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THE ARAB SPRING AND
THE CRISIS OF THE EUROPEAN BORDER REGIME:
MANUFACTURING EMERGENCY IN THE LAMPEDUSA CRISIS

Giuseppe Campesi

EUROPEAN UNIVERSITY INSTITUTE, FLORENCE

ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES

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GIUSEPPE CAMPESI

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For further information:
Mediterranean Programme
Robert Schuman Centre for Advanced Studies
European University Institute
Via delle Fontanelle, 19
50016 San Domenico di Fiesole (FI), Italy
E-mail: Academic.Medmeet@eui.eu
Fax: + 39 055 4685 770
http://www.eui.eu/RSCAS/research/Mediterranean

Abstract

The so-called Arab Spring has thrown out of kilter the precarious balance on which the Euro-Mediterranean border-control regime has been built over the years, illustrating the need to set this regime on a new foundation. The breaking point in the crisis came when the flow of migrants landing on Italian shores in Lampedusa took a spike at the beginning of this year. I analyze how the Italian government manufactured the Lampedusa crisis by matching a discursive rhetoric to government strategy, and I highlight how the sovereign prerogative to define emergency was questioned at both a supranational and a subnational level. I also discuss the main assumption behind securitization theory, exploring the complex web of political and institutional relationships involved in the securitization process and illustrating the ambiguity of the security language deployed by the main securitizing actors. Finally, I look at the possible outcomes of the crisis by looking at the interests involved when it comes to reconfiguring the power to define and govern emergency within the framework of the European border-control regime.

Keywords

1. Introduction[*]

From January to May 2011, some 30,000 migrants landed on Italian shores, many of them making for the tiny island of Lampedusa, which for years has stood as a prominent symbol of the fight that Europe and the Italian government have waged against irregular migration in the Mediterranean region. The overwhelming majority of these migrants were Tunisian, with a minor percentage fleeing the ravaged Libya. These numbers are relevant if we consider that during the whole of 2008, when Italy had one of its peak inflow, an estimated 36,900 migrants landed on Italian shores. These numbers also mark a turning point by comparison with the previous two years, when the European border-control regime shut off the central Mediterranean route, thereby diverting the flow of irregular migrants to the Greek-Turkish border, as has been found to be the case by both the Italian government (Ministero dell'Interno 2010: 27) and Frontex (2009: 5). These numbers are extremely significant for Lampedusa itself, considering that for weeks the small island, with its 5,000 inhabitants, was home to more than 5,000 migrants at a highly overcrowded first-aid and reception centre, along with many other makeshift camps without sanitation or running water.

The so-called Arab Spring has unsettled the delicate balance on which the Euro-Mediterranean border-control regime has been built, a balance which, as even the less-critical observers are now forced to admit, hinges on the dirty job of a bunch of police states governed by a regime of permanent emergency. The crisis of the European border regime is thus mainly political, not migratory. It was triggered by the collapse of the political institutions in North African countries and by the widening of the web of bilateral agreements and diplomatic relations that for years have allowed a strict policing of migratory routes in the Mediterranean. This crisis is also reverberating through the complex institutional structure built over the years for governing Europe's internal and external borders. We may be forced to consider this crisis as another breaking point in the history of European migratory policy, similar to those of the past decade: the 2001, 2004 and 2005 terrorist attacks and the enlargement process. These events accelerated the reform process, increasing over the years the securitarian dimension of the European migratory policy.

The Lampedusa crisis thus stands as a perfect case study for analyzing how the securitization process is changing the European border regime. It is also an interesting case for analyzing the interplay between the norm and the exception which is at stake in the securitization process. I will thus analyze how the Italian government has manufactured the Lampedusa crisis by using a discursive rhetoric functional to its strategy: this will make it possible to show how the sovereign prerogative to define emergency was questioned at both a supranational and a subnational level. And in doing so I will illustrate the basic assumption behind securitization theory, exploring the complex interplay of political and institutional relationships that were involved in the securitization of the Lampedusa crisis. I will further illustrate the full complexity and ambiguity of the security language deployed by the main securitizing actors during the Lampedusa crisis, discussing as well how the security practices and the exceptional measures taken by the Italian government raise many concerns about the basic human rights of migrants.

Resorting to exceptional powers, the Italian government set off a bitter struggle among the different actors involved in migratory policy at the European level: at stake was the power to control the political and legal framework by which to define and govern emergency in migration policy. And such was exacerbation that the whole setup of the Schengen acquis and the European free-movement space are now in question. In this case, too, as on many other occasions, what brought the situation to a head was the decision to invoke exceptional powers, momentarily suspending the ordinary rule so as to preserve the legal framework in moments of crisis, on the model of the commissarial dictatorship

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theorized by Carl Schmitt, a model that informs the use of emergency powers in many Western democracies. This strategy brings always with it the risk of causing the whole framework to slide into a permanently altered state, as happens when recourse is made to sovereign dictatorship, where the definition of emergency invariably carries a subversive force apt to reshape the given legal-political order (Schmitt 1921). The outcome of the Lampedusa crisis may just be a new configuration of the power to define and govern emergency within the frame of European migratory policy, with the strongest member states pushing for an extension of their sovereign prerogative to suspend the ordinary Schengen regime.

2. Studying Securitization

The concept of securitization was developed by the so-called Copenhagen School of Critical Security Studies in its investigation of the way our understanding of a political or social problem is mediated through a "security prism." The concept identifies a process of social construction that pushes an area of regular politics into the area of security by resorting to a discursive rhetoric of emergency, threat, and danger aimed at justifying the adoption of extraordinary measures reaching above and beyond the law and the ordinary political process. As Ole Waever has suggested, "when a problem is securitized, the act tends to lead to specific ways of addressing it: threat, defence, and often state-centred solutions" (Wæver 1995: 65). The security prism is a peculiar political frame used to fashion a problem into a security issue without regard to its objective nature or to the actual threat; this frame is conjured into being by political actors and security officials who channel fears and anxieties to legitimize an expansion of their political prerogatives. With the progressive widening of the meaning of security in security studies, many other fields traditionally regarded as lying outside the scope of traditional security policy have undergone a securitization process over the last twenty years (Krause and Williams 1996; Smith 1999); this has happened as well in migration policy, which has been among the most extensively analyzed securitization area in social science (Doty 1998; Ceyhan and Tsoukal 2002; Huysmans 2000 and 2006, Karyotis 2007; Guild 2009; Van Munster 2009).

On the classic model, the study of securitization is based on speech act theory, analyzing securitarian speech acts with a focus on the speaker's intention (for a critical discussion, see McDonald 2008; Balzacq 2005 and 2011). It is on this approach that the securitization of migration policy has been studied, emphasizing the strategic moves of politicians, policy makers, and security officials considered as actors who engage in security-speak to gain political consensus or new administrative or executive prerogatives. The emphasis placed on the role and interests of the securitizing actor has in certain respects led to an underestimation of the structuring role played by the context in which actors move. This is surprising if we consider that the Copenhagen School originally formulated the theory providing insights on which basis to develop a contextual analysis of the securitization process. Drawing on J. L. Austin's notion of *felicity* conditions, Ole Waever and Barry Buzan had outlined the idea of *facility* conditions for the securitization process by highlighting, alongside the internal linguistic and grammatical requirements of speech acts, the need for some external conditions for a successful securitizing move. Aside from the properties a speech act must exhibit on its own, they identified two other elements as key nondiscursive conditions for the securitization process: the actor, enjoying a more or less powerful social position, and the audience, understood as the political and social context where the securitizing move is made (Buzan, Wæver, and de Wilde 1998: 33). Unfortunately, these theoretical insights were never fully developed, and securitization theory thus found itself wallowing in a state of epistemological uncertainty, trapped between, on the one hand, a perspective where emphasis is laid on a securitizing speech act's ability to bring about security by virtue of its performative power alone and, on the other hand, a perspective that regards securitization as a social process involving many actors operating within a given sociopolitical context (Stritzel 2007: 364).

