

Kent Academic Repository

Aversa, Ilaria (2025) The harms of anti-smuggling narratives and legislation on migrants: a comparative study of Italy and the UK. Justice, Power and Resistance, 8 (1). pp. 112-129. ISSN 2635-2338.

Downloaded from

https://kar.kent.ac.uk/108881/ The University of Kent's Academic Repository KAR

The version of record is available from

https://doi.org/10.1332/26352338Y2025D000000034

This document version

Publisher pdf

DOI for this version

Licence for this version

CC BY-NC (Attribution-NonCommercial)

Additional information

Versions of research works

Versions of Record

If this version is the version of record, it is the same as the published version available on the publisher's web site. Cite as the published version.

Author Accepted Manuscripts

If this document is identified as the Author Accepted Manuscript it is the version after peer review but before type setting, copy editing or publisher branding. Cite as Surname, Initial. (Year) 'Title of article'. To be published in *Title* of *Journal*, Volume and issue numbers [peer-reviewed accepted version]. Available at: DOI or URL (Accessed: date).

Enquiries

If you have questions about this document contact ResearchSupport@kent.ac.uk. Please include the URL of the record in KAR. If you believe that your, or a third party's rights have been compromised through this document please see our Take Down policy (available from https://www.kent.ac.uk/guides/kar-the-kent-academic-repository#policies).

Justice, Power and Resistance • vol XX • no XX • 1–18 • © Author 2025

Online ISSN 2635-2338 • https://doi.org/10.1332/26352338Y2025D000000034

Accepted for publication 21 January 2025 • First published online 17 February 2025



This article is distributed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International license (http://creativecommons.org/licenses/by-nc/4.0/).

research article

The harms of anti-smuggling narratives and legislation on migrants: a comparative study of Italy and the UK

Ilaria Aversa, ia335@kent.ac.uk University of Kent, UK

This article investigates how anti-smuggling political narratives and legislation in Italy and the UK are used to justify institutionalised harm on migrants, using thematic analysis of legislation, NGOs' reports, press, and social media coverage on migration and smuggling in the last two years (2022–2024). Through a comparative study of Italy as a longstanding EU internal border, and the UK as a new EU external border, this article will show how discourses of exceptionalism, securitisation, and externalisation of borders are used to justify the infliction of harms on migrants in the context of a trend of an increasingly violent hostile environment and spectacle of borders of the European neoliberal democracies.

Keywords smuggling narratives • hostile environment • border spectacle

To cite this article: Aversa, I. (2025) The harms of anti-smuggling narratives and legislation on migrants: a comparative study of Italy and the UK, *Justice, Power and Resistance*, Early View, DOI: 10.1332/26352338Y2025D000000034

Introduction

In the last decade, discourse around migration in UK and EU political debates translated into increasingly stringent migration policies (Bosworth, 2019). Literature on the harms systematically inflicted on the migrant population highlighted how this system creates, reiterates, and operates within a 'hostile environment' (Bosworth et al, 2017), and that it serves the purpose of creating a 'spectacle of border' (Brown, 2019) to showcase nation-states' power through the spreading of violent narratives in the public and political discourses. In practice, this led to the implementation of quasi-prison deportation centres and the overcrowding of hotspots¹ at the EU borders (Canning, 2017), as well as resulting in a series of malpractices including the registration of minors as adult asylum seekers (Care4Calais, 2023).

In light of these developments, literature in academia widely adopted a zemiological approach to focus on the harms experienced by the migrant populations, in order to produce knowledge aimed at social change and an evolution of epistemologies and

approaches of the discipline (Hillyard, 2021). Canning (2019), Bhatia et al (2023), and many others highlighted how the harms experienced by migrants are strongly justified by populist narratives of over-criminalisation and moral panics. It is in this heightened climate of criminalisation that smuggling narratives are gaining new momentum in Parliaments, feeding what has been called a rhetoric of dangerousness (Campesi and Fabini, 2020), which translates into new policies furthering the harms of previously sanctioned legislation (Gashi et al, 2019).

Focusing on Italy and UK: spotlighting the role of the EU

Zemiological literature emerged in the last decade, building on literature analysing harms in many bordering regimes of the neoliberal world (Canning, 2019; Chan et al, 2018). Comparative studies are none too popular in the field, with most literature striving for either a universally applicable theory of the border, or a specific case study often aimed at specific policy impact. Through its comparative nature, this study will throw light on complex dynamics of various actors and their jurisdictions, political discourses, conflicts, and crises of authority and legitimacy of neoliberal institutions at the national and European level. Specifically, I will focus on Italy and UK narratives of smuggling and their harms. Their comparison is important because of their political position towards the EU, especially after Brexit.

Italy, as an EU border country, together with Spain and Greece, is one of the Member States that experienced most of those regarded as irregular entries in the EU in recent years, and which has seen the most FRONTEX (EU Border and Coast Guard Agency) presence in its waters and skies (Aversa and Gkliati, 2021). The UK, on the other hand, has only recently become an EU external bordering country, and its relationships with FRONTEX and the EU Commission are still evolving, including economic funding of new FRONTEX databases (Statewatch, 2023).

Theoretical framework

For the analysis of the narratives presented in this article, I will rely on two main concepts from sociology and criminology: hostile environment (Hiam et al, 2018), and border spectacle (Franko, 2021). I want to employ these theories to specifically situate punitive bordering practices of Italy and the UK and the harms they cause to migrants within this historical moment of neoliberal political and economic crisis, highlighting the function that the infliction of these harms and their representation serves for the maintenance of nation-state and supranational neoliberal authorities such as the EU (Mayblin, 2017; Franko, 2021).

Hostile environment

Hostile environment literature focuses on how policies and bordering practices make life difficult for those undesired (migrants and asylum seekers), and forces them into irregular and/or illegal lives until they get incarcerated or deported to be excluded from the public eye and public life (Fabini, 2019; Bhatia, 2020). The hostile environment for migrants is not only made by clear bordering policies; this approach to understanding bordering in fact sheds light on how borders are reiterated both

physically (away from the border region) and through bodies and policies in other aspects of civil and criminal law (Fabini, 2017).

