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# The Role of International Law in the Maritime Migration Security Assemblage: EU Activity in the Lampedusa Triangle

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## Keywords

*Assemblage, EU Security, Maritime Security, Migration Governance, Practice Theory, Zonation*

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## Abstract

*This paper concerns itself with the configuration of security at sea, arguing that its implementation is not solely within the security actor's control. Rather, maritime security configurations are constructed as a result of intended and unintended actions and implications, melding security and insecurity together as a singular sphere of activity. Narrowing in on the specific case of migration governance, this paper investigates the role of international legal obligations and limitations for security actors at sea in understanding the operationalisation of maritime migration security. Questions of the construction of maritime security configurations are considered with reference to boarding and searching of vessels, search and rescue (SAR) and access to territorial waters, perceived through the practice based assemblage approach. It is proposed that assemblage theory is suited to accessing complex relationships between security and international law. Attending to Central Mediterranean migration governance, this paper reflects a reading of international law that resulted in a stagnation of security on the high seas. The convictions of this paper are three-fold. Firstly and primarily, the implementation of a maritime security initiative is not solely within the control of the securitising actor. Secondly, maritime security configurations are malleable, and shaped by unplanned elements, including international legal obligations and instruments. Finally, maritime security is an assemblage, constructed as a result of intentional and unintentional independent elements which form relationships and result in a unique security configuration. The findings demonstrate that international law forms an important aspect of maritime migration security configurations or assemblages, and significantly shapes such operations.*

## Introduction

Maritime migration governance and security has become a much discussed and researched area of concern for academics, policymakers, and media outlets alike, over the course of the 21<sup>st</sup> Century. Scholars from a variety of theoretical backgrounds have investigated this security policy from a range of perspectives, each contributing comprehensively to this field of great importance and consequence. Critical security studies, critical border studies, critical migration studies, and others, have each provided a varied and useful overview of the migration governance picture. Despite an empirical understanding having already been established, the recently emerged field of maritime security has not expressed the same theoretical interest in the movement of persons at sea and its resulting counter-migration policy emanating from maritime security actors. Indeed, the rise of maritime security as an independent school of academic research has coincided with the academic movement away from maritime migration governance, following the apparent taming of the mid 2010s migration crisis. This parallel rise of maritime security and fall of maritime migration interest has left a void of investigation, calling out to be filled. The renaissance of

practice theory, or the practice turn, which has swept through the discipline of international relations (IR) has not only invigorated the theoretical debate more broadly (Kustermans, 2015), but has also permitted maritime security to broaden its horizons and gain more IR interest in recent years. As such, the opportunity to utilise such methods of inquiry has never been greater in the maritime security field than it is now. Christian Bueger's crossover as a prominent IR practice theory commentator and maritime security theorist, reflects this evolution taking place in both fields<sup>1</sup>. Indeed, he has called for maritime security theorists to continue to utilise sociology founded practice theory, and therefore contribute to these theoretical debates, which are increasingly seabound. As such, this paper responds to this call to arms, and seeks to provide clarity of maritime security existence and practices, while filling the theoretical void left in the mid to late 2010s, through discussion of the European migrant crisis.

Assemblage approaches have gained recent traction through the practice turn of IR, with more and more security scholars utilising this theory and methodological approach to isolate and identify configurations of security (Enns et al., 2020; Stevens, 2020; Sperling & Webber, 2019). Its main utility is found in answering how security is constructed, as well as how it is affected by, and integrated with, elements outside the security actor's control. Like the seas themselves, the implementation of security is an unpredictable and treacherous scape, with many unanticipated hurdles and unintended consequences to be found along the way. Mimicking the sea, maritime security is an imperfect endeavour, made up of many varying elements which are as interconnected as the waves. While waves have their individuality, or heterogeneity, they are connected with one another homogeneously, affecting each other's path and force.

In a maritime security assemblage, there equally exist many heterogenous elements. The securitising actor possesses agency over a number of these elements, such as naval surface assets, technological surveillance capabilities, state and non-state actor information sharing, territorial zonation etc, but does not possess agency over the assemblage as a whole. Within maritime security operations, these elements are methods that seek to tame the seas and stand in opposition to the elements of blue crime initiatives which are seen to create insecurity at sea.

Termed by the European migrant crisis, the high volume of boat migrants attempting the voyage across the Mediterranean Sea northwards was, at the time, seen as the highest priority among the EU's political elite. The loss of life was well publicised, with high media interest, such as the back-to-back shipwrecks of 13<sup>th</sup> and 18<sup>th</sup> April 2015 (IOM, 2015) in the Central Mediterranean totalling more than 1,200 deaths. In total, over the course of 2015, 3,771 boat migrants died making similar Mediterranean crossings (IOM, 2016). This was not the only migration headache for the EU, as the volume of successful crossing created political and administrative issues and tensions of their own for European governments and authorities. In the same year, 473,887 migrants are said to have successfully reached European shores via the Mediterranean crossings. The EU acted on both counts, attempting to stem the tide of maritime migration from the shores of Northern Africa. Large scale maritime security operations were launched, military assets and personnel were deployed, and technological surveillance was expanded to fight criminal smuggling elements and prevent migrant departure from the territorial waters of Libya<sup>2</sup>. Operation Sophia<sup>3</sup> was the spearhead in the EU security response, with activity reaching across the Central Mediterranean from Italian shores to Libyan territorial waters. This spanned across the internationally recognised search and rescue (SAR) zones of Italy and Malta.