In my analysis I will favour this second perspective, highlighting the important role of the securitizing actors' contextual (sociopolitical) environment: what securitizes a given issue is not the

language per se, through its performative power, but the *symbolic* power of the words spoken by certain key social and political actors. The contextual environment in which this dynamic unfolds will be understood here as a complex structure of cultural, political, institutional, and legal constraints channeling the strategic moves the securitizing actors can make. This should not be taken to suggest, however, that actors are fully determined by the structures that define their field of action. Indeed, I will regularly be referring to the actors' discursive strategy, but will do so arguing that the contextual environment can and will preselect some of the strategic options available, constraining the securitizing moves into more or less fixed strategic models.

With Stritzel (2007: 369), I will consider the securitization process as embedded in a twofold context having (*a*) a sociolinguistic dimension and (*b*) a politico-institutional one. So, to begin with, the securitization process plays itself out within a given cultural framework providing the semantic and symbolic repertoire the actor can draw on. The securitizing speech act is not properly an act of creation: it is not a pure creative act but is set in a context of socially shared meanings framing the conditions for successful securitization. This process is largely dependent on an existing "empowering audience" (Balzacq 2011: 13) that legitimizes and reproduces the actor's securitizing frame. The successful securitizing actor must accordingly identify the needs and sentiments of his or her audience, resorting to a security language that in some way resonates in the given sociocultural environment. As I will highlight, all the framing moves made by the securitizing actors during the Lampedusa crisis can be configured as an attempt to accommodate the semantic regularity of ordinary security language with the peculiar contextual circumstances. The peculiarity of the case was that the political actors involved in managing the crisis could draw on a broad menu of symbolic repertoires making it possible to frame the situation in a variety of different ways, a circumstance that brings to light the complexity of the politico-institutional context relevant for this securitizing process.

And this takes us to the second contextual dimension, which on the one hand enables the actors to more or less effectively shape the securitization process, and on the other hand marks the boundaries within which the process of defining the rule and the exception to it unfolds. In the Lampedusa crisis, the legal, institutional, and political context framing the different actors' securitizing moves was particularly complex, being articulated into three levels: a supranational level, a national level, and a subnational one. Although there is no denying that the dominant actor playing the crucial role in defining the emergency on the path to successful securitization remains the national government, calling for exceptional measures above and beyond the law and the regular political process, it is equally true that in a range of policy areas the sovereign prerogative is increasingly losing its grip at both the supranational and the subnational level, where national authorities are called on to share their political prerogatives with local players or are constrained by international legal and political obligations and forces.

This is particularly true in European migration policy, where national governments are increasingly having to share with many other political actors on different levels the political prerogative to define and manage emergency. This is happening on the supranational level with political actors having powers in migration policy, examples being the Council of the European Union (hereinafter the "EU Council"), which is also the institutional framework for handling diplomatic relations among member states; the European Commission, which has the crucial power to coordinate border control through its agency for the management of external frontiers (Frontex); and other international agencies working on migration and refugee issues, two such agencies being the Office of the United Nations High Commissioner for Refugees (HNHCR) and the International Organization for Migration (IOM). At the subnational level, national governments are forced to deal with local powers, which are often called on to play a crucial role in managing migration policy, public security, and civil protection, but which play an especially crucial role when the battle to gain political consensus is fought by seizing on citizens' fears and insecurities.

	Supranational level	National level	Subnational level
Legal framework	International and EU law	National law	
Institutional framework	EU Council (multilateral relations among member states)	National government	Local governments
		Public-security agencies	
	European Commission	Civil-protection agencies	
	Frontex		
Political framework	Bilateral relations with third countries	Political relations within the coalition supporting the government	Political relations with local governments
	Bilateral relations with member states	Political relations with the opposition	
	Bilateral relations with EU institutions (European Commission)	Political relations with NGOs involved in governing migration	
	Diplomatic relations with international governmental agencies and other NGOs.		

The table above shows the complex web of actors and legal, political and institutional constraints that have shaped the securitizing process in the Lampedusa crisis. Outside this contextual framework we cannot properly understand the cultural and political meanings of the different definitions of emergency. The empowering audience, which in classic securitization theory is often described as a passive element receiving the security definition propounded by key political actors, is here understood as an active participant in an interactive process. As Thierry Balzacq has argued, the securitization process is not a self-referential practice (Balzacq 2011: 3). The politico-institutional context within which securitization actors are forced to move thus exerts a structuring power that shapes the actors' discursive strategy, forcing them into a complex negotiation with their relevant audience, a negotiation in which the imagery of threat and security, of rules and exceptions, are constantly being reshaped.

3. Defining Emergency

During the Lampedusa crisis the Italian government was of course the key actor in the struggle to control the definition of emergency. The government, notwithstanding its sovereign power in this area, was forced to adjust its own perspective in light of those espoused by other important political and institutional actors, which in several respects structured the government's field of action and its

discursive strategy. More to the point, this strategy had to be realigned with different semantic repertoires in the effort to properly target the securitizing process's relevant audience. What can be noticed by analyzing official documents and press releases is that the Italian Minister for Home Affairs, Roberto Maroni, wavered before alighting on what turned out to be the most effective role to play: he acted on some occasions as "Minister for Civil Protection," speaking the language of "humanitarian emergency," whereas on other occasions he cast himself in the role of "Minister for Public Security," speaking the language of "securitarian emergency." These fluctuations were clearly owed to the bitter confrontation he was having with the other institutional actors involved in managing the crisis, at both the supranational and the subnational level, as well as with other politicians (mainly from the political majority in the government's ruling coalition) who played a key role in framing the crisis through their public speaking. The complexity of the audience involved forced the Italian government to alternatively tap two different symbolic reservoirs, sometimes invoking the migrants' human security (though quite ambiguously, as we will see), other times resorting to the more straightforward rhetoric of security and public order.

The key to the Italian government's discursive strategy is quite clear, for it was gauged to the institutional political actor being addressed. When the government was dealing with *supranational* actors, such as the European Union, the emphasis was on the idea of an impending "humanitarian emergency," conjuring up the image of an "epochal" migratory influx about to unfold, its proportions "biblical," with potentially hundreds of thousands of displaced persons ready to land on European shores. The aim, of course, was to obtain more technical and financial aid from European institutions, but also to gain the needed political consensus among other member states so as to suspend the regular rule of law by activating the exceptional instrument of temporary protection set forth under European Directive 2001/55/EC, with its burden-sharing mechanism. In the minister's own words,

> We are facing a biblical exodus, and yet the European Union is doing nothing. It is turning a deaf ear. I have not heard any word from President Barroso. Italy has been left on its own [...]: people fleeing an unstable country need international protection.[1]

By contrast, when the government was dealing with *subnational* institutional actors—seeking to involve local governments in managing the crisis, and to legitimize the partial suspension of the regular political process, a suspension implied by the government's own appointment of a special commissioner with special powers to handle the emergency—the discursive strategy refocused on the language of "humanitarian catastrophe," explicitly evoking the imagery of natural disasters familiar to the Italian audience:

> The Tunisian crisis is a humanitarian catastrophe, just like that which unfolds in the aftermath of an earthquake. We accordingly must proceed in just the same way as we would following an earthquake, on the basis of the same first-aid principles.[2]

Likewise:

> If the current trend keeps up, we will soon exceed 80,000 arrivals. It is for this reason that we urgently need a quick-response intervention. This crisis is like the Abruzzi earthquake: that is why we have mobilized the civil-protection service.[3]

Neither at the European level nor at the local level were the Italian government's institutional interlocutors persuaded by the rhetoric of humanitarian emergency, and so they offered alternative readings of the Lampedusa crisis.

