

Migrants at Sea

How policy-making actors influence the policy-making process through framing and scaling on the subject of seaborne migration and the rescuing of migrants in the Mediterranean Sea.



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Foreword

In front of you lies the result of many hours of hard work, lots of frustration and quite a couple of energy drinks. The writing of this bachelor thesis has been a larger project than I would have imagined it to be when I first started out and the process has been much more difficult than I had anticipated. The process of starting out with an idea, the search for literature and the shaping and the reshaping of the many paragraphs and chapters has been a challenge. Being knowledgeable on a subject is one thing, having an interest in the subject another but translating thoughts into words and into a coherent texts seemed at one point an almost impossible achievement.

The first time I was confronted with policy-making on migrants at sea was during a summer internship in Brussels. At the time I received a report which interested me for the style of writing. The style of writing was very different from the scientific articles I was used to. The subject of the report was migrants at sea in the Mediterranean and in particular a case of a migrant vessel that ran into distress and was not rescued. There was a discussion held in Brussels at a think tank where the author of the report was present, as well as several organizations the author had mentioned in her report. A few days after the discussion an article was published stating a direct reference to the discussion and promised policy changes. I found the discussion interesting because the representatives from the organizations were all too busy diverting the subject put forward by the author. The emotional attachment of the author to the issue surprised me as well as the speed of the article which was published only a few days later. The speed at which policy change seemed to take place and the arguments of the representatives of the organizations inspired me to look at the policy-making process.

Now that the final product is finally here I cannot say anything anymore about it. To judge it myself is something I cannot do. What I can say is that after all the hard work that was put into this thesis and the long learning process this is my thesis and mine alone.

Summary

This thesis aims to say something about the how the policy-making process is negotiated by policy-making actors on the issue of migrants at sea. 'Migrants' refers to the people attempting to cross into Europe illegally while looking for safety or better economic opportunities. The term 'migrants at sea' refers to the rescuing of migrants in distress at sea during their crossing. The issue of migrants at sea is multi-faceted and knows many actors and aspects. Policy-making actors influence the policy-making process by framing and scaling. Framing gives meaning to an issue and is used by policy-making actors in order to legitimize a certain direction in policy. Scaling is a part of framing but has a geographical dimension and is used in order to claim the scale on which policy should be made. This thesis shows that frames and scales change over time and that frames and scales become useful tools to influence the policy-making process when there are gaps in existing laws and regulation and policy is changed. Two main frames are identified in this thesis, the humanitarian frame and the security frame. They were identified at the hand of a framework of indicators designed by the author. From written sources the words are used to identify the frames. Frames and stakes are related to the interests and stakes of the policy-making actors and the interests and stakes can be deduced from the frames, scales and the context of a policy-making actor.

List of Abbreviations

| | |
|-------------------|---|
| EC | European Council |
| ECHR | European Court of Human Rights |
| ECJ | European Court of Justice |
| EU | European Union |
| IOM | International Organization for Migration |
| MRCC | Maritime Rescue and Coordination Centre |
| PACE | Parliamentary Assembly of the Council of Europe |
| | |
| SAR (zone) | Search And Rescue (zone) |
| SOLAS | Safety of Life at Sea (UN Convention) |
| TEU | Treaty of the European Union |
| TFEU | Treaty on the Functioning of the European Union |
| UN | United Nations |
| UNCLOS | United Nations Convention on the Law of the Sea |
| UNCHR | United Nations Convention on Human Rights |

1. This Research

The subject of this thesis will be the process of policy-making on the issue migrants at sea. The policy-making on 'migrants at sea' encompasses the issue of irregular migration from North Africa towards Europe and in particular between Libya and Italy. The term 'migrants at sea' also refers to the rescuing of migrants in distress at sea during their crossing. Over the past years migration from Northern Africa towards the south of Europe has grown exponentially and the countries such as Italy and Malta have called for aid in dealing with the many migrants. The issue of migrants at sea is a multi-faceted issue and with the increasing numbers of migrants the EU and its Member States are forced to review and change existing policies. Policy-making on the issue of seaborne migration is a complicated process with many actors and not as linear as might be assumed. The point of research in this thesis will be to look at how the policy-making process is negotiated and how actors are able to influence the policy-making process. In order to look at how policy-making actors influence the policy-making process the concepts of framing and scaling will be introduced.

1.1 Subject introduction

On May 8, 2011 the English newspaper The Guardian published an article about a migrant vessel running into distress while attempting to cross the Mediterranean Sea towards the Italian island of Lampedusa (Shenker, 2011). The vessel ran into distress and sent out several distress calls in order to be aided. Without any response the vessel drifted back to the Libyan shore with only nine of the original 72 people surviving. The publication of the article by The Guardian was one of the many news articles published about people attempting to cross the Mediterranean Sea into Europe. Irregular migration over the Mediterranean Sea has grown over the years. In the first half of 2014 the BBC reported that over 66,000 people successfully crossed into Europe (Alan Johnston, 2014). From the article in the Guardian multiple issues become clear on responsibility for rescue, taking action and considering the claims for asylum made by the people on board of the migrant vessels.

The article of the Guardian further displays multiple issues playing in the European Union such as immigration, border control, foreign affairs and security policies. These issues are sensitive for both the Member States of the European Union and the European Union in terms of central authority and state sovereignty. The amounts of immigrants attempting to cross into Europe are

putting pressure on the receiving Member States and the shared outer border of the European Union. Especially the outer EU borders have provided much discussion about their patrolling and protection. Illegal immigration attempts across these borders have put an increasing strain on the national policies and obligations to the EU as well as EU policy. For example, initiatives by the Italian government to set up rescue operations have been characterized by other Member States as a 'taxi service' in to Europe (Commentaar, 2015). While the European Court of Human Rights has condemned the lack of humanitarian action such as rescuing operations at sea and sending back the migrants.

This thesis aims to say something about the actors that are involved in the policy-making process and more specifically about how they attempt to influence policy-making. In order to do so we must look at the process of policy-making, the power of actors and the actor's capabilities to influence the policy-making process and each other. From anthropology of law perspective of framing and scaling I will look at how actors influence policy.

The power of actors to influence the policy-making process will be looked at through the concept of framing and scaling. Framing is derived from the notion that power of actors lies with the ability to maintain a specific narrative or interpretation of the issue that policy is made about. Framing is about generating political support by maintaining narratives. Frames represent an actor's resources such as skills, theories, goals and attitudes. Frames consequently are seen to manifest themselves in written documents such as resolutions, comments, reports, articles and opinions through the relative context of an actor, choice of words, methods and the use of for example certain laws. A frame is the collection of repeated words, arguments, context and perspectives on the issue at hand. Scaling is seen as a distinctive method of framing which adds another dimension to a frame in the form of a geographical scale. It does influence the policy-making process by influencing on which level policy-making actors believe the policy-making should take place.

Anthropologists such as Klepp, Dunnwald and Cuttita have argued that the legal frameworks on the sea are lacking in clarity and leave gaps in the obligations of states. Policy-making actors use framing as for dominant interpretation and thereby also shape the implementation of law and policy. Moreover the complicated structure of one of the most prominent policy generating bodies, the European Union, allows for framing and scaling by all the policy-making actors and policy-implementing actors.

1.2 Research question

In order to look at how the problem posed in the introduction a main question was formed. The main question in this thesis is:

How do policy-making actors for the purposes of having their interests and stakes represented in policy use framing and scaling in the policy-making process about the issue of migrants at sea?

This question contains the important notion that policy-making actors have the ability to influence the policy-making process. This ability will be analysed through the concept of framing and scaling used by the policy-making actors. However to answer the main question properly three sub questions are posed:

- 1. What are the practices, actors, rules and regulations that are involved in policy making on the issue of migrants at sea?*
- 2. How have policy, frames and scales changed over time on the issue of migrants at sea?*
- 3. How have framing and scaling influenced the policy change on the issue of migrants at sea during the case study and how do these frames and scales represent the interests and stakes of policy-making actors?*

Policy-making on rescuing migrants at sea is characterized by many policy-making actors on many different levels of government. Each of these policy-making actors seeks to have their interests and stakes represented in policy. In order to uncover all the aspects that are involved in policy-making on migrants at sea the first sub question is posed. The purpose of this question is to look at what exactly is incorporated into the issue of migrants at sea, from the geographical location to the international treaties that deal with the rescuing of people at sea. When all the aspects to policy-making on migrants at sea are uncovered the next step to answering the main question is to look at how policy changes as well as framing and scaling.

The second question will look at how policy changes as well as frames and scales and will be answered through a case study. The case study will provide events that have changed the policy over time and also relate to changing frames and scales. After having described how policy changes over time and the changing frames and scales have been shown the question remains on how exactly frames and scales influence the changes in policy.

The third question will aim to answer this by using the indicators for frames they will be explained in Chapter 2. Conceptualization. The third question will deal with the power of frames

and scales to influence the policy-making process and how exactly interests and stakes relate to the frames and scales of actors. The purpose of this third question is to uncover if framing and scaling are able to influence the policy-making process and how frames and scales relate to the interests and stakes of policy-making actors.

In the Chapter 6. Conclusion the answered sub questions will together provide an answer for the main question. The main question's answer will combine the answer of the three sub questions and will allow me to say something about how the policy-making process can be influenced by policy-making actors through framing and scaling.

1.3 Methodology

This thesis is the result of an extensive literature study into policy and policy-making about the rescuing of migrants in the Mediterranean Sea, border policies of the EU and Member states. Newspaper articles, policy documents, scientific articles, reports and more will provide the basis for the analyses of framing and scaling of the events in the timeline.

In order to gain insight in to what incorporates the policy-making process and policy several scientific articles will be used. The articles will provide a basis to look at how policy-making actors are able to influence policy.

The challenge of this thesis will be to uncover the interests and stakes of actors, the frames and scales they use and how the policy-making process takes place. The process of policy-making is clarified by the scientific literature. While the practices of actors often are explicitly mentioned in the documentation the interest, stakes, frames and scales are obscured. The framing, scaling, interests and stakes will be deduced from the literature.

The case-study in this thesis will focus on a number of events that show changes in framing by the policy-making actors that are involved in the event. From each of these events there is documentation available in the form of news articles, resolutions, reports and policy documents. This documentation shows the practices of policy-making actors.

From each event the most relevant policy-making actors will be elaborated upon and the framing and scaling will be looked at. The framing and scaling will be identified by looking at the documents from the policy-making actor as well as quotes from the policy-making actor as stated in news articles. From the practices, statements, quotes and published document the framing and scaling will be identified and from this the underlying interests and stakes can be

theorized. The underlying interests and stakes together with the context of a policy-making actor will explain why frames and scales are used in order to influence the policy-making process. The context of the policy-making actors will be deduced from mission statements, resolutions and the level of government the policy-making actors are on.

Finally I will look at how exactly these frames affect and influence the policy-making process and subsequently how policy changes because of the use of frames and scales.

1.4 Contents

The second chapter will be used to describe the theoretical framework. The chapter will start off describing the scientific perspectives and continue with the specific point of view I will take within the anthropology of law perspective. In the rest of the chapter I will look at what I understand policy and the policy-making process. Then I will move on to how policy-making actors are able to use framing and scaling as a method to influence policy, the policy-making process and the interpretation of policy.

The third, fourth and fifth chapter will answer the three sub question as states in this chapter. The third chapter will show all the aspects involved with the issue of migrants at sea. This chapter will explain the issue in detail and will provide the basis for the case study in chapter four. The fourth chapter will contain a case study. The case study will be about showing framing by policy-making actors over a specific period of time. Each event will be shortly mentioned in the timeline and further elaborated upon in the rest of the chapter. From each event in the case study I will describe the actions of the policy-making actors involved and the frames and scales being used. The fifth chapter will go further into the frames and scales the policy-making actors' use and will look at why these frames and scales can be maintained and how frames are powerful. Also the frames and scales will be looked at and further background will be described. The sixth chapter will be concluding. I will answer the main question posed in this introduction with the information described in the previous chapters when answering the three sub questions. After the conclusion in Chapter 6. there will be a discussion about the introduction on the framework of indicators to look at frames and scales. This framework of indicators will first be introduced in Chapter 2. Conceptualization. Also there will be a short remark on the development of policy on the issue of migrant at sea.

2. Conceptualization

2.1 Introduction

In order to be able to say something about policy and policy-making first certain choices on the conceptualization have to be made. In this thesis choices for the scientific approach and theory have been made and will be fully explained in this chapter. The subject of this thesis is the policy-making about seaborne migration and the rescuing of migrants in distress on the Mediterranean Sea. The aim will be to say something about the actors that are involved in the policy-making process. The main question in this thesis is;

How do policy-making actors for the purposes of having their interests and stakes represented in policy use framing and scaling in the policy-making process about the issue of migrants at sea?

Certain aspects of this question must be answered in order to say something about these policy-making actors. Such as; what makes that actors are able to play a role in the policy-making process? How exactly do interests and stakes of actors influence this process? And by what means are actors able to influence the policy-making process? And what exactly is policy and what does policy encompass? In order to fully comprehend how and why actors influence policy we must look at the process of policy-making, power of actors and actor's capabilities to influence the policy-making process and each other. This thesis will look from anthropology of law perspective. From this field of study this thesis will look at how European policy making takes place on the issue of migrants at sea.

With anthropology of law and public policy as the starting point the general direction of the conceptual framework is made clear. Anthropology of law and public policy has often aimed to find how processes and policy influence and effect social groups and organizations. Turned the other way around the field of anthropology of law also attempts to show the otherwise hidden networks and structures of actors and processes that shape policy and policy-making. While many study the first Wedel inclines that there have not been many anthropological researchers studying the latter: how social organizations, networks and actors influence public policy (Janine Wedel, 2005). In the past policy has been seen as a legal-rational way of getting things done, policy is seen as a problem solver, a tool to achieve certain changes in society (Janine Wedel, 2005) (Mosse, 2004). However there have been growing critiques to these assumptions on policy and policy-making. Critiques posed by Mosse are for example that the policy-making

process is not linear or as one-dimensional as anthropologists have assumed throughout history (Mosse, 2004). Also terms in order to reason about policy posed by anthropologists such as 'state', 'national', 'private' and 'top down' would fail to uncover what anthropologists have sought to do, namely to shed light on "*the constellations of actors, activities, and influences that shape policy decisions, their implementation and their results*" (Janine Wedel, 2005). I will follow the line of the anthropologists looking at the underlying processes that shape policy and not just policy. In the current era 'states' and 'national' have become limiting terms that are not able to cope with the increasing globalisation and interdependency between countries through treaties and supranational organisations. The approach to policy and the policy-making process therefore needs several adjustments in order to fully comprehend how policy and the policy-making process can be influenced.

In this thesis I will seek to uncover how actors influence public policy and the policy-making process on the subject of policy on migrants at sea in the European Union. Policy and policy-making are being looked at as an interactive process. I will look at how policy-making is affected by interests and stakes of policy-making actors. Actors, policy and policy-making are therefore important components that have to be elaborated. The power of actors to influence policy and the policy-making process will be analysed with theoretical concept of framing. Framing is a concept will help understand the actions, activities, interests, goals, power and abilities of actors. Through framing the power of policy-making actors will be incorporated into the analysis of the policy-making process and how it is being influenced. The exact goals and underlying motives cannot be made clear through the concept of framing but the strategy of policy-making actors can be identified. I will argue that through framing policy-making actors are able to influence the policy-making process in order to have their interests represented in policy. Within the concept of framing there is a specific type called scaling. Scaling is a part of framing but has specific spatial and strategic characteristics. Scaling provides a basis for legitimizing claims made by policy-making actors on the basis of a geographical scale where for example policy should be made on.

Both framing and scaling in this thesis will be looked at and how policy-making actors use them in order to legitimize and promote a direction in policy. Framing and scaling will be introduced as tools to look at policy and the policy-making process. The identification of frames and scales used on the subject of migrants at sea will be uncovered and analysed in this thesis. In order to identify the frames and scales I will introduce a method to look at the literature in the case study. This method will be based on the literature of framing and scaling but will extent the literature with indicators that can be used to identify frames. But first it must be made clear

what can be understood as policy? How is it made and how are actors able to influence the policy-making process?

2.2 Policy

So indeed what is policy? Policy as said before has previously been thought of as a legal-rational way of making change and getting things done. However anthropologists such as Wedel (Janine Wedel, 2005) and Mosse (Mosse, 2004) have argued against this assumption. Mosse in his perspective states that policy legitimizes and mobilizes political support (Mosse, 2004); the process of policy-making in this sense is the search by actors for a legitimate basis for interests, stakes and goals so that they are incorporated into policy. Policy as a word refers to both the policy-document and the real life implementation and thus the outcome/practice of a policy-document. According to Wedel policy can be seen as a tool for actors to achieve a goal and when looking at policy in such a way the question can be asked how actors see policy as a method to achieve their goals, promote their interests and stakes and how they achieve those goals (Janine Wedel, 2005)? In this sense policy is not viewed as the method to produce certain behaviour or practice, but that policy is produced by practice of or a representative of practice (Mosse, 2004).