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<sup>1</sup> On Practice theory see Bueger and Gadinger, 2018. For maritime security papers see Bueger, 2012; 2015a; 2015b; Bueger, C., Edmunds, T. & McCabe, R., 2020a; and others.

<sup>2</sup> Libyan shorelines have widely been cited as primary departure points. Although, Tunisian and Egyptian shorelines have also been utilised to a lesser degree, to access the central Mediterranean migration route.

<sup>3</sup> Originally referred to as EU Naval Force Mediterranean, or EUNAVFOR MED, and later and more commonly referred to as Operation Sophia, named after a Somali refugee child, born onboard a German Frigate after her pregnant mother was rescued in the Mediterranean (EUNAVFOR MED, 2023).

In his efforts to provide a definition to the seemingly unlimited reach of maritime security, Ryan (2022) has pointed to its contemporary zones of initiation, and as such the geographical area or zone that opposing physical forces and actors collide. This research equally highlights the importance of these hotspots, and particularly acknowledges the geographical area that stretches between the Libyan port cities of Zuwarah in the West, Misrata to the East of Tripoli, and the Italian island of Lampedusa. Officially this was recognised as an area of high people smuggling activity by operation command in Council Report 5653/16 (EEAS, 2016). As such, this zone, which became known as the Lampedusa Triangle, would be considered the primary hotspot for anti-blue crime and anti-migration EU activity for the duration of Operation Sophia. It is from Ryan's narrowing of maritime security practice to the hotspot of activity, that the Lampedusa Triangle has been selected, with continuing respect for the consequences of maritime security that extend beyond the simple geographical and sea-level point of action. After all, as Ryan (2022) puts it, 'When we look at the fish on our dinnerplate, we are encountering maritime security'. To that end, while this study concerns the configuration of maritime security from a practice approach, the implications and consequences of such operations beyond this zone are not disregarded, and rather are identified as areas deserving of greater policy attention before the moment of implementation.

The mandate for Operation Sophia, and the subsequent justification for its successor, Operation Irini, is central to the research within this paper. The configuration of security in the Central Mediterranean has evolved since 2015, with Operation Irini now acting within Libyan territorial waters, as well as the high seas previously occupied by Operation Sophia. The questions that arise from research into the practices of these operations are many and require a broader study. However, one element that has gone under the radar of many maritime security papers, is the nature and role of international law in the forming of policy and operational configuration of security operations. This research will demonstrate the centrality of international SAR obligations that EU military personnel at sea were forced to carry out, and how the stagnation of Operation Sophia's activity due to United Nations Security Council (UNSC) resolutions, made these obligations its operational policy. Furthermore, due to this stagnation resulting from international legal instruments, obligations, and restrictions, this research finds that the reinvention of Operation Sophia as the arms embargo enforcing Operation Irini, is a result of international law's role in maritime security configuration. Operation Irini's activity within Libyan territorial waters consequently has the legal mandate to force migrant vessels back to Libyan shorelines. Assemblage theory serves to demonstrate the centrality of international law in maritime security conception, implementation and evolution, and the lack of control that security actors can possess in a maritime security configuration.

### *Maritime Security and Migration Governance to Date*

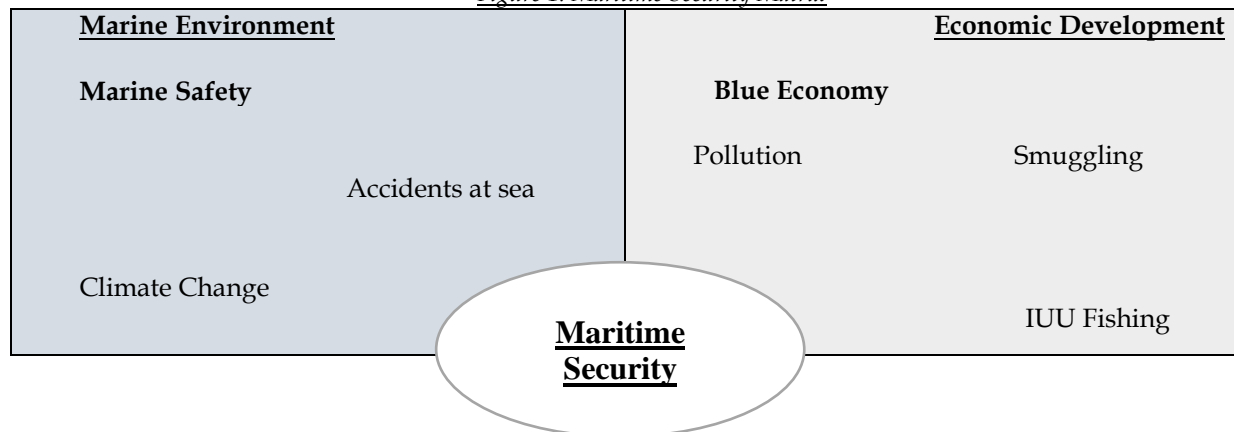
The journey of maritime security as a field of study has been one with many meanders along the way. Recent academic interaction with this discipline has not taken long to erode the ground beneath it, creating deep beds of knowledge, with deeper insight continually being unearthed. As an emerging topic of security studies, many are still in the dark that beneath the surface there exists a whole other world that traditional security has neglected and misunderstood. Indeed, within IR scholarship, the maritime domain has typically taken a backseat to other security spheres. There has existed a clear neglect or ignorance within IR academic circles for the wet in favour of the dry, which is addressed only by a few advocates for a sea-based emphasis to take hold. Only recently have such attempts to broaden IR understandings and shine a light on maritime security become mainstream (C.f. Boşilcă et al., 2022; Carvalho and Leira, 2022; Bueger and Edmunds, 2017). Land-based security has disproportionately dominated discussions and studies within the IR discipline, despite the fact that Earth's watery plains account for over 71% of the planet's surface. This

means that maritime security sits in this void as a set of scholars whose work resembles the best attempts to date to unify in theorising, and bring attention to, the unique nature of the security of the seas.