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[1] Roberto Maroni, Italian Minister for Home Affairs, quoted in *Corriere della Sera*, 14 February 2011; my translation.

[2] Giuseppe Caruso, Special Commissioner for Emergency Management, quoted in *Il Messaggero*, 14 February 2011; my translation.

[3] Roberto Maroni, Italian Minister for Home Affairs, quoted in *Avvenire*, 15 February 2011; my translation.

The supranational actors involved were to some extent ambiguous in defining the emergency. The European Commission, speaking through Cecilia Malmström, the European Commissioner for Home Affairs, at first seemed willing to strike some middle ground in answering the Italian government's request to activate temporary protection, and in the meantime it approved some financial and technical aid. Italy's insistence subsequently led the Commission to downplay the crisis, underscoring the adequacy of existing European support. The Commission accordingly framed the Lampedusa crisis as an ordinary influx of irregular migration, arguing that Italy had the institutional means to govern it. The EU Council shared this view from the outset, and through its national Justice and Home Affairs representatives spoke the language of the regular external border policing for which Italy is responsible, albeit with the support of the EU technical and financial aid that was due.

European institutions rejected the humanitarian-emergency reading of the Tunisian influx on Italian shores, choosing to instead frame it as an ordinary, albeit particularly intense, case of irregular migration to be handled by way of the regular police procedure for identifying and repatriating illegal immigrants. This interpretive frame was reinforced by the Office of the United Nations High Commissioner for Refugees (UNHCR), which through its Italian representative framed the influx as an ordinary case of *mixed migration*, inviting the institutional actors involved to scale back their rhetoric and not voice alarmist views:

> Italy has already proved it can handle significant migration influxes. In the 1990s, tens of thousands of Albanian citizens landed on our shores after the defeat of the regime, and in 1999 some 35,000 refugees came in from Kosovo [...]. I can say that the Tunisian influx has an "European dimension". Tunisian migrants are young, they are driven by economic concerns, they want to exercise their freedoms, they do not believe in the prospect of political change in Tunisia, and they fear that the crisis in the tourist industry will bring even greater poverty. The vast majority of them set their sights on France and Holland, not on Italy.[4]

The Italian government's humanitarian-emergency reading met with even greater resistance at the subnational level, where the government's interlocutors pressed for a full-fledged securitarian framing of the ongoing crisis. Local governments, in synchrony with the national governing coalition, called for a complete securitization of the crisis, inviting Italy's Minister for Home Affairs to enact extraordinary measures designed to stem the flow of irregular migrants and minimize the threat to public security which this inflow was perceived to pose. Talk of a naval blockade, forced repatriation en masse, and blanket administrative detention became commonplace in public speaking and press releases, while local government representatives insistently raised the issue of the "bogus asylum seekers," a scare tactic used in the effort to oppose the installation of new reception centres in the politicians' local communities.

> Lampedusa is swarming not with desperate refugees but with Tunisians fleeing a country where life has gotten back to normal and businesses have reopened: I can say this because there are many Italian firms operating out of Tunisia. Life has resumed its normal pace over there, and so has business, and therefore, since that is the place these people come from, they are illegal *clandestini*. They must be detained and deported. Those who get here wearing brand-name sneakers and Western-looking jackets and holding mobile phones in their hands cannot be considered eligible for international protection [...]. Italians are outraged at this spectacle. We have seen many authentically "humanitarian emergency boats" in the past: they carry people from all walks of life—women, children, the elderly. Now the only kinds of persons we see making landfall are young males at a healthy weight and without family: they are not so naïve. I can understand *some* boats like this, but we *only* have young males who have paid more than 2,000 euros to reach Italian shores.[5]

The emergency language deployed by the Italian government was deliberately ambiguous: it did not commit to any specific framing of the Lampedusa crisis and instead fluctuated between a humanitarian

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[4] Laura Boldrini, UNHCR representative in Italy, quoted in *La Stampa*, 22 February 2011; my translation.

[5] Luca Zaia, governor of the Veneto Region, quoted in *Quotidiano Nazionale*, 24 March 2011; my translation.

reading and a securitarian one. This ambiguity was of course rooted in political opportunism, allowing officials and politicians to adjust their semantic repertoire to the institutional interlocutor they were addressing. More to the point, in repeatedly invoking the imagery of a humanitarian catastrophe, the Italian government sought to export on a European level an emergency language typical of Italy's legal and political context, the aim being to win the political consensus needed to justify suspending the Schengen provisions regulating access to Europe by third-country nationals. This attempt ran in parallel to a second securitarian framing of the Lampedusa crisis, a framing the Italian government used to plead with national and subnational political and institutional actors to set up special powers to handle the emergency. This ambiguity dangerously conflated the need to protect migrants with a concern with ensuring public order, offering a clear example of the securitarian potential the language of human security can acquire when spoken by nation-states (Floyd 2007; De Larrinaga and Doucet 2008). In the Italian authorities' rhetoric, and to an even greater extent in the policies they carried out, the recurrent reference to a humanitarian emergency legitimized recourse to extraordinary measures whose final recipient could not be clearly identified, given that these measures could be framed either as protective measures called for to respond to the needs of migrants or as security measures called for to protect Italian citizens threatened by an unchecked influx of illegal immigrants.

4. Governing the Emergency

The symbolic mediation through which securitization is effected can also be accomplished by engaging in nondiscursive practices, such as the use of specific institutional and technical devices or the creation of special powers. In fact, the politico-institutional context operates on two levels at once: on the one hand, it provides a vocabulary through which to securitize a specific issue—it does so by making available legal constructs that single out a given group or situation as posing a threat, thereby setting things up for that group or situation to play a direct securitizing role—and, on the other hand, it contributes to the securitizing process by endowing with special powers the security professionals called on to govern the threat so identified. As Didier Bigo (2006) and Thierry Balzacq (2005; 2011) have outlined, these legal and political *dispositifs* take the form of aggregates of power and knowledge (Foucault 1977; Deleuze 1991; Agamben 2006). They are brought into play to govern specific issues, but once deployed they reinforce the security framework: by coupling security discourse with practices for managing security on the ground, they prompt such discourse and such practices to short-circuit, thus leading to a securitizing escalation.

Classic securitization theory was focused on security *discourse*, but those who have brought securitization *practices* into account have underlined the different dynamic involved in the securitizing escalation. Whereas security discourse tends to dramatize a state of affairs by magnifying its dangers, so as to legitimize an *immediate* suspension of the regular legal process, security practices act to *incrementally* wear away at the legal and political framework, without any dramatic appeal to emergency laws and powers. From the latter point of view, the *government of unease* in contemporary societies produced a pervading widespread of security logic and risk management technologies across society, thus bringing about a new form of low-intensity state of emergency (Bigo 2002). Many who have studied the securitization of migration in contemporary societies have criticized the idea that migration policies have been inspired by the dramatizing logic of emergency, pointing out instead how the European border-control regime has developed on the basis of a risk-management model that has been introducing a subtle securitizing shift driven by security professionals (Neal 2009; van Munster 2009).