So then how will policy and the policy-making process be looked at? Mosse identifies two ways of looking at policy: an instrumental view and a critical view. The instrumental view of policy is that policy is a rational way to solve problems that occur and is very much in line with the belief that policy-making is a linear process. The critical view chooses a different perspective and sees;

“Policy as a rationalizing discourse that conceals hidden purposes of power, in which the true political intent is hidden behind the argument of rational planning” (Mosse, 2004).

In other words where the instrumental view believes policy is an impartial method to achieve something and looks at the implementation of policy. The critical view sees policy as the product of a power struggle that is hidden within the structure of the policy-making process. The critical view goes even as far as saying that the outcomes of the policy-making process are not in favour of achieving the goal that is beneficial to society (Mosse, 2004).

Mosse however finds both views not fully capable to explain or comprehend the complexity of the policy-making process. Mosse explains that both views are not capable of looking at the true complexity of policy-making because the relationship between the practice of actors and policy is not sufficiently looked at as well as the creativity and skill that is involved in negotiating policy

(Mosse, 2004). While the critical view does provide a basis I will show that the key will be to evolve from the single critical view which does provides the basis of a contested policy, but adding several notions on how policy and policy-making is contested and to what purpose actors choose to contest in the process.

Mosse identifies two ways to look at policy, yet dismisses both and proposes a third. He agrees with the critical view that the ability of actors lies with their power to maintain their narratives and interpretation of an actor's definition of the problem (Mosse, 2004). Mosse however dismisses the critical view again by saying that it fails to understand and look at how policy is socially produced. Mosse mentions that different narratives and interpretations are made in order to support certain interests while the critical view again fails to take this into account. Mosse's alternative approach consists of a continuum and expansion of the critical view. He sees several motions that happen during the policy-making process; the *translation* of (policy) goals into a practical purpose and vice versa. From this he finds that anthropologists must look at how actors attempt to create unity and order through *composition* (Mosse, 2004). It implies looking at how actors are tied together through translation and common interpretation into a conceptual policy document or practical policy.

Mosse argues in his view that the policy-making process is contested through a power struggle to maintain a definition of the issue that policy is made about (Mosse, 2004), but ultimately he mostly focuses on the implementation of policy models and the effects of policy. His focus lies with practice producing policy and policy being made in order to support or strengthen existing practice, the political aspect of policy-making is not further mentioned or elaborated upon by Mosse.

Mosse leaves a gap at how exactly translation and composition take place and how the political aspect is incorporated into policy; he does see policy as contested but leaves it for the researcher to look at how and where the policy is contested. Three anthropologists that look at the contested nature of the policy-making process and the shape of the policy-making process are Lutz (Lutz, 2005), Gill (Gill, 2005) and Chen (Chen, 2011). Viewing policy-making as a power struggle is the perspective of Lutz (Lutz, 2005) and Gill (Gill, 2005). Both researchers attempt to look at how actors influence policy by using power. The identification of how power is used is an important factor, previously it has been stated that power is seen as the ability of maintaining a certain narrative or interpretation of a policy-issue. But when policy is a power struggle, where exactly does the struggle take place and how, when do interpretations and narratives become necessary for actors? We must identify how power is translated and how it possibly influences other actors. Gill and Lutz as we will see, do exactly that. Also when knowing that policy is

contested and knowing how power is able to influence other actors, we must know how the policy-making process is shaped in order to understand where exactly power and power struggle come in. This will be shown through an article by Chen where the policy-making translation, composition and building narratives come in and why the notion of giving meaning and having narratives is of importance.

Policy-making is often called the 'Black box' in politics and science. Many anthropologists write about policy and how it influences actors; however what influences policy and how a policy came to be is a question that is still not very much looked at according to Wedel (Janine Wedel, 2005). The 'Black Box' in this way is seen as the process of policy-making. Understanding how policy is made is important to the research in this thesis. The main question of this thesis refers to the interests and stakes of actors that play a role in the policy-making process. It is important to understand how policy is made, where the interests and stakes of actors become part of this policy-making process and how exactly they influence the policy-making process and the policy-outcome.

A research where the aim was to uncover what happens in the 'Black box' of the policy-making process is Chen (Chen, 2011). As Chen demonstrates in her article on 'The Office as an Assemblage' (Chen, 2011) that in order for researchers to get a full view of the problem it is important to look at what happens when policy is implemented and not merely looking at the proposed ideal policy in a document. Chen uses the issue of policy-making on drugs in Taiwan as an example. The proposed drug policy aimed to reduce the number of HIV infected people through three components in a policy; Education and screening, drug substitution treatment and needle syringe programs. The last component was covered by the media while the other two were not. Needle syringe programs were aimed to minimize the spreading of HIV, because using the same needle to take drugs could infect people. The drug substitution was aimed to provide drug-users with a legal substitute that would eventually lead to a halt in HIV infections. In this article by Chen certain steps can be identified that are part of the policy-making process on HIV reduction and shed light on what actually happens when policy is being made.

From the article by Chen four steps can be identified that lead to the eventual policy. This eventual policy as described by Chen is only the document which states what the policy will be and does not cover what the influence and result are of the actual policy implementation will be. The four steps taken in the process of the policy-making and the writing of the policy-document in Chen's article are the following:

1. The first step is the discovery of an inadequacy within the existing policy document and thus a need for change and an incentive to start the policy-making process to deal with the inadequacy.
2. The second step is the government proposing policy measures. These policy measures consist of components that deal with the issues caused by the inadequacy of the existing policy. As a result of the propositions the media will choose to cover it. The media may choose to cover only certain components of the proposed policy measures, such as happened in this case where only the component of a needle syringe program was covered.
3. The third step is the need that for persuasive concepts to persuade all actors in the policy-making process of the necessity of the new policy measures. Policy-making in the example case of Chen is contested through the recommendations made by experts. These experts are originally not involved in the policy-making process but are used as a tool to strengthen or challenge policy propositions. This third identified step allows actors outside of the group of policy-makers to participate in the policy-making process and reshapes the proposed policy document.
4. As a result of the third, the fourth step is the final policy result that came into existence. This final policy consists as said before of only the policy-document which is the result of the four steps. (Chen, 2011)

While Chen does not look further than the outcome of the policy-making process as the policy document, policy in this thesis is more than the document and policy is also seen as the implementation of the policy document. 'The Office' that Chen describes is the space where policies are made. In Chen's case this is the government yet the eventual policy consists of governmental planning, expert knowledge and institutional interaction and not just governmental ideas, aims and planning. Chen's research has shown the use of narratives and the interests of actors coming into the policy-making process. Her 'Office' only consists of formal policy-makers in political and administrative function within the government, yet the actors that influence policy are also outside the government. While Chen's view on the policy-making process is very much in line with the instrumental view of Mosse, the important aspects to her research are the persuasive concepts that are introduced in the third step of the process. Within this third step claims are being made by policy-making actors that make them act in way to influence the draft policy. There is thus a need for another dimension that ties the actors together outside or in addition to their role and political or administrative function in the policy-making process.

The persuasive concepts and the need to persuade other actors in the policy-making process and thereby strengthening or challenging policy propositions are important notions that will be further elaborated upon when I introduce the concepts of framing and scaling (see 2.3 Framing & 2.4 Scaling). Both in the policy-making process and the policy-implementation maintaining narratives and interpretations are important. The ability to influence other policy-making actors is of importance for policy-making actors in order to see their interests and stakes represented within a policy. Having such an ability to maintain narratives, make claims and influence other policy-making actors and most importantly how they influence policy is another dimension that requires an exploration.

Researchers such as Catherine Lutz (Lutz, 2005) and Lesley Gill (Gill, 2005) have attempted to look at this dimension of how actors influence policy. Lutz looks directly at

“How social organizations and networks organize transnational players and policy-processes, global elites, decision-makers and those who influence decisions” (Lutz, 2005).

From this point of view Lutz attempts to uncover what is otherwise hidden in the normalized structure of the policy-processes. Lutz sees policy as a result of the ability of an actor and his coalition partners to impose its will on opponents. Lutz mentions three specific actors in her article; the USA and its coalition partners, the embassies and the local activists. Policy-making actors such as the USA see the presence and access to foreign military as crucial to achieve a ‘projection of power’ (Lutz, 2005). This projection of power would be able to impose its will solely by being present in great numbers and strength. Coalition partners profit from the USA’s presence and its ability to impose its will, however coalition and presence work both ways. In the Philippines activists gained recognition and were able to eject the USA’s military by joining and eventually gaining recognition with the national government (Lutz, 2005). In the case described by Chen the coalition between policy-makers and experts became apparent (Chen, 2011). The expert knowledge seemingly provides a narrative or interpretation with credibility and therefore gives strength to the policy-makers. The ability of an actor to form alliances and impose its will creates a field where not only policy and policy-making is contested but also the field of actors itself is changing through changing alliances. The alliances are a method to maintain a certain narrative or interpretation and with growing support its influence grows as well. Changing alliances imply a change in the dominant narrative.

Gill in her research looks at how the USA uses strategies to dominate weaker states. The central subject in her research is power and she analyses how powerful states use their strength towards weaker countries in achieving a situation which is beneficial to them. She finds the USA an ‘empire state’ and the sponsor of violence in other states (Gill, 2005). Her research shows

how a state such as the USA may use their power; she argues that anthropologists must situate international and state institutions in a single analytical framework and then must look at the following:

“The task is then to examine how individuals form and break alliances, acquire particular kinds of understandings and advance a series of claims and agenda’s within shifting fields of power” (Gill, 2005).

This will be done by looking at coalitions, support and opposing certain dominant narratives or interpretations by policy-making actors. The task is then to see how individuals act and acquire power, this is the more individualised part of attempting to look at how organizations and networks make claims, maintain narratives and influence other policy-making actors. The acquiring of power within the policy-making process in order to influence it is what will be looked at in this thesis. It will be the attempt of this thesis to look at how actors move between power fields, make and break alliances, support or oppose policies, produce narratives and interpretations, and how power is used to achieve goals to maintain or change policy.

From Lutz and Gill there comes a growing understanding on how policy and policy-making are contested yet it leaves us with the question on why and how power is put to use or is able to influence other actors. The case by Chen is an attempt to uncover the ‘Black-box’ of policy-making. While the four steps of ‘problem-alternative-implementation’ provide one way to look at how policy is made and in some way is contested during the policy-making process. Attaching Mosse’s critique it becomes clear that Chen misses the dimension of the implementation and effects of a policy. She does note that media coverage will change policy but does not see what actual effect there where from the policy implementation.

So besides uncovering the black-box of the making of the policy-document, that what is written, the next step is uncovering what the effects of policy are and how that might be influenced by the same actors. Mosse hints that narratives, interpretation and their power are the key to uncovering these effects. This brings us one step closer from what policy is towards how policy is made, the next will be the step to identify how and why it is influenced by actors. Identifying power that is generated through alliances, how stakes and interests are represented in narratives and interpretation of actors will be the key in understanding how they influence policies and the policy-making process. The main focus of this thesis is the representation of interests and the maintaining of narratives by policy-making actors as well as the relation between the two in order to see how policy-making actors influence the policy-making process and in order to do so two concepts, of framing and scaling, will be introduced.

2.3 Framing

Gill, Mosse and Wedel leave gaps that provide a certain task. There is a need for a framework that is able to interpret alliances, interests and narratives. My focus on the narratives and interpretations of actors about the issue that policy is made on is based on the sources of information that are available. From literature implicit assumptions, goals, narratives and interpretations of actors can be made clear. For example through the mission statements of policy-making actors or reactions to policy changes and problematic situations in the field these implicit assumptions, goals, narratives and interpretations become clear. Mosse makes a first step by mentioning that power lies with the ability to maintain a specific narrative or interpretation of the issue that policy is made about (Mosse, 2004). So the ability to create, shape and maintain narratives or interpretation on the issue that policy is made about, has been seen as power by Gill and Lutz. But further elaboration on how these narratives are shaped and maintain are needed. Mosse uses the term composition to look at how actors give meaning and are tied together through common interpretation of an issue or policy.

A concept to understand giving meaning and legitimizing narratives is the concept of framing. Framing in itself is a broad concept with several possible purposes. Actors use framing to give meaning to an issue and create connectivity among actors and the purpose of frames as basis for problem construction (Leonardi, 2011). Frames that give meaning are frames that in their sense create a scheme of interpretation based. Within this frame the negotiation of meaning plays a role, meaning in this sense is seen by researchers as a set of resources that enables actions. Giving a meaning provides actors with strategies for action (Leonardi, 2011).

Framing provides a method of looking at how actors in the policy-making process and how frames affect and influence other policy-making actors in achieving their goal. Frames provide a method to interpret problems and issues for actors. Having said this frames in this thesis are seen as a method by actors to bring attention to their point of view. For example to frame military presence of the USA in the Philippines as a violation of human rights or as crucial to for the international war on terrorism. These two frames are used to bring attention to the situation of an actor. Actors involved in the policy-making process on migrants at sea in the Mediterranean and the rescuing of migrants in distress might choose to frame the issue in a specific way in order to bring attention to their point of view and in favour of their goal will gain support. The military presence of the USA was discussed and protested against by local people claiming injustice. This claim of injustice eventually brought a turn in the USA's policy and they left (Lutz, 2005). Framing in this sense can also be seen as a method of framing social problem

in different political discourses (Kurtz, 2003). Frames can become set and having a set frame or narrative is a way of legitimizing action. Existing frames such as 'human-rights' and 'security' have long been established and when actors call upon such a frame they generate legitimacy. Frames by Kurtz are seen as sets of beliefs that justify or legitimize actors' actions (Kurtz, 2003). Frames are about generating support and maintaining a narrative and can be used strategically. Frames can be used by an actor in order to generate support from other actors and through that is able to change policy in a certain direction. Frames in this sense are shaped and created by actors and subjected to change.

Frames as said can be used by policy-making actors to generate support, create alliances and bring attention to their point of view. However there is dimension to framing that exist. Actors are able to use frame for a purpose as tool, these frame however do not suddenly come into existence. There is a dimension to frames that makes them somewhat autonomous; frames already exist and are used in order to maintain a direction in policy. Actors cannot create a narrative frame out of the blue, but are able to use an existing frame in order to take a position in the policy-making process. Frames are in this sense are more autonomous because they exist independently from policy-making actors but can be used to their advantage. This means that actors cannot use or built frames on their own initiative but framing becomes a social process that must be negotiated. The dominance of certain frames will shape the policy-making process in a direction. While the policy-making debate on environmental justice (Kurtz, 2003) and seaborne migration in the Mediterranean Sea and rescuing migrants in distress know many frames, some are more dominant than other.

Now that the concept of framing has been put down the question remains on how frames manifest themselves. What can be seen or used as a frame? According to Leonardi frames are resources that individuals use as a basis for framing. Skills, theories, goals and attitudes are seen as resources by Leonardi (Leonardi, 2011). Combined these resources result in frames. Lutz has shown that a frame is something that can be chosen, a choice to use a certain perspective of an issue. In her case the military bases vs. the sovereignty of the state where the bases are put (Lutz, 2005). Like Lutz, Kurtz also sees frames as the manifest of social issues through a certain context (Kurtz, 2003).

While Kurtz, Leonardi and Mosse lay down the basis for framing, they do not mention how frames exactly manifest themselves in the policy-making process. Leonardi does mention resources that combined result in a frame and scale but not how these are recognized or shown. I will take the basis laid down by these three scientists and formulate how I find frames to manifest themselves.

The manifesting of frames used by policy-making actors in their resolutions, comments, reports and opinions is through their relative context and choice of perspective through words, methods and use of for example laws that hold value in the actor's context. The actor's context is for example the legal basis of a European institution, the task or mission of an actor and the governmental level that the actor acts on. This thesis is based on a literature study and during this study it has become clear that actors use certain words and comments on a regular basis in order to support their point of view. Actors from a certain context are more likely to use certain words that are in line with their context. The same goes for the choice for words, the mentioning of certain laws and regulations by actors in order to build, support or maintain the frame they use.

2.4 Scaling

In this thesis scaling is a step further into the concept of framing. Scaling involves a geographical aspect to framing and can be done in several ways. A reason for actors to invoke geographic scales is to claim the geographical extent of an issue that policy will be made upon. The negotiating of scale is an activity that is done between actors and by actors in order to promote their interests and stakes. Scaling in this sense is done in a geographical way for narratives and interpretations. However scales are much more than that. Besides the notion of scale as local, national and international, scales can be seen as part of economic and political processes and also as part of policy-making debates. Scales as means of framing encompasses that scales are used as a way to construct meaningful linkages between scales and a social problem or issue and the scale at which it is experienced and could be politically addressed (Kurtz, 2003). An author that looks at scaling and scaling as a method of framing is Kurtz (Kurtz, 2003). She looks at the scaling of the issue of environmental injustice and particularly how social groups are able to use scales in their favour. Kurtz identifies three types of scaling:

- 1) Scales as a method of giving authority or power. Between actors there are competing visions about the territorial scale of a problem and which governmental body should be given control over the issue. The process of scaling involves hierarchizing and that creates and gives power. The manipulation of power and authority of actors involves situating themselves at different spatial scales. The process of scales giving authority is subject to a lot of debate between actors in the policy-making process.
- 2) Scales as a method of inclusion and exclusion in a political debate. Given the geographical scale of an issue certain actors may be (strategically) excluded from the policy-making

debate. The reason for either inclusion or exclusion is mostly the existing political and administrative boundaries that are able to reshape the policy-making debate.

