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To cite this article: Luigi Achilli (11 Jun 2024): The missing link: the role of criminal groups in migration governance, Journal of Ethnic and Migration Studies, DOI: [10.1080/1369183X.2024.2363844](https://doi.org/10.1080/1369183X.2024.2363844)

To link to this article: <https://doi.org/10.1080/1369183X.2024.2363844>



Published online: 11 Jun 2024.



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The missing link: the role of criminal groups in migration governance

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ABSTRACT

The article investigates the role of transnational criminal groups in migration governance. Although this topic has attracted increasing global attention due to the intersection of migration management and crime, academic research remains limited. Most studies tend to view criminal groups merely as threats to migration governance or as peripheral actors. The article advocates for a significant paradigm shift in conventional debate on transnational governance. Rather than merely viewing criminal groups as global challenges for various actors to tackle, we should acknowledge them as pivotal actors influencing these challenges. Based on empirical research on migrant smuggling and human trafficking in the Greece and Libya, the article sheds more light on the complex relationships between these criminal actors, state actors and other key stakeholders in migration governance. It shows how criminal groups not only disrupt but also actively shape migration governance, and may even play a crucial role in the functioning and reproduction of its legal apparatus. In so doing, the article transcends both mainstream perspectives that view crime as a mere challenge to migration governance and critical studies that frame the role of crime in migration governance solely in terms of a state-driven process of ‘criminalization’.

ARTICLE HISTORY

Received 21 September 2023

Accepted 30 May 2024

KEYWORDS

Migration governance;
crime; criminalization;
externalization; Libya

Introduction

In recent years, international organizations and media outlets have denounced and documented instances of criminal involvement in migration control and policies. In the Mediterranean, Europe’s externalization policies have come under scrutiny for enabling migrant smuggling and human trafficking groups to exert control over migration (Lighthouse Reports 2023; United Nations 2018), with the Italy-Libya Memorandum standing out as a prominent example (Micallef and Reitano 2017; Urbina 2021). Another notable instance concerns the European asylum system. EU law does not allow for the regulated arrival of asylum-seekers, so their entry into EU territory is usually irregular (European Parliament 2023). Since the very large majority of those who reach Europe with irregular channels relies on human smugglers (Europol 2016), it is evident that the European

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This article has been corrected with minor changes. These changes do not impact the academic content of the article.

asylum system is partly dependent on migrant smuggling for its functioning (see also Costello 2020).

However, the increasing number of reported incidents starkly contrasts with academic research in this area. To date, there remains a significant gap in systematic empirical research and theoretical understanding of the role of criminal groups in shaping ‘transnational migration governance’ – understood as the constellation of policies, practices and discourses steering international mobility (Geddes and Scholten 2015). While scholars have used terms like infrastructure (Xiang and Lindquist 2014), business (Andersson 2014b), apparatus (Feldman 2011), or market (Nyberg-Sørensen 2012) to highlight the multifaceted and network-based nature of migration governance (Levi-Faur 2012), their focus has predominantly been on states and licit actors, such as international organizations (Andrijasevic and Walters 2010), NGOs (Massari 2021), private companies (Infantino 2023) and civil entities (Walters 2015).

This article aims to bridge this gap by closely examining the impact of transnational criminal groups on migration governance. It argues for a fundamental reevaluation of the prevailing narratives and perceptions regarding the involvement of criminal elements in this sphere. Instead of perceiving these groups solely as global challenges to be addressed by national and international entities, it is crucial to recognize them as key players within the domain of transnational migration governance. Their role often extends beyond mere disruption, actively influencing migration governance, at times even playing a critical role in the functioning and reproduction of its legal frameworks.

Theoretical notes

The involvement of criminal groups in migration governance is generally positioned within two contrasting theoretical frameworks: the first views criminal groups as disruptors of states’ attempt to steer migration governance, while the second considers crime and criminalization as central to state migration control.