What we have witnessed during the Lampedusa crisis seems to contradict this hypothesis. As we have seen, the institutional actors involved spoke the language of emergency from the outset, trying to unbalance the security equilibrium based on the regular functioning of risk-management *dispositifs* by staging a critical and highly dramatized play calling for a new mode of security management requiring emergency practices clearly operating beyond the limits of the law. As we will see, the Lampedusa crisis was governed under a permanent state of emergency that clearly broke ranks with regular

border-control management. This is certainly true, but then the emergency language spoken and the crisis-management practices deployed by the actors involved in the securitizing process does not square with the classic emergency-powers model implicit in classic securitization theory, and this in a way vindicates the critical stance of those who argue that the securitization of migration policy should not be construed as a chapter in the history of national emergency policy.

I believe these interpretive discrepancies in securitization theory are owed in part to our underestimating the role the concepts of rule and exception have in explaining how the securitization process unfolds. This is particularly surprising considering the key role these concepts have had in the history of political thought and in contemporary political and legal theory (Saint-Bonnet 2001; Agamben 2003). On the classic paradigm, securitization theory refers to a theoretically poor and essentialized notion of the state of emergency built around those national security threats which formed the focus of realist international relations theory (Williams 2003). The state of emergency is equated here with classic *constitutional emergency*, that is, the *état de siege* and martial law declared in accordance with procedures commonly provided by contemporary democratic constitutions (Ferejhon and Pasquino 2004; Neocleous 2006). On this view, the exception to regular political procedure and the breakup of the legal framework in which lies the main outcome of the securitization process tend to coincide with the full powers entrusted to governments in times of national emergency.

In the second half of the 20th century, the notion of emergency was progressively broadened with respect to its scope in modern politico-legal theory and the rules often set forth in democratic constitutions. Just like the notion of security, the notion of emergency was progressively diluted so as to make it applicable to different kinds of environmental, natural, economic, and humanitarian crises, beyond the range envisioned on the classic model of national emergency. At the same time, constitutional practice in advanced democracies can often be observed to set up powers by means of ordinary law, without formally declaring any national emergency, as instead modern constitutions typically require, usually restricting such declarations to a narrow set of circumstances (such as civil war and military confrontation). According to Ferejohn and Pasquino (2004, 215), this practice has given rise to a truly new model of emergency government which they call legislative emergency, as distinguished from classic constitutional emergency. On this model, special powers are created directly by ordinary laws, with national government being permanently entrusted with the power to declare the state of emergency on its own by way of special decrees.

Emergency powers in Italy are only weakly regulated. The Constitution (Articles 11 and 78) authorizes Parliament to declare war, conferring full powers on Parliament for the entire duration of the armed confrontation; and under Article 77 of the Constitution, when cases of "necessity and urgency" arise, the executive is empowered to issue provisional emergency decrees having the force of law. Unlike the full powers conferred on Parliament in times of war, the powers the executive assumes with an emergency decree are limited (they are subject to the Constitution), and the decrees themselves are provisional, in that they must be made into law within sixty days by an act of Parliament (otherwise they become unenforceable). In addition to these tools of *constitutional* emergency, ordinary law provides a wide assortment of other emergency powers in Italy, the most important of them being the ones set forth in the country's Civil Protection Law (No. 225/1992, under Article 5). Under this legal umbrella the prime minister is authorized to issue a decree (known as *Decreto del Presidente del Consiglio dei Ministri*, or DPCM for short) conferring emergency powers on specially appointed commissioners (*commissari straordinari*) charged with handling specific critical situations and provided with special powers to act above ordinary laws (see Fioritto 2008).

Despite the executive's use and abuse of this extra-constitutional emergency prerogative being challenged several times in court, the Italian constitutional and governmental practice is marked by the abuse of these extra-constitutional emergency powers, which were used along the years for the management of different kinds of economic, environmental, humanitarian, and social crises, thus giving place to a parallel governmental practice beyond the ordinary political procedure and legal framework (see Bonaccorsi 2009). Over the last ten years, border control and the landing of illegal

immigrants on Italian shores has been managed under what can be described as a state of permanent emergency, so much so that the phrase *emergenza sbarchi* ("landfall emergency") has become a cliché in legal parlance and is now widely invoked to justify the ongoing use of emergency decrees under Law No. 225/1992.[6]

The Lampedusa crisis has been managed in keeping with this model of extra-constitutional emergency, with the Italian executive branch of government essentially free to declare emergencies at will and confer on public security and special civil-protection powers not provided by law. As we will see, this has provided the legal and political basis for a crisis-management model built around an extensive use of arbitrary administrative detention and the systematic violation of migrants' basic rights.

4.1. Spaces of Legal Indistinction

The Italian government wasted no time resorting to its extra-constitutional emergency powers in managing the Lampedusa crisis. On 12 February 2011 a decree was issued declaring the entire national territory under a state of humanitarian emergency, and a special commissioner entrusted with special powers was then appointed by way of an executive order (*Ordinanza del Presidente del Consiglio dei Ministri*, OPCM No. 3924/2011). But just like the discursive strategy deployed by the administration's ministers, the decree wavers between a humanitarian frame and a securitarian one, coupling the need to protect migrants with concerns about public order. Indeed, as the emergency decree cautions, because matters are very likely to worsen, this administration underscores "the need to adopt extraordinary measures by which to set up appropriate facilities for humanitarian assistance, all the while ensuring that clandestine immigration [*sic*] is fought in an effective way by identifying those who pose a danger to national public order and security" (DPCM No. 50936/2011; my translation).

The Minister for Home Affairs managed the emergency on the basis of two successive plans: at first, until the end of March, the plan was to confine the emergency within the Sicilian territory, mainly in Lampedusa; but then, when the situation on the tiny island became unsustainable, the government realized it had to distribute the landed migrants throughout the national territory. What distinguished this model of emergency management was the wide recourse to the administrative detention of migrants in places or spaces that following Giorgio Agamben I would describe as "spaces of legal indistinction": these can be considered a typical example of the "camp form" as institutional settings that function outside the legal framework regulating the ordinary detention of migrants and ruled under a state of permanent exception (Agamben 1995: 188; 1996: 38, 39). The previously mentioned DPCM and OPCM empowered the special commissioner for the emergency to set up "facilities" or "spaces" where the landed migrants could be held or detained (the chosen journalistic term in Italian, *trattenere*, "to withhold," is really a euphemism for detention). But while the decree and the order did not state any explicit exception to the Italian or the European law on detention centres for migrants, their generic reference to the need to act outside the law in handling the emergency legitimized an institutional practice that opened a breach in the legal framework, creating detention spaces whose legal void is filled by police acting with full sovereign powers.