- 3) Scales as a method of analytical categories in which she identifies scales of meaning and scales of regulation. Analysing scales is possible in multiple ways but the divide between scales of meaning and scales of regulation. Scales of meaning is when scales attach a meaning of geographic scale to an issue. For example constructing an issue such as environmental injustice as an international concern and not just local. Scales of regulation constitute from the regulation of multiple agencies and governmental institutions. (Kurtz, 2003)

What becomes clear from these three types of scales and scaling is that scale is not something pre-composed and independent, but scaling is seen as a part of framing certain conceptions and ideas on spatiality. Local, regional, national and international scales are shaped through political and economic processes. Policy can also be viewed as operating on a range of scales and also being made on a range of scales. Scaling as part of framing with the two methods of giving authority or power and inclusion or exclusion in a political debate will be the two types used in this thesis. Giving authority is meant as to claim responsibility to or by a certain policy-making actor. Policy-making actors stating that the issue of seaborne migration is an issue on international scale, claim a responsibility to the EU and other member states. Scaling will be analysed as a type of framing and will aid in order to uncover how actors influence the policy-making process.

This thesis will attempt to identify with frames actors operate and at what scale. Chapter 4 will have a section on the analysis of the actors and their actions and how they relate to certain scales. This chapter will identify the underlying structure of scales and frames that shape the policy-making debate.

2.5 Conclusion

From anthropology of law approach this thesis will look at how interests and stakes of policy-making actors influence the policy-making process through the use of frames. Frames are used by policy-making actors to maintain narratives and represent their interests.

First policy has been considered as being both a means for political aim and the implementation. I have argued that the policy-making process is contested by actors that are involved in the policy-making process. Policy-making actors seek to influence the policy -making process and

policy in order to promote their interests and stakes. The interests and stakes of policy-making actors are represented in narratives and by claims that are made by policy-making actors. The ability of an actor to form alliances and impose its will creates a field where not only policy and policy-making is contested but also the field of actors itself is changing through changing alliances. The alliances are a method to maintain a certain narrative or interpretation and with growing support its influence grows as well. In this sense it becomes a self-reinforcing circle. Changing alliances imply a change in the dominant narrative.

To be able to influence the policy-making process I have argued that policy-making actors use frames. These frames are used by policy-making actors in order to try to legitimize their policy view. Scale-making is a type of framing in which the geographical dimension is important. Policy-making actors often claim a scale to the issue that policy is made about in order to maintain their narratives and be able to influence policy in order to have their interests and stakes represented.

3. Background

3.1 Introduction

This chapter will elaborate on the background of the issue of migrants at sea. Going back to the main question of this thesis:

How do policy-making actors for the purposes of having their interests and stakes represented in policy use framing and scaling in the policy-making process about the issue of migrants at sea?

There are several aspects that must be looked at before answering this question. In Chapter 1. This Research, several sub questions were posed in order to answer the main question. The first of these sub questions will be answered in this chapter:

What are the practices, actors, rules and regulations that are involved in policy making on the issue of migrants at sea?

This question deals with the background regarding policy-making on migrants at sea. Aspects of policy-making on this issue are the actors, rules, regulations, the flows of migrants and the practices of migrants and policy-making actors. This chapter will answer the sub question by identifying the policy-making actors, their past practices and the structure in which they operate. Also the applicable rules and regulations laid down in international, EU and national laws will be identified and described.

The goal of this sub question is to identify the many aspects involved with policy making on the issue of migrants at sea making this issue a multi-faceted issue. The answering of this sub question will provide a basis for the case study of Chapter 4, the analysis of Chapter 5 and the eventual conclusion in Chapter 6. For now this chapter will allow the identification of important aspects to the issue of migrants at sea.

3.2. Seaborne migration towards Europe

Seaborne migration across the Mediterranean Sea has become more and more popular among migrants attempting to reach Europe. Migrants from North and South of Africa as well as migrants from the Middle –East are known to use Libya as a transit country towards Europe (UNCHR). Reasons for the migrants to leave their home countries are for example degrading living conditions and a possible threat to their security (Dünnwald, 2011). The reasons for people to migrate towards Europe are diverse but two main categories of migrants are recognized by the UNHCR. The flow of migrants towards Europe is classified by the UNHCR as ‘mixed migration’. A mixed-migration flow contains both migrants for economic reasons and migrants who are forced to flee their country in fear of their freedom or lives. The latter category of the two is better known as refugees. Refugees are protected under international laws and conventions that states have signed and ratified and therefore are obliged to care for the refugees (UNCHR). The fact that the flow of migrants is a mixed flow is an important notion to keep in mind when looking at the actor’s statements in regard to the events in the case study.

A second important notion is that over the past thirty years the European border policy has changed. Since 1990 legal possibilities to enter Europe were restricted, new visa regulations were activated and the external EU borders were closed and military controlled (Klepp, 2010). With the growing restrictions and diminishing possibilities to enter Europe in a less risky manner the dangerous routes across the Mediterranean Sea gained popularity with migrants. While only an estimate of ten percent out of the total number of migrants towards Europe enter Europe by boat, the route over the Mediterranean Sea has proven to be far more deadly than any other region in the world or manner of migration ((IOM), 2014).

Over the course of the year 2014 approximately 134,272 people have attempted to cross into Europe using the Central Mediterranean Route (Frontex, Frontex, Migratory routes map, 2014). This route is one of the seven land and sea routes identified by the European Border Agency; Frontex. The Central Mediterranean Route has as its starting point in Northern Africa and the points of entry into Europe are Malta, Italy and the

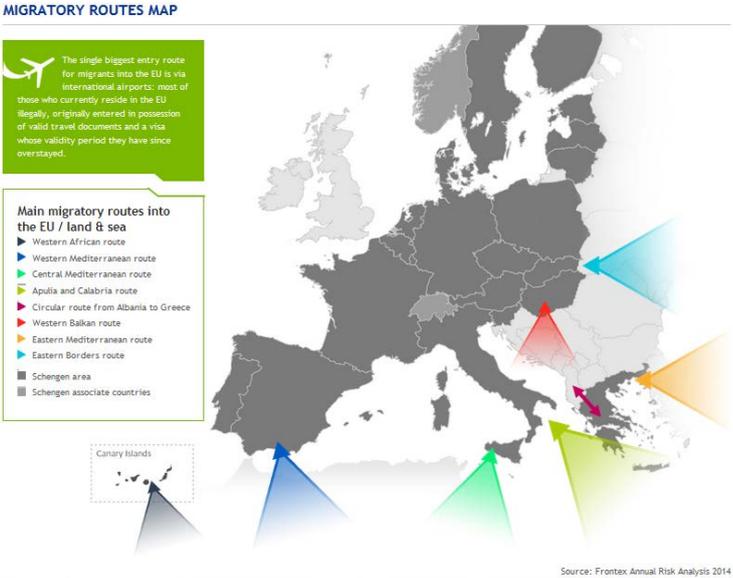


Image 1, Migratory routes map (Frontex)

Italian Islands of Sicily and Lampedusa (Frontex, Frontex, Migratory routes map, 2014). Smugglers provide the migrants with un-seaworthy vessels for it being the only opportunity for migrants to enter Europe and migrants are willing to take their chances. Risks that are involved with travelling by sea are the weather conditions in the Mediterranean, inexperienced crews and the loss of direction. There are many cases known where migrants have died from a lack of supplies on board (dehydration, hunger), being a drift because the vessel ran out of fuel and the capsizing of overcrowded vessels causing many people to drown ((IOM), 2014). Many of the vessels used are small in order to avoid the surveillance ships and avoid being picked up by radars. There is also an assumption that smugglers do not have any incentive to use seaworthy vessels because the risk of losing the vessel at sea (including the people on board) is rather large ((IOM), 2014). The vessels used in the period of time of the case study presented in Chapter 4, were generally small rubber boats and old fishing boats that would not be able to withstand the harsh conditions at sea. Smugglers’ practices since the case study however have changed¹. There are also several risks involved while crossing that concern the migrants; there is a risk of being intercepted and possibly even pushed back (Bonfanti, 2014). On the other hand making it into territorial waters of European states may lead to rescuing and having the possibility to claim asylum ((IOM), 2014).

The International Organization for Migration (IOM) published a joint report on the number of migrants that have died while attempting to cross into Europe. The report by the IOM shows that during the year 2014 more people have died in the Mediterranean in border related incidents than anywhere else in the world ((IOM), 2014). The United Nations High Commissioner for Refugees (UNHCR) published the estimated number of migrants that have died while attempting to cross to several destinations such as Italy, Malta and Spain from the year 2006 up to 2013. The number of migrants that has lost their lives on the route from Libya towards Italy has been estimated at 1,500 people by the UNHCR (UNCHR). This estimated number was derived from the reported incidents of boats in distress but there is a possibility that there may have been more people who have died and whose deaths have gone unnoticed. Since January 2011 the estimated number of migrants that were lost in the Mediterranean Sea is over a thousand according to the UNHCR (Council of Europe, 23). Table 1 shows the estimated number of border related deaths from several regions in the world.

Table 1. *Regional estimates of migrant border-related deaths compiled by various sources, available years between 1996 and 2014.* Source: International Organization for Migration ((IOM), 2014)

| Region | Number of Deaths | Years | Source |
|---------------|-------------------------|--------------|-----------------|
| Sahara | 1,790 | 1996-2013 | Fortress Europe |

¹More on this can be found in Chapter 7. Final notes.

| | | | |
|----------------------------------|-------------|-----------|----------------------------------|
| United States- Mexico border | 6,029 | 1998-2013 | United States Border Patrol |
| European External Borders | 22,400 | 2000-2014 | IOM based on The Migrants Files |
| Australian waters | 1,495 | 2000-2014 | Australian Border Death Database |
| Horn of Africa | 3,104 | 2006-2014 | IOM for 2014 |
| Bay of Bengal | 1,500-2,000 | 2012-2014 | UNHCR; Arakan Project |
| Caribbean | 188 | 2012-2014 | IOM for 2014 |

Notes: (a) The definition of border-related death varies between sources; some count only deaths occurring at external borders, while others include deaths that occur once in the destination or transit country that can be directly or indirectly attributed to the border control regime.
(b) 2014 figures are until September 2014 (Bay of Bengal until June 2014).
(c) Figure for the United States–Mexico border is until 30 September 2013

Table 2. Landings on Sicily and the minor Sicilian islands (mainly Lampedusa)

| 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 |
|-------|--------|--------|--------|--------|--------|--------|-----------|
| 5.504 | 18.225 | 14.017 | 13.594 | 22.824 | 21.400 | 19.597 | ca.32.000 |

Source: Italian Ministry of the Interior and Italian Refugee Council (CIR). (Klepp, 2010)

The numbers that are shown in table 2 show the number of people that have successfully arrived on the Italian shores. Once migrants have entered Europe the most claim asylum in one of the European Member states. Data from 2013 has shown that out of 434,450 migrants from out of the EU have applied for asylum. Out of this group of migrants 26,620 have applied for asylum in Italy and 126,705 have applied for asylum in Germany (Eurostat, 2015). After Germany, France and Sweden are the countries dealing with the largest number of asylum applicants. For the year 2014 the UN refugee agency reports 77,109 applicants in Germany and 25,077 in Italy (Frenze, 2015). The data does not show how the migrants enter Europe, whether by boat, international airport or otherwise that Italy is the fifth most popular country for migrants to claim asylum. Research however has pointed out that Italy is primarily used as an entry point and that migrants who do not claim asylum in Italy often push forward further into Europe (Bonfanti, 2014).

3.3 Policy-making actors

The previous national borders between countries in Europe have been replaced when the European Union came into existence, the creation of the EU led to a common external border that new policy had to be made upon. EU policy replaced or added to the existing policies in the

fields of border patrol and protection (Klepp, June 22, 2011). EU organizations were set up that would deal with the issues of border patrol and protection. The EU restricted legal migratory routes and because of that migrants take much more dangerous routes across the Mediterranean when they attempt to cross into Europe.

This section will shortly introduce the actors that are active in policy-making and implementing policy on the issue. One of the most prominent policy-making actors in the field of migration, rescuing of migrants and border protection and security in the EU is the European Union itself. The EU however consists of many components and active bodies, each with their own task and legislative powers. Aside from the EU there are other actors active on policy-making that deal with seaborne migration and the rescuing of migrants at sea, for example the Member States, international organizations, NGO's and maritime organizations. Besides the issue of migrants at sea there are policy-making actors that deal with specific aspects of the issue or related issues such as border surveillance, security and protection of the EU external border.

The EU itself consists of seven formal institutions and derives its legislative power from Treaties on which the EU is based. The Treaty of the European Union (TEU) states the institutions (art.13 TEU) and the Treaty on the Functioning of the European Unions (TFEU) states the exact function and purposes of the seven institutions.

The European Union consists first and foremost of Member States who are represented in the European Council and the Council of the European Union. The European Council is at the top of all the legislative institutions in the EU. The European Council however does not have any formal legislative power, but gives impetus and policy direction. Resolutions adopted by the European Council do not have any legal binding power for the Member States and resolutions are only adopted through a general consensus by all the Member States².

The Council of the European Union is not to be confused with the European Council. Shortly called 'The Council' it consists of the ministers of all the Member States of the relevant issues discussed such as 'General Affairs', 'Justice and Internal Affairs' and 'Social policy'. The Council is the lead European institution in the decision-making on the common foreign and security policy³. The Council makes decisions often based on proposals of the European Commission and in co-decision with the European Parliament. The Council adopts laws and proposes policy.

The members of the European Commission and the people working for the Commission do not represent their home countries and cannot take orders from their home country's government.

² TEU art. 15 & TFEU art. 235

³ TEU art. 16 & TFEU art. 237-243

The Commission has legislative power in specific areas such as the internal market, the Euro and Common Agricultural Policy in which power was conferred from the Member States to the Commission. The main purpose of the Commission is to propose and implement policies in these areas. Other than that the Commission is the so-called 'Guardian of the Treaties' ensuring the correct application of EU law. The Commission however does not have any legislative power on the common foreign and security policy. The Commission does not hold power over these issues because that power has not been conferred from the Member States due to the areas being very much connected to the sovereignty of states⁴.

The European Parliament is the democratic arm of the European Union, it represent the citizens of the European Union. The Members of Parliament are not representatives through nationality but of a political party. The Parliament has the authority to dismiss the Commission and is able to amend decisions made by the Parliament. Another important feature is that the Parliament has the initiative to propose legislation for the Council to adopt or to look at⁵.

The European Council, The Council of the European Union, the Parliament and the European Commission with the European Central Bank, the European Court of Justice and the European Court of Auditors together make up the institutions of the EU. In order for these institutions to make decisions they need to have the competence to do so. Competence is given through the transferral of power by Member States to one of the institutions and is written down in a treaty. Each institution is legally bound to competence given to them, meaning that it can only make decisions and policy on the issue that they have been given the power to make decisions on. There are five types of legal acts the EU is able to produce; regulations, directives, decisions, recommendations and opinions. According to article 288 of the TFEU regulations, directives and decisions are binding acts that all addressees must implement. Recommendations and opinions are not legally binding. The legislative decisions that are made in the EU are made and adopted through several ways. Two methods will be shortly discussed; the Ordinary Legislative Procedure and the Delegating and Implementing acts. The first concerns the making and adoption of new rules and regulations while the latter is concerned with amending and adjusting existing legislation.

The first method of standard decision-making in the EU is the Ordinary Legislative Procedure meaning that the Parliament has to approve legislation together with the Council. It is the Commission that proposes policy and assesses the potential consequences the policy might have. The Commission has about 23.000 civil servants and is consulted by NGO's, local authorities and representatives of civil society and industries depending on the issue. During this procedure

⁴ TEU art. 17 & TFEU art. 244-250

⁵ TEU art. 14 & TFEU art. 223-234

national governments may oppose and call for the legislation to be dealt with at a national level instead of on an EU level. The Parliament and Council review the proposals and are able to make amendments. In the Ordinary Legislative Procedure the decisions are made through co-decision. During a Special legislative Procedure the Council does not require co-decision from the Parliament; this procedure is used for certain areas (Parliament).

