even with the help that these charity ships have been providing, most of this increase arrived independently.[34] With around 1,400 people dying, missing, or presumed dead in 2022, it's highly questionable whether opposing and punishing the ships complying with UNCLOS by trying to save migrants' lives is the best (if realistic and viable at all) way of addressing Italy's migration issue.

[32] *See id.*
[33] Colleen Barry, *Charities say new Italian rules will limit rescues at sea*, AP NEWS (Dec. 29, 2022), https://apnews.com/article/politics-italy-government-europe-mediterranean-sea-9c0a1dbb637be3011afa49cc68a5cb4b.
[34] *Id.*