Italian law distinguishes three classes of migrant centres. In the first class we have (*a*) reception centres (*centri di accoglienza*, or CDAs), two of which are defined as first-aid and reception centres for their location along Italy's southernmost shores (*centri di primo soccorso e accoglinza*, or CPSAs), created under Law No. 563/1995 and intended to deliver first aid to irregular immigrants found in distress on Italian territory. Reception in these kinds of centres is temporary, generally lasting for the

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[6] See specifically DPCM No. 21128/2002, declaring a state of emergency "in order to deal with the exceptional influx of illegal immigrants," and its subsequent extensions implemented under DPCM nos. 25687/2002, 12206/2003, 16289/2004, 19729/2005, 25760/2007, 29956/2008, 42326/2009, and 49972/2010.

time needed to provide first aid and to identify and define the legal status of intercepted migrants. Then we have (*b*) reception centres for asylum seekers (*centri di accoglienza per richiedenti asilo*, or CARAs), established under a decree of the president of the republic (no. 303/2004) and under a legislative decree (no. 25/2008), where asylum seekers who have escaped border control are held in an "open-door regime" (generally for no more than thirty-five days) while their asylum request is being processed. And, finally, we have (*c*) deportation centres for irregular migrants (*centri di identificazione ed espulsione*, or CIEs), established under Article 14 of Italy's Consolidated Immigration Law (Testo Unico sull'Immigrazione), where immigrants are detained for up to 180 days (under Law No. 94/2009), pending a police order confirmed by a judge for the purpose of repatriating or otherwise deporting them.

The detention spaces and places created under the emergency-powers umbrella have been managed in a situation of complete uncertainty as to their nature and the legal status of their "guests." The Italian government deliberately created this situation so that the landed migrants would not be managed under the legal status of proper asylum seekers or under the legal status of illegal immigrants. In these two cases, right after a brief stay at a CDA or a CPSA, immigrants should be sent to either (*i*) a CARA, so as to process their request for international protection, or to (*ii*) a CIE, so as to carry out the repatriation or deportation process. In both cases, the scenario the Italian government was trying to avoid was that of releasing third-county nationals on Italian territory. Indeed, on the one hand, when a request for international protection is forwarded, the third-county national is registered in the EURODAC system and enabled to circulate across Italian territory, subject to the restriction that they may not leave for other member states; on the other hand, under Directive 2008/115/EC, now directly enforceable in Italy's domestic jurisdiction, a decision to return migrants to their countries of origin must "guarantee an appropriate period for voluntary departure" (Article 7), leaving removal and administrative detention as a last resort. Unless the police could prove that the landed migrants were trying to abscond themselves or that they posed a threat to public order (Article 7.4), the Italian government would have been forced to release these migrants with an order to voluntarily leave the country.

The situation of legal uncertainty was thus purposely protracted for weeks, confining the landed migrants within the spaces of indistinction created within internment areas, temporary camps, and institutional settings whose legal status remained unclear, this with the unequivocal aim of extending the arbitrary detention of immigrants while working with other member states and the Tunisian government to negotiate a diplomatic solution that would avoid the permanence of third-country nationals on Italian territory.

Specifically, in the first stage of the crisis the Italian government arbitrarily protracted the internment of the landed migrants on Lampedusa, transforming the small island into a proper open-air camp existing outside the law and, contrary to what the Italian Constitution mandates, without allowing any judge to confirm the protracted deprivation of their freedoms. The vast majority of the landed immigrants was held on the island well beyond the time needed to deliver first-aid and to identify them, violating the rule that detention in these kinds of centres be kept as short as possible. Law No. 563/1995 does not set a clear maximum term for detention at a CPSA or a CDA, despite the fact that the Italian Constitution states, under Article 13, that such deprivations of liberty must be judicially validated within ninety-six hours. In light of these legal constraints, the practice became to detain the migrants at a CPSA or a CDA for just the time needed to determine their legal status, thus sending them to either (*i*) a CIE, if they were found to be irregular immigrants to be returned in their countries of origin or of transit, or to (*ii*) a CARA, if they were seeking international protection as asylum seekers, in which case they would be held pending the outcome of that request. From February to April 2011, all the migrants who landed in Lampedusa were held on the island without any judicial validation of their deprivation of liberty, and without clarifying their legal status (Vassallo Paleologo 2011).

In the second stage, a new temporary-camp system was put in place by setting up tent cities at abandoned military sites. As Fulvio Vassallo Paleologo has stressed, these temporary camps were created in violation of Article 14 of Italy's Consolidated Immigration Law, under which detention centres cannot be created without obtaining decrees issued by Italy's Minister for Home Affairs. Italian law allows the maintenance of first-aid detention only in cases of extreme urgency and for the time strictly necessary to transfer the migrants to regular centres: the possibility of creating a parallel system of temporary camps is simply not envisioned in the law (Vassallo Paleologo 2011). These camps, whose legal status was not formally declared until April 2011, had all the makings of first-aid centres and should accordingly have been subjected to judicial review of administrative detention, as provided by Article 13 of the Italian Constitution. Even here the legal status of the third-country nationals being detained was never clarified, and yet no judicial validation of such detentions was ever effected. On the contrary, the temporary camps were placed in a regime of permanent emergency that escaped not only judicial review but also the oversight of civil society, with the law-enforcement officials responsible for managing the camps repeatedly denying the right of access even to members of the Italian Parliament (who under the Italian Constitution are authorized to visit all places of detention). Moreover, these camps' internal management was shaped by police forces alone, under the legal umbrella of the emergency powers conferred by the aforementioned DPCM and OPCM: the upshot was a situation where police could act with absolute sovereignty over the rights and living conditions of hundreds of people held in a regime of arbitrary administrative detention.[7]

4.2. Turn off the Faucet and Drain the Tub

April 5 marked a key moment in the emergency's management. This was the day when a new agreement with Tunisia was signed and Italy's prime minister issued a decree granting to all landed immigrants the temporary protection mandated under Article 20 of Italy's Consolidated Immigration Law. Italy's governing coalition sealed a strategy that Umberto Bossi, leader of the xenophobic Lega Nord Party, with his taste for vivid images summarized by saying, "We must turn off the faucet and drain the tub!"[8] The aim was to encourage the departure of the migrants who had landed on Italian shores since January 2011, while rebuilding bilateral collaboration in migration control with the temporary Tunisian government so as to prevent further migrant inflow.

The detention system set up in Lampedusa, with temporary camps and installations, showed many cracks from the outset. Reports say that disorder and escapes were legion, continuing uninterruptedly throughout the time that migrants were being transferred from Lampedusa. Some workers at the centres have described the dispersion as a matter of course—an inherent or connate feature—with a rate that increased sharply when the Italian government created the temporary-camp system. The tent cities amounted to improvised installations impossible to keep under strict surveillance, while the police officers called on to manage the camps have often described the atmosphere inside as tense, even suggesting they were compelled to allow a certain amount of dispersion in the interests of order and security.

This situation lasted until Italy's governing coalition decided to define the legal status of the landed migrants, finally opting for a clear humanitarian framing of the crisis, against the view of its political majority (which was pushing for a more securitarian framing) and that of the European partners, who were advocating a more standard model of migration control. Unable to manage the temporary camps

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[7] The ability to exercise the right to access these temporary camps was finally recognized with Internal Circular Order of the Minister for Home Affairs No. 1305/2011, allowing access only to the NGOs involved in managing the camps, to members of the Italian and the European Parliament, and to members of the regional councils where the camps were located. And yet press reports say that even this circular order did not prevent the police forces responsible for the camps' security from repeatedly denying access to the persons so identified.