The second method is the delegating and implementing acts. These two acts are part of the so-called 'comitology'. Comitology⁶ refers to the process where EU law is changed and adjusted. A delegating act means that the legislator delegates power to adopt legal acts that amends certain elements of a legislative act of the Commission⁷. Implementing acts refer to the implementation of European law in Member States. Under article 291 of the TFEU the European Commission is able to implement measures that require a uniform implementation across all Member States. With most legal acts of the EU it is the Member States' responsibility to implement EU law but under article 291 the Commission is able to directly authorize the implementation⁸. This is however limited by the principles of subsidiarity and proportionality. As said before the EU institutions are bound to act inside of their competence as laid down in the Treaties. The principle of proportionality states that the actions of an EU institution are legally not allowed to go beyond of what is necessary to achieve the legislative objective⁹. The principle of subsidiarity states that the EU can only legally take action if it is necessary for the policy objective to be achieved and cannot be achieved on a regional or national level¹⁰. Between the institutions there are checks and balances in order to make sure that an institution does not go beyond their competence and exceeds the two principles. The European Parliament for example checks the legal acts proposed by the Council and the Commission. Further checks and balances are also done by the European Court of Justice when a case is presented to them.

To shortly summarize the EU exists of seven formal institutions. The European Parliament, the European Commission and the European Council deal the most with policy related decisions. These three may adopt the same decisions with each other's approval or might oppose each other. The European Court of Justice has a big part in the interpretation and the application of EU law and is able to influence the implementation of laws and regulations by giving interpretations of these laws and regulations through judgements and advisory opinions. The seven institutions act independently of each other and may have different interests when it comes to generating new policies, laws and regulations.

⁶ Art. 5a (4) (e) of the Second Comitology

⁷ TFEU art. 290

⁸ TFEU art. 291

⁹ TEU art. 5

¹⁰ TEU art. 5

Now stepping away from the European Union's internal structure we look at the Member States and their national governments. Member States of the EU are mentioned in the literature and categorized as 'receiving state' when they are the EU state in which the migrants first arrive. The states where the migrants set off towards are called 'third countries' (Klepp, 2010). The states where the refugees are from are referred to as 'country of origin'. Many of the migrants are not from the country from whose shores they depart. The EU member states categorised as receiving states are states such as Italy, Malta, Greece and Spain. These states and especially Malta see themselves as 'front-line' states (Klepp, 2010). These 'front-line' states have called out to the EU for a while for aid in dealing with the migrants at sea. For example within the article by Klepp a Maltese government official stated the fears the island state has of being overrun by migrants. The Italian government also has critiqued the lack of aid the state received from the rest of Europe in dealing with the migrants.

One of the most notable achievements in the EU is the Schengen Agreement. With the first agreement being signed and ratified in 1985 by five European States outside of the EU legal framework, the current agreement is signed by 26 States and has become integrated into EU legislation. Some the countries that are part of the Schengen Agreement are not part of the EU, namely 2 out of 26 (Schengen Visa Country List, 2014). The Agreement provides an abolishment of passport checks between the States who have ratified the Agreement for inhabitants of those states. People from outside the Schengen area need a visa to enter legally but afterwards also enjoy free passage for the time their visa provides. Other rules regarding visas, asylum requests and border controls are bound to common procedures. With the Schengen Agreement in place the European Union has become more focused on protecting the outer border of the EU. Countries in the Schengen Agreement still have the ability to put up border controls on the external border for a short period of time when there is a serious threat to the national security of a state. This for example was done by Malta when the Pope visited the island between 17-18 April 2010 (Malta, 2010).

An organization set up by the EU to deal with common border patrol and protection is Frontex. Without any resources of its own, the organization relies on Member States to supply them with operational resources. Frontex works with a host-state from where the operation is started. Its mandate is to support cooperation between Member States, lead joint operations and take on the risk analysis of the EU external borders (Frontex, 2015).

The implementation of policy about the rescuing of migrants is left to organizations within the Member States. These organizations have been set up by the Member States in accordance with

Sea laws in order to rescue people in distress at sea. Maritime Rescue and Coordination Centres operate within the territorial waters of the Member States.

A main part of the existing policy is the policy on illegal migrants and border security. Policy-making actors dealing with both migration and border security consider migration a threat to the security and safety of the European Union. Policy has been made about the rescuing of people in distress at sea for a long time. Before the Schengen agreement became active and in place, EU states only took care of their state borders. When the Schengen agreement became active people within the Schengen area and EU borders gained the freedom to move freely within the EU borders. Because of the freedom of movement the EU Parliamentary Assembly saw a growing need to focus on the external borders of the EU, because the free movement of people meant that once migrants had successfully entered Europe they would be able to travel throughout the entire Union.

In conclusion the policy-making actors are diverse and operate on different levels. Within a policy-making body such as the EU policy is made by several bodies within this supra-national organisation and some of the policies that are made end up contesting each other. Ultimately the implementation of policy is in most cases left to the Member States and between the Member States the implementation of policy may be done differently. With the Schengen Agreement being ratified there has been an increasing pressure on the EU external borders which caused the policy-making actors to take different points of view and maintain different policy directions.

3.4 Laws and regulations

In regard to the seaborne migration towards Europe and the rescuing of migrants at sea there are several laws and regulations that deal with aspects of this issue. In this paragraph the relevant international laws will be shortly described and how they relate to the issue.

A treaty as will be mentioned in the rest of this paragraph is a written agreement between states¹¹. The European Union currently rests on two treaties that the Member States have signed and ratified. These two treaties hold the design and the functioning of the EU¹². Another important treaty is the Schengen Agreement governing the free movement between the states that have signed and ratified the treaty. Treaties are mostly between states or a group of states; in some cases it also includes an international organization that is able to enter treaties. Some

¹¹ Vienna Convention on the Law of Treaties, 1969

¹² TEU (Treaty on the European Union), TFEU (Treaty of the Functioning of the European Union)

treaties are not between a small group of states and a large group of states from all over the world. These treaties are known as the conventions. Conventions deal with global issues and deal with rules and regulations on how to act. Once a state has signed and ratified a convention there is a strong pressure to follow what the convention dictates, not following the convention however does not have direct legal consequences.

The United Nations Convention on the Law of the Sea (UNCLOS) is one of the oldest conventions. It governs for example the claiming of territory in the sea by states and the jurisdiction of states at sea. The UNCLOS agreement states the zones that a coastal state may claim for its own purposes. There are four recognized zones; the territorial sea, the Contiguous zone, the Exclusive Economic Zone and the High Seas. The territorial sea is the area that extends no further than 12 miles into the sea from the so-called 'baseline'¹³. In this territorial area the state that has claimed it has certain duties. The free passage of ships through their territorial waters is such a duty. The state cannot hinder ships to pass unless the foreign ship holds a threat to the peace and security of the state. The UNCLOS states that a foreign ship can be considered a threat when it breaches among other things the *"loading or unloading of any commodity, currency or person contrary to the customs, fiscal immigration or sanitary laws and regulations of the coastal State"*¹⁴. Foreign ships can then be disallowed passage through the territorial waters of the state.

The second zone that is of importance in relation to the issue of seaborne migration and the rescuing of people in distress are the High Seas. The High Seas cannot be claimed and are open to all states and no state is allowed to claim ownership of the High Seas¹⁵. Ships are supposed to sail under a flag of a state and that state is responsible for the safety of the people on board¹⁶. The most important provision in relation to the rescuing of people is that all ships flying under a flag are required by their flag state to render assistance to anyone in need of rescue and every coastal state is obliged to have an operative and effective search and rescue service¹⁷ (UNCLOS, 1982). If a ship has rescued people at the High Seas it is obliged to take the people on board and disembark and deliver them at a place of safety.

The Safety of Life at Sea Convention (SOLAS) (SOLAS, 1974) is the international maritime safety convention. This convention is the most important convention in regard to merchant ships, but provisions in chapter V of the convention applies to all ships at sea. Chapter V states the

¹³ UNCLOS art. 3-5

¹⁴ UNCLOS art. 19 (g)

¹⁵ UNCLOS art. 87

¹⁶ UNCLOS art. 94

¹⁷ UNCLOS art. 98 1(a), 2

obligation of each person navigating a ship to be aware of all possible dangers and its duty to render assistance to other vessels in distress¹⁸.

The international Search and Rescue Convention (SAR) (SAR, 1979) is the follow up of the article 98 in the UNCLOS and the SOLAS. The SAR convention encourages states to have formal organization dealing with the search and rescue and between states to have common procedures. The SAR states the procedures for taking action in an emergency and the designation of a commander. The SAR convention has several clauses on where rescued persons should be taken; first and foremost to a place of safety and the rescue and co-ordination centres will see to the most appropriate place for the people rescued to disembark¹⁹.

Finally another important convention to this thesis is the United Nations Refugee Convention (UNCHR). This convention states the rights of people classified as refugees. A refugee is a person who is in fear of being persecuted because of race, religion, nationality or member of a certain social group and cannot safely remain in his country of origin²⁰. To any other person this convention does not apply. Previously stated the seaborne migration towards Europe consists of both migrants that can be recognized under the status of refugee and migrants who do not. The claims for asylum that the migrants upon arrival make have to be considered by the receiving country yet this becomes increasingly difficult because of the amount of people (UNCHR).

While the UNCLOS, SOLAS, SAR and Refugee Convention each govern the actions of actors in their own respective fields they leave gaps and are open for different interpretations. While the UNCLOS dictates that all in trouble at sea should be aided and saved, it does not mention where the rescued persons are to disembark besides a safe place. It has been part of the discussion whether rescued migrants can claim asylum and become the responsibility of the state under whose flag the ship sails that rescues these people. A place of safety is considered a place where the rescue operations are terminated and the rescued people are no longer in danger and basic needs can be met²¹ (IMO, 2004). People rescued at sea cannot be returned to an unsafe place even if that is their country of departure (principle of non-refoulement) or their country of origin. If however disembarkation cannot be arranged the SAR zone has to take responsibility for taking in the people (Papastavridis, 2014).

¹⁸ SOLAS, Chapter V

¹⁹ SAR, Chapter 3.1.9

²⁰ Convention and Protocol Relating to the Status of Refugees, art 1 A (2)

²¹ Guidelines on the Treatment of Persons Rescued at Sea, RESOLUTION MSC.167(78), 2004

3.5 Conclusion

To conclude this chapter we look again at the sub question stated at the beginning of this chapter:

What are the practices, actors, rules and regulations that are involved in policy making on the issue of migrants at sea

In answer to this sub question it can be said that there are many practices, actors, rules and regulations that are involved with the issue of policy-making on migrants at sea. The issue of migrants at sea is an issue that knows many different sides and aspects, such as the migration aspect and the rescuing of persons in distress regulations. There are many institutions that make policy on the issue of migrants at sea or make policy on specific aspects of this issue. There are many international laws and regulations that deal with some parts of the rescuing of migrants in distress at sea. There are treaties and laws regulating the rescuing of persons, the rights of persons to claim asylum, border control and human rights. However the laws and regulations leave certain gaps that have to be filled up with policies made by countries themselves or by the EU as supranational organization. These gaps allow framing and scaling to become useful for policy-making actors. Framing and scaling can be used for the interpretation of these gaps in order to have the interests and stakes of policy-making actors represented.

4. Case Study

4.1 Introduction

This chapter will seek to answer the second sub question that was posed in Chapter 1. This research. To recall the main question of this thesis was:

How do policy-making actors for the purposes of having their interests and stakes represented in policy use framing and scaling in the policy-making process about the issue of migrants at sea?

In order to answer this question three sub question were posed. In the previous chapter the second sub question was answered, this chapter will answer the third sub question:

How have policy, frames and scales changed over time on the issue of migrants at sea?

In order to answer this sub question I will look at how policy-making actors use framing and scaling in order to influence the policy-making process. As said before frames are used by policy-making actors to promote their stakes and interests and try to influence the policy-making process. Framing refers to how a policy-making actor influences the policy-making process by for example using certain words to describe the issue. For example by calling the people attempting to cross 'illegal migrants' their status is determined by an actor. Frames are used as a strategy to justify a certain course within policy. The use of frames has implications for the policy and the other policy-making actors. The strength of a frame is in its perseverance over time and the relevant actors using the frame. Frames may be used for such a long period of time that they become institutionalized within policy and the policy-making process. Scaling is used by actors to assign a geographical scale to an issue. An example of this is Italy repeatedly stating that the issue of migration is a European issue and should not be left for states to deal with it themselves.

This chapter will be used to describe the frames and scales that have been used over a specific period of time on the issue of seaborne migration and the rescuing of migrants in distress on the Mediterranean Sea. In order to do so a case-study will be presented to analyse the policy-making process. The case study encompasses a chosen time frame in which policy-making events took place that relates to the issue of seaborne migration and the rescuing migrants at sea. The events in the case study will be looked at how framing and scaling are used by actors and how this influences policy. From each event the actors involved will be described, what action they have taken and the frame and scale that are used.

4.2 Case introduction & timeline

The following case consists of events that were compiled over a period of time. The publication of the article by the Guardian marks the starts of the case study. Events that have taken place previous to the publication of the article are taken into account when describing the events further in this chapter. The events span from the publication of an article in the British newspaper The Guardian to the launch of the European Operation 'Triton'. This case study will show the changes in power balances, framing, scaling and how this results in policy. Frames and scales will be shown and named and in the next chapter the frames and scales and the changes will be further analysed.

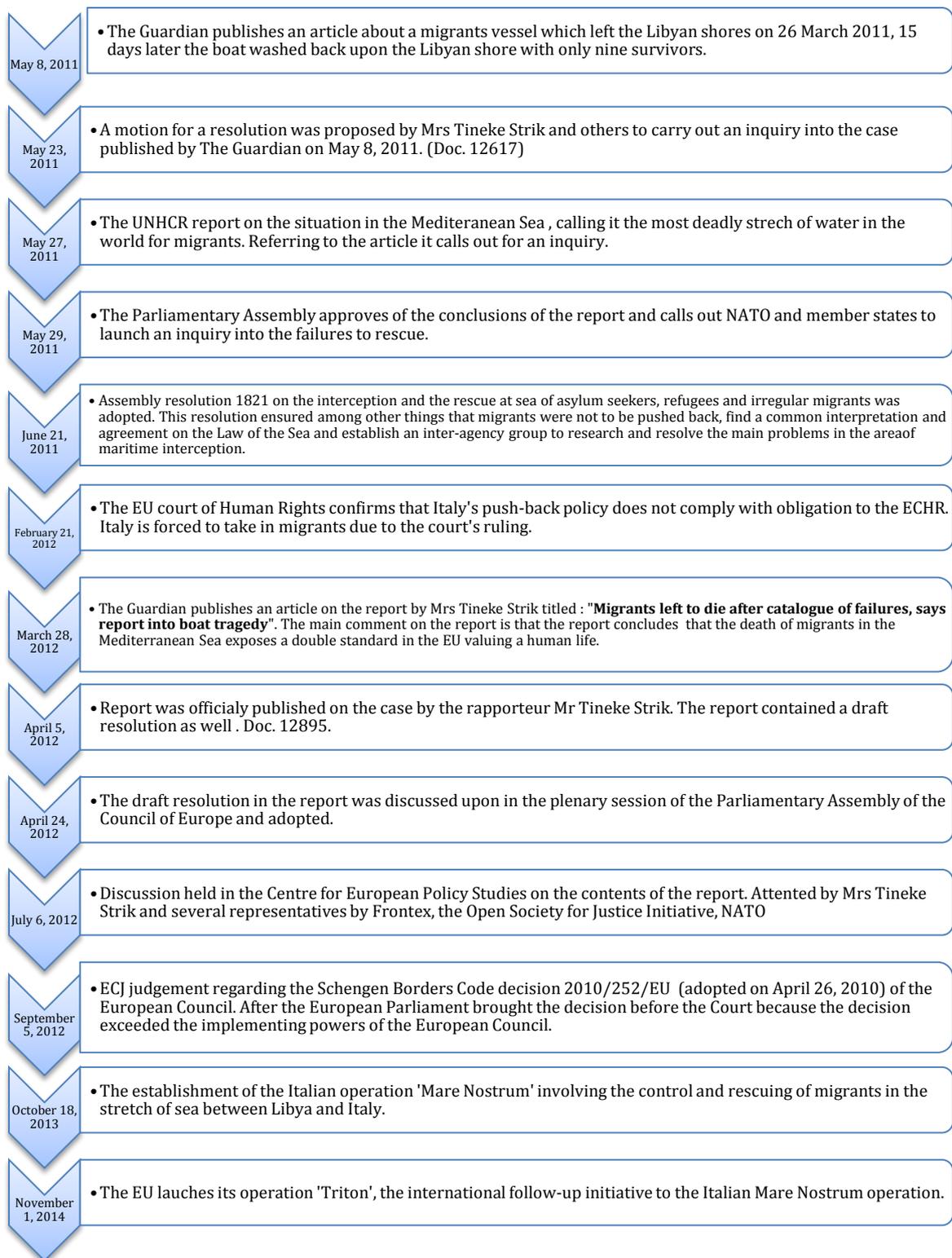


Image 2. Case study, timeline

4.3 The article by the Guardian

The first event that took place in this timeline is the publication of an article by the British newspaper The Guardian on the 8th of May 2011. This article will be the first starting point of the case study. The article is titled “Migrants left-to-die”. According to The Guardian a migrant vessel containing 72 migrants had left the Libyan shore only to run into distress on the Mediterranean Sea while trying to make its way towards the Italian Island of Lampedusa. The Guardian wrote that when the vessel ran into trouble, the engines failed and the little water and food that were present ran out, the vessel send out distress signals in order to be rescued. The article concludes that while distress calls were being made, several other vessels were in the area and even despite the presence of a helicopter lowering water and biscuits to the vessel, no action was taken to rescue the people from their predicament.