An example of the reiteration of borders, or 'everywhere borders' (Paasi, 2009) was evident during the COVID-19 lockdown in the UK. Because of government health measures, charities working with the homeless population gained additional funding to make sure people were not rough sleeping. However, part of this funding was also more or less explicitly tied to the reporting of rough-sleeping irregular migrants (Taylor, 2019). Inquiries showed how this made homeless irregular migrants scared of reaching out to charities, hiding in more precarious and dangerous living conditions that resulted in worsened health conditions (Taylor, 2019). Thus, although these policies were not framed as border policies, they had the direct effect of creating disproportionately harsher living conditions for migrants (Bosworth, 2019). The focus of research on hostile environment is to start from the experiences of those targeted, to highlight the driving factors to these harmful narratives.

Border spectacle

Border spectacle literature also employs this focus, with two main differences. Firstly, border spectacle research not only looks at the experiences and consequences of policies and practices, but stresses the importance of analysing their representation, the narratives that evolve from this, and the effect they have on further policies and practices (Franko, 2021). Secondly, border spectacle literature directly relates bordering violence and harms to nation–state authority, legitimacy and powers. Adapting from Nail (2016), border spectacle literature shows bordering violence as a tool of the nation–state to assert its powers and its existence altogether.

The main theory advanced by border spectacle literature is that as governments lose their powers they will struggle to maintain their legitimacy and authority. Bordering, citizenship, and rights on the land remain the few powers that these nation-states have not extensively privatised. Therefore, they will stress their powers in these sectors in order to show off their force in the face of crisis (Brown, 2019). Observing Italy and the UK, we can notice how increasingly stringent bordering policies have in fact emerged, and re-emerged in the face of economic crisis, cost-of-living crisis, and political crisis that resulted in further privatisation of many sectors such as healthcare, education, transport, energy and more (Brown, 2019).

Using these two theories to analyse smuggling narratives will help highlight their role in policy development, how they directly or indirectly relate to violent and harmful practices, and how these narratives stem from and feed into the wider context of the weakening of nation-states in this moment of neoliberal crisis.

Methodology

To do so, I carried out a thematic analysis of a wide number of media, political and legal texts. For this article's scope, length and aim, I used data from the past two years (2022 to 2024). The legal items I selected are the Illegal Immigration Bill and Cutro Decree, while the political narratives include inquiries, investigations and critiques of these two particular pieces of legislation, at times with their previous and related working legislations (Anti-Trafficking Bill in the UK and the Salvini

Decree in Italy). The media items included are also related to the pieces of legislation, together with news of important events highlighting the harms and consequences of these legislations.

Italy's Cutro Decree and dl 158/2024

Italian Cutro Decree (dl² 20/2023) is a direct evolution of the infamous and internationally sanctioned (Ikonomu, 2024) Salvini Decree (dl 113/2018³). Through its legal jargon, the Salvini Decree stated that anyone 'aiding' the irregular entry of migrants to Italian shores is considered a criminal smuggler, including NGO personnel, and including anyone identified as driving a dinghy, even if part of the migrant group themselves. The scapegoating of NGOs created harsher conditions for search and rescue operations at sea and led to an increased number of injuries and deaths in Italian waters. Through the Cutro Decree, the consequences of the provisions from the Salvini Decree are being ignored and are making a comeback, justified by a narrative focusing on the need to stop international criminal organisations involved in smuggling and trafficking. Moreover, through the Cutro Decree, a new door was open for the legalisation and implementation, at the systemic level, of the externalisation of the asylum processing and temporary accommodation of asylum seekers in Albania, through the subsequent dl 158/2024. At the time of writing (summer 2024), this decree has been ruled inadmissible by the Italian High Court, but, as it will be shown below, the current government has publicly declared they are going to carry on with the implementation of these measures despite any ruling of any court (Tribunale di Roma, 2024).

UK's Illegal Immigration Bill and the Safety of Rwanda Bill

The Illegal Immigration Bill⁵ aiming at deterring irregular arrivals has been shown to ignore the duty of asylum of the UN Charter of Human Rights (Statewatch, 2023). According to the EU Commission, the UNHCR, and UK Courts ruling, the Bill realistically extinguishes any possibility for asylum for most people whose applications should be accepted, since the actual safe passageways only allowed around one percent of refugees to have their applications processed since the passing of the Bill (Migration Observatory, 2024). The Illegal Immigration Bill also opened the door to a project of externalisation of the UK border with the introduction of the UK-Rwanda agreement. According to this agreement, people whose application for asylum was rejected would be deported to Rwanda, regardless of their origin, ties in other countries, and with no possibility of appeal to the decision (Migration Observatory, 2024). This legislation has been highlighted at EU and international level to be dangerous for the human rights of many asylum seekers (Migration Observatory, 2024). The UK government replied to these concerns with the Safety of Rwanda Bill, which simply stated that despite these concerns the government chooses to regard Rwanda as a safe country for deportation regardless of any parameter.⁷

The analysis below will focus on showing the importance of the parts of these legislations using populist and often misinforming narratives around smuggling to

justify the implementation of legislation hindering search and rescue operations, solidarity initiatives, and promoting border externalisation.

Themes and analysis

As explained above, hostile environment narratives create harsh living conditions for undesired groups. Smuggling narratives in these pieces of legislation serve this purpose. Although they seem to be aimed at specific small groups, both in Italy and the UK there is evidence on how they are de facto used as a deterrent method for migrants trying to enter national territory irregularly, albeit not being effective.

Regarding the Illegal Immigration Bill, the Joint Committee on Human Rights (JCoHR) said specifically on the Bill's position on smuggling:

... increasing security and deterrence may encourage people to 'attempt riskier means of entering the UK' those 'riskier means' could include entering by boat 'clandestinely' (not calling for rescue if they need it). ... deterrent policies may not be effective in breaking the business model of people smugglers. (House of Commons, House of Lords JCoHR, 2023: 22)

Similarly, evidence provided during court proceedings in Sicily showed how the Cutro Decree is leading to the over-incarceration of migrants through their criminalisation of smugglers', who are effectively not part of any organisation, but are often exploited simply as drivers of the boats. (Montella, quoted by Camilli, 2023). Yet, despite numerous rulings and provisions, both in the UK and in Italy narratives reiterating hostile environment are still present in the legislation and political discourse, to empower and to justify them as tools of harm. These tools ignore evidence against them through securitisation narratives.