Defining or theorising maritime security has itself been a focus of much research, with progress made, albeit without a clear definition forthcoming. Bueger's maritime security matrix, recreated in figure 1, reflects one of the most comprehensive pieces of theorising on how security at sea a singular entity is not simply defined within an isolated context, but rather a constantly interconnected collective of security elements (Bueger, 2015a). Much like a web, when one thread is pulled, others equally reverberate and react to this interaction. The existence of a knock-on effect is central to Bueger's theorising, whereby one security concern at sea does not exist in a bubble. Rather, multiple aspects of sea security are constantly at play. The maritime security matrix positions security issues between four pillars: Marine Environment, Economic Development, Human Security, and National Security (ibid.). These four pillars, which could equally be labelled policy objectives, encompass wide-ranging issues that are consistently the focus of security actor policy making, in attempts to tame the seas (Otto, 2020). Theorising maritime security in this way is useful, as it provides a greater appreciation for the wide-ranging nature of security at sea, which other perspectives don't fully appreciate. It is also effective, as it incorporates the policy aims of security actors, and as such, the meaning such actors ascribe to maritime security.

Similarly, to Bueger's theorising, within this journal, cook (2020) has explored the analogy of a maritime security spectrum, theorising the varying effects of maritime security activity and other maritime events on individuals and communities. The utility of such a perspective highlight how the implications of events on the world's waters are not isolated from this field, and in stark contrast to happenings in Vegas, what happens at sea, does not stay at sea. The term spectrum acts as a useful linguistic tool to fully encapsulate that the maritime domain is not one of singular agency, viewpoint, or effect. This spectrum reflects the varied perceptions of the sea, and the utility, opportunity, implications, or dangers that it poses to actors and others impacted by, or reliant on, its presence. Further pointing to the diversity of activity and implication that maritime security represents, both spectrum and matrix point to the disputed nature of what maritime security truly is and how it behaves.

*Figure 1: Maritime Security Matrix*



<p>Terrorism</p> <p>Arms Proliferation</p> <p>Inter-state Disputes</p> <p><b>Sea power</b></p> <p><b><u>National Security</u></b></p>	<p>Piracy</p> <p>Trafficking/ Migration</p> <p>Human- Irregular (Boat)</p> <p><b>Resilience</b></p> <p><b><u>Human Security</u></b></p>
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Source: Author's reproduction. Adapted from: Bueger, 2015a.

Answering such a question requires interaction with further questions. How is maritime security enacted? What elements create or configure maritime security? Where does maritime security begin and end? It is within this space that the research of this paper is situated. Highlighting international law is of course not the whole picture, but points to an understated aspect that is often discussed in isolation, and not incorporated into the policy or implementation discussions surrounding maritime security. What the use of international law does do, is highlight that the endeavour of maritime security, and the relevant actor's initiatives, are part of a wider international system, limited by and answerable to legal obligations and decisions. Considering the role of legal instruments and apparatus fills a void in such literature and highlights that discussion of any maritime security configuration or policy agenda is incomplete without appreciation for the impact of international law. Maritime security operations live and die on the whim of legal considerations. Such activity is bound by law and forced to abide by its obligations and principles. Why does maritime security unravel as it does? The argument in this paper is that international law provides some answers, and points to wider reasoning found in the elements of maritime security that security actors cannot control. Acting agency alone is not the be all and end all and is in fact malleable and open to manipulation.

While the discipline of maritime security and its high-profile contributors have done much to develop the field and invigorate discussion empirically, the case of migration governance has gone somewhat under the radar. Academic discussion within this context has come and gone, with the interest in boat migration gaining the most traction during the so-called European migration crisis. Such studies included discussion of citizenship and migrant rights (Albahari, 2016; Trevisanut, 2014), the humanitarian/securitisation dichotomy of migration operations (Bevilacqua, 2017; Moreno-Lax, 2017; Garrelli & Tazzioli, 2017; Stierl, 2017), and descriptive pieces on counter-migration policy and NGO activity (Hanke et al., 2018; Patalano, 2015; Cuttita, 2017) among others. These approaches have provided valuable empirical contributions, which make understanding what happened during the migrant crisis a simple task. What is missing is a well-rounded understanding of why the EU's maritime migration security configuration was constructed in this way.

To this extent, commendable studies have provided convincing discourse centred accounts of EU policy and security construction through use of the Copenhagen school, commonly referred to as securitisation theory (Léonard & Kaunert, 2022; Goldewijk, 2018; Fakhoury, 2016). Following the theory laid down by Buzan, Wæver and de Wilde (1998), those that utilise securitisation theory have pointed to the use of linguistics by relevant actors to frame an event or issue as a security threat. Within this



framework, language is used to present this threat in such a way that would influence the perspectives of the general public, and/or organisations and other relevant audiences, into sharing that perception (Jamieson, 2018). It is a two-fold process, with firstly, the application of security discourse to an issue and subsequent legitimisation of the discourse, and secondly, the implementation of exceptional measures (Asderaki and Markozani, 2021).