The author of the article in the Guardian did a study into a case that was presented to him of migrants claiming they had been left to die by Italian, Maltese and European authorities despite sending out distress calls for help. The author did a research into the events that happened with the vessel in the case, from the moment it left the Libyan shore until it washed back up again after being at sea for 15 days. The article from the author makes point in describing the ordeals that the people on board the vessel had gone through. The events are described in great detail and accounts from the few survivors are quoted multiple times to demonstrate the predicament the migrant found themselves in. A quote directly taken from the article in The Guardian states the following:

“Using witness testimony from survivors and other individuals who were in contact with the passengers during its doomed voyage, the Guardian has pieced together what happened next. The account paints a harrowing picture of a group of desperate migrants condemned to death by a combination of bad luck, bureaucracy and the apparent indifference of European military forces who had the opportunity to attempt a rescue.” (Shenker, 2011)

The quote is taken from the introduction of the article in The Guardian, in the introduction and in the rest of the article it is repeatedly mentions the ‘horrors’ that the migrants experienced. The quote contains an accusation towards the lack of action taken by European military forces, MRCC’s and other actors present in the vicinity of the vessel. The author of the article inquired with NATO and the MRCC’s about their knowledge on the vessel. NATO stated that it had no logs on the vessel and mentioned that their ships would require assistance when needed and that saving lives is a priority (Shenker J. , 2012). The Italian MRCC admitted to having known about the vessel but advised Malta’s MRCC the vessel was heading towards their SAR-zone. Malta has

claimed to not have any knowledge on the vessel. The article portrays two accusations; one, that it is bureaucracy that has led to the inactivity of rescue attempts of the people in the vessel. And two, that the survivors and many other will make other attempt in order to claim asylum in Europe. The article mentions that Refugee rights campaign organizations have demanded an investigation into the deaths and the UNHCR has called for stricter co-operation between all vessels in an effort to save human lives (Shenker J. , 2012).

Aside from the explicit accusations made by the author of the article there are several more implicit accusations made through the choice of words by the author. An explicit accusation of the author was the 'apparent indifference' by the European military forces. The implicit accusation that is added through painting the picture in which the people on board have found themselves according to the author. By naming the people 'survivors' of a 'doomed voyage' and 'desperate migrants' the author calls on the lack of humanitarianism showed by the European Union and the European military forces. This choice of words in the article is also used in articles and publication by Amnesty International and even in a report to the EU Parliamentary Assembly.

The article by the Guardian contains several important notions. The article claims for itself that bad luck, bureaucracy of the EU and the lack of action of European military organizations were the factors that led to the number of deaths. Organizations charged with the task to render assistance to the vessel in distress claim not to have any records or knowledge on the vessel, despite the people on board claiming otherwise. Organizations that specifically deal with refugees claim that the deaths are not accidental but are caused by the unwillingness of other vessels and MRCC's to respond to distress calls of migrants vessels. Finally the UNHCR has specifically mentioned that stricter co-operation is needed in order to save lives.

All organizations that could have had the opportunity to assist the vessel and rescue the people in distress have claimed not to have enough information or knowledge of the vessel to launch a rescue operation. The MRCC's, vessels near the migrant's vessel and the European coastal states have stated not to have undertaken any action in attempt to rescue the migrants. The MRCC have mentioned the lack clarity about the position of the boat and whether or not it was present in their SAR zone, of the vessel had been in their SAR zone than action would have been taken. The particular focus of the actors involved in the case of the vessel described by The Guardian specifically hold onto their claim about the vessel not being in their SAR zone or that they in any way could have been responsible for the rescuing of the vessel in distress due to its location or lack of knowledge about the vessel. The claimed lack of knowledge on the location of the vessel was used in this particular case as argument by the MRCC to not undertake action. On a local

scale of the MRCC and their SAR zones the actors claimed that there are issues with knowing the location of a vessel and if not in the SAR zone, it is not their responsibility. In the article by Shenker several people claim that MRCC and other vessels in the area have ignored their responsibility to come to the aid of someone in need on the sea. Finally while Shenker claims that bureaucracy and the indifference of European forces was the cause of the loss of life and responsibility should be made clear. Punishment and clarity in responsibility to prevent the loss of life are named the solutions by Shenker (Shenker, 2011). European military forces from Frontex operations and the Member State's MRCC's are called out on their responsibilities to prevent the loss of life regardless of the status of the people they have to save. The bureaucracy meant by Shenker relates to the extensiveness of the European institutions dealing with making, delegating and implementing legislation. Because of the extensiveness there exist loopholes and legal gaps that are used in order to shirk responsibilities towards the rescuing of migrants in distress at sea. The European military forces that Shenker describes in his article most likely refer to the marine vessels of Member States in the Mediterranean under the authority of Frontex for joint operations.

4.4 Resolutions & Decisions

After the article that was published by the Guardian the European Parliamentary Assembly adopted a resolution on the interception and rescuing of migrants at sea. The Resolution 1821 states that member states of the EU must ensure that maritime border surveillance operations and border control measures do not affect the protection afforded under international law to vulnerable people such as refugees and people who are at risk if they are sent back to their country of origin (Europe P. A., 2011). The resolution is in line with existing refugee and human rights conventions but lacks a connection to migrants for economic reasons and the general prevention on the loss of life in the Mediterranean.

Some major human rights conventions relate to the issue of irregular migration. The EU Charter on Human Right, states several principles on how migrants should be treated upon arrival. One of the most noticeable is the EU having a so-called 'non-refoulment' principle. This principle provides that refugees must be protected of being returned to places where they might be subjected to persecution and the prohibition of sending people back without considering their proposal for asylum (Klepp, 2010). In other words migrants upon arrival have to be taken in and Member States cannot send the migrants back without considering their claims for refuge. Refoulment in other words is the immediate sending back of migrants without considering their

rights and situation. The refoulment principle has been previously used by states such as Italy and Greece and aimed to intercept migrants both outside and inside territorial waters and sending them back upon interception. The practice of refoulment meant that all migrants intercepted were to be sent back, including refugees.

The resolution by the EU Parliamentary Assembly was adopted on June 21st, 2011 in the Parliament with 54 votes (52 in favour, 1 against and 1 abstention from voting) (Europe, 2011). While the resolution states that responsibilities on the rescuing of migrants should be made clear and rescue operations should be in line with the international conventions the resolution states concerns and not how action should be undertaken to prevent any future occurrences. A quote from the resolution shows the reasoning behind the need for the resolution:

“The Assembly is concerned about the lack of clarity regarding the respective responsibilities of European Union states and Frontex and the absence of adequate guarantees for the respect of fundamental rights and international standards in the framework of joint operations co-ordinated by that agency. (Europe P. A., 2011)”

The quote demonstrates two different frames; firstly the resolution takes the frame of a lack of clarity of responsibilities and consequently gaps in the legal framework. Secondly, according to the resolution fundamental rights have not been respected by the actors present on the Mediterranean Sea. Meaning that practices in the by Member State do not respect one of the fundamental rights and in case in particular the right to live. Like Shenker the resolution refers back to the responsibility of all people, organizations and states to respect the lives of people.

The resolution states that these fundamental rights have not been respected especially by joint-operations of the European Border Agency Frontex. Frontex is an organization set up by the EU; its full name is the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. The organization’s mission is to coordinate the EU external border management through risk analysis, joint-operations, training and assistance of Member States. Frontex operates using a security frame to justify the sending back of migrants. The issue of migration is deemed by Frontex to a risk to security in Europe. Frontex is the organization responsible for an integrated border management in the EU and the Schengen Area. It is responsible for risk analysis and information management within the EU. Frontex in particular states that their risk analysis is mainly aimed at preventing cross-border crimes such as smuggling and human trafficking (Frontex, Risk Analysis, 2015). Frontex states that their knowledge and risk analysis outcomes are used in joint operation, daily management and also serve as aid in setting priorities in policy-making.

Frontex and the European Member States regard migration as a threat to the peace on a European level and on a national level. France and Germany have threatened to close the borders and restrict the free movement of people within the EU in order to prevent migrants from entering their country. Frontex looks at migrants as part of human trafficking and therefore something illegal that must be prevented. Whether on an EU scale or national scale, policy-making actors are shown to be concerned with migrants being a threat to the internal peace and security of Europe.

A decision was adopted by the European Council on April 26, 2010 (Council, 2010). This decision dealt with a supplement to the Schengen Borders Code on the area of patrolling the maritime outer borders of the EU under the coordination of European Border Agency Frontex. The decision states that the border surveillance is meant to prevent illegal border crossing by discouraging the migrants. The EC stated that there was a need for additional rules for better cooperation on joint patrols and clear rules on disembarkation. The decision held clauses on the cooperation and that it should be dealt with on a European level due to the international character of the rescue missions. This is emphasized by the Council in the decision by the mentioning of the subsidiarity principle. The decision also contained a clause stating that when migrants are rescued there is a preference to disembark them in a Member State's territory.

The decision of the Council was not approved of by the European Parliament and the Parliament brought the decision to the ECJ in order to have the decision annulled. The Parliament claimed that the decision exceeded the implementing powers of the Council and asked the ECJ for annulment. The ECJ based its judgement on an article about the comitology and the adjustment of existing policy and the right of the European Parliament to interfere²². The European Parliament wished to annul the decision of the Council through the judgement of the ECJ because it stated that the decision exceeded the implementing powers of the Council. In the end the ECJ ruled that the decision indeed exceeded the implementing powers of the Council and that the decision was no longer valid (European Court of Justice, 2012).

The controversy between the Council and the Parliament shows that within the EU different scales are used on what level policy should be made. The Council has chosen a European scale based on the involvement of the European Border Agency and because of the harmonization between EU Member States policy should be made on the European level. The ECJ and the Parliament from their frame view that harmonization of the rules and the principle of subsidiarity is not a sufficient basis for the argument of the Council that policy should be made on a European level.

²² Art. 5a (4) (e) of the Second Comitology

This events shows how divided the European institutions can be and how important the ruling of the ECJ can become. The ECJ basis its judgement on EU law and states that it does so for multiple reasons. Two reasons however stand out:

“First, the adoption of rules on the conferral of enforcement powers on border guards,--, entails political choices falling within the responsibilities of the European Union legislature, in that it requires the conflicting interests at issue to be weighed up on the basis of a number of assessments. Depending on the political choices on the basis of which those rules are adopted, the powers of the border guards may vary significantly, and the exercise of those powers require authorisation, be an obligation or be prohibited, for example, in relation to applying enforcement measures, using force or conducting the persons apprehended to a specific location. In addition, where those powers concern the taking of measures against ships, their exercise is liable, depending on the scope of the powers, to interfere with the sovereign rights of third countries according to the flag flown by the ships concerned”. (European Court of Justice, 2012)

“Second, it is important to point out that provisions on conferring powers of public authority on border guards – such as the powers conferred in the contested decision, which include stopping persons apprehended, seizing vessels and conducting persons apprehended to a specific location – mean that the fundamental rights of the persons concerned may be interfered with to such an extent that the involvement of the European Union legislature is required.” (European Court of Justice, 2012)

The ECJ is concerned with the power that officials might receive if the Decision was adopted and brought into practice. State sovereignty might become endangered as well as the fundamental rights of people might be interfered with. The judgement of the ECJ shows a clear preference for joint border patrol operations not to be part of EU legislation but to be an agreement between states to cooperate. The judgement is concerned that the sovereignty and the interests of states may be impaired as well a fundamental rights not being respected. While it does not fit into a frame the scale which is preferred by the ECJ does become clear. The Decision threatens the interests of both Member States and migrants and should therefore be annulled.

4.5 Report to the EU Parliamentary Assembly

One of the most important consequences of the publication of the article by The Guardian was the initiative of a Mrs. Tineke Strik who proposed a resolution to launch an inquiry. Strik is a

Member of Senate in the Netherlands for the Green Party²³ and a member of the socialist group in the European Parliamentary. Strik is a member of the Committee on Migration, Refugees and Displaced Persons as well as Chairperson in the Sub-Committee on Detention and the Sub-Committee on Co-operation with Non-European countries of origin and transit (Parliamentary Assembly Member Details, Tineke Strik). Besides being a member of the Parliamentary Assembly Strik is a lecturer on Migration Law for the Centre of Migration Law of the Radboud University in Nijmegen, The Netherlands. The report²⁴ she wrote as the result of an inquiry into the events that were described in the article by the Guardian. In her report Strik attempts to seek out who was responsible and should have undertaken a rescue operation.

Strik proposed to Council of Europe to launch an inquiry into the incident that The Guardian reported on through a motion for resolution. The resolution stated a number of cases where migrants lost their lives in attempt to cross the Mediterranean Sea. The resolution finishes with the following statement:

“The Assembly should carry out an enquiry into this particular incident, but also into other cases where better interception and rescue co-ordination could have saved human lives. No vessel has the right to ignore another in distress on the sea. Under the circumstances where an increased number of makeshift boats are likely to embark from Libya as the conflict continues, Europe should do everything possible to provide humanitarian aid and prevent the loss of human life at sea, and to offer protection where it is needed (Council of Europe, 23).”

From this motion for a resolution the main reason to launch an inquiry becomes clear. Following a human rights narrative the prevention of the loss of life is the main aim of the people that have undersigned the motion for a resolution. The motion was not discussed in the European Parliamentary Assembly but the inquiry into the incident was still launched.

On April 5th the report was published and in the report the attempt was made to provide the exact events that lead to the deaths of many of the migrants on board. The Council of Europe that Strik reported for is known in the EU as the body that monitors the EU Member States and oversees the European Court of Human Rights (ECHR). The main aim of Strik in the report was to find who exactly was responsible for the rescuing of the migrants on the vessel in distress. She provides a series of events that occurred when the vessel had run out of fuel and was a drift on the open sea. The report contained a resolution that was adopted by April 24th, 2012. The

²³ GroenLinks

²⁴ A summary of the report can be found in Appendix I

resolution aimed to deal with the gaps in assigning responsibility to the vessels present in the area and the Maritime Rescue and Coordination Centres that were involved.

The Guardian published an article before the official publication of the report on March 28th, 2012. The article was titled: “Migrants left to die after catalogue of failures, says report into boat tragedy (Shenker J. , 2012)”. In this article Strik made a statement saying the following:

“This report is only the beginning. The Mediterranean is one of the busiest seas on the planet, yet somehow nobody managed to rescue these migrants. We need more answers and I will continue to look for them. These people did not need to die and those responsible have to be called to account. (Strik, 2012)”.

July 6th, 2012 after the publication of the report by Strik a discussion was held at a think tank in Brussels. The Centre for European Policy Studies (CEPS) held the discussion between Mrs. Strik and representatives of Frontex, NATO. The discussion focused again on assigning responsibility of who should have taken action to rescue the migrants. Strik was also present at this discussion and stated that there should be consideration for the nine people who survived. Frontex claimed that the rescuing of migrants was not their task and that it was concerned with patrolling the European external borders. NATO questioned why it had to be present at the discussion for it claimed not to have any ships in the region at the time. All parties however agreed on a lack of action of the organizations that were active in the region around the time the vessel ran into trouble, but none made any attempts to propose any changes or truly assign responsibility to a single party(source: authors notes when present at discussion).

The report by Strik shows a similar point of view as the article by The Guardian. The choice of words by Strik at times is a direct copy from the choice of words used by Shenker. Both Shenker and Strik put emphasize the case as ‘harrowing’ and the people as ‘survivors’ of a ‘tragedy’ (Shenker J. , 2012) (Strik, 2012). Strik goes a step further and mentions a direct ‘failure’ to launch a rescue operation as opposed to the ‘apparent indifference’ mentioned by Shenker. Both however title their written documents as ‘migrants left to die’ and refer to the vessel in question as the ‘left-to-die boat’.

4.6 Maritime Operations

A major shift in policy-making of the issue of seaborne migration and mainly the rescuing of migrants at sea took place after the ruling of the European Court of Human Rights (ECHR) on

February 21st, 2012. The ECHR found that the Italian policy of pushing back migrants is in conflict with the fundamental human rights.

Amnesty International published a report in 2012 titled: “S.O.S Europe, Human rights and Migration control”. In this report Amnesty International directly accuses the EU and Member states and Frontex of not taking human rights into account. It goes directly into the agreements between Libya and Italy. Italy had made a secret agreement with Libya to send back migrant upon arrival. When migrants reached the shore they were immediately put on a plane back to Libya without allowing them any chance to ask for asylum. The agreement also mentioned that when migrant vessels were intercepted at sea they could be returned to Libya. Though the agreements are not made public, other sources all state that the agreements did not have any clauses in regard to the human rights. Amnesty International went as far as saying that the clauses were purposefully left out.