Securitisation

Securitisation narrative can be tied to established theories such as moral panics (Cohen, 1972; Armillei, 2017), where episodes and phenomena get taken out of context and often blown out of proportion, creating a widespread narrative of danger in order to justify the increase of policing powers, surveillance, and often the limitation of civil liberties (Brown, 2019). We have seen such narratives in bordering regimes tied to terrorism threats, to national identity threats, as well as job and economic security threats (Yuval-Davis et al, 2019).

Smuggling narratives were first used in this context around 2016, shortly after the beginning of the so-called 'refugee crisis' in the EU. In Italy, they quickly became a substitute for terrorist tropes, because they not only seemed more relevant, but they could be tied to two important developments in policies. Firstly, smuggling narratives aided the clear division between victims and perpetrators, helping to justify increasing policing powers and increasing presence of FRONTEX, not only in patrolling operations, but also at processing centres such as hotspots. Secondly, smuggling narratives could be used to criminalise NGOs who carried out search and rescue operations at sea, blaming them for the failing of policies and international accords to halt irregular entries (Dadusc and Mudu, 2022).

These narratives stopped in Italy after the failing of the Salvini government and his subsequent trial for kidnapping, following his direct orders to deny a port to the NGO ship Open Arms (Ikonomu, 2024). However, since the Meloni government came to power the consensus seems more stable and these narratives have returned in the Cutro Decree. They are also mirrored in the Illegal Immigration Bill in the UK.

However, the UK did not have the same experience, as it was not a comeback of a narrative, but the rising of it. The UK did not really have to deal with irregular entries, especially by boat, before Brexit, and most of the narratives on migration before then were regarding the Dublin III Regulation on refugee quotas with the EU. Some reference to smuggling was mentioned, for example, in the 2016 Home Office response to the EU Action Plan on smuggling, but it was indeed only in response to the EU. The tone of the Home Office response was already tense, as the Action Plan came into being around the time of the Brexit referendum, but the government seemed not too worried about the themes raised by the EU, or at least not too worried that these themes would become so relevant in their political discourse.

For example, in response to Paragraph 38 of the Action Plan, drawing from research distinguishing smuggling from trafficking, the Home Office replied:

The Government agrees that the evidence suggests that the majority of individuals moving into and across the EU as part of the migration crisis tend to be smuggled rather than the victims of human trafficking. However, we must remain alert to the risk as it is difficult to estimate the true scale of human trafficking. (Home Office, 2016: para 38)

The tone of the Action Plan paragraphs is professional, citing research, as narratives at the EU level often do. At a first glance, the Action Plan makes it sound like the smuggling narrative was used by the EU on the back of data in order to provide support to 'vulnerable migrants' and 'victims of trafficking'. However, the points raised in their paragraphs about the differentiation between smuggling and trafficking actually twist the research in order to make the definition of 'victim' more stringent, behind the pretence that understanding smuggling is difficult.

Research differentiating smuggling and trafficking (Fekete, 2018) emerged in migration and bordering literature to obtain the contrary result, to show that smuggling acts on a spectrum; that not all those falling under the legal definition of smugglers are in fact part of organised criminal networks; that the notions of victimhood and vulnerability need to be more nuanced; and that they are not fully grasped at the legislation level.⁹

In this case, not only did the EU use this research to widen the umbrella of people falling under the criminalisation of smuggling, but the response of the Home Office seemed to understand it as also giving a green light for national policies to reflect this with the EU blessing. This was not implemented into policy right away, as irregular entries into the UK were still low, and the presence of NGOs in the Channel and in Calais were also not as prominent. However, as I will highlight below, the same narratives have now surfaced in the Illegal Immigration Bill.

In paragraph 39, the Action Plan draws back on matters of human rights, suggesting that agencies (including FRONTEX) should deal with issues of smuggling from a humanitarian perspective, recognising the vulnerability of people involved in the process. The Home Office replied: 'We believe that action should be taken against

all facilitators of organised immigration crime and that EU partners understand the variety of types of facilitators that might be involved in people smuggling' (Home Office, 2016: para 39). Both the Action Plan words and the Home Office response are important here. As the UK was already in the process of moving away from EU regulation through Brexit, it also remained an EU Charter of Human Rights (EUCHR) signatory. Both the EU and the UK needed to address this. However, the response of the Home Office glossed over the need for support for vulnerable migrants involved in smuggling, and reframed the wording to make it an 'immigration crime'. As per EUCHR but also the UN Declaration of Human Rights (UNDHR), no irregular entry in a nation-state is a crime until asylum claims are processed. This already seems to be subtly ignored in the Home Office reply in 2016, but is even more blatantly disregarded by the Illegal Immigration Bill, starting with its name.

Although it is older than the rest of the data, I have included this document because it offers a good time comparison with current narratives, and it can help to highlight repeating patterns both in the Italian and UK narratives. I am aware that the document above does not include direct analysis of Italian narratives, but it is important to note that after the Dublin III regulation ¹⁰ and the start of Triton operations, ¹¹ EU presence on Italian borders managed operations at an extensive level. Therefore, in this specific period, EU narratives also had a huge impact on policy and practices on the border in Italy, although operations were still carried out by Italian border and coast guard and policing bodies.

This however changed with the FRONTEX 2019 mandate, and the presence of EU-employed armed guards in actual patrolling operations is now a reality. In the case of Italy, this would not be received too well at the public and political level, and it has received almost no coverage in mainstream media. Instead, since the Cutro Decree and the Illegal Immigration Bill, smuggling narratives are back as a focus. These laws aim to frame smugglers, not as terrorists, nor as victims or vulnerable people, but as criminals, and when that is not possible, as exploiters of national resources. We see this in the presentation of the Illegal Immigration Bill:

The only way to come to the UK for asylum will be through safe and legal routes and, as we get a grip on illegal migration, we will create more of those routes. We will work with the United Nations High Commissioner for Refugees to identify those who are most in need so that the UK remains a safe haven for the most vulnerable. We will also introduce an annual cap on numbers, set by Parliament in consultation with local authorities to determine our capacity, and amendable in the face of humanitarian emergencies. (Gov.uk, 2024a)

This piece highlights the evolution of the discourse. The body working with the UK now is not the EU, so they cannot take the blame for the quotas from Dublin III, but rather these quotas are decided with the UN directly, which tends to have a more technical sound to the narrative, compared to the loss of faith in the EU management system. Moreover, there is already an implicit distinction in the narrative, which will later be reiterated. There are people who are 'most' in need, and for whom the UK is a 'safe haven', while the rest cannot have any claim. The narrative again becomes dichotomous, between those in need and those exploiting what is later referred to as a 'broken system'.