Boat migration has been institutionally categorised as a security risk, as it is framed as an existential threat to national identity through linguistic means, such as the framing of boat migrants as criminals who illegally cross borders (Waever et al., 1993; Diez and Squire, 2008). A politics of exception resultingly occurs, meaning that exceptional measures are taken in response to these existential threats, removing it from so-called normal politics, and therefore consolidating its security-oriented framing (Huysmans, 1995). This framing is a top-down procedure, with states and regional organisations possessing the relevant legitimacy to make claims on security (Karyotis and Patrikios, 2010; Buzan et al., 1998). The acceptance of securitising speech by a target audience, usually in the public sphere, is the affirming step in legitimising exceptional measures (Buzan et al., 1998; McDonald, 2008). In the case of irregular migration governance at sea, the resulting use of military strategies, assets and personnel is a primary characterisation of this securitisation following legitimisation (Gabrielli, 2014; Lemberg-Pedersen, 2018).

This theorising and discourse centred method of investigation possesses many merits, and convincingly documents the agency of security actors in framing the context for drastic security action. However, its merits are also its weaknesses, as the policy centric approach often neglects outside factors beyond the securitising actor's control. This paper finds further contribution in this very gap, by recognising that while a security actor does of course enact agency over public opinion, this agency is not enough to affirm security configurations. The nature of international law is one such element that securitisation studies often ignore. With the focus on international law in this paper, it is possible to identify the areas in which maritime security configurations depart from actor control and are instead impacted by outside forces. As opposed to the discourse methods of securitisation theory, this paper equally finds its niche in the use of practice theory, which has seen lesser use in the maritime migration security arena. To use practice theory is not to disregard securitisation studies, but rather to enhance them. Practice and discourse are not enemies or theoretical competitors. Instead, the use of both independently can provide a more rounded picture of maritime security and migration governance and generate a broader and more comprehensive understanding of the field.

Academic literature operating in the migration sphere has, to date, missed this opportunity. Indeed, maritime security literature has equally made little use of practice theory so far. Ethnographic methods undoubtedly reflect practice approaches best and represent the truest model of practical and pragmatic assessment of maritime security activities (Larsen, 2022). Their use in piracy is novel and providing highly intriguing results, with the use of interviews and observational methods providing fresh insight into this aspect of maritime security (Larsen, 2023; Jacobsen & Larsen 2019). Indeed, while there have been excellent studies published, piracy has in general received more attention from practice theorists and maritime security authors overall, at the expense of the migration governance sphere (Broohm, 2021; Bueger, Edmunds & McCabe, 2020b; Svanberg, 2020; 2021). Climate oriented studies have steadily been gaining traction in this maritime security environment also (Alim, 2021; Germond & Mazaris, 2019), achieving this author's aspirations for empirical studies in this field to broaden.

Situated within the stipulated gaps in legal and policy analysis, maritime security discussion, and IR focal points, this paper makes the case for an assemblage approach to assessing maritime security configurations, and the impact of law on the agency of securitising actors in this field.

## *Assemblage, the Practice Turn, and Configuring Maritime Security*

### **Assemblage Theory and Methodology**

The practice turn in IR has sparked much needed fresh debate, which both broadens security theoretical discussion and questions the merits of traditional theoretical schools that have dominated IR for decades. These traditional IR frameworks have newly invigorated competition, found in the methodological portfolio of praxeology, employed by researchers from varying backgrounds. Bourdieu's (1972) vocabulary of habitat and field has experienced particular contemporary popularity in security studies, with his emphasis on the reproduction of power utilised to explain changes in the international security sphere (Berling, 2012). Latour's (1996) actor network theory has equally experienced recent utility in the consideration of non-human and technological actors and practices within security discussions (Duxberry & Haynie, 2019; Van de Kerke & Hijzen, 2021). Communities of practice, as put forward by Wenger (1998), and evolved for usage in security contexts by Adler (Adler & Barnett, 1998; Adler, 2008), has also found its place as a framework for investigating the configuration of security actor collective entities, encompassing many actors (Bicchi, 2022; Bremberg et al., 2019). While each of these practice approaches, among others, possess great utility in assessing the configuration of security, through its spacialities, temporalities, and actor/network participations, one praxis approach fits the model of this research most significantly. Indeed, assemblage theory, as developed by Deleuze and Guattari in their 1987 work *A Thousand Plateaus*, has experienced a renaissance due to its usage in the maritime security domain, as a tool for addressing the configurations and constructions of security.