The ECHR ruling stated that in the month of May 2009 Italy’s practices to send-back migrants were not in line with the European Convention of Human Rights (Case of *Hirsi Jamaa and Others v. Italy*, 2012)²⁵. During the month in question Italian military vessels had forced three migrants vessels back towards Libya with over 200 people on board. The court ruled that while Italy had intercepted the vessels on the High Seas²⁶ when the migrants boarded the Italian vessels, Italy had jurisdiction and was responsible for guarding the safety of the migrants. Italy was consequently put in a position where it had to change its policy under the pressure of the ECHR and NGO’s such as Amnesty International. After the ruling of the ECHR in the case of *Hirsi v Italy*, Italy declared that it would no longer use the push-back method or refolement (Case of *Hirsi Jamaa and Others v. Italy*, 2012).

In answer to the judgement of the ECJ Italy suspended the refolement practices. Italy was back to taking in migrants when they reached the shores or were rescued at sea. Within the regulations of the Schengen Agreement, Italy proceeded by giving out visas for a six-month stay in the EU²⁷ and allowing the migrants to continue on further into Europe. Italy continued to insist on sharing the burden of migrants. This practice however led to France threatening to suspend the free movement in order to not allow the migrants to enter the country (Waterfield, 2011). France recalls that if there is a threat to national security and the disruption of peace it is allowed to temporarily suspend the free movement and reintroduce border controls. Germany

²⁵ [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{%22dmdocnumber%22:\[%22901565%22\],%22itemid%22:\[%22001-109231%22\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{%22dmdocnumber%22:[%22901565%22],%22itemid%22:[%22001-109231%22]})

²⁶ The High Seas are mentioned in the United Nations Convention on the Law of the Sea (UNCLOS), in this area of the sea states cannot claim territory yet have the jurisdiction over vessels that sail under their flag or the people that enter a flagship of the state in question. (UNCLOS, 1982)

²⁷ Regular visas for the Schengen Area compromise a three-month stay.

had later on threatened with the same actions of restriction free movement if Italy would not suspend giving out the six-month permits. France and Germany go as far as to threaten to suspend the free movement in order to keep out migrants of their countries.

Italy consequently has launched the operation Mare Nostrum. On October 18, 2013 the Italian operation called 'Mare Nostrum' was launched in order to attempt to reduce the number of mortality on the Mediterranean Sea (Bonfanti, 2014). The mission statements of the Operation contained the following quote:

"The naval and air units deployed to Mare Nostrum was necessary to improve maritime security, patrol sea lanes, combat illegal activities, especially human trafficking, and tackle the Mediterranean humanitarian emergency in the Sicily Straits, ---." (Mare Nostrum Operation , 2013)

The Italian operation took place in both territorial waters and international waters. The Mare Nostrum operation was an initiative taken by the Italian Government and has been financed by the Italian Government alone. The initiative was taken by Italy but Italy continued to ask the EU for support and to put up an operation on EU level.

In search for more support in handling the rescue operations and the claims for asylum Italy appealed to the EU. Germany's Chancellor Angela Merkel spoke about the problems voiced by Italy about dealing with the many migrants on a summit held on October 25th, 2013. In response to the complaints she recalled the Dublin regulation:

"She said there is no question of changing the EU's basic rule, the so-called Dublin regulation, under which countries through which asylum seekers first enter the Union have to take care of them.....- "I'd like to remind you the we have quite a large number of asylum seekers that we have accepted [in Germany] by European comparisons," "We feel that Dublin is the basis on which we should work, and that we need to add some short term measures on Lampedusa and on the seas around Lampedusa ... We have today not undertaken any qualitative change to our refugee policy," (Rettman, 2013)

In Merkel's recalling of the Dublin regulation and the way she mentions it shows a clear refusal of any help or common Member state responsibility to rescuing migrants and dealing with the claims for asylum. Not "Changing the EU's basic rule" is the main argument used by Merkel as well calling out that this basic rule shows clearly what country is responsible for the migrants upon entering. Using the argument of it being a basic rule, Merkel ultimately aims to declare that the rule cannot be changed. She as well mentions that Italy is not the only country dealing with a large stream of migrants. News articles have appeared of the German city of Hamburg claiming

that Italy had given migrants Schengen Visas and some cash and not consider their claims for asylum as the EU rules dictate (BBC, 2013). The EU rules state that the state in which the migrant arrive is responsible for considering the claims for asylums and dealing with the migrants appropriately. Through Merkel's reasoning the issue of dealing with many migrants is a matter of Member states as set in the European law. An important notion when looking at the statement of Merkel is the lack of personality given to the migrants. She calls the migrants asylum seekers implementing that upon their arrival in Italy they were under their responsibility. She does not mention the circumstances through which the migrants enter; no 'harrowing' cases or 'left-to-die'. Germany has been the main advocate of the Dublin regulation with countries such as Italy and Malta arguing against it and voicing that migrants and the rescuing of migrants are a collective European issue. Germany under Merkel has taken the issue of migration up as an issue that the receiving states should deal with, under the EU law these receiving states are responsible for the claims for asylum and rescuing in their SAR zones.

Interesting note here however is that Germany threatened to reinstate border controls on April 11th, 2011 and only a month later accepted to take in 100 migrants from Malta alongside 10 other EU Member States. (Times of Malta, 2011). The current practices of Germany and France are rather obscured, though Germany has no issued as many permits for non-EU residents as for example Poland (Local, Germany lags in permits for non-EU migrants , 2013). Germany's argument was that the country simply cannot economically afford to give out more permits. This suggests that there have not been explicit restrictions for migrants to enter but implicitly there exist difficulties. Germany has been accused of being able to do more for the migrants and especially the people claiming asylum and not doing so (Local, 2014).

In January 2015 Italy closed down the operation and the European initiative called Operation Triton was launched. Operation Triton is a collective operation of EU Member states and the European border agency Frontex. A representative of the Italian operation Mare nostrum stated the following on Operation Triton:

"We always said that we would close Mare Nostrum once Europe did its share. We now feel that we can say that Europe is doing its share". (Bulletin, 2014)

The Italian operation had according to the Italian minister of Interior Alfano rescued over 150,000 people during the time the operation was active. Operation Triton is the European initiative to replace the Italian Operation of Mare Nostrum. According to [Frontex](#) the operation has the following objectives:

“While saving lives is an absolute priority in in all maritime operations coordinated by Frontex, the focus of Joint Operation Triton will be primarily border management”.

Operation Triton is currently operating on a smaller scale than the Italian predecessor. Operation Mare Nostrum spans international waters while Operation Triton is only active up to 30 miles off the Italian Coast. The Italian Mare Nostrum Operation specifically mentioned a clause on providing humanitarian assistance. Interestingly enough the working document of Frontex only mentions that the absolute priority will be border management. Italy has shared concerns with the deployment of the Operation Triton, because according to Italy the limited budget and scope does not allow the operation to be as effective as the Italian operation.

4.7 Frames and scales

Many frames and scales have proven to play a part in the issue of seaborne migration and the rescuing of migrants. This paragraph will shortly conclude the findings and will explicitly mention the frames and scales found. From the first event of the publishing of the article in the Guardian a specific frame becomes clear. The explicit mentioning of the circumstances of the migrants in distress and a clear judgement on the lack of action by the EU and the coastal European States shows the frame. The frame that has become clear here will further be called the humanitarian frame, dealing with the personal aspects of migrants and considerate with fate of the migrants.

In terms of scale it shows that Strik, Shenker and Italy find that there is a European responsibility to undertake collective action and not let the receiving states struggle with the amount of incoming migrants and many distress calls. With the humanitarian frame Shenker and Strik deliberately seek to show the personal stories of the people on board. Strik even makes these repeated requests for consideration of the nine survivors further support this. Also Amnesty International expresses concerned with the fate of the migrants and continuously seeks public attention in order to gain support for the fate of the migrants. The humanitarian frame is very noticeable for its emotional aspect, the calling out to the human nature of the issue and the inherent responsibility of one person to take care of another. It deals very much with giving a face to the many migrants that attempt to cross.

A second frame that can be identified is the frame that migrants are a threat to the peace and security of Europe. This frame is largely supported by the risk analysis of the EU border agency Frontex. France and Germany have each chosen this particular frame to argue that migrants should be dealt with on a national level. France and Germany support this claim with the threat to close their borders, imposing a dilemma on the rest of Europe. The resolution 1821 by the Parliamentary Assembly seems to look for a middle ground; calling out on the international responsibilities towards refugees but not further mentioning the migrants and the rescuing of people in distress at sea.

This second frame is characterized with a very formal approach of policy-making actors using this frame. A formal approach meaning that where the humanitarian perspective brings out emotion, the security frame distance itself from the human aspects and focuses on the threat of a breach in the peace and security. Peace and security being abstract terms. Calling the Italian operation a 'taxi-service' (Commentaar, 2015), reveals a distance to the migrants. It can be said that in some way this frame has an inward perspective, looking only at the possible consequences for the internal structure of the EU and its Member States.

The level on which the issue of rescuing migrants and external border control should take place is disputed in the events of the case study. This first becomes clear from the resolution in the EU where the lack of clarity in responsibilities is mentioned. This lack of clarity in the laws and legislation also becomes clear in the report by Strik who concludes that there was no action taken to launch a rescue operation because it was not clear which MRCC was responsible to launch an operation and take initiative. Member States of the EU that are not receiving states under all circumstances stick to a frame that migrants should be dealt with on a national level. Germany and France for example refuse to deal with migrants on a European level and state that Italy should deal with them appropriately²⁸. Dealing with migrants on a national level allows Members States to adopt policies to keep migrants out and the rescuing of migrants has nothing to do with them. Italy has claimed the opposite scale and remarks that migrants are a European issue and should be dealt with on that level.

The relation between frames and scales in this sense raises the question how they relate to each other. The scaling of an actor most likely relates to the context of the policy-making actor. Strik as Member of Parliament consequently believes that the rescuing of migrants should be dealt with on a European level. France and Germany refer to the geographical location of the external borders of the EU and therefore refer the responsibility for rescuing migrants towards the European states that are on the external border in the Mediterranean.

However the assumption that frames and scales relate because of the context policy-making actors does not hold up when looking at the judgement of the ECJ regarding the annulment of a decision made by the Council. The European Parliament sought to annul the decision 2010/252/EU of the European Council stating that the decision exceeded the implementing powers of the Council. The judgement of the ECJ stated that it indeed exceeded their powers and the decision based on the subsidiarity principle (see chapter 3, 3.3 Policy-making actors) because of the international character of sea border surveillance and protection, was not justified and the decision was consequently annulled. The judgement of the ECJ meant that the ECJ frames sea border surveillance and protection as not be regulated by the European Council, even when it concerns joint operations with Frontex. While the ECJ is not a policy-making actor it is very powerful in influencing policy decisions when they are brought before the Court.

From the case study it becomes clear that there has been a shift in the frame in which Italy operates. Italy has gone from the treaty with Libya and sending the migrants back upon arrival without considering their claims for asylum to the leading state in Europe doing self-undertaken rescue operation even outside their territorial waters. Italy has set up an operation spanning the whole of the Mediterranean Sea. While taking the issue on a national scale the impact has been throughout Europe and the EU took up launching an operation of their own. The Operation Mare Nostrum is completely in accordance with European legislation and seems also largely supported by a humanitarian frame which finds the rescuing of life of utmost importance.

4.8 Conclusion

This chapter aimed to answer the second sub question stated in chapter 1. This Research:

How have policy, frames and scales changed over time on the issue of migrants at sea?

This chapter has shown that within each event different frames and scales of actors have played a role. The frames have become clear through the actions and statements of actors and the events have shown how the use of frames and scales has developed over time.

There are two main frames that have been identified; the humanitarian frame and the security frame. The first focuses on the humanitarian responsibility of people, organizations and states towards the migrants at sea. The latter focuses on the security risk the migrants at sea pose towards the European internal peace and security. The scales have also been identified with the main scales being European level and state level. How exactly frames and scales relate to each

other can be seen in several ways. For example the scales relate to the context of the policy-making actor and through that way to the frame.

Because of changes practices of actors frames have changed as well as the use of frame has changed practices of actors. How exactly this happened will be further analysed and explained in the next chapter. The next chapter will connect the events that happened in the case with the background of the issue, the interests and stakes of the policy-making actors and the context of the policy-making actors.

5. Analysis

5.1 Introduction

In this chapter I will further analyse the framing that was presented in the fourth chapter. While in the previous chapter the frames in an event were described, the events analysed and the frames identified, this chapter will look at how policy has changed due to framing and scaling. The previous chapter answered the second sub question as posed in Chapter 1. This Research and Chapter 3. Case Study:

How have policy, frames and scales changed over time on the issue of migrants at sea?

This chapter will answer the third sub question:

How have framing and scaling influenced the policy change on the issue of migrants at sea during the case study and how do these frames and scales represent the interests and stakes of policy-making actors?

The framing mentioned in chapter four will be looked at again but this time both their effect will be looked at but what why a frame was used in order to answers this fourth sub question. Scaling will also be further elaborated upon. The assigning of scales to the issue of seaborne migration and the rescuing of migrants at sea will be further described plus the consequences of assigning a specific scale to the issue.

Policy-making actors use frames in order to maintain their narratives and seek their interests and stakes represented in policy. The previous chapter has shown a change in frames that were used over time. Frames and scales were used to make claims in regard to how the issue of seaborne migration and the rescuing of migrants should be interpreted and how policy should be made about the issue.

Before analysing the frames, scales and actors alliances, power balances and shifting policies more in depth a couple of notions in relation to policy have to be taken into account. From an instrumental perspective of policy (see Chapter 2, 2.2 Policy) the view on policies regarding seaborne migration hold certain assumptions on the loss of migrants lives when implementing policies. The IOM stated that there exist a relation between certain elements of to the mortality number of number of migrants and the related policies and practices by state authorities ((IOM), 2014). Researchers such as Bonfanti and Farques have argued that in strict border control policies cause a large loss of life and that the strictness of such policies justifies the deaths of

many migrants attempting to cross (Bonfanti, 2014). Many of the border control policies are argued by states and the IMO to discourage possible migrants due to the large risks involved. Encouraging and discouraging migrants through policy is the key of an instrumental view of policy. Effects of policy such as push and pull effects are policy outcomes that are designed to influence practice. The assumptions made by the instrumental view on policy are recalled because states and EU institutions use this to legitimize policy during the implementation in the view that is used in this thesis, where policy-making is contested and is a method for policy-making actors in order to have policy become beneficial to them. In this view policy is only a result of policy-making actors contesting each other and the policy outcome is much more related to the intentions of the actors to decrease the stream of migrants and the people perishing at sea.

The rest of this chapter will look further into aspects of the use of framing and scaling. The next section will provide a detailed example of the impact of the interpretation and the use of words in relation to the term of 'illegal migrants'. This section will show a frame might influence policy and change and how the use of this term might relate to the interests and stakes of a policy-making actor. Section 5.3 will further look at gaps in legal frameworks and how these provide opportunities for framing and scaling. In Chapter 3. Background gaps in legislation were laid bare and it was said that these gaps provide policy-making actors an opportunity to influence how these gaps should be interpreted. Section 5.4 will look further at claims of responsibility and the related framing and scaling by policy-making actors. The claim of responsibility also relate to the interests and stakes of policy-making actors. From the frame of a policy-making actors claim are made on who should be responsible for making policy on the issue of migrants at sea and at what scale this responsibility should be taken.

5.2 What's in a name?

Framing and scaling by policy-making actors is a method to exercise a strategy and to seek serve their interests and stakes. Though a frame in itself can be looked at, it cannot be seen as a representative of the goals, interests and stakes of an organization. It merely provides a method to seek the interests and stakes of an organization represented and through the actions, statements, frames and scales give an insight to the interests and stakes. Recalling what was said in Chapter 2. Conceptualization frames are seen as a method by actors to bring attention to their point of view. The interests and stakes can be deduced by looking at the policy-making actors' context.

Starting from the use of certain words I will look further into the use of the term of 'illegal migrants' and the underlying notions for the use of this term. Underlying notions of what were that the people attempting to cross into Europe through the Mediterranean Sea are coined as 'migrants' and in many cases as 'illegal migrants'. The article by the Guardian calls the people on board 'illegal migrants'. Many other articles do exactly the same in their articles while some mentions 'refugees' or 'people' and referring to them as 'scared' and vessels in trouble as 'harrowing' (Shenker, 2011).

Illegal migration and the term 'migrant' itself is a loaded term that can deliberately be used. In the previous chapter it was briefly mentioned that the people attempting to cross into Europe are migrants (people who remain in a different country for a longer time and leave their home country for economic reasons) and refugees (people who are forced to flee their home-country in fear or their freedom or their lives). The latter category is protected by international laws and treaties such as the UNHCR. States are under the obligation to render assistance to refugees. Mixed-migration flows allow policy-making actors room for attending to their frames. Dünnwald provides an insight on the necessity for a term of the people attempting to cross.