The UK asylum system is broken These journeys are extremely dangerous ... and ... unnecessary, as those making these crossings are coming from safe countries such as France ... and are ... manipulated by people smugglers who charge them thousands of pounds, before using this money to fund other serious crime. (Gov.uk, 2024a)

Again, migrants crossing the Channel irregularly are portrayed as wanting to exploit the system in the UK, without really having a need to do so. Yet the Bill fails to address how the increasing number of deaths at sea, which are not mentioned, relate to most people not having a need to embark in notoriously dangerous crossings. Here, the EU is also indirectly named again, as it is noted that crossings are coming from France, therefore people should have applied for asylum there as it is a safe country. According to this line of reasoning, the UK would then not be liable for providing asylum, simply because of its geographical position and its nature as an island. This cannot be legal as per the UNDHR, but the Illegal Immigration Bill still implicitly makes this argument. The smuggling narrative presented in this passage offers a thread to sew all the previous arguments together. It presents a patronising angle on migrants who cross, denying their agency but at the same time not recognising them as victims, offering a clear name for those to blame: smugglers. Moreover, it implies that people choosing to cross have large sums of money, not addressing the exploitation they endure to be able to pay their fees that has been extensively covered in research (Nail, 2016; Bosworth, 2019). Lastly, it concludes the trope of associating people smuggling with the notion of 'serious crime', opening the door to the application of heavy criminal policies in the framework of anti-smuggling. In fact, they then continue:

We will strengthen detention powers ... this will make it easier to remove people. We will put a stop to the endless merry-go-round of spurious, last-minute legal challenges that are used as a delay tactic to stop those with no right to be in the UK from being removed This will mean that trafficking victims are protected, while preventing people from abusing our modern slavery laws to thwart their removal from the UK. (Gov.uk, 2024a)

Detention powers for the removal of people are explicitly mentioned, tapping into the securitisation narrative. Additionally, the use of catchphrases such as referring to legal challenges as 'spurious merry-go-rounds', together with unsupported claims that practitioners exploit the modern slavery system, is something that was already evident, together with the criminalisation of NGOs in Italy in 2016. Securitisation not only serves as a tool for the hostile environment against undesired populations such as migrants, but also as a key to create narratives that make the criminalisation of political opposition acceptable and desirable.

The Cutro Decree also brings back these tropes in the Article 12bis, which directly criminalises those who are driving boats as smugglers, and considers them responsible for injuries, lesions and deaths, even in international waters.

Whoever ... promotes, directs, organises, finances or (in any way) carries out the transport of foreigners in the territory of the State ... is punished with imprisonment from twenty to thirty years if the fact results, as an unintended consequence, in the death of more than one person ... and serious or very serious injuries to one or more people. 12 (Cutro Decree, Article 12bis)

Italian legislation, like many continental Europe civil law books, is particularly wordy, and not readily accessible to laypeople. This is already an issue that makes the analysis of legal documents in Italy something that requires extra attention, as political discourse can be hidden through technical jargon. Nevertheless, even in the long sentences of the article, the securitisation narrative is present through the important keywords such as 'illegally procuring entry', and the criminalisation and sensationalisation of deaths at sea.

In Italy, even more directly than in the UK, illegal entry cannot be defined as such because of international laws and EU laws and the EUCHR. The sensitivities emerging from this wording have been highlighted in NGO reports (Dal mare al carcere, 2024), and they are simply serving the purpose of opening the door to the use of heavier policing methods to manage the border. More directly, the Cutro Decree also serves to modify previous pieces of legislation, extending funding to return detention centres until 2025, and allowing detention periods to be extended up to 45 days. Perhaps more importantly, it also extinguishes any possibility of claiming asylum for anyone who committed a crime under Italian law. Although this last measure is not directly related to smuggling, Article 12bis makes it easy to criminalise those on the boats, thereby extinguishing their asylum rights. In 2022, at least 268 people were arrested as smugglers for driving the boats they were on while crossing, and it is expected that more of them will be incarcerated after the Cutro Decree (Dal mare al carcere, 2024).

As outlined above, securitisation narratives are one of the tools to create a hostile environment against an undesired population, in this case migrants. However, this narrative needs to be justified at the ideological and political level; it needs to have some consensus among the citizens of the state implementing the policies. Securitisation policies often get justified through moral panics. During the past decade, the moral panic of terrorism was used extensively, but in more recent years, the scapegoating of migrants as being the cause and enhancers of economic crises has become the main narrative to justify securitisation (Brown, 2019). Therefore, dividing 'economic migrants' from asylum seekers who are in need of protection, and painting 'economic migrants' as responsible for crises in the welfare system and working sectors, are two sides of the same coin, resulting in the narrative that more policing at the border will result in better economic conditions for the national populations (Brown, 2019). Communication from the UK government on the Illegal Immigration Bill reads:

It's not fair that those coming to the UK with the intention of becoming economic migrants are able to exploit our asylum system, which should be prioritising those whose lives are genuinely at risk. It's also not fair on the British taxpayer. The current broken asylum system currently costs the UK some £3 billion a year and rising, including nearly £6 million a day on hotel accommodation. (Gov.uk, 2024a)

In Italy, similar discourse can be found in declarations by the Prime Minister Giorgia Meloni, who said: The crux of the matter [migration] is one: to distinguish economic migrants from those who have a right to international protection; two very different

subjects that for years have been guiltily overlapped ... favouring those managing human trafficking' (Giorgia Meloni, 28 June (Palazzo Chigi, 2023)).

Exceptionalism

Both in hostile environment literature and in border spectacle literature harmful police bordering practices need to be justified at the political and cultural level, but sometimes even more importantly at the legal level. As already highlighted, antismuggling policies included in the Illegal Immigration Bill and in the Cutro Decree have been criticised at the national and international level for their lack of compliance with international laws and potential sensitivities to human rights (UK Parliament, 2023). This is not the first time since 2015 that bordering regimes show disregard for international treaties, justifying dangerous policies by means of exceptionalism.