Building on Manuel Castells’ influential work (2010), the first body of studies has argued how globalization has empowered not just multinational corporations but also increasingly sophisticated transnational criminal organizations – including human smugglers, human traffickers and drug cartels (e.g. Miklaucic and Brewer 2013; Naim 2010; Shelley 2014). The problem is characterized as so serious and spreading so rapidly that it now represents a first priority security threat to states and the international order (cf. Andreas 2015). Profiting on the vulnerability of vulnerable people, these groups thrive in migration crises, creating in the process global syndicates of organized crime that are swiftly bypassing, evading, corrupting and subverting state control and authorities (OECD 2016). For example, EUROPOL (2016) estimated that criminal networks facilitating irregular migration earned between EUR 3 and 6 billion in 2015, while the UNODC noted that these networks in Central America generate about 7 billion dollars (Blancas Madrigal 2017). This narrative, prevalent in academic and policy circles, significantly influences public and political discourse, serving as a key moral and political justification for consolidating more authoritarian forms of border security and migration policies (Pallister-Wilkins 2015).

In contrast, a critical literature challenges the idea that crime is fundamentally antithetical to governance by focusing on the role of states in ‘manufacturing’ illegality

(De Genova and Peutz 2010). If we are currently observing an intersection of crime with migration, it is argued, it is vital to acknowledge how crime is produced in the first place (Aas 2013, 26). A large body of literature now exists on the criminalizing dimension of powerful policy and border regimes (Bigo and Guild 2005; De Genova and Peutz 2010; Fassin 2001). A strand of this scholarship has investigated how states frame migration as a crime and a security issue by mobilizing legal, ideological and coercive powers typically reserved for criminal or military threats (Aliverti 2013; Pickering, Bosworth, and Aas 2015; Stumpf 2006; Van der Woude, Barker, and Van Der Leun 2017). Studies illustrate how ‘criminalization’ serves as a specific, yet globally connected strategy for governing migration (Cuttitta 2018; Moreno-Lax 2018). Research has also shown how states have not only fuelled but also rhetorically exploited criminal phenomena such as migrant smuggling (Achilli 2018; Perkowski and Squire 2019), human trafficking (Anderson and Andrijasevic 2008), drug trafficking (Sanchez and Zhang 2018) and terrorism (Achilli and Tinti 2019) to justify increasingly stringent and discriminatory migration agendas.

This article builds upon this second body of literature. In this respect, critical scholarship has the merit of first illuminating the connections between legal and illegal frameworks. Most importantly, by meticulously documenting the process of criminalization, this scholarship has demonstrated how ‘crime’ is integral to the process of governing migration across the world (Achilli and Álvarez-Velasco 2024). In this sense, critical studies have explored how legal frameworks ‘produce’ crime through a top-down process of criminalization. Here, however, I call for a reversal of this approach. While it is valid to argue that states steer migration governance through a process of criminalization, it is equally crucial to explore how crime – specifically, the outcome of a series of political, historical and social processes that lead to criminalization (Aas 2013) – influences migration regimes and the broader context of migration governance. In other words, what we lack is a deeper understanding of how crime ‘loops back’, influencing these migration regimes that potentially generated or molded it. To this end, this article shifts the focus on what I refer to as the ‘illegal production of legality’: how criminal phenomena shape the legal apparatus governing migration. Through this lens, we observe how interactions between criminal activities and regulatory measures reciprocally influence each other, co-constructing the landscapes that define migration governance.

Such an approach calls for a recasting of criminal entities not merely as peripheral actors or disruptive forces, but as central actors that can both operate within and actively reshape the scaffolding of migration governance. Other strands of literature have recognized the often-overlooked premise that criminal systems, while potentially damaging and corrosive, can also paradoxically facilitate governance. A key concept in this context is ‘hybrid governance’, where non-state actors, such as militias and criminal organizations, undertake roles typically associated with state entities (Meagher 2012). Drawing from Tilly’s view of state formation as a violent and disputed process (Tilly 1985), studies have recognized the productive interplay between formal and informal entities in governance (Boege et al. 2008; Hagmann and Péclard 2010; Raeymaekers, Menkhaus, and Vlassenroot 2008). Studies in criminology, sociology, and anthropology suggest that these hybrid structures may give rise to significant instances of ‘criminal governance’ (Lessing 2021). Governance is indeed considered a fundamental feature of organized crime (Campana and Varese 2018), with some criminal groups offering elaborate

systems of law, justice and social welfare, as evidenced in São Paulo (Willis 2015), Nicaragua (Rodgers 2006), New York (Bourgois 2003) and Rio de Janeiro (Arias 2009). Despite potential negative effects on the rule of law, studies have also documented the role of criminal organizations in state transitions to democracy in Latin America (Cruz 2011), Russia (Volkov 2016) and Sicily (Gambetta 1996).