"A note on migration and protection. In this article, the term "migrant" denominates persons migrating without addressing the reasons why. The distinction between labour migrants and refugees is a much debated issue and relates to the different questions of security. The notion of "mixed flows" indicates the difficulties of dealing with migration before a protection status is determined. If persons are in need of protection becomes a crucial question when it comes to the control of entry to potential receiving countries, as asylum seekers should have access, while access for labour migrants may be denied" (Dünnwald, 2011).

The choice of policy-making actors to coin the term 'migrants' and not 'refugees' is a note on what their policy will be like. Objections have been made against such terminology:

"While within EU institutions, the term 'illegal immigrant' is still widely used, scholars, activists, and the UN object to the terminology. It is seen as linguistically and legally wrong, as only acts and not people can be illegal, and has been criticised for strong negative connotations and its potentially manipulative impact on public opinion." (Paspalanova 2008)

The use of the term illegal migration goes together with a notion of the EU, Frontex and other organizations that illegal and irregular migration is something that can be stopped. With the notion that illegal migration can be stopped policy has been made in apparent disregard to refugees.

“The assumption that irregular immigration is to be prevented, and can be averted by patrolling the high seas, has been championed for years – in fact, the very establishment of Frontex in 2005 was driven by this belief. However, since its inception Frontex has been criticised by NGOs like Amnesty International, Human Rights Watch, and the European Council on Refugees and Exiles(ECRE) for undermining international legal obligations such as the non-refoulement of refugees and the protection of migrants’ human rights” (Perkowski, 2012)

Klepp describes that in the more recent years the EU borders have become increasingly militarized as a result of the shift towards the external border protection after the ratification of the Schengen Agreement. This militarization of borders forces migrants to more dangerous routes when attempting to make it to the EU (Klepp, 2010).

“The main actors were not official institutions of the EU, but rather International Organisations, mainly UNHCR and IOM (International Organization for Migration), and NGOs, which were financed by the EU and which established a new discourse by introducing the term “illegal migration”. The research group identifies a new policy culture of governing the external borders of the EU, where the knowledge of experts and security officials plays a central role. Their recommendations are realised based on “multi-level governance” in different formal and informal working groups and through various actors that are no longer the nation states or the European institutions”. (Klepp, 2010)

The changes in the frames used on the people attempting to cross the Mediterranean Sea have changed the policy that is implemented as well as the other way around. In the instance of the refoulement-treaty between Italy and Libya the people were conveniently named as solely migrants. The treaty was signed in 2008 between the Italian leader Berlusconi and the Libyan leader Gadhafi. The treaty for Friendship, Partnership and Co-operation allowed provisions of an earlier agreement in 2007 to be implemented. The 2008-treaty specifically mentioned cooperation between Italy and Libya in the context of the fight against terrorism, organized crime, and drug trafficking and the Agreement included a provision calling for:

“.....- Intensification of the ongoing cooperation in the context of the fight against terrorism, organized crime, drug trafficking and clandestine migration” (UNHCR’s Third Party submission to the European Court of Human Rights in the case of Hirsi and Others v. Italy)

A migrant being looked upon as 'illegal' is a framing working against the opinions of for example Shenker, Strik and Amnesty international. Regardless of the status of a person as migrant or refugee the term illegal claim that the attempt to cross in not in accordance with the law. While the international treaties on the Law of the Sea state that persons in distress should always be rescued, they also contain clauses on trafficking persons outside of the law.

The usage of the term 'illegal migration' is an example of how important words can be and the interpretation of words. The claim that these illegal migrants are refugees makes that for a shift in policy-making. The rescuing of people and not sending them back to their country of origin has stated to be the responsibility of all states in the EU according to the ECJ. The coining of migrants as illegal also holds risks when migrants attempt to cross; they can be detained, arrested and sent back.

5.3 From legal gaps to dominant frames

In Chapter 3. Background, it has been shown that there exist legal gaps; this was affirmed in the case study in the report by Strik and the resolution by the EU. Where these gaps exist frames can be become the tool to influence the interpretation of the law. When realizing this there are several notions that become important. In EU legislation a consistent interpretation and common policy are important for the harmony, stability and interdependence in the EU. In order for the EU to exist and its legislation to be effective the same standards are put up for Member States. When there exist gaps in law or questions about the interpretation of law, conflict can arise within the EU when dealing with these gaps and questions. There is either a need for secondary legislation by for example the EU to deal with these gaps or a ruling by the ECJ needed. With the need for secondary legislation to fill gaps at the international level the interpretation of the existing treaties, laws and regulations becomes important for policy-making and implementing actors. The interpretation of existing legislation by actors influences how the legislation is interpreted by the ECJ. The gaps in legislation are filled by policy-making actors with an interpretation that is consistent with their frame and scale.

The report by Mrs Strik mentions that it is unclear who was responsible for rescuing the migrants, other cases describe the same problem; who must take responsibility for the rescuing of migrants, consider their claims for asylum and take further care of them? Especially in the case of joint operation multiple researchers claim that a gap exists between the refugee laws and treaties and the existing EU policy (Klepp, June 22, 2011). The report by Mrs Strik mentions

several legal institutions that should be able to designate responsibility to the actors present in the Mediterranean Sea. The Search and Rescue zones (SAR zones) assign responsibility to the state to which the SAR zone belongs. The statutes on the SAR zones do not mention the issue of disembarkation and the consideration of claims for asylum. Besides from the legal maritime framework actors are bound by ratified treaties and conventions such as the Refugee Convention and The European Convention of Human Rights.

The article in the Guardian by Shenker in 2011 claims to have pieced together what exactly happened to the people on board and why no action has been undertaken by other vessels in the area. The article claims to uncover the truth in the events. The report by Strik further explores the events that took place according to eye witness accounts of people on board the vessel in question. Both Shenker and Strik aim to assign responsibility and claim to look for the truth what has happened and how the events took place. Their perspectives draw especially upon the personal experiences of the people on board of the migrant vessel. Strik in particular seems very concerned about the fate of the nine survivors and repeatedly asks for consideration in their claims of asylum. Only for a small part she mentions the supposed lack of clarity in the legal framework. Strik's proposal for a resolution states several matters concerning the legal framework but leaves what to be changed open for discussion. Such personal commitment as witnessed with the report and statements of Strik are not mentioned again. Shenker's purpose seems purely journalistic and to bring the case to the attention of the public. Strik in her resolution seems not to merely propose policy changes but the entire report describes in detail what the people have suffered and again calling for consideration on their behalf.

The report from Strik and Shenker both deal with a supposed bureaucracy such as the amount of institutions that deal with issues that relate to the vessel, and the lack of legislation on the responsibility for rescuing migrants and considering the claims for asylum. This claim of bureaucracy is affirmed by the European Parliament with the adoption of the amended resolution as proposed by Strik. Also the bureaucracy is further shown in the controversies between the European institutions. In the case study it was shown that at one point the European Parliament referred a decision of the European Council to the ECJ in order to have the decision annulled. The ECJ annulled the decision stating that the decision exceeded the implementing power of the Council. This is only part of the extensive process of policy-making and decision-making in the EU where different states have different stakes and interests that slow down the process. The lack of legislation on for example disembarkation and considering claims of asylum is then caused by a supposed sensitivity of the issue for Member States. This supposed sensitivity is most likely related to the sovereignty of states that might be

compromised of this issue if the competence to legislate about this issue was transferred to the EU. In other words the interests of a state, in this case their sovereignty, may be impaired.

In the previous chapter the geographical position of states was briefly mentioned. Malta and Italy are 'front-line' states that deal with the incoming migrants. These states operate their SAR zones and are the first to respond to distress calls. Within these SAR zones the states are responsible for responding to maritime distress calls. Strik mentions a first gap in these SAR zones, when a state is unable to respond due to its lack of capability as result of internal struggle (Strik, 2012). This notion was provided after the vessels returned to Libya's SAR zone. The Italian Operation Mare Nostrum operated outside territorial waters and the designated SAR zones. In the report by Strik Italy and Malta each state that the vessel mentioned in the article by the Guardian and the report by Strik that it was not in their SAR zones. According to Maritime Laws all vessels and states must answer to a distress call when they receive it. The SAR zones however do not mention the place where rescued persons must disembark. The process of disembarkation is related to the consideration of claims for asylum that are made. Every state that has ratified the Refugee Convention must consider the claims for asylum.

A second gap claimed by Klepp is that there exists a gap between the Member state sovereignty to protect their own borders and the humanitarian responsibility in both the SAR zones and the consideration of claims for asylum. This is encouraged by the European institutions being able to make policy on the sensitive issues such as common foreign policy and common security policy. These two issues are closely related to a state's border protection but a state maintains sovereignty by its own border policy. The seaborne migration in relation to the EU common borders and the Schengen agreement has difficulties. Italy has asked for an increased European cooperation in rescuing the migrant and considering their claims for asylum. Germany has proven vastly against it and is even going as far as to threaten the rest of Europe with the closing of their borders. With the interpretation of laws dominant frames become important for they provide how the laws and especially the gaps between laws must be interpreted.

A third gap exists between the humanitarian duties and the practices of Member States in joint border operation with the European Border Agency Frontex. While Frontex has no own material it has to rely on the host-state and other states part of the mission to receive operational resources. Frontex does however have the means for making risk analysis and advising in the EU policy-making process. According Frontex in the article by Klepp the vessels and helicopters that are supplied for the operation remain under the command of the state sending the material (Klepp, 2010). These joint operations led by Frontex or where there organization partakes in leave several questions. Klepp mentions this issue in her article a contested Asylum System:

“.....Which state is obliged to assume responsibility for the examination of an asylum claim as a result of the application of international refugee law, in particular when engaged in joint operations or in operations taking place within the territorial waters of another State or in the High Sea” (Klepp, 2010).

When these vessels or helicopters rescue migrants at sea, the migrants fall under their responsibility and the flag state must care for the migrants. This includes disembarking them in the flag state and takes their claims for asylum into consideration (Klepp, 2010). The laws on disembarking and claiming asylum leave room for negotiation different interpretation between actors.

In respect to interpretation of laws and regulations on all levels it has been shown in the case that on the operational level there are disputes about the location of where the vessel in need is and who should take responsibilities for disembarkation and the consideration of claims for asylum. In international maritime laws there is a reference to the rescuing of people in the High Seas, while the MRCC's only operate in territorial waters. The interpretation of these laws is supportive of the frames that are being used by the actors. Front-line states seem to deliberately choose to interpret the law in accordance with what they scale the responsibilities of rescuing the migrants. The front-line states also claim that due to circumstances such as the Schengen Area and the aim of EU integration dealing with migrants has already become a common EU problem and cannot be solved by Member States on their own. This leaves an opening for the use of frames and scales in order to enforce a common interpretation. The power of a frame or a scale lies in the determination of how policies and EU regulation have to be interpreted. A powerful frame is a frame that is repeated by many actors, and thus many actors interpreting law in the same way. In order for a frame to influence an interpretation other actors have to adopt the frame. There is a major strength in the threatening with measures by states such as Germany and France in order to coerce a common interpretation, the threat becomes a measure to give extra strength to their frame. In relation to frames and scales this means that alliances and states taking the same strategy strengthens a frame and scale and allows for policy to be influenced, resolution to be weaker and common interpretation shaky.

5.4 Pointing fingers

One of the main attempts being made by politicians of Member States and the EU is stating who should be responsible for rescuing the migrants in distress, where they should disembark and who should consider their claims for asylum.

Germany and France in this respect have continuously claimed that dealing with migrants in all respects should be left up to the Member States themselves. Both have threatened to limit the free movement as prescribed in the Schengen Agreement. With the Schengen Agreement all people, goods, services and capital are able to move freely between the states that have signed and ratified the treaty. The Schengen Agreement was concluded outside of the European Union but has become part of its legislation through an integration clause in the Treaty of Amsterdam in 1996. Germany and France use another clause in this Agreement to claim that the migrants pose a threat to the national security and therefore they have a right to refuse these people by closing their borders. France and Germany are the main advocates of Member States being responsible for dealing with migrants themselves. Not too long ago the Dutch State secretary of Justice, Fred Teeven, stated that the rescuing of migrants on the Mediterranean Sea is not the responsibility of the EU (NU.nl, 2014). He stated that the migrants should be cared for before they attempt to cross the Mediterranean Sea. Teeven shifts here from assigning responsibility of the EU to the countries of origin such as Syria from which people flee.

The claim of who should be responsible is a part of framing and scaling. If responsibility can be assigned or claimed by a policy-making actor the frames and scales are strengthened. Also showing a lack in action can for example support the scale that policy should be dealt with on a European level in order to make Member States legally bound to fulfil their obligations.

Interests and authorities play a role in the adaption of a different frame by an actor. Italy has shown a large transformation in policy towards the migrants. After the treaty with Libya migrants were sent back upon arrival and the conviction of the ECJ, the threats of France and Germany to close borders if Italy were to let anymore migrants through the Italian government has taken a new approach with the launch of the rescue operation. The Italian Operation Mare Nostrum executed on a national level was an initiative that the EU finally felt obliged to follow up upon. At the end of the Italian Operation Mare Nostrum Italy has mentioned its growing concerns on the rescuing operations of the EU operation Triton. This Operation was set to replace the Italian operation but does not cover the same large area as the Italian operation did. The budget of the EU operation is far smaller than the Italian operation.

The underlying cause for the Italian turnaround is not entirely clear. The Operation is in compliance with European legislation on migrants' rights and Member States' obligations (Bonfanti, 2014). The effect of the Operation however has also been critiqued as becoming a pull for migrants to attempt to cross because the chance of rescue is bigger.

5.5 Conclusion

This chapter aimed to answer the third sub question stated in Chapter 1. This Research:

How have framing and scaling influenced the policy change on the issue of migrants at sea during the case study and how do these frames and scales represent the interests and stakes of policy-making actors?

In Chapter 3. Background it was established that the issue of migrants at sea knows many facets, aspects, actors, rules and regulations and that frames and scales become useful tools for policy-making actors when there are gaps between laws. Chapter 4. Case Study has shown that frames and scales may be subjected to change over time as well as policy. This chapter however aimed to look at how framing and scaling influences policy and how this may affect the change in policy. Also this chapter analysed how frames and scales relate to the interests and stakes of policy-making actors.

This chapter analysed the use of the term 'illegal migration' as an example of how important words can be in framing. By naming migrants differently an obligation might be created. When migrants are recognized as refugees this means that they are protected by international rules and regulations. Secondly this chapter looked how gaps in legislation are opportunities for policy-making actors to use frames and scales in order to have a dominant interpretation of these legal gaps. In EU legislation a consistent interpretation and common policy are important for the harmony, stability and interdependence in the EU. The interpretation of existing legislation translates to the practices of actors as well as the use of frames which influences how the legislation is interpreted. In relation to frames and scales this means that alliances and states taking the same strategy strengthens a frame and scale and allows for policy to be influenced, resolution to be weaker and common interpretation shaky. Thirdly this chapter identified how actors use frames and scales to assign responsibility and through that create a self-enforcing cycle of frames, scales and actors' practices.

6. Conclusion

This chapter will conclude the findings from the case study and its analysis and will answer the main question that was posed in chapter 1. Recalling the main research question:

How do policy-making actors for the purposes of having their interests and stakes represented in policy use framing and scaling in the policy-making process about the issue of migrants at sea?

To answer this question we must look at how actors are able to influence the policy-making process and why they wish to do so. Policy-making actors seek to influence the policy-making process and policy in order to have their interests and stakes represented in policy. The interests and stakes of policy-making actors are represented by narratives and by claims that are made by policy-making actors.

To recall the theoretical framework of chapter two the following was assumed in regard to framing and scaling. First of all policy was described to legitimize and mobilize political support, with the process of policy-making being the search for a legitimate basis for interests and stakes of actors to be incorporated into policy. Policy was argued to be contested through a power struggle in order to maintain a definition of the issue that policy was made about and that the power of a policy-making actor lies with its ability to influence the policy-making process and other policy-making actors.

This refers to the notion of Chapter 2. that frames are pre-existing and can be used as a tool. This is related to the ability of a policy-making actors to form alliances and creates a field where not only frames and scales and the resulting policy are challenged but also the field of actors itself is changing. A changing field of actors refers to the changing alliances between actors. Recalling Chapter 2 it would be the attempt in this thesis to look at how actors move between power fields, make and break alliances and thereby support or oppose policies and how this power of policy-making actors is used to maintain or change policy. Alliances in this sense imply a dominant frame or scale.

To recall framing and scaling are seen methods to influence the policy-making process and other actors. Framing gives meaning and becomes a scheme of interpretation. These frames are used by policy-making actors in order to try to legitimize their policy view. Scaling was described to be shaped by economic and political processes and connected to framing as a method of giving authority or power and inclusion or exclusion in the policy-making process. A frame is the collection of repeated words, arguments, context and perspectives on the issue at hand. Scaling

in seen as a part of framing which adds another dimension to a frame in the form of a geographical scale. It does influence the policy-making process by influencing on which level policy-making actors believe the policy-making should take place.