The first step was painting 2015 as a 'migration crisis'. In Italy, the narrative at the time did not focus on the causes of the increase in irregular migration, including the thinning of legal corridors from North Africa, especially Tunisia and Libya (Dal mare al carcere, 2024), and the spark of new conflicts, many of which saw the involvement of UN and European weapon manufacturers (Dal mare al carcere, 2024). It was instead painted as an exceptional and unpredictable phenomenon that required special measures to be applied. These special measures, however, did not remain temporary but became institutionalised, and they normalised the narrative of emergency to become the norm in the bordering regime (Fabini and Ferraris, 2025).

During the Salvini government, these measures also included the criminalisation of NGOs' search and rescue operations as framed within the smuggling legislation (Ikonomu, 2024). This lead to the infamous Open Arms case, for which Salvini is now under trial for kidnapping, after having denied a port to the NGO ship for many days, while children and vulnerable people were present on board. To this day, not only does Salvini refuse to deny his act, but he claims that it was in the interest of national security given the exceptional circumstances of the 'migration crisis' of those years. As Ikonomu puts it:

One of Salvini's tweets, relating precisely to Open Arms, accused the NGO of holding 'the immigrants on board (including fake sick people and fake minors) hostage'. As emerged in the trial, in the hearing phase, it was confirmed that there [actually] were also minors on the ship. Among Salvini's prides is 'having collaborated in the arrest of smugglers' ... those who drive boats and dinghies that cross the Mediterranean. ¹³ (Ikonomu, 2024)

At the time of the events, the EU Commission distanced itself from Salvini's position, and reminded us that 'EU law does not allow the criminalisation of humanitarian activity' (EU Commission, 2024). This is still the position of the EU Commission today, at least on paper. However, we can see the same exceptional narratives as the EU takes on more duties in the bordering of EU external borders.

As already mentioned, FRONTEX has moved, per its last mandate, from a management body working in cooperation with Member States' coast and border guards, to a deployed body of over 20,000 armed guards, directly employed by the EU (Statewatch, 2022). This change has been widely criticised for various reasons.

Firstly, the FRONTEX 2019 mandate had been halted for a long time due to an ongoing investigation into the accountability system of the agency, and perhaps more gravely because of legal action for damages at the EU Court of Justice for refoulement acts in the Mediterranean (Aversa and Gkliati, 2021). This made NGOs, activists, academics and legal practitioners question the legitimacy of the agency in taking on even more responsibility at the border. Moreover, as direct EU employees, the armed guards would have immunity, even when deployed and acting within a Member State jurisdiction, creating issues of accountability (Statewatch, 2022).

Thus, the application of the new measures and powers for FRONTEX, resulting in a billion's-worth of new budget, needed to be justified. This is where even the EU Commission used exceptionalism as a narrative, framing the need for FRONTEX presence on the ground as necessary to combat smuggling: 'The way these smugglers operate is continuously evolving So, we need new legislation and a new governance structure. We need stronger law enforcement, prosecution, and a more prominent role for ... Frontex' (EU Commission, 2024).

The fact that the EU started reiterating this narrative, which it was opposing just a few years previously, shows the fallacy of the narrative in justifying these measures. If this narrative has been applicable for almost a decade now, how can this be an exceptional circumstance? The systematic nature of the growing migration flows toward Europe has been highlighted by numerous researchers (Brown, 2019; Franko, 2021), and the repressive response at the border has now been uncovered as a signal of the weakening of legitimacy and authority of neoliberal bodies and nation–states (Brown, 2019; Aliverti, 2021). The relationship between nationalist political uprising and the exploitation of these narratives is tight, and we can observe it wherever national or supranational authorities are challenged. This is also true for the UK, which is for the first time in decades alone in managing its borders, which have now become external borders of the EU.

A 'radical response' is needed according to the government (Gov.uk, 2024b) and it is shown in the Illegal Immigration Bill as access to the Modern Slavery legislation and Anti-Trafficking conventions for migrants, including those appealing asylum decisions. Without the backing of international accords, as happens within the EU, both for the Commission and also for Italy, the UK is now facing more resistance to the application of these exceptional measures, including from the House of Commons and House of Lords Joint Committee (2023: 8), who specified that whatever the circumstances the government has to face, there will be no permission to derogate from Article 4 ECHR. This is relevant for smuggling narratives, because the recognition as potential vulnerable people or victims themselves of many people who might fall under the legal definition of smugglers is embedded in this legislation, as per article 26 of the Anti-Trafficking Convention (Crown Prosecution Service, 2023). Pressure is coming also from the UNHCR, who describe the Illegal Immigration Bill as a 'worrying precedent for dismantling asylum-related obligations that other countries, including in Europe may be tempted to follow' (UNHCR, 2023).

Externalisation of borders

The last theme that emerged from the legislation and the narratives around it is probably the one that has received the most attention in the UK through all the

coverage of the Illegal Immigration Bill. The externalisation of borders is something that NGOs and legal practitioners in the EU have been working against for a long time. It is not new that FRONTEX has presence on the ground in third-countries which are not part of the EU (Statewatch, 2022).

However, this narrative seemed shocking to the British climate when the so-called Rwanda plan was put forward in the Bill. It is still being discussed at the political level, after a number of rejections from the House of Lords (Badshah, 2024). Nevertheless, this is still presented as being the plan to deal with the increase of irregular entries, and its justification still revolves around the criminalisation of smugglers.