From the French word *agencement*, assemblage was established to define the structural and yet unstable nature of things (Brown, 2020). It describes the meeting of many individual entities, and their interconnected and even symbiotic relationship, existing within a homogeneous structure. The French translation better grasps the true meaning of this structural relationship, implying the presence of agency and manipulation that actors and entities can employ, thus making the focal structure, or assemblage, malleable. However, as Bueger (2014) points out not all elements are within the control of security actor agency, while maintaining that these elements are related to one another, and 'are made and re-made in practices. Within security studies, maritime security can itself be defined as an assemblage of sorts. Much like the unpredictability of the sea, the maritime domain finds itself caught between turbulent and tame, secure and insecure, an eternal tug of war within which actors and events exist with one another, each possessing their own agency and meaning. The elements and agencies of maritime security are subsequently theorised as possessing relationship with one another. The maritime security assemblage of the Mediterranean is therefore explored as such, with Deleuze and Guattari's understanding that all things are interconnected and existent within a single homogeneous configuration, all the while possessing heterogeneity (Bousquet, 2014; Müller, 2015). The agency that exists is therefore found in how actors attempt to reconfigure an assemblage, with the consequence impacting the strength or weaknesses of its structure, causing a stabilisation or destabilisation (DeLanda, 2006). Ultimately, it is the desire of a security actor in the deployment of their agency to stabilise this configuration, replacing insecurity with security.

The benefits of the assemblage approach are found in its capacity to delimit security from the traditional boundaries of nation states, not only taking into account the actions and agendas of non-state actors, but also the presence, relevance and implications of other entities not necessarily possessing conscious agenda. The maritime migration security assemblage incorporates state security actors, non-state security actors, public and private security actors, technological surveillance, and information sharing platforms, zonation strategy, and international legal intervention, among others. It is this multi-faceted nature of security that assemblage theory recognises as an interconnected configuration, where the activity of each element affects the others.



The geography of maritime domains, such as the Mediterranean, further emphasises and justifies an assemblage approach. Its political structure, incorporating territorial waters, contiguous zones, archaeological zones, exclusive economic zones, and other maritime zones, as well as significant areas under the legal framework for the high seas, highlights the complicated international nature of the maritime arena. Assemblage approaches are able to move beyond the rigid borders of nation states and consider borders as those of regional security (Abrahamsen & Williams, 2009). Therefore, utilising assemblage means being able to isolate maritime security activity at its hotspot of high activity for research, while also acknowledging the wide ranging and border ignoring repercussions of maritime security, which Ryan (2022) highlights the importance of.

Following the assemblage model, this article highlights the nature of international law within maritime security assemblages, taking the Central Mediterranean maritime migration assemblage as its case and point. The influence that international law has had on operations implemented by the EU is demonstrated between the years 2015 and 2020, establishing that as a heterogeneous element within the assemblage, it has a strong bearing on the homogeneous whole. In doing so, the assemblage approach is highlighted as a strong means to assess the implementation of maritime security, while the article also contributes to the growing discussions and debates around the meaning and configurations of maritime security.

### **Methods and Data**

Drawing upon primary data, this research consolidates international legal declarations and resolutions emanating from the United Nations, and press releases, operation reports, policy documents, and legislative decisions from the EU. Third party NGO reports and perspectives are also incorporated to provide additional perspective and information on specific events in the Mediterranean. These documents and publications were collated and organised in a legal and policy analysis approach, into categories of legal security concern. This categorisation made clear the interconnected nature of maritime security elements with one another, with one such connection being the wide-reaching arms of international law.

Argument in an abstract maritime security context is provided initially, so as to highlight the broader contribution of this study to IR and maritime security, before the EU case study is discussed through analysis of the aforementioned documentation, which was sourced directly from the relevant institutional bodies. A chronological structure is implemented to provide a rounded understanding of why the security configuration has resulted as it has contemporarily, building up to the demise of Operation Sophia and the rise of Operation Irini. On a theoretical level, this documentation is considered independently from one another, but always with the assemblage connections reinforced and considered. Equally, within this research, international law as a whole is considered independently of other security elements within the assemblage, while its connections and impacts are also explored. Ultimately, this kind of investigation is empirically heavy, as the assemblage approach lends itself to the study of empirical maritime security. The empirical contribution is of equal importance to the higher-level abstract discussions of how maritime security exists, how it can be defined, and how it is configured or implemented.

### ***The Role of International Law***

#### **Argument**

Maritime security actors apply their policy on the world's waters in attempts to tame the seas. In doing so, plans are made to achieve their policy aims, and mitigate insecurity. Militaristic elements often characterise maritime security operations, as does the increased use of technology, surveillance, and data sharing. The argument of this paper is that such deployments and policy initiatives are not solely in the

control of the securitising actor. Rather, as part of a wider assemblage, the implications of international law are felt by this actor, who is subsequently limited in their activity and policy.

The mandate of Operation Sophia has incorporated various activities within and around the Lampedusa Triangle which are specifically stipulated in international law. This research splits these activities into two categories of investigation. The military patrolling of the Lampedusa Triangle, and subsequent interdiction and boarding of suspect vessels forms the first topic of discussion. Secondly, perhaps the most important aspects for discussion are those associated with SAR activities. Associated and as such tied in with this aspect, is the surveillance of Central Mediterranean seafarers by means of drone and satellite footage, enhanced through information sharing between state and non-state actors. These activities are hence examined within the international legal framework, and their implications for Operation Sophia are analysed through discussion in a third and final section. This section comprises UNSC decision related to the operational capacities of Operation Sophia and the successor Operation Irini.