It is important to acknowledge that the application of this theoretical approach faces various geographical and conceptual challenges when adapted to different contexts (Meagher 2012) – primarily due to its state-centric analytical perspective and its predominant focus on countries from the so-called Global South. This raises questions about the effectiveness of such a framework in fully capturing transnational governance dynamics where multiple state and non-state actors interact at the crossroads of diverse geopolitical interests. That notwithstanding, this theoretical framework provides clear advantages in examining migration governance, particularly in understanding the complex and occasionally relationship between legitimate and criminal systems. Indeed, common biological metaphors that depict criminal groups as parasites infesting the body politic may be ethically problematic and could fundamentally mischaracterize the nature of the relationship. Instead, a symbiotic coexistence between state and criminal orders might be at times a more accurate representation, and perhaps more prevalent than previously assumed (Lessing 2021).

In order to demonstrate this, in what follows, I first concentrate on the role of criminal groups – mostly human traffickers – in the European Union's externalization of border controls and asylum responsibilities to third countries. Secondly, I focus on the day-to-day interactions between migrant smugglers and border guards in a western city of Greece.

Research focus and methodology

To effectively show the role of criminal groups in migration governance, it is essential to first establish clear and concrete definitions of the main actors at the centre of this investigation: transnational criminal groups. To this end, this paper offers a broad yet simple definition. While agreeing with Paoli and Vander Beken that the term can be ambiguous, given the spectrum of criminal actors and activities it may include (Paoli and Beken 2014, 14), the study intentionally avoids the existing controversy over the definition of 'organized crime'. Instead, it anchors the term in an empirical context, using it as a comprehensive, non-theoretical category for groups commonly perceived by domestic and international law as functioning outside the realm of law, such as migrant smugglers and human traffickers. Clearly, a central methodological issue pertains to the differentiation between criminal and non-criminal phenomena. The demarcations between state institutions and illegality in migration governance are often blurry (Aliverti 2023; Super 2024), particularly in light of the neoliberal ideologies promoting state privatization and deregulation (Aas 2013, 12). This complexity is further compounded by incidents of state officials engaging in extortion, kidnapping and even the murder of migrants (Slack and Martínez 2021). Nevertheless, for the sake of analysis, it remains vital to distinguish between direct state policies and the mechanisms by which organized criminal groups operate, engendering their own parallel governance structures (Campana and Varese 2018).

This groundwork sets the stage for the empirical core of this study, which zeros in on two distinct case studies: Libya and Greece. These case studies have been chosen based on their unique and significant roles in the European migration regime, each presenting a distinct manifestation of criminal involvement in migration governance. The selection was driven by the objective to illustrate how criminal groups operate within and influence migration systems in varied geopolitical contexts. The intention was not to make direct comparisons but to draw out core principles and allow for the emergence of theory from diverse criminal phenomena.

For the Libyan case, the analysis primarily consists of a comprehensive review of grey literature and secondary sources. The review process included an assessment of documents encompassing governmental and non-governmental reports, academic studies and media articles spanning from the signing of the Memorandum of Understanding (MoU) between Italy and Libya on migration in 2017–2013. This timeframe was selected to capture the evolving legal frameworks, policies, and practices post-MoU, a critical period for understanding changes in migration governance influenced by external European pressures. The grey literature was sourced through systematic searches of databases and repositories pertinent to migration studies and international law. This approach ensured a broad and representative collection of sources, providing a robust basis for analyzing the impact of criminal organizations on migration within the Libyan context.

This comprehensive evaluation was supplemented with 22 interviews conducted in Italy specifically with Sub-Saharan and West African migrants during the latter half of 2023. These migrants were initially disembarked at Italian hotspots, known as ‘prima accoglienza’, where preliminary reception and processing take place. Subsequently, they were relocated to reception centres, referred to as ‘seconda accoglienza’, where ideally more sustained assistance and integration efforts are carried out. I also interviewed six members of humanitarian organizations (local and international NGOs and UN agencies) in charge of migrants protection in Libya.