[8] Umberto Bossi, leader of the Lega Nord Party and Minister for Reforms and Federalism, quoted in *Quotidiano Nazionale*, 6 April 2011; my translation.

under emergency rule by further protracting the arbitrary detention, the governing coalition chose to implement the temporary-protection procedure set forth in Article 20 of Italy's Consolidated Immigration Law, thus providing all the migrants who made landfall in Italy from January 2011 to 5 April 2011 with a temporary residence permit for humanitarian reasons. This was a way to unilaterally activate the temporary-protection instrument the European institutions were reluctant to resort to—but of course this came with consequences, as we will see. The more pressing problem for Italy's governing coalition, however, was that of winning the support of its political allies (and especially the Lega Nord Party), which viewed temporary protection as a more or less thinly veiled amnesty. The winning argument was that this solution would have relieved Italy of some of the burden of dealing with the migratory pressure by allowing the landed migrants to reach relatives and friends in France and Germany. It was Umberto Bossi himself who explained the reasons of his assent: "I agree with this solution so long as they move on to France and Germany."[9]

The DPCM was thus finally signed, declaring all Tunisians who had landed until 5 April 2011 in need of temporary protection, thus implicitly putting an end to the humanitarian emergency and setting the stage for a full-fledged securitarian management of those who would land from that point onward. Under the terms of the agreement signed with Tunisia, all new arrivals would be treated as illegal immigrants and returned to that country. The Italian government initially estimated that the temporary protection would potentially benefit 14,500 migrants. However, considering that in the period from January 2011 to 5 April 2011, some 25,000 migrants landed on Italian shores, and that about 2,300 of them came in from Libya, and were thus eligible for international protection, while another 2,200 Tunisians applied for some form of international protection, we can easily get a sense for how many persons went unaccounted for: about 5,000. This is the figure that gives us a measure of what was earlier described as matter-of-course, or built-in, "physiologic dispersion".[10]

As to the government's control of the external border, it was immediately clear that the inflow of migrants from North Africa was due to the collapse of the Tunisian politico-institutional structure. Tunisia was formally defined a failed state, and so, through a singular rendering of the doctrine of humanitarian intervention, the Italian government advanced the idea of making up for Tunisian law enforcement's inability to patrol its borders. The temporary Tunisian government indignantly rejected the proposal out of hand. Italy's negotiations with Tunisia thus started off on the wrong foot and dragged on for quite some time. Italian ministers officially visited Tunisia on a regular basis from February onward, making public statements whose tone ranged erratically. Italy was clearly using a carrot-and-stick approach to squeeze out an agreement covering police cooperation and the readmission of illegal migrants. At several points in the negotiations, the Italian Minister for Foreign Affairs was on the point of offering, aside from substantial financial aid, 2,000 euros for each migrant who would be readmitted; at other points, Italy explicitly threatened unilateral action in defiance of international law, such as a naval blockade and coercive mass repatriations of illegal immigrants. The Tunisian government, for its part, dictated its own conditions, notably, no agreement on police cooperation could include joint patrol in Tunisian or international waters, and readmission was to be confined to small groups of migrants, fifty at most, so as to avoid any backlash in public opinion and the risk of delegitimizing a temporary government that had just taken on responsibility for leading the country in its transition to democracy.

Finally, after more than nine hours of talks between Roberto Maroni and Habib Essid, his Tunisian counterpart, along with a long round of preparatory talks among Justice and Home Affairs bureaucrats, Italy and Tunisia signed what the report described as a "memorandum of understanding." This was basically a working agreement on police cooperation and the readmission of illegal migrants: it was agreed that Tunisian liaison officers would be dispatched across Italy to undertake an accelerated repatriation procedure, while Italy, for its part, would provide ten patrol boats, 100 off-road vehicles,

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[9] Ibid.

[10] For these estimates, see *Il Sole 24 Ore*, 7 April 2011; my translation.

and economic aid to the Tunisian government. As had previously happened with many other "informalized" international agreements on border control (Cassarino 2007), this working agreement was not ratified by the Italian Parliament, nor was it published in its government's official journal. As of this writing, the text has yet to be made public.

Repatriations got underway on April 8, with many special flights boarding thirty migrants at a time, escorted by a large contingent of police officers. The return procedure used is highly questionable from a legal standpoint, in the first place because the Italian government is abusing the so-called deferred refusal of entry (*respingimento differito*) established under Article 10 of Italy's Consolidated Immigration Law, providing that a refusal of entry can also be issued for illegal migrants who have crossed the border and have immediately thereafter been intercepted by the police in the so-called frontier zone. But when someone crossed the border weeks before and, as often happens, has already been sent to one or more of Italy's many temporary camps, the use of such deferred refusals of entry can no longer find a legal justification. By using this procedure, the Italian government is treating the whole of Lampedusa and the other temporary camps as an extraterritorial frontier zone where the migrant, despite being well inside the Italian territory, has never reached its "legal border" (Basaran 2008). The aim, again, is to avoid recourse to the regular return procedure, which under Directive 2008/115/EC allows the use of forced removal and administrative detention only as a measure of last resort, and after a voluntary-departure order has been issued. Indeed, under Article 2.2(a) of the same directive, member states may decide not to apply its provisions to illegal immigrants who are subject to a refusal of entry in accordance with Article 13 of the Schengen Border Code. Moreover, because each return flight sparks violent disorder, the police avoid informing migrants about any decision to return them to their countries of origin, keeping them in the dark about their final destination, thus denying them the right they have under Arts. 13 and 15 of the Schengen Border Code to appeal the refusal-of entry-decision.

The foregoing reconstruction brings out the deep ambiguity inherent in the Italian government's model for governing emergency, a model hovering between a politically expedient recourse to the language of humanitarian emergency and a securitarian practice clearly beyond the law and in open violation of the migrants' basic rights. But the Italian government's political opportunism was not the only driving force behind the securitization of the Lampedusa crisis: conspiring with that force was, to some extent, a reluctance on the part of the European institutions to seek a shared *political* solution to the crisis, a solution based on a broad political agreement acceptable to all the parties involved. More or less explicitly, the European institutions correspondingly forced a securitarian framing of the situation involving the North African migratory influx, thus legitimizing the language of policing and border control that political and institutional actors were using at the subnational level.

5. The Schengen Spirit

Even though emergency powers at the European level do not compare to those enjoyed by member states, the Italian government used the EU as one of its main interlocutors from the beginning of the Lampedusa crisis. Under Directive 2001/55/CE, the European Commission can propose that the EU Council set up temporary protection by declaring a state of "humanitarian emergency," while at the same time regulating the distribution of refugees among member states. The Italian government's discursive strategy, with its recurrent reference to the idea of "humanitarian emergency," was clearly aimed at garnering the needed political consensus to activate European temporary protection, even though this goal was not explicitly stated at first but was only evoked by indirection, by referring to the need to set up some sort of "burden sharing" mechanism among member states.

The appeal to EU institutions was immediate, and as early as February 15, the European Commission received from the Italian government a formal request for financial and technical aid to

deal with the emergency.[11] Speaking at a plenary session of the European Parliament, Cecilia Malmström, EU Commissioner for Home Affairs, proved receptive to Italy's requests by underscoring that the migrant inflow from North Africa "is a truly European issue," thus announcing a plan for technical and financial aid. At the same time, however, she expressed the Commission's rejection of the "humanitarian emergency" frame, inviting the Italian government to strengthen border control and repatriate the illegal immigrants from North Africa.[12] Echoing once more the Commission's intention to frame the inflow into Lampedusa as an ordinary case of illegal immigration to be handled by ordinary border-control measures, the Frontex agency said its HERMES joint operation would take the form of the ordinary joint operations carried out each year within the European Patrol Network rather than the form of its crisis-management, rapid-intervention team RABIT, which had been deployed in full force on the Greek-Turkish border from October 2010 to March 2011.