### **Boarding and Searching**

The boarding of vessels is a complicated legal framework, with the UN Convention on the Laws of the Sea (UNCLOS) (UNGA, 1982), providing rules on jurisdiction and rights of seafarers in this regard. Article 87 of UNCLOS on 'freedom on the high seas', provisions freedom of navigation, while article 92, on 'status of ships', provisions sole state jurisdiction of flag flown. Equally, article 89 on the 'invalidity of claims of sovereignty over the high seas' rejects any sovereignty that a state may try to enforce. Together, the provisions within these articles prevent jurisdiction of any state being enforced, and would ordinarily prevent the use of authority, such as boarding of vessels, on the high seas. Private vessels and seafarers are therefore customarily protected, when outside of territorial waters, from any boarding and searching. However, exceptionality is recognised as a justification for boarding and searching in article 110 on 'right of visit'. People smuggling and boat migration are labels that can equally be termed human-trafficking. A subjective interpretation of the situation can permit consideration of these smuggling operations as a means of slavery. Article 110 1(b) stipulates that if a warship suspects that a foreign ship on the high seas is 'engaged in the slave trade', exceptionality exists, and boarding of said foreign ship is permitted. Perhaps more relevant, comprehensive, and applicable, is provision 1(d) of article 110, which equally permits a warship to conduct boarding of a vessel, when it is suspected to be 'without nationality'. Provision 2 then permits an officer of the warship to lead a boarding party and inspect documentation. Following this inspection, if appropriate suspicions laid on in provisions 1(a) through to 1(e) remain, then a full examination of the foreign ship can proceed.

Further exceptionality to the freedoms of seafarers on the high seas is found in the UN Protocol against the Smuggling of Migrants by Land, Sea and Air (UNGA, 2000), which is directly referenced alongside UNCLOS in the language of Phase 2A of Operation Sophia's mandate, in Council Decision CFSP 2015/778:

*...conduct boarding, search, seizure and diversion on the high seas of vessels suspected of being used for human smuggling or trafficking, under the conditions provided for by applicable international law, including UNCLOS and the Protocol against the Smuggling of Migrants. (Council of the European Union, 2015).*

Where UNCLOS would protect seafarers that fly the flags of their flag state from boarding and searching, within this protocol, article 8(7) would permit such activity by naval personnel on the high seas dependent upon permission from the flag state. The same article further provides approval for enforcement mechanisms to be enacted in the scenario of smuggling suspicions confirmed (ibid.). In policy and theory, therefore, and without enforcement restrictions found in any relevant legal material<sup>4</sup>, naval vessels operating under Operation Sophia have extensive powers and opportunities to board and search seafarer

<sup>4</sup> Including UNCLOS (UNGA, 1982); Protocol against smuggling of Migrants by Land, Sea and Air (UNGA, 2000); Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially women and Children (UNGA, 2000b); and the UN Convention against Transnational Organised Crime (UNGA, 2001).

vessels on the high seas where there is suspicion of slave trading, suspicion of no ship nationality, or where the flag state has given permission otherwise.

## SAR

The founding document of Operation Sophia states that the rescue mandate of the operation is to be limited to instances of distress and mandatory assistance (Council of the European Union, 2015). Section 6 states Operation Sophia's adherence to international law, with UNCLOS (1982), the International Convention for the Safety of Life at Sea (SOLAS) (IMO, 1974), and the International Convention of Maritime Search and Rescue (SAR Convention) (IMO, 1979), cited as legal obligations to act in the case of distress calls (Council of the European Union, 2015). The SAR Convention formalised processes identified in other international treaties such as SOLAS, on the obligation that all sea vessels have to respond to distress calls and incidents at sea. This formalisation produced a system for operationalising SAR in specific zones, providing the precedent for state actors to cooperate with each other and organisations in establishing their own SAR zones on the high seas geographically relevant to them. This Convention equally laid the foundations for the training of authorities that can be better equipped for SAR scenarios, as well as encouraging the establishment of devoted information and coordination centres for SAR.

As such, EU naval vessels operating within Operation Sophia on the high seas of the Central Mediterranean have specific responsibility to identify and respond to distress that they encounter. The European Parliament makes specific reference to Chapters 1.3.2 and 2.1.10 of the SAR Convention in discussing the legal framework of rescuing migrants at sea (European Parliament, 2022). Chapter 1.3.2 specifies the organisation of SAR, with the definition of a 'Rescue Coordination Centre' and its design as an efficient unit for responding to distress calls. The EU's recognition of this chapter provides understanding for utilisation of a communication and information system (CIS) associated with Operation Sophia. Such a CIS was shown to have been set-up in a six-monthly report from the operation's original commander in Council Report 5653/16 (EEAS, 2016). A key aspect of this CIS was a Classified Mission Network (MED CMN) established to share all information and data efficiently and secretly (*ibid.*). This allowed specific assets to at all times have a live operational understanding of the Mediterranean seascape. As part of CIS and MED CMN, a Maritime Surveillance project (MARSUR) run by the European Defence Agency (EDA), created a Recognised Maritime Picture (RMP) in the Mediterranean through information sharing across 19 member states during phase 1, with further states joining later (EDA, 2022). This RMP is a consolidated map reflecting the collective and up-to-date maritime surveillance data of all MARSUR cooperating state assets, including manned and unmanned resources (EDA, 2014). This Maritime Situational Awareness (MSA) is described by the EDA as an 'effective understanding of activities, associated with and occurring in the maritime domain that could impact on the security, safety and environment of the European Union and its Member States' (EDA, 2022)<sup>5</sup>. People smuggling and boat migration is inferred therefore, as a threat to the security of the EU, with MARSUR's use a method of maritime security on the high seas.

