

MAY 2024



WRITTEN BY

MEAVE BUCHIGNANI

EDITED BY

ZOI SOFOLOGI

SUPERVISED BY

MARTA CERAFOGLI

Introduction

In the past years, the Mediterranean Sea has become a theatre of both tragedy and lifesaving efforts, as the ongoing migration crisis has prompted a surge in sea rescue operations. Amidst this complex landscape, the *Iuventa* case stands out as a pivotal case study, representing the challenges faced by humanitarian NGOs engaged in saving lives at sea. This paper explores the legal framework governing sea rescue operations and analyses the legal intricacies and landmark decision of the *Iuventa* trial before the Italian Court.

Migration Flows in Italy (2015-2017)

Before delving into the analysis of the legal framework surrounding sea rescue operations and the *Iuventa* case, it is essential to provide a brief overview of the migration situation in Italy from 2015 to 2017. The migration crisis that swept across Europe during this period emerges as one of the most complex humanitarian challenges of the 21st century. It was characterised by a substantial influx of refugees and migrants, primarily originating from war-torn regions, exacerbated by political instability, economic adversity, and human rights violations (UNHCR, 2021).

Italy, positioned as a frontline state facing significant migration flows, played a crucial role during this crisis. In 2015 alone, Italy documented over 150,000 sea arrivals, while the following year, 181,436 migrants reached its shores by maritime routes (International Organisation for Migration, January 2017). Although there was a decline in the number of arrivals in 2017, Italy registered 102,534 sea arrivals in the first nine months of the year (International Organisation for Migration, 2017, September). Notably, the decrease in the number of irregular migrants reaching Italy in mid-2017 followed the implementation of the Italy-Libya Memorandum of Understanding signed at the beginning of 2017 (La Repubblica, 2018, June 20).

In response to the migration fluxes, several operations took place in Italy. Operation *Mare Nostrum* commenced in 2013, followed by Frontex Operation *Triton* in 2014 aimed at enhancing border surveillance and search and rescue capabilities (European Commission, 2014). Additionally, in 2015, the EU launched EUNAVFOR MED Operation *Sophia*, focusing on disrupting human smuggling and trafficking networks in the Southern Central Mediterranean. Its systematic efforts targeted the identification, capture, and disposal of vessels and assets used by smugglers or traffickers, aligning with broader EU objectives to dismantle these criminal networks and prevent further loss of life at sea (Operation *Sophia*, n.d.).

Amidst the surge in migration flows and the operational responses deployed, sea rescue operations emerged as a critical lifeline for individuals undertaking dangerous journeys across the Mediterranean. In response to the escalating humanitarian needs and the risk of losing lives at sea, NGOs carried out several sea-rescue operations, saving hundreds of thousands of people (Lanni, 2017).

The Legal Framework

The crime of facilitating irregular migration was introduced in Italy in 1998 under Article 12 of the Decreto Legislativo 286/1998, which prohibits “illegally promoting, directing, organising, financing or conducting the transport of individuals into the territory of the State or committing any other act aimed at aiding the illegal entry of an individual” (EUROJUST, 2024, p.24). The Article penalises individuals who transport migrants, finance, and manage human trafficking. It is necessary to emphasise that this conduct is prohibited and subject to punishment, even if the aided migrants do not succeed in entering Italian territory due to the fact that the law explicitly targets actions “aimed at aiding the illegal entry” of individuals, regardless of the outcome of said actions (Vitali, 2022).

Furthermore, it is essential to note that the Italian Criminal Code (c.p.) recognises the legal concept of the State of Necessity, a circumstance which precludes the wrongfulness of an otherwise wrongful act. Specifically, according to Article 54 c.p., someone who commits a wrongful act to save themselves or others from imminent danger of serious harm may not be punished if the danger is not caused by them voluntarily and could not have been avoided by any other means. However, the action must be proportionate to the danger. A broader interpretation of this Article suggests that individuals who rescue migrants at sea whose lives are in danger cannot be prosecuted for facilitating irregular migration (Comitato parlamentare di controllo sull'attuazione dell'Accordo di Schengen, di vigilanza sull'attività di Europol, di controllo e vigilanza in materia di immigrazione, 2017).

When examining the legal framework concerning the rescue of migrants at sea, it is essential to recognise that international law has long established the obligation to provide assistance at sea. Article 98 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) stipulates that every State shall require the master of a ship flying its flag to render assistance to any person found at sea in danger of being lost (UNCLOS, 1982, Art. 98 (1)(a)). The second paragraph of the Article imposes a duty on coastal states to establish and maintain adequate and effective search and rescue services (UNCLOS, 1982, Art. 98 (2)). Other international conventions such as the 1974 International Convention for the Safety of Life at Sea (SOLAS Convention), the 1979 International Convention on Maritime Search and Rescue (SAR Convention), and the 1989 International Convention on Salvage also recognise the duty to rescue at sea.