For the Greek case study, the analysis is grounded in empirical research largely derived from interviews and participant observations involving Syrian refugees and smugglers located in Southern Italy (during the periods March–April 2015, June–September 2021 and 2022) as well as in Western Greece and Eastern Turkey (April, October, and December 2015; July 2016; January–February 2017). The study incorporated interviews with 31 men and women who were previously smuggled across the Eastern and Central Mediterranean routes. Additionally, six interviews were conducted with border and immigration officials and humanitarian workers in Italy and Greece. Notably, seven interviews were conducted with smugglers in Greece, who served various roles such as organizers, passeurs, lookouts and intermediaries. In Italy, interactions were held with four ‘retired smugglers’ who were active during the so-called Albanian Crisis (1991–2001), as well as with various actors in the smuggling market, including hotel operators and taxi drivers, who provided services to both smugglers and migrants.

Interviews were conducted with migrants, members of humanitarian organizations, border and immigration officials, and smugglers. Efforts were made to include a wide array of viewpoints to triangulate information and provide a balanced understanding of the roles and perceptions of various stakeholders in migration governance. To access research participants, I have relied on existing social contacts in the field, established through prolonged fieldwork in the areas and previous engagement with two Italian

NGOs specializing in working with migrants and refugees in Greece and Italy. Subject recruitment was initially centred around migrant facilities and accommodation centres set up by the international community in the two countries. Research participants' social networks were then utilized as referral sources for additional subjects, thereby extending the network of participants through their friends, acquaintances, and family members. Given that smuggling is not generally considered reprehensible within migrant communities, some smugglers were amenable to sharing their experiences.

The analysis of interview transcripts in this study was conducted using inductive methods, primarily 'thematic content analysis' and 'narrative inquiry'. The former allowed for the identification of recurring themes and patterns throughout the collected data as I searched the materials organically. This method facilitated the extraction of fundamental principles from the diverse contexts of Libya and Greece, thereby enabling a synthesis of theory and empirical insights. The second phase of the analysis, narrative inquiry, was crucial in exploring the personal and collective narratives of those engaged in the migration process, including migrants, smugglers and authorities. This method provided insight into the realities of those participating in or affected by the mechanisms of transnational migration governance. It illuminated how these individuals perceive and narrate their own roles and experiences within the broader context of migration governance.

This study's qualitative approach is designed to delve deeply into the specific, context-bound interactions between criminal groups and migration governance. Focusing on detailed, localized insights rather than broad generalizability allows for a comprehensive exploration of unique dynamics often overlooked in more quantitatively driven research paradigms. Moreover, the use of ethnographic methods in Greece brings us closer to the lived experiences and realities of the actors involved, providing an essential layer of understanding to the complex phenomena of migration governance intertwined with criminal activities. This methodological choice enhances the depth and richness of the data, allowing to access vulnerable (irregular migrants) and hard to reach population (smugglers).

However, the methodology adopted in this study presents certain limitations. While extensive fieldwork was feasible and conducted in Greece, the volatile security situation in Libya precluded similar research activities. As a result, the understanding of the Libyan context depends primarily on an analysis of secondary sources, online interviews with members of humanitarian organizations in Libya, and face-to-face interviews with migrants conducted in Italy. This approach inevitably limits the scope of direct observational data and results in a partial representation of the migrants' experiences and perspectives. The reliance on testimonies from migrants who successfully reached Europe introduces a selection bias, omitting the voices and experiences of those who did not complete the journey. This limitation is significant, as it constrains our ability to fully understand and portray the varied and potentially divergent experiences of all migrants navigating through Libya's complex migration routes.

The loopback: EU externalization measures and criminal group involvement in migration governance in Libya

The past few years have witnessed a significant shift in the EU's approach to externalize its migration control (Cusumano and Riddervold 2023). As early as 2017, the European

Council emphasized enhancing cooperation with countries of origin and transit, prioritizing the training and equipment of the Libyan Coast Guard and Navy (LCGN) (EUTF 2020, 2). In 2018, Italy, with EU backing, signed a Memorandum of Understanding with Libya to curb Mediterranean migrant crossings in exchange for financial aid. The LCGN, trained by Italy and the EU's EUNAVFOR Med mission, would intercept migrants from Tripoli, while Italy agreed to finance migrant centres and repatriation efforts (Maccanico 2020). Malta followed suit in 2020, promising technology and increased EU funding to Tripoli for border control and anti-trafficking measures (State-watch 2020). By 2021, the EU had invested approximately €