The subsequent institutional steps reinforced the initial framing. On February 24 a Justice and Home Affairs meeting was held that according is background notes was scheduled to discuss a range of policy issues related to migration, and to this agenda was added the issue of the EU's unwillingness to frame Lampedusa as an emergency, as Italy had requested. Member states offered to provide financial and technical aid to Italy but rejected any burden-sharing mechanism designed to distribute incoming migrants across the whole of Europe. Subsequently, during the extraordinary EU Council meeting of March 11, member states reiterated their support of southern EU countries, inviting the European Commission to lay out a plan for managing the migratory inflow more effectively:

> The Member States most directly concerned by migratory movements require our concrete solidarity. The EU and the Member States stand ready to provide the necessary support as the situation evolves. The EU, in particular through the Frontex Hermes 2011 operation, will continue to closely monitor the impact of events on migratory movements both within and from the region. In particular, Member States are urged to provide further human and technical resources to Frontex, as required. The Commission is invited to make additional resources available. The European Council calls for rapid agreement to be reached on the regulation enhancing the agency's capabilities. (EU Council 2011a, 4)

There remarks were echoed in the "Council Conclusions" adopted following the EU Council meeting of March 25:

> The European Council also looks forward to the presentation by the Commission of a Plan for the development of capacities to manage migration and refugee flows in advance of the June European Council. Agreement should be reached by June 2011 on the regulation enhancing the capabilities of Frontex. In the meantime the Commission will make additional resources available in support to the agency's 2011 Hermes and Poseidon operations and Member States are invited to provide further human and technical resources. The EU and its Member States stand ready to demonstrate their concrete solidarity to Member States most directly concerned by migratory movements and provide the necessary support as the situation evolves (EU Council 2011b, 10).

The true breaking point came with the Justice and Home Affairs meeting of 11 April 2011, when the Italian government, having issued the temporary-residence permit for humanitarian reasons under Article 20 of Italy's Consolidated Immigration Law, immediately proceeded to request European temporary protection in pursuance of Directive 2001/55/CE. The EU partners' reaction was resolute, firmly rejecting the request and calling for stronger border-control measures by the Italian authorities. Cecilia Malmström, the European Commissioner for Home Affairs, put it in this way: "The majority of EU countries believe that, although it could be considered in the future, still we are not on the point of using the temporary protection directive." And Gonzalo Rubalcaba, the Spanish Minister for Home

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[11] "The Italian Government requested assistance in strengthening the surveillance of the EU's external borders in the form of a Joint Operation. In addition, Italy requested a targeted risk analysis on the possible future scenarios of increased migratory pressure in the region in the light of recent political developments in North Africa and the possibility of the opening up of a further migratory front in the Central Mediterranean area" (Frontex Press Release, 16 February 2011).

[12] Speech 11/106, 15 February 2011.

Affairs, stated, "we cannot bring the solidarity clause into effect in this situation. Tunisian immigrants are illegal immigrants: they must be deported to Tunisia."[13]

The official conclusions of the EU Council were of course more veiled. On the one hand they reaffirmed the need

> for genuine and concrete solidarity towards Member States most directly concerned by migratory movements and [the Council] calls on the EU and its Member States to continue providing the necessary support as the situation evolves, such as by assisting the local authorities of the most affected Member States in addressing the immediate repercussions of migratory flows on the local economy and infrastructure [...]. Considering the need for further resources to respond to the situation, the Council welcomes the intention of the Commission to mobilize supplementary funds that can be made available to Member States or FRONTEX at short notice when needed. (EU Council 2011c, 2)

On the other hand, it was also unambiguously emphasized, in these very conclusions, that the measures proposed for coping with the Euro-Mediterranean border-control regime in the short run were adequate, thus closing the door to any emergency framing of the situation:

> The Council underlines that the measures mentioned in the paragraphs above represent the immediate answer to the crisis situation in the Mediterranean, but that it is also crucial to put in place a more long-term sustainable strategy to address international protection, migration, mobility and security in general, and taking also the secondary movements to other Member States into account. (EU Council 2011c, 3)

At the same time, the Italian government's unilateral decision to resort to temporary protection stirred up a bitter legal and political confrontation on the question of whether such protection was compatible with the Schengen *acquis*. At the Justice and Home Affairs meeting of 11 April 2011 Italy was explicitly accused of violating the "Schengen spirit." In the words of the German Minister for Home Affairs, Hans Peter Friederich:

> We cannot accept that economic migrants come into Europe in vast numbers through Italy. We have taken note of the fact that Italians are issuing temporary-residence permits, in effect allowing illegal immigrants to travel across Europe. The French are strengthening their border controls, Austria is thinking about it. It is not in Europe's best interest if member states are forced to resume internal border controls. We hope the Italians will fulfill their obligations.[14]

It had been some time, by then, since the Schengen spirit had been a point around which to work out diplomatic relations between Italy and France. The Prefecture of the Alpes Maritimes had been "fencing" its border since January, denouncing the fact that some 3,000 undocumented Tunisians had illegally crossed over from Italy. In the meantime, Ventimiglia, the Italian town closest to the French border, had filled up with migrants camping out in the area around the train station and waiting for the right moment to elude the Gendarmerie's patrols on the other side. Under the Chambery bilateral readmission agreements (1997), Italy and France are each allowed to return illegal immigrants found in their own territory when it could be materially proved that they had transited through the other country. Needless to say, there have been many complaints on the Italian side about the way that French law-enforcement officials went about *materially* proving that Tunisian citizens had crossed into France from Italy.

When Italy accorded temporary protection to Tunisians, France not only challenged the residence permits issued under Article 20 of Italy's Consolidated Immigration Law—alleging that this was not in keeping with the Schengen *acquis*—but also announced that it would tighten its border security. France's Minister of the Interior, Claude Guénant, issued a *circualaire* calling for stricter enforcement of the entry conditions set forth in Article 5 of the Schengen Border Code (Regulation (EC) No.

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[13] Quoted in *La Stampa*, 12 April 2011; my translation.

[14] Quoted in *Corriere della Sera*, 12 April 2011; my translation.

562/2006), while declaring that border controls would be carried out *nonsystematically* (i.e., at random) under Article 21.a(iii) of the same code. Belgium, Austria, Germany, and Denmark announced similar measures on land and air borders, provoking a reaction on the Italian side, with senior government officials denouncing an openly hostile attitude and a clear violation of the Schengen rules on internal border checks. Once the confrontation cooled down, each member state was forced to acknowledge the legitimacy of the measures taken by the others, this in keeping with what the European Commission itself had often reiterated, declaring that "nonsystematic" border checks and Italy's temporary-protection measures were both legal.

As much as these measures may have stood on solid *legal* ground, they gave rise to political tensions that clearly made the Schengen system show some cracks, as the president of the EU Council, Herman van Rompuy, had to admit: "Neither Italy nor France have so far done anything illegal. That said, there is the risk of violating the *spirit* of the Schengen agreements."[15] On the eve of the decision to bring Romania and Bulgaria into the Schengen Area—with Greece being regarded as the weak link in the European border regime, so much so that Frontex has been operating in full force along the Greek-Turkish border since October 2010—the tensions the Lampedusa crisis created among Italy and other member states (mainly France) became an occasion to officially propose that the Schengen Agreement be revisited.