The operation's CIS relied on a number of physical land-based centres, which employ methods of cooperation and coordination in SAR activity (EEAS, 2016). These coordination centres include the Force Headquarters, based in Rome, the Forward Logistic Base and Forward Operating Base, both located on the island of Sicily, the Forward Logistic Site on the island of Pantelleria, and the Air Component Command based in Poggio Renatico, near Bologna, while access to the CIS is also available onboard several seafaring assets (*ibid.*). Where Chapter 1.3.2 provides an operational precedent for Operation Sophia to provide a

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<sup>5</sup> MSA and RMP are extremely similar, if not exact replicas in all but name to Maritime Domain Awareness and Common Operational Pictures discussed significantly in maritime security scholarship, particularly in discussion of piracy.

means of coordination and efficient response to distress at sea, Chapter 2.1.10 of the SAR Convention provides the obligation of response in all cases:

*Parties shall ensure that assistance be provided to any person in distress at sea. They shall do so regardless of the nationality or status of such a person or the circumstances in which that person is found.*

These two provisions in the SAR Convention, and the subsequent EU recognition of each, has led to a policy of SAR organisation and obligation in the Central Mediterranean. It follows on that the boundaries of SAR zones come to be important factors of EU maritime migration security policy also. Chapter 1.3.1 provisions such a zone, calling it a 'search and rescue region' and 'an area of defined dimensions within which search, and rescue services are provided'. Chapter 1.3.6 further establishes the need for an 'on-scene commander' who will coordinate SAR initiatives within the defined zone. Chapter 2.1.2.2, provisioning the organisation of SAR zones, stipulates that signed parties to the convention should provide the UN Secretary General with their areas of responsibility, formalising these SAR jurisdictions in the international maritime system. Establishing responsibility further, chapter 2.1.9 stipulates that in the case of a distress call, the party who possesses jurisdiction for the relevant SAR zone will be bound to rescue coordination obligations.

### **UNSC Resolution 2240 and Limitations to Operation Sophia's Assemblage**

International legal instruments all but doomed Operation Sophia to its fate as a failed and disbanded operation as early as 9 October 2015. Indeed, the UNSC rejected the EU's wish to operationalise phase 2B in Security Council Resolution 2240 on this date, which would otherwise permit activity within Libyan territory (UNSC, 2015a). Phase 2B stipulated that:

*in accordance with any applicable UN Security Council Resolution or consent by the coastal State concerned, conduct boarding, search, seizure, and diversion, on the high seas or in the territorial and internal waters of that State, of vessels suspected of being used for human smuggling or trafficking, under the conditions set out in that Resolution or consent.*

As a result, Phase 2B would allow Operation Sophia's military assets to engage in anti-people smuggling activities within the territorial waters of Libya. The purpose of this phase was to prevent access to the high seas in the first place, preventing further loss of life, isolating blue crime activity to a smaller geographical zone, and having the legal ability to redirect and/or disembark boat migrants that were in need of rescuing back to Libyan shorelines. Essentially, the policy aims at a nullification of the Central Mediterranean migration route, by limiting access to the high seas from the Libyan shores. The UNSC would provide obstacles to this transition of phases, however.

Chapter VII of the UN Charter concerns 'Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression'. Commencing this chapter, article 39 provides relevant power to the Security Council in identifying security threats:

*The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.*

Article 42 further provides reasoning for the use of military force before stating the form of military action that a UN member state can take in taming any previously determined security threat:

*...Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.*

The aforementioned UNSC Resolution 2240 made clear that authority to identify threats and means for military action belongs to them, as laid out in Chapter VII of the UN Charter. As such, the EU is limited in its capacity to enter Libyan territorial waters with military objectives. Permission within the international legal framework can only be provided through one of two means, therefore. In this case, Libya could provide permission to the EU in a bilateral arrangement, whereby the Libyan government essentially invites

the combined military of the EU's then 27 cooperating member states within Operation Sophia, to conduct military operations within its jurisdiction. The second requires the Security Council to identify said security threat, as conditioned in article 39 of the UN Charter, before then providing permission for military activity as conditioned in article 42. This action would override the necessity of permission from Libya in entering their waters but is cause for concern for members of the UNSC. In a UNSC meeting on 9 October 2015, statements of concern, shown in Doc. S/PV.7531 (UNSC, 2015b), were made by various representatives, emphasising the priority of saving and protecting migrants and their rights. Primarily, Russian representative Evgeniy Zagaynov was eager to highlight Russia's intention to monitor Operation Sophia and ensure its legal obligations are met (ibid.). The outcome of the UNSC perspective meant that the transition to phase 2B would not be sanctioned and would instead require Libyan permission.

As laid out in Part II of UNCLOS, article 2-4 provide legal status and sovereignty of territorial seas, reaching out to 12 miles from the shoreline of a coastal country. As such, Operation Sophia must operate at least 12 miles off Libyan shores. Trying to reach an agreement with the Libyan government presents its own challenges. Following the overthrow of Colonel Gaddafi in 2011, Libya has faced crisis after crisis. By late 2015, following Operation Sophia's transition from Phase 1 to Phase 2A, and the EU's vocal wish to transition onwards to Phase 2B, there was no Libyan government capable of considering such a proposal (Toaldo, 2015; Zoubir, 2020). A lack of political unity led to the second Libyan civil war, which would in reality last from 2014 to 2020 – a timeframe longer than that of the entirety of Operation Sophia. Attempts to gain access to Libyan territorial waters were most likely following the UN recognition of the Government of National Accord (GNA), in UNSC Resolution 2259 of 23 December 2015 (UNSC 2015c). The GNA unified two opposing factions that claimed governmental authority over Libya. However, unification would not last, and the EU was left without a viable negotiation process possessing legitimacy, recognised by the international community, to enact Phase 2B.