To be able to answer the main question properly three sub questions were introduced. These three sub questions will answer the main question. In chapter 1. This Research these three sub questions were introduced:

1. *What are the practices, actors, rules and regulations that are involved in policy making on the issue of migrants at sea?*
2. *How have policy, frames and scales changed over time on the issue of migrants at sea?*
3. *How have framing and scaling influenced the policy change on the issue of migrants at sea during the case study and how do these frames and scales represent the interests and stakes of policy-making actors?*

These three sub questions were answered in the chapter 3. Background, Chapter 4. Case Study and Chapter 5. Analysis.

In Chapter 3. Background the practices, actors, rules and regulations involved with policy-making on the issue of migrants at sea were described. In Chapter 3 it became clear that the laws and regulations leave certain gaps that have to be filled up with policies. These gaps allow framing and scaling to become useful for policy-making actors. They become useful because there is a discussion on who should make the policy, which should be involved and subjected to the implementation of the policy and what direction the policy must take.

In the report of Strik and in the general description of the rules and regulations several gaps become clear. For example the loss of life at sea must be prevented and MRCC's are responsible for rescuing the people in distress but there are no clear regulations on where the rescued people should disembark and which country should take responsibility for considering possible claims for asylum; the state of the flag of the vessel that rescues the people, the flag state of the lost ship or the state in whose SAR zone the vessels find themselves. It is merely stated by the people rescued should always be delivered to a place of safety but the SAR zone in which the people are rescued is not responsible for disembarking the people to their own shores. Strik points out several of these gaps and proposes better regulation. The issue is also recognized in the resolution by the Parliamentary Assembly but no further specifications are made on how to solve the gaps.

Other gaps that are mentioned in Chapter 3. Background are the gaps between the maritime laws on the responsibility to assist, rights of free passage and the Refugee Convention. For

example the gaps in the UNCLOS were framed different by actors. The UNCLOS states that when a vessel can be considered a possible threat to the coastal state; *“loading or unloading of any commodity, currency or person contrary to the customs, fiscal immigration or sanitary laws and regulations of the coastal state (UNCLOS, 1982)”*. When this rule of the UNCLOS comes into contact with the responsibility to rescue under the SOLAS convention of the coastal state the use of one rule becomes more dominant than the other. The dominance of the rules there relates back to the alliances between policy-making actors to make a rule more dominant from their dominant frame. The UNCLOS rule has been used by Italy in the past in favour of refoulement and inaction; later on the rule under SOLAS and the European legislation have become dominant in support of the Italian new found frame.

Through the first sub question: *What are the practices, actors, rules and regulations that are involved in policy making on the issue of migrants at sea?* Chapter 3 was able to show that there are gaps that exist between policy and regulations that allow policy-making actors to use framing and scaling in order to influence the policy that is made to fill up these gaps and how the laws and regulations should be interpreted with the existing gaps. The second sub question: *How have policy, frames and scales changed over time on the issue of migrants at sea?* Would then be able to answer in more detail how frames and scales played a role in the policy-making process and how the frames and scales have changed over time.

In Chapter 4. Case Study there are two main frames that have been identified; the humanitarian frame and the security frame. The first focuses on the humanitarian responsibility of people, organizations and states towards the migrants at sea. The latter focuses on the security risk the migrants at sea pose towards the European internal peace and security.

One of the main frames that was identified in Chapter 4 was the humanitarian frame. This frame holds the assumptions that all human life must be saved; it disregards the status of the people on board, it calls largely on the responsibility of states and organizations to prevent the loss of life and most importantly views that human life must be saved despite the potential illegality of the people on board. Strik takes this frame on step further by repeatedly recalling the circumstances of the survivors of the case in her report and that besides taking responsibility and rescue the people, claims for asylum must be considered and granted, showing that this frame contains a side that calls upon emotion and sympathy.

The second main frame that was identified in Chapter 4 was the security frame. This all relates to seeing migrants as a threat to the internal peace and security of Europe. The legitimization of border related deaths has for a large part been happening in the EU. With many border control policies a high human costs is associated, many migrants find their death because of the strict

border controls while trying to avoid them. Also media attention is only being given to the larger events with many deaths, while many small vessels disappear during their voyage. This also relates to the number of deaths which in reality may be a lot higher than currently estimated. Despite regulations that supposedly protect the refugees in the mixed-migration flow the supporters of this frame call for strict border policy, sticking to the own SAR zones, refolement of migrants when possible and restricting all opportunities to reach the European shores. This frame is further built up with the claim that the rescuing of migrants should only be dealt with on a Member State level as well as the receiving country being responsible for the consideration and rejection of the claims for asylum. Germany and France add to this frame the threat of closing the borders and restricting the four freedoms provided by the Schengen Agreement (free movement of all people, goods, services and capital).

Within the use of framing and scaling the largest transformation takes place during the case study in Chapter 4. The Italian government switches completely from a security frame towards a humanitarian frame. The security frame as used by Italy defined that the amount of migrants flooded the Italian islands and mainland and the pressure of these migrants would pose a threat to the country. The humanitarian frame of Italy came to be after the country was called out by the ECJ on its refolement agreement with Libya. Under pressure the Italian government switched frames completely and started the Italian operation Mare Nostrum. The added scale to the frame of Italy has not changed with the switch of frames. Italy maintains like other southern European states that the rescuing of migration and dealing with the claims of asylum should be dealt with on a European level. The Schengen Agreement partly supports this with the Schengen agreements on visa and refugee regulations.

Scaling was mentioned in Chapter 2. Conceptualization as a part of framing but with an added geographical dimension. In Chapter 4. the scales by different actors also became clear. The scales were an added dimension to the humanitarian frame and the security frame. Policy-making actors used the frames to define the issue and choose a policy direction. The scales were used to argue on which level the policy should be made.

Scaling also shows where policy-making actors seek alliances or support the same scale. The best example of an alliance is the alliance between France and Germany in their collective threat to close the borders. Germany further contributes to this by recalling the Dublin principles and maintaining that migrants should be dealt with at a national level. Though the alliance between Germany and France was not outspoken or formalized, it supported the strength of their scaling. In the end there has been a compromise in the case study between the national and European scale. The European Operation Triton was the European initiative to pacify the Member States.

Receiving states are no longer alone in their rescue operation and the other Member States are content with the European operation being executed on a European level with the receiving states without the requirement of their direct cooperation.

Another example of scaling is the judgement of the ECJ. The ECJ had to rule on a case where the European Parliament had asked for the annulment of a decision adopted by the European Council. The European Council in its decision stated that it was the goal of border policy was to prevent illegal border crossing and that the border policy and especially the joint missions should be dealt with on a European level. The legal basis for this decision by the Council was their argument that due to the international character of such missions the EU should have control. The judgement by the ECJ stated that the decision was annulled for the reasons that the sovereignty of states was in danger as well as the fundamental rights of the migrants. The ECJ found the sovereignty of states to protect and patrol their own border took place over a formal decision on European level.

Through the second sub question: *How have policy, frames and scales changed over time on the issue of migrants at sea?* Chapter 4. was able to answer how policy, frames and scales have changed over time. It portrayed the two main frames that have been identified, the humanitarian frame and the security frame. Also the scaling of policy-making actors between the national and European level have been shown. The next chapter looked further into the frames, how these frames were made up and how the frames and scales related to the interests and stakes of policy-making actors. The sub question that was posed in order to look at this was: *How have framing and scaling influenced the policy change on the issue of migrants at sea during the case study and how do these frames and scales represent the interests and stakes of policy-making actors?* This question aimed to look to the interests and stakes of policy-making actors that were deduced from the frames and scales they use as well as their context.

Recalling what was said in Chapter 2. Conceptualization frames are seen as a method by actors to bring attention to their point of view. The use of a certain word by the policy-making is able to influence direction of policy. The example that was given in Chapter 5. Analysis was the term of 'illegal migration'. This term stated caused a direction in policy in line the security frame, however when called 'migrants' or 'refugees' there consequently is a different direction in policy. This is only part in the extensive process of policy-making and decision-making in the EU where different states have different stakes and interests that slow down the process. This is encouraged by the European institutions being able to make policy on the sensitive issues such as common foreign policy and common security policy. These two issues are closely related to a state's border protection but a state maintains sovereignty by its own border policy.

Changing interests and stakes and the pressure of authorities play a role in the adaption of a different frame by an actor. For example Italy has shown a large transformation in policy towards the migrants. The Italian government has taken a new approach with the launch of the rescue operation. The Italian Operation Mare Nostrum executed on a national level was an initiative that the EU finally felt obliged to follow up upon, though on a smaller scale and with a smaller budget.

The scales that policy-making actors use can be related to their context. For example the scale by Strik is most likely derived from the fact that she works for the European Parliament and sees opportunities there to change and implement policy. Her point of view is that the loss of life should be stopped and that all European Member States are part of this. Also Italy uses a European level scale. This is most likely derived from Italy's belief that it cannot deal with the numbers of migrants alone. Strik argues with the emotional side of the humanitarian frame, while Italy after the judgement of the ECJ on their refolement treaty with Libya uses the humanitarian frame to fulfil its obligations and strengthen their scale that migrants at sea should be dealt with on a European level.

Finally we arrive at the answering of the main question. The main question was: *How do policy-making actors for the purposes of having their interests and stakes represented in policy use framing and scaling in the policy-making process about the issue of migrants at sea?*

The issue of migrants at sea knows many aspects and is so extensive that policy-making actors are able to influence the process by forming alliances and legitimizing their point of view through framing and scaling. Framing and scaling are useful tools to generate support, create alliances, bring attention to the point of view and be a scheme for interpretation. The interests and stakes of policy-making actors determine which frame and scale they use.

The interests and stakes have been deduced from the frames, scales and the context of a policy-making actor. The larger part of the interests and stakes however remain obscured, as well as the policy-making process. The policy-making process was deduced from the written sources and the outcomes of policy-discussion stated in decisions, resolution, reports and news articles. The frames and scales were deduced with the framework of indicators that was introduced in Chapter 2.

7. Discussion

In this thesis I have looked at how policy-making actors are able to influence policy through framing and scaling in order to have their interests and stakes represented in policy. In order to look at policy in this way the notion of what policy is was explained; policy is not just a policy document but policy is also the implementation and interpretation of policy. The policy-making process involves the negotiation of policy and during this negotiation policy-making actors use frames and scales in order to influence the process.

In the second chapter of this thesis the concepts of framing and scaling were introduced. These concepts were constructed from existing literature from authors such as Mosse with his notions that policy-making actors seek generate support and maintain narratives. Also Leonardi states that frames are built up from resources of actors. Leonardi mentions resources such as skills, theories, goals and attitudes as a basis for framing. With the concepts of framing and scaling being placed as concepts that allow policy-making actors to influence policy and the policy-making process and the question remained how frames manifest themselves.

Authors such as Mosse and Leonardi allow for a construction of framing and scaling but methods, frameworks or indicators of how a frame or scale is recognized and how they manifest themselves is not further elaborated upon. Because of this I constructed indicators to look at how frames manifest themselves as an extension of the basis provided by Mosse, Leonardi, Chen, Lutz and Kurtz (see Chapter 2. Conceptualization, page 18-22). The indicators look at how frames manifest themselves in written sources such as resolutions, news articles, comments, reports and opinions. The context of a policy-making actor is taken into account. The context of a policy-making actor was explained to be for example the legal basis of a European Institution, the task or mission of an actor or the governmental level the actor acts on. The context of the actors provides which frames and scales they used.

During the case study it became clear that policy-making actors acting on an EU level often argued that the protection and patrolling of the EU external borders should be the business of the EU and should not be left to Member States by themselves. By using words such a 'common' border protection and patrol, the scale is indicated. Italy also argued that migrants are an EU problem and should be dealt with on that level. During the case study the use of the word 'illegal migrant' made in which direction policy moved. When the frames changed the statements changed and the words that were used. In the humanitarian frame the term of 'refugees' was used or just 'migrants' leaving out the unlawful aspect.

In conclusion the use of the indicators to look at how frames and scales manifest themselves in written sources proves to be a useful extension to the existing concepts of framing and scaling. Whether or not these indicators can be used for sources other than written sources remains to be seen but for written sources it has proven to be very useful in this thesis. The question I would want to ask Mosse and Leonardi is whether they see the manifestation of framing and scaling also through the words that an actor uses. This remains unanswered for now, but if they would view frames and scales manifesting themselves differently it could be asked how they would see it and how else the manifestation can be seen.

8. Final remarks

Where previous anthropological researchers have focused on how policy influences practice, this thesis followed the line of another group of anthropological researchers and has focused on how practice influences policy. The practice of policy-making actors has in particular been looked at through framing and scaling. Actors involved in policy-making have shown that they wish to see a certain direction in policy or policy being made on in certain fields. However this thesis has focused on one aspect of the policy-making on migration and external borders and in particular on events from 2011 to the end of 2014. However during the writing of this thesis new issues have emerged that I wish to make a few remarks on.

Since the start and the writing of this thesis new practices have emerged from smugglers. During the period of time in the case the most common method by smugglers was the use of small unseaworthy vessels that would be crammed with people. Often these vessels lacked people with nautical knowledge and methods for direction. The smugglers would provide the migrants with material and some guidelines but would leave the rest of the journey up to the migrants themselves. This was supposedly done in order to avoid radar and being noticed by European authorities. Since the summer of 2014 a new practice has emerged however; the ghost ships. These ships are large vessels such as old fishing boats or freight ships. The ships capable of carrying more migrants and are reportedly operated by crews of smugglers. Once the ships arrive in the territorial waters of Italy or another European state the crews abandons the ship and the migrants are left for rescue. Since the start of the Italian operation Mare Nostrum migrants ships have actively been rescued, far more then described in the case in chapter 3. During Easter of this year news articles have emerged stating that in a day over 1500 people had been rescued in the vicinity of Italy. This change in smuggler's practice raises some question in how to analyse this change as well as changes in policy.

What the next step in research, I find, would be is to once again look at how policy influences practice. Where first policy was meant to lessen in the amount of migrants by restricting movement across the external borders not concerning how to deal with migrants in distress, there has been a shift to rescuing the migrants in distress with the Italian and European operations. This change in policy seems to have triggered a reaction of the smugglers, who have consequently changed their practice of putting migrants in little boats in order to avoid any notice of the boat to setting out in large ships with a crew and letting the crew abandon the boat when it reaches European waters. It can easily be assumed that there is a back and forth reaction between the policy-making actors in the EU and the migrants and smugglers. These reactions must be analysed. Yet looking at policy-making actors creating policy requires a

perspective of looking at how actors change policy, while looking at the practices of the migrants and smugglers requires a perspective of looking at how policy influence actors.

This back and forth movement between the two perspectives will provide an interesting picture on the interaction between European migration and maritime rescue policy and the practice of migrants and smugglers.

9. Sources

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10. Appendix I

Doc. 12895
05 April 2012

Lives lost in the Mediterranean Sea: Who is responsible?

Report¹ Committee on Migration, Refugees and Displaced Persons
Rapporteur: Ms Tineke STRIK, Netherlands, Socialist Group

Summary

The starting point for this report is that at least 1 500 people are known to have lost their lives attempting to cross the Mediterranean in 2011. This report, however, focuses on one particularly harrowing case in which a small boat left Tripoli with 72 people on board and after two weeks at sea drifted back to Libya with only nine survivors. No one went to the aid of this boat, despite a distress call logged by the Italian Maritime Rescue Coordination Centre, which pinpointed the boat's position. There were also a number of alleged direct contacts between the boat in distress and other vessels, including a helicopter that dropped biscuits and water, but never returned, two fishing vessels, both of which refused to provide assistance, and a large military vessel which came into close contact with the boat, but ignored obvious distress signals. From this story, a catalogue of failures became apparent: the Libyan authorities failed to maintain responsibility for their search and rescue zone, the Italian and Maltese Maritime Rescue Coordination Centres failed to launch any search and rescue operation, and NATO failed to react to the distress calls, even though there were military vessels under its control in the boat's vicinity when the distress call was sent (including the Méndez Núñez frigate which was estimated to have been 11 miles away, although this distance is disputed by Spain) The flag States of vessels close to the boat also failed to rescue the people in distress. Furthermore, two unidentified fishing vessels also failed to respond to the direct calls for assistance from the boat in distress. Alongside these failures, a number of shortcomings contributed to the distress calls not being answered, including gaps in the maritime legal framework and a failure by NATO and the States militarily involved in Libya to anticipate adequately for an exodus of asylum seekers and refugees. Perhaps of most concern in this case is the alleged failure of the helicopter and the military vessel to go to the aid of the boat in distress, regardless of whether these were under national command or the command of NATO. In this case, many opportunities for saving the lives of the people on board the boat were lost. A series of recommendations are made in the draft resolution to reduce the likelihood of similar tragedies in the future. There is also a request for further information from NATO and relevant member States to identify or carry out an investigation into the identity of the helicopter and ship that allegedly failed to go to the rescue of the boat in distress.

1. Reference to committee: Doc. 12617, Reference 3774 of 27 May 2011.