The overarching purpose of this bill is to deter dangerous and illegal journeys to the United Kingdom, which are putting people's lives at risk, and to disrupt the business model of people smugglers who are exploiting vulnerable people The Migration Economic Development Partnership (MEDP) with the Government of Rwanda is one part of our wider programme of work to stop the boats. (Gov.uk, 2024b)

Similar narratives are also present in Italy and at the EU level. However, the lack of backing from a body such as the EU, whose legislation is becoming more and more in line with hostile environment policies, makes it harder for the UK to surpass international legislation. Moreover, being external to the EU and the Dublin III regulation also limits the options for the externalisation of the processing of migrant asylum claims. The UK can count on the influence of the Commonwealth, which Rwanda only joined in 2009. On the other hand, Italy, with the backing of the EU and the externalisation of FRONTEX operations, has a long history of agreements to try and move its borders towards Libya. As Medici Senza Frontiere (MSF, 2022) reported, Libya Accords, renewed again in 2022, increase the risk of human rights violations, knowingly and willingly funding overcrowding of prison-like reception and deportation centres. Libya Accords have been criticised for years, and they do not create consensus at the narrative level. This is why, in the Cutro Decree, article 12bis, Italy tries to take this into its own hands, expanding its jurisdiction through smuggling criminalisation: '... if the conduct is aimed at procuring illegal entry into the territory of the State, the crime is punished according to Italian law even when the death or injuries occur outside that territory' (dl 20/2023 article 8, modifying previous article 12 bis).

This is problematic at the legal level for many reasons. Firstly, the only piece of legislation that would give Italy jurisdiction in international territory is the Palermo Convention of 2006. This convention specifies that the jurisdiction is only valid when there is evidence that the first crime committed in international territory is tied to the intention of committing a second crime in Italian territory. Moreover, the Cutro Decree does not reference the convention at all (Azzollini, 2023).

The willingness of Italy to detain more people in deportation centres, however, clashes with the current overcrowding situation at the centres (2024). Because of this, Italy is also looking at the externalisation of the processing of migrants for deportation. The most recent accord has been signed with Albania, for the use, for free, of land in Albanian territory to build more deportation centres, and giving Albania the responsibility of processing 3000 migrants per month (Camera dei Deputati, 2024).

Similarly to Rwanda, which has only recently joined the Commonwealth, Albania is also in the process to being considered for accession to the EU, after having initially applied in 2009 and joined the list for consideration in 2014. We can see here dynamics of colonial powers, creating accords among countries with clear imbalance of power in the negotiations. In fact, Rama, Albania's Prime Minister, described its joining of the accord as a sign of Albania 'behaving like an EU member state' and sharing a burden that 'the EU should face together as a family' (Rama, cited in Taylor, 2024). On the other hand, Meloni, Italy Prime Minister, depicted the accord as a cooperation 'against illegal immigration and human trafficking' (Meloni, as cited in Taylor, 2024).

Conclusion

So far, this article has used a comparative approach to show how anti-smuggling narratives are causing harm in the UK and in Italy, focusing on the role these legislations play in a time of authority and legitimacy crisis of both national and supranational entities. These narratives are situated within a bordering regime that is reiterated 'everywhere' through practices of bordering that include actors far beyond policing bodies and border and coast guards (Paasi, 2009; Fabini, 2019). However, these regimes are resisted by activists, NGOs, academics and legal practitioners. Especially in the past five years, the main legislations analysed (Cutro Decree in Italy and the Illegal Immigration Bill in the UK) have been put to the test, and substantial evidence exists to oppose them. Still, they are justified at the political level through narratives of securitisation, exceptionalism, and externalisation of borders.

The comparison between Italy and the UK on their anti-smuggling narratives shows the disregard for evidence and national and international judicial systems that both countries have when building policies on these narratives. Moreover, it also showed the role of the EU as a crucial actor, acting more and more like a nation-state, albeit not having accountability or governmental legitimacy on the ground. Building from border spectacle literature (Franko, 2021), the EU, as well as Italy and the UK, are using bordering regimes and violent measures to assert their power and gain the legitimacy at the political level that they do not have at the legal level.

In a widespread neoliberal economic crisis, the ultimate European neoliberal authority, the EU, is finding itself less relevant as nationalist, right-wing governments take the majority of its Member States. Just as it is described in border spectacle literature (Aliverti, 2021), the EU's only tool to assert its power, as well as its relevance to Member State governments, is that of bordering, especially through FRONTEX. This is something that the EU Commission has been working on since 2014, using FRONTEX de facto presence on the ground as policing power. This is justified through an exceptionalism narrative that paints the EU as being needed in a migration emergency, although this 'emergency' has now been present for almost a decade.

Securitisation also serves to divide those considered 'economic migrants' from asylum seekers who are in need of protection. 'Economic migrants' are painted as responsible for crises in the welfare systems and working sectors, resulting in the narrative that more policing at the border will result in better economic conditions for the national populations (Canning, 2019). The consensus arising from this narrative plays on citizens' unmet social and economic needs, distracting public perception from the crisis of hyper-privatised systems. At the national level, in the environment of nationalist right-wing governments, securitisation narratives not only serve as a

tool for hostile environments against undesired populations such as migrants, but also as the key to create narratives that make the criminalisation of political opposition acceptable, possible, and even desirable.

Lastly, the continuous attempt by nation-states to externalise their border management, especially under far-right governments, also shows the colonial mindset that bordering regimes help reiterate (Mayblin, 2017). Both R wanda for the UK, and Albania for Italy, are not equal partners, and having Italy and the UK have a part of their bordering regime in their territory, is an open door (at least initially) for indirect influence of these nations in their territories.

Notes

- ¹ Hotspots are first reception centres as conceived and mainly funded by the EU. They are not only present in Italy, but also in Spain, Greece, and other bordering Member States with a high rate of irregular entries. In Italy, the most famous one is that on the island of Lampedusa.
- ² Decreto Legge is the abbreviation used for legislation in Italy.
- ³ https://www.gazzettaufficiale.it/eli/id/2023/05/05/23A02665/sg.
- ⁴ https://www.gazzettaufficiale.it/eli/id/2024/10/23/24G00177/SG.
- ⁵ https://www.gov.uk/government/collections/illegal-migration-bill.
- ⁶ https://publications.parliament.uk/pa/bills/cbill/58-04/0038/230038.pdf.
- ⁷ At the time of writing the so-called Rwanda policy for deportation has been deemed inadmissible; in theory there should be no flights scheduled for deportation. However, lawyers and initiatives on the ground are not always able to stop the flights which are still in operation. More developments will come in the near future and the government will have to respond to their decisions. At the current time, there has been no development on the legal side, to the best of my knowledge.
- ⁸ One of the main EU documents on matters of asylum and migration, which, among other measures, give yearly quotas to Member States to process asylum applications based on arrivals and means of each Member State.
- ⁹ If this research can still be used for the very aims it is trying to oppose, it is worth asking, among academics, whether a repositioning of our collective agendas and writing are necessary, as more and more research gets ignored, and is only used when twisted for dangerous policies. However, this is a question beyond the scope of this article, although I hope more discussion among scholars can spark from this.
- ¹⁰EU agreement mainly revolving around creating 'quotas' for the management, accommodation and processing of asylum applications among EU Member States.
- ¹¹Sea operations substituting search and rescue operations by the Italian coast guard. These operations did not permit search and rescue operations in international waters, and instead served the purpose of patrols. They were coordinated by FRONTEX.
- ¹²Chiunque ... promuove, dirige, organizza, finanzia o (in qualunque modo) effettua il trasporto di stranieri nel territorio dello Stato ovvero compie altri atti diretti a procurarne illegalmente l'ingresso nel territorio dello Stato, ovvero di altro Stato del quale la persona non è cittadina o non ha titolo di residenza permanente ... è punito con la reclusione da venti a trenta anni se dal fatto deriva, quale conseguenza non voluta, la morte di più persone ... e lesioni gravi o gravissime a una o più persone.
- ¹³Uno dei tweet di Salvini, relativo proprio alla Open Arms, accusava l'ong di tenere «in ostaggio gli immigrati a bordo (fra cui finti malati e finti minorenni)». Come è