The consequences of this stalemate would force Operation Sophia to reduce its mandate to SAR obligations, the redirection of vessels back towards Libyan shores, the targeting of criminal smugglers that would rarely stray from Libyan territory, and the criminalisation of NGO SAR initiatives. Indeed, many NGO rescue operations were targeted and deemed illegal. Official documentation demonstrates the severity of the EU's resolve in its anti-NGO SAR agenda. With people smugglers largely out of reach, the blue crime focus was redirected to NGOs, with the EU Agency for Fundamental Rights publishing information on the seizure of NGO vessels and legal proceedings pursued against NGO personnel and ship crew (EUFRA, 2022<sup>6</sup>). Framing NGO SAR operators as blue crime actors represents EU policy-maker reaction to the inability to transcend international law and further progress their maritime security agenda into phase 2B of Operation Sophia.

This stalemate, a result of the UNSC's perspective, ultimately led to Operation Sophia's demise, officially ceasing activities on 31 March 2020. Its failure to proceed into Libyan territorial waters would mean the EU had to find another method to achieve this final goal in its maritime security configuration. Operation Iriini<sup>7</sup> would launch on the very same day and maintain migration concerns as a secondary objective (Council of the European Union, 2020). Primarily, Iriini was set up to enforce the UN arms embargo on Libya and has resultingly achieved UNSC permissions to operate within Libyan waters. However, in almost identical fashion to Sophia, Iriini deploys naval surface assets and surveillance technology to achieve its goals. In essence, it is the previously unauthorised phase 2B.

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<sup>6</sup> A recent example of these types of reports from EUFRA. Others available from: <https://fra.europa.eu/en>.

<sup>7</sup> Officially EUNAVFOR MED IRINI, taken from the Greek for peace.



## Conclusions and Direction for Future Research

Security configurations established to tackle boat migration have gone under the radar in contemporary maritime security studies and require greater discussion in these academic circles. In asking what maritime security is and how it functions, a full answer cannot be gained without the migration sphere being considered in a similar fashion to piracy and climate change investigations. Indeed, the use of practice approaches such as that of assemblage, can act as a justification for returning to migration discussions, developing greater knowledge, and understanding of maritime security configurations as a result. This paper maintains that assemblage approaches reflect a useful method for understanding this sea borne event and can contribute to answering the big questions and areas of debate that are still at the forefront of maritime security theorising.

As an empirical case, this analysis of Operation Sophia's implementation and demise presents a strong case that international law dictated its capacity to tame the Mediterranean Sea and played a vital role in the ongoing configuration of Mediterranean maritime security. The UNSC's decision to block movement of Sophia's policy into phase 2B reduced the capacity of the operation to counter people smuggling and boat migration. Having its mandate reduced to international legal obligations, and the criminalisation of NGO SAR actors, meant that Sophia's maritime security configuration was not within the EU's sole control. Rather, as a security actor, the EU's maritime security policy was left at the whim of international legal apparatus and instruments. Empirically, this analysis has notably presented the suggestion that maritime security is an assemblage, and that outside factors beyond the securitising actor's agency are at play. Within the broader field and setting, the concept of maritime security as a policy initiative can equally be considered through an assemblage approach. To conceive of a maritime security assemblage is to acknowledge the relevance of varying actors, agencies, operational elements, natural entities, and implications, as well as to consider their relationship with one another. The work of a maritime security actor and its operationalisation should remain central in empirical studies, maintaining a pragmatic and practical consideration of the field as a whole.

The outcomes of increased knowledge emanating from such approaches can have significant policy implications. Greater appreciation for the heterogeneous elements of maritime security assemblages in advance of their implementation can have the effect of better constructed maritime security operations. Understanding the varied unplanned elements that can exist within an assemblage can equally create better policy safeguards against such unintended consequences. The outcome of this, in the migration sphere at least, would be greater capacity to prevent loss of life at sea, as some have criticised operations such as Sophia for forcing people smugglers to send boat migrants into treacherous seas in unseaworthy vessels, leading to an unintended increase in migrant deaths (House of Lords, 2017). The inability of Operation Sophia to enter Libyan territorial waters, resulting in their reliance on training the Libyan Coast Guard, also led to unintended consequences, including the long term and ongoing human rights abuse of boat migrants leaving Libyan shorelines (ibid.; HRW, 2022). Equally, policy improvements could also generate greater protections for non-security actor seafarers, whose obligations to provide rescue services at sea have resulted in stand-offs at ports during attempts at migrant passenger disembarkation (Westcott, 2023; HRW, 2022; Amnesty International, 2020).

To fully explore the policy implications of better maritime security understanding and preparation, further research is required on the empirical activities of key maritime security actors in the varying fields in which they are deployed. Equally, while the impact of international law has been explored within this paper, this is highly limited and could be explored to a more significant degree, as part of a larger study. Equally, the study of other elements within the maritime security assemblage, which are outside the securitising actor's control, is required to fully provide a well-rounded understanding. While this author



will continue to study these aspects of maritime security, it is necessary for other maritime security scholars to continue this important work, employing practice theory and conducting empirical studies on a wide range of maritime issues and events.

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