On April 20 the Commission issued a draft communication on migration, eventually approved on May 4, then presented at the Justice and Home Affairs meeting of May 12 and fully discussed at a later meeting of 9 and 10 June 2011 and at the EU Council meeting of 24 June 2011. The communication—stressing how "weaknesses at some sections of the external border undermine confidence in the credibility of the Union's ability to control access to its territory, and undermine mutual trust"—contains a proposal to review the Schengen Agreement with the aim of further developing "a shared culture among national authorities," finding that to this end a "clear system for Schengen governance is needed." The Commission envisages a mechanism "to allow the Union to handle situations where either a Member State is not fulfilling its obligations to control its section of the external border, or where a particular portion of the external border comes under unexpected and heavy pressure due to external events" (European Commission 2011, 8). This new mechanism for implementing the Schengen Agreement was presented as a tool with which to avoid further tensions among member states acting unilaterally.

The idea was basically to bring into being an emergency-defining prerogative with which to legitimize any exceptions that EU institutions might make in following the standard set up under the Schengen Agreement. Even though this prerogative is presented as a "measure of last resort in order to face exceptional situations" (EU Council 2011d, 3), it essentially introduces a new form of frontier management, with a mobile external frontier that can move back and forth as circumstances require. Indeed, some member states, especially the southern and eastern ones, are formally regarded as weak links in external border control, undermining the "mutual trust" that should underlie the Schengen governance, and this new prerogative would make it possible to fashion these states into a proper buffer zone lying partly outside the Schengen system. It now looks like the role the North African countries have played until the Arab spring in making up the sanitary cordon providing security against illegal immigration along Europe's southern periphery may be taken up by countries like Italy and Greece, which accordingly appear poised to replace the North African countries in serving the function of providing the first line of defence, as it were, in protecting the safe area of freedom, security, and justice of "core" European countries.

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[15] Quoted in *Avvenire*, 18 April 2011; my translation, italics added.

6. Conclusive Remarks: A New European Borderscape?

The friction between the Italian government and the European institutions replicates a pattern that has become quite entrenched in the model on which basis the EU's external borders have been governed over the last decade. Which is to say that the member states with the greatest exposure to migratory flows have been ready to invoke states of emergency to obtain the European partners' technical and financial support, along with a broader sharing of responsibility, while the European institutions invite member states to manage the frontiers using the regular tools and procedures provided by European policy (see Carrera 2007). The push toward securitization in border control would thus seem to originate from the member states, with the European institutions playing the virtuous role of desecuritizing actors. The actual situation, however, paints a more complex tableau than a cursory reading of relations between national governments and European institutions would suggest.

The foregoing reconstruction illustrates the full complexity of the process through which migration in Europe is securitized. The causes lie as much in the variety of the actors involved, and the bitter conflicts that arise in connection with the prerogative to define emergency, as they lie in the complexity of the securitarian languages available. What makes Lampedusa an especially interesting case study is its showing how the securitization process can be enriched through a broad approach that does not just analyze securitarian *discourse* but also closely investigates securitarian *practices*. Indeed, the two main political actors in this crisis, namely, the Italian government and the European institutions, have expressed themselves in language that appears to contradict a securitarian logic strictly construed, leaving that logic to the subnational political actors alone. On a national level, the Italian government has made explicit recourse to the humanitarian-emergency frame, using a language whose effect should at least theoretically have been that of desecuritizing the crisis; on the European level, by contrast, the language used was that of regular border control, with an invitation not to take an alarmist attitude, in keeping with the policy advocated by the UNHCR. But if we consider these discursive strategies in connection with what the practices were on the ground, we can appreciate how both strategies have had a clearly securitizing outcome, prompting the creation of an emergency proper that has legitimized practices falling outside the regular legal and political framework, and this emergency is destined to reshape the way European borders are governed.

That this is a matter of strategy can be appreciated by noting that the Italian government has been consistent in making ambiguous its use of language by which to evoke the idea of emergency. Indeed, on the one hand, the government made an instrumental use of the humanitarian-emergency paradigm, seeking to involve the European partners in managing the crisis and urging local government administrations to accept violations of their regular decision-making procedures, but at the same time, in the shadows of the rhetoric of humanitarian emergency, the attempt was to present as legitimate an emergency-management practice in open violation of constitutional principles, severely undercutting the migrants' basic rights and freedoms. By coopting the humanitarian-protection paradigm, the Italian government managed to transform so-called human security into a powerful securitization tool, all the more deceptive considering that it brings into being the paradox whereby the need to protect migrants goes through a violation of their basic rights.

As we've seen, the European institutions have responded from the outset by rejecting the Italian government's emergency rhetoric, choosing to instead speak the language of the ordinary control of irregular migration. In this way, the European institutions invited the Italian authorities to assume responsibility for the ongoing crisis, all the while making nothing of the desecuritizing potential that was after all present in the humanitarian rhetoric espoused by Minister Maroni. The migrants coming in from Tunisia were thus being treated without distinction from economic migrants, through a frame that inevitably encouraged their criminalization and also reinforced, however much unwittingly, the push exerted at the subnational level toward a firmer securitization of the crisis. The European partners' essentially securitarian attitude was ultimately reaffirmed in the debate that opened up on the question of how to go about reforming the Schengen system's governance model, where the main concern was with putting in place a more effective mechanism for protecting the European area of

freedom, security, and justice in times when sociopolitical unrest on Europe's periphery escalates beyond control.

Europe's border-regime crisis seems to accordingly have prodded member states into a more attentive reflection on the fine line between the rule and the exception when it comes to governing migration, setting in motion a reform process whose outcome will be that of reframing the member states' sovereign prerogative to each define emergency in migration policy. The existing system amounted to an odd mishmash where the powers retained by member states—especially in dealing with issues of public order and security—operated under the politico-legal restrictions that European law has imposed on unilateral action: it proved inadequate in protecting European borders when the older system broke down through a long practice of delocalizing border control along the Mediterranean's southern shore, a practice that set off a fierce politico-institutional conflict among Italy, the other member states, and the European institutions. Although it is still not entirely clear how this conflict will be resolved, the basic directions it can take are essentially two, for on the one hand the European Commission is pursuing an ambitious plan to assume the sovereign prerogative to define emergency, setting up an institutional mechanism that would limit the member states' ability to unilaterally act in matters of migration policy, while on the other hand the member states are pushing for greater flexibility in invoking the power to unilaterally reactivate internal border controls, so as to be able to promptly respond to migratory crises that could emerge along Europe's external borders, the idea being to filter incoming migration through an additional border-control layer at the heart of the Schengen space.

The likely outcome of this reform process seems to be precisely that of a complex redefinition of what William Walters (2004; 2006) calls the European borderscape: an open, fluid space defined by borders contingent on circumstances and liable to change accordingly. What can be observed is how this changeful border topography is functional to the creation of a securitarian filter governed on the basis of an incremental model that puts stronger and stronger legal guarantees in place as we move in toward the centre of the European area of freedom, security, and justice—a model that, conversely, progressively strips these guarantees away as we move out toward the periphery. In this way, the EU's peripheral countries wind up operating alongside nearby third countries in making up a securitarian cordon where legality is only partial: this time around the cordon lies *within* the European space, a space that, as the occasion requires, may be excluded from the core countries' area of freedom, security, and justice for the purpose of confining to the periphery the irregular-migration filtering function the nearby third countries cannot perform.

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Author contacts:

Giuseppe Campesi

University of Bari "Aldo Moro"

Dipartimento di Filosofia, Letteratura, Storia, e Scienze Sociali

Corso Italia 23

70121 Bari

Email: giuseppe.campesi@gmail.com

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