emerso nel processo, nella fase del dibattimento, è confermato che sulla nave c'erano [effettivamente] anche minorenni.

Tra gli orgogli di Salvini l'«aver collaborato all'arresto di scafisti» ... chi guida le imbarcazioni e i gommoni che attraversano il Mediterraneo.

Funding

This work was supported by the Migration and Movement SRT PhD scholarship at the University of Kent.

Acknowledgements

I would like to thank Liberi Nantes sport and community centre in Rome, the Napier Drop-in, Samphire Project and Care4Calais volunteers in Folkestone, and all the migrant families who are collaborating in my PhD research and who provided invaluable insight for the development of this article.

Conflict of interest

The author declares that there is no conflict of interest.

References

Aliverti, A. (2021) Policing the Borders Within: Globalisation, State Power and Magic, Oxford: Oxford University Press.

Armillei, R. (2017) Boat arrivals and the 'threat' to Italian national security: between a moral panic approach and the EU failure of creating a cohesive asylum-seeking policy, *Journal of Applied Security Research*, 12(1): 141–59. doi: 10.1080/19361610.2017.1228423

Aversa, I. and Gkliati, M. (2021) Frontex investigations: what changes in the EU border agency's accountability?, https://www.statewatch.org/analyses/2021/frontex-investigations-what-changes-in-the-eu-border-agency-s-accountability/.

Azzollini, V. (2023) Le falle giuridiche del reato contro scafisti e trafficanti voluto da Meloni, Domani, 13 March, https://www.editorialedomani.it/fatti/decreto-cutro-migrazione-reato-pene-aumentate-ewmr62tu.

Badshah, N. (2024) Rwanda deportation bill set back again after House of Lords votes, The Guardian, 6 March, https://www.theguardian.com/uk-news/2024/mar/06/rwanda-deportation-bill-set-back-again-after-house-of-lords-votes.

Bhatia, M. (2020) The permission to be cruel: street-level bureaucrats and harms against people seeking asylum, *Critical Criminology*, 28(2): 277–92. doi: 10.1007/s10612-020-09515-3

Bhatia, M., Poynting, S. and Tufail, W. (eds) (2023) *Racism, Violence and Harm: Ideology, Media and Resistance*, London: Palgrave Macmillan.

Bosworth, M. (2019) Immigration detention, punishment and the transformation of justice, *Social & Legal Studies*, 28(1): 81–99. doi: 10.1177/0964663917747341

Bosworth, M., Franko, K. and Pickering, S. (2017) Punishment, globalization and migration control: 'get them the hell out of here', *Punishment & Society*, 20(1): 34–53. doi: 10.1177/1462474517738984

Brown, W. (2019) In the Ruins of Neoliberalism: The Rise of Antidemocratic Politics in the West, New York: Columbia University Press.

¹⁴Europa dovrebbe affrontare unita, come un'intera famiglia.

¹⁵Contro l'immigrazione clandestina e il traffico di esseri umani.

- Camera dei Deputati (2024) Protocollo Italia-Albania in materia migratoria, https://temi.camera.it/leg19/provvedimento/protocollo-italia-albania-in-materia-migratoria.html.
- Camilli, A. (2023) Chi sono davvero gli scafisti, L'Essenziale, 17 March, https://www.internazionale.it/essenziale/notizie/annalisa-camilli/2023/03/17/scafisti-italia.
- Campesi, G. and Fabini, G. (2020) Immigration detention as social defence: policing 'dangerous mobility' in Italy, *Theoretical Criminology*, 24(1): 50–70. doi: 10.1177/1362480619859350
- Canning, V. (2017) Gendered Harm and Structural Violence in the British Asylum System, London: Routledge.
- Canning, V. (2019) Abject asylum: degradation and the deliberate infliction of harm against refugees in Britain, *Justice, Power and Resistance*, 3(1): 37–60.
- Care4Calais (2023) The illegal migration bill and the politics of fear, https://staging.care4calais.org/news/the-illegal-migration-bill-and-the-politics-of-fear/.
- Chan, D., Perera, S. and Pugliese, J. (2018) 'Same story, different soil': the deathscapes project gets under way, Open Democracy, 4 November, https://www.opendemocracy.net/en/same-story-different-soil-deathscapes-project-gets-under/.
- Cohen, S. (1972) Folk Devils and Moral Panics, London: Routledge.
- Crown Prosecution Service (2023) Modern slavery and human trafficking: offences and defences, including the section 45 defence, https://www.cps.gov.uk/legal-guidance/modern-slavery-and-human-trafficking-offences-and-defences-including-section-45.
- Dadusc, D. and Mudu, P. (2022) Care without control: the humanitarian industrial complex and the criminalisation of solidarity, *Geopolitics*, 27(4): 1205–30. doi: 10.1080/14650045.2020.1749839
- Dal mare al carcere (2024) Quadro normativo, https://dal-mare-al-carcere. info/2-quadro-normativo/.
- European Commission (2024) Irregular migration and return, https://home-affairs.ec.europa.eu/policies/migration-and-asylum/irregular-migration-and-return_en.
- Fabini, G. (2017) Managing illegality at the internal border: governing through 'differential inclusion' in Italy, *European Journal of Criminology*, 14(1): 46–62. doi: 10.1177/1477370816640138
- Fabini, G. (2019) Internal bordering in the context of undeportability: border performances in Italy, *Theoretical Criminology*, 23(2): 175–93. doi: 10.1177/1362480618819802
- Fabini, G. and Ferraris, V. (2025) No deportation but no leniency here: multi-faceted bordered penality in Italy, in J.A. Brandariz, G. Fabini, C. Fernández-Bessa and V. Ferraris (eds) *Border Criminologies from the Periphery*, London: Routledge, pp 39–61. doi: 10.4324/9781003333166
- Fekete, L. (2018) Migrants, borders and the criminalisation of solidarity in the EU, *Race & Class*, 59(4): 65–83.
- Franko, K. (2021) The two-sided spectacle at the border: Frontex, NGOs and the theatres of sovereignty, *Theoretical Criminology*, 25(3): 379–99. doi: 10.21428/51bae76e.114f4785
- Gashi, L., Pedersen, W. and Ugelvik, T. (2019) The pains of detainment: experience of time and coping strategies at immigration detention centres, *Theoretical Criminology*, 25(1): 88–106. doi: 10.1177/1362480619855989