Specifically, Regulation 33.1 of the SOLAS Convention establishes that “the master of a ship at sea which is in a position to be able to provide assistance, on receiving a signal from any source that persons are in distress at sea, is bound to proceed with all speed to their assistance, if possible informing them or the search and rescue service that the ship is doing so” (International Convention for the Safety of Life at Sea, 1974). The obligation to provide assistance applies both in the event of vessels colliding and when a vessel is notified of individuals who need rescue at sea because their vessel is endangered or has sunk. It is paramount to remember that the duty applies to all persons in distress, despite their nationality and their legal status (Papanicolopulu, 2016).

Similarly to the SOLAS Convention, the International Convention on Salvage clearly imposes an obligation on ship masters. According to Article 10 of the International Convention on Salvage, “every master is bound, so far as he can do so without serious danger to his vessel and persons thereon, to render assistance to any person in danger of being lost at sea” (International Convention on Salvage, 1989). This brief overview of international conventions relating to the law of the sea concludes that the duty to rescue people in distress at sea is a fundamental rule of international law.

The Case

In October 2015, the NGO Jugend Rettet was founded in Germany with the aim of fighting against dying in the Mediterranean. In May 2016, the NGO bought a ship, the *Luventa*, with the aim of rescuing people in maritime distress. The *Luventa* mission rescued over 14,000 refugees and migrants in the Mediterranean within a year. However, on 2 August 2017, Italian authorities seized the ship and began investigations into the conduct of crew members of the German NGO Jugend Rettet (Jugend Rettet, n.d.).

The charges they faced were based on Article 12 d. lgs. 25 Luglio 1998, n. 286 Testo Unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero [Legislative Decree No. 286/1998 "Consolidated Text on Immigration and provisions on the legal condition of foreigners"]. This Article specifically refers to the facilitation of irregular migration by colluding with smugglers (Forensic Architecture, n.d.). More precisely, according to the Prosecution, the NGO coordinated with smugglers to pick up migrants at specified times and locations, returning empty boats to them on three occasions: 10 September 2016, 18 June 2017, and 26 June 2017 (Camilli, 2017).

The Prosecution's case heavily relied on testimonies from two IMI Security Services agents, Pietro Gallo and Floriana Ballestra. The two were security guards on board of the *VOS Hestia*, a sea-rescue vessel of the NGO Save the Children, and believed several NGO workers were carrying out their activities irregularly. Therefore, they lodged a complaint and forwarded a dossier concerning the actions of NGOs to specific political parties and to the Italian Secret Services (Il Post, 2024).

The main accusations were against the *Luventa* crew members and led to undercover investigations and wiretapping, which revealed photos and conversations supposedly implicating NGO workers. Despite the ongoing investigation, the photo, allegedly portraying crew members on small vessels towing empty boats to human smugglers, was leaked to the press (Camilli, 2024). Said evidence was presented as the key argument during the trial. The Prosecution claimed that it proved the NGO's agreements with smugglers to return them boats. However, the allegations were refuted thanks to a detailed inquiry carried out by Forensic Architecture and Forensic Oceanography (Il Post, 2024; Forensic Architecture, n.d.).

The investigations ended in 2021, and the preliminary trial before the Court of Trapani started in May 2022 with twenty-one individuals facing charges of up to 20 years of imprisonment (Amnesty International, 2020). In the preliminary stage of the trial, proceedings were halted because the defendants were not properly notified about the conclusion of the investigation phase and the scheduling of the first preliminary hearing, a fundamental aspect of fair trial rights. The proceedings were also delayed because authorities did not provide sufficient interpretation services to the defendants (ECCHR, n.d.).

On 19 December 2022, the Italian Ministry of Interior (Moi) and the Prime Minister's Office requested to join as a plaintiff, claiming material and reputational damages. While Italian Criminal Procedure permits government involvement as a plaintiff in trials, this decision raised concerns about the politicisation of the proceedings. Two months later, the judge ruled on the request. The request of the Presidency of the Council of Ministers to join as a civil plaintiff was rejected due to lack of legitimacy since there were no specific reasons or compensation claims in the final section and conclusions. On the contrary, Moi's request was granted, due to its competence to manage immigration flows and maintain public order and security. After all, the allegations of facilitation of illegal immigration contained in the charges, concerned the safeguarding of public interests that fall under the purview of the Moi (ECCHR, n.d.).

During the proceedings, it was reiterated that the conduct of humanitarian rescuers cannot be considered unlawful. According to one of the defence lawyers, Francesca Cancellaro, the conduct should be deemed as atypical since, as previously mentioned, shipmasters are obligated to render assistance to those in distress at sea. Hence, according to the defendants, the entry of migrants in Italian territory is not irregular or illegal, because "they are exercising their rights as rescued persons, including to be put in a position to exercise their right to apply for international protection" (ECCHR n.d.).

On 10 February 2024, after two years of preliminary proceedings, Pietro Gallo and Floriana Ballestra, the main Prosecution witnesses, were summoned for questioning. Their testimonies played a crucial role in initiating the investigation, but following the hearing and cross-examination, it was found that they lacked credibility and had been dismissed from the police services due to fraud, lies, defamation and malpractice (Mediterranea, 2024). On 28 February 2024, the Prosecution requested that the charges be dropped. The Prosecution concluded that the witnesses lacked credibility and that there was no evidence proving the wrongdoing of the defendants (ECCHR, 2024, February). On 29 April 2024, after a seven-year trial, the Court acquitted all crew members (Tondo, 2024).

The conclusion of the lengthy legal case surrounding the Luventa mission is a landmark decision in sea rescue operations and humanitarian efforts. Nonetheless, it is imperative to acknowledge that the prolonged investigation not only cast a shadow over the operations of humanitarian NGOs, but also led to the decay of the Luventa ship, hindering its ability to continue saving lives at sea and impeding efforts to rescue others in distress (ECCHR, 2024, April). The acquittal of all crew members is not merely a legal victory but a resounding affirmation of the essential humanitarian principles underpinning sea rescue operations.

Conclusion

In conclusion, the examination of the legal framework surrounding sea rescue operations, through the lens of the Luventa case, illuminates the intricate intersection of humanitarian principles, legal obligations, and political realities. The protracted investigation and trial against the Luventa crew members have casted a shadow over the work and ability of NGOs to conduct lifesaving missions. Moreover, the decay of the Luventa ship amidst the legal proceedings serves as a stark reminder of the tangible consequences of prolonged legal battles on humanitarian mission, hindering their ability to continue lifesaving missions.

However, the acquittal of all crew members after the seven-year long legal battle represents a significant victory for humanitarian efforts, reaffirming the fundamental principles of international law and sea rescue operations. As we navigate the complex landscape of migration crises and humanitarian responses, it is paramount to recognise the significance of the Luventa case in the discourse on migration and international law and the imperative of safeguarding the essential principles of international law.

Bibliography

Amnesty International. (2020, July 31). Italy: Crew of rescue ship face 20 years in jail on third anniversary of smuggling investigation.

<https://www.amnesty.org/en/latest/news/2020/07/italy-crew-of-rescue-ship-face-20-years-in-jail-on-third-anniversary-of-smuggling-investigation/>.

Camilli, A. (2017, August 8). Tutte le accuse contro l'ong Jugend Rettet. Internazionale. <https://www.internazionale.it/notizie/annalisa-camilli/2017/08/08/accuse-ong-iuventa-jugend-rettet>

Camilli, A. (2024, March 5). Iuventa, un processo politico durato sette anni. Internazionale. <https://www.internazionale.it/notizie/annalisa-camilli/2024/03/05/iuventa-ong-soccorso-in-mare-trapani>.

Comitato parlamentare di controllo sull'attuazione dell'Accordo di Schengen, di vigilanza sull'attività di Europol, di controllo e vigilanza in materia di immigrazione. (2017). Audizione del Procuratore aggiunto f.f. della Repubblica presso il Tribunale di Trapani, dottor Ambrogio Cartosio, accompagnato dal Sostituto Procuratore della Repubblica, dottor Andrea Tarondo. XVII Legislatura, Testo del resoconto stenografico [Trandscript]. Seduta n. 47 di Mercoledì 17 maggio 2017. http://documenti.camera.it/leg17/resoconti/commissioni/stenografici/html/30/indag/c30_confini/2017/05/17/stenografico.0047.html.

Decreto Legislativo 25 Luglio 1998, n. 286, Testo Unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero [Legislative Decree No. 286/1998 "Consolidated Text on Immigration and provisions on the legal condition of foreigners"]. <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:1998-07-25;286>.

EUNAVFOR MED Operation Sophia (n.d.). About us. <https://www.operationsophia.eu/about-us/#story>.

EUROJUST. (2024, January). Legal definition of migrant smuggling and/or facilitation of irregular migration.Criminal justice across borders - An overview of EU legislation. European Union Agency for Criminal Justice Cooperation.

<https://www.eurojust.europa.eu/sites/default/files/assets/legal-definition-of-migrant-smuggling-and-facilitation-of-irregular-migration.pdf>.

European Center for Constitutional and Human Rights. (n.d.). Acquittal for Iuventa sea rescuers. ECCHR.

<https://www.ecchr.eu/en/case/sea-rescuers-under-attack-iuventa-crew-criminalized-by-italian-government/>.

European Center for Constitutional and Human Rights. (2024, February 28). After 8 years, prosecution calls for charges to be dropped in IUVENTA proceedings. ECCHR. <https://www.ecchr.eu/en/press-release/nach-7-jahren-staatsanwaltschaft-fordert-einstellung-des-verfahrens-im-iuventa-prozess/>.

European Center for Constitutional and Human Rights. (2024, April 19). Acquittal for sea rescuers of the Iuventa. ECCHR. <https://www.ecchr.eu/en/press-release/acquittal-for-sea-rescuers-of-the-iuventa/>.

European Commission. (2014, October 31). Frontex Joint Operation 'Triton' – Concerted Efforts for managing migrator flows in the Central Mediterranean (MEMO 14/609). European Commission. https://ec.europa.eu/commission/presscorner/detail/it/MEMO_14_609.

Forensic Architecture. (n.d.). Investigations - the seizure of the Iuventa. <https://forensic-architecture.org/investigation/the-seizure-of-the-iuventa>.

Il Post. (2024, March 2). Le indagini e il processo sulla nave Iuventa, dall'inizio. Il Post. <https://www.ilpost.it/2024/03/02/caso-iuventa/>.

International Convention for the Safety of Life at Sea. (1974). United Nations Treaty Series No. 18961, Vol. 1184, pp. 1-18961. <https://treaties.un.org/doc/Publication/UNTS/Volume%201184/volume-1184-I-18961-English.pdf>.

International Organisation for Migration. (2017, January 6). Mediterranean Migrant Arrivals Top 363,348 in 2016; Deaths at Sea: 5,079. <https://www.iom.int/news/mediterranean-migrant-arrivals-top-363348-2016-deaths-sea-5079#:~:text=IOM%20Rome%20spokesperson%20Flavio%20Di,percent%20increase%20over%202014%20totals>.

International Organisation for Migration. (2017, September 19). Mediterranean Migrant Arrivals Reach 131,772 in 2017; Deaths Reach 2,556. <https://www.iom.int/news/mediterranean-migrant-arrivals-reach-131772-2017-deaths-reach-2556>.

Jugend Rettet. (n.d.). Our Story. https://jugendrettet.org/en/about#our_story.

La Repubblica. (2018, June 20). Migranti, l'Ocse: "Nel 2017 in Italia sbarchi calati del 34%". La Repubblica. https://www.repubblica.it/solidarieta/profughi/2018/06/20/news/rapporto_ocse_migranti_richiedenti_asilo_italia-199497094/.

Lanni, A. (2017). Ong e salvataggi in mare, 11 domande (e risposte) per fare chiarezza. UNHCR Italia. <https://www.unhcr.org/it/risorse/carta-di-roma/fact-checking/ong-salvataggi-mare-11-domande-risposte-chiarezza/>.

Mediterranea. (2024, February 12). Le accuse sono basate su testimoni inattendibili. Il processo contro iuventa sta crollando. <https://mediterraneaescue.org/it/news/le-accuse-sono-basate-su-testimoni-inattendibili-il-processo-contro-iuventa-sta-crollando>.

Papanicolopulu, I. (2016). The duty to rescue at sea, in peacetime and in war: A general overview. *International Review of the Red Cross*. 98 (2) p. 491-514 <https://library.icrc.org/library/docs/DOC/irrc-902-papanicolopulu.pdf>.

Tondo, L. (2024, April 19). Crew of migrant rescue boat acquitted in Italy after seven-year ordeal. *The Guardian*. <https://www.theguardian.com/world/2024/apr/19/italian-court-acquits-crew-of-migrant-refugee-rescue-boat-iuventa>.

UNHCR, The UN Refugee Agency. (2021). *Global Trends: Forced Displacement in 2019*. [report] <https://www.unhcr.org/globaltrends2019/>.

United Nations. (1953). *International Convention on Salvage, 1989 (No. 33479)*. In *Treaty Series: Treaties and international agreements registered or filed and recorded with the Secretariat of the United Nations (Vol. 1953, pp. 165)*. <https://treaties.un.org/doc/Publication/UNTS/Volume%201953/v1953.pdf>.

Vitali, M. (2022, January 18). Il reato di favoreggiamento dell'immigrazione illegale. *Diritto.it*. <https://www.diritto.it/il-reato-di-favoreggiamento-dellimmigrazione-illegale/#delitto1>.