- Gov.uk (2024a) Illegal migration bill: overarching factsheet, https://www.gov.uk/government/publications/illegal-migration-bill-factsheets/illegal-migration-bill-overarching-factsheet.
- Gov.uk (2024b) Safety of Rwanda (asylum and immigration) bill: factsheet, https://www.gov.uk/government/publications/the-safety-of-rwanda-asylum-and-immigration-bill-factsheets/safety-of-rwanda-asylum-and-immigration-bill-factsheet-accessible.
- Hiam, L., Steele, S. and McKee, M. (2018) Creating a 'hostile environment for migrants': the British government's use of health service data to restrict immigration is a very bad idea, *Health Economics, Policy and Law*, 13(2): 107–17. doi: 10.1017/S1744133117000251
- Hillyard, P. (2021) Preface, in V. Canning and S. Tombs (eds) From Social Harm to Zemiology: A Critical Introduction, London: Routledge.
- Home Office (2016) Government's response to the House of Lords EU Committee Inquiry on the EU action plan against migrant smuggling, https://www.parliament.uk/globalassets/documents/lords-committees/eu-home-affairs-subcommittee/eu-action-plan-against-migrant-smuggling/government-response-migrant-smuggling.pdf.
- House of Commons, House of Lords Joint Committee on Human Rights (2023) Legislative Scrutiny: Illegal Migration Bill, Twelfth Report of Session 2022–23, https://committees.parliament.uk/publications/40298/documents/196781/default/.
- Ikonomu, M. (2024) Le cose che non tornano nelle dichiarazioni di Salvini nel processo open arms, *Domani*, 12 January, https://www.editorialedomani.it/fatti/fact-checking-processo-open-arms-matteo-salvini-wwa3n3z6.
- Mayblin, L. (2017) Asylum After Empire: Colonial Legacies in the Politics of Asylum Seeking, Lanham, MD: Rowman & Littlefield.
- MSF (Medici Senza Frontiere) (2022) Accordi Libia-Italia: la campagna #nonsonodaccordo contro il rinnovo, 26 October, https://www.medicisenzafrontiere. it/news-e-storie/news/accordi-libia-italia-rinnovo/.
- Nail, T. (2016) Theory of the Border, Oxford: Oxford University Press.
- Paasi, A. (2009) Bounded spaces in a 'borderless world': border studies, power and the anatomy of territory, *Journal of Power*, 2(2):213–34. doi: 10.1080/17540290903064275
- Palazzo Chigi (2023) Consiglio Europeo, le comunicazioni del Presidente Meloni alla camera dei deputati, Youtube, https://www.youtube.com/watch?v=6QtlYJfN72M.
- Statewatch (2022) Evaluation of the 2019 Frontex regulation: Statewatch submission to the European Commission call for evidence, 3 October, https://www.statewatch.org/analyses/2022/evaluation-of-the-2019-frontex-regulation-statewatch-submission-to-the-european-commission-call-for-evidence/.
- Statewatch (2023) EU: interoperable migration and police databases: a data trove for Frontex, 6 February, https://www.statewatch.org/news/2023/february/eu-interoperable-migration-and-police-databases-a-data-trove-for-frontex/.
- Taylor, D. (2019) Charity says sorry for giving rough sleepers' details to Home Office, The Guardian, 5 November, https://www.theguardian.com/uk-news/2019/nov/05/charity-st-mungos-says-sorry-for-giving-rough-sleepers-details-to-home-office.
- Taylor, A. (2024) Accordo Italia-Albania sui migranti: via libera del parlamento albanese, Euractiv, 23 February, https://euractiv.it/section/capitali/news/accordo-italia-albania-sui-migranti-via-libera-del-parlamento-albanese/.

- Migration Observatory (2024) Q&A: The UK's former policy to send asylum seekers to Rwanda, 25 July, https://migrationobservatory.ox.ac.uk/resources/commentaries/qa-the-uks-policy-to-send-asylum-seekers-to-rwanda/.
- Tribunale di Roma (2024) Sentenza 42251 R.G. 2024, https://effimera. org/wp-content/uploads/2024/10/DECRETO-Tribunale-di-Roma_18-ottobre-2024.pdf.
- UK Parliament (2023) Widespread human rights failings must be addressed in illegal migration bill, Human Rights Committee finds, 11 June, https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/195605/widespread-human-rights-failings-must-be-addressed-in-illegal-migration-bill-human-rights-committee-finds/.
- UNHCR (United Nations High Commissioner for Refugees) (2023) UK illegal migration bill: UN Refugee Agency and UN Human Rights Office warn of profound impact on human rights and international refugee protection system, 18 July, https://www.unhcr.org/news/press-releases/uk-illegal-migration-bill-un-refugee-agency-and-un-human-rights-office-warn.
- Yuval-Davis, N., Wemyss, G. and Cassidy, K. (2019) Bordering, Cambridge: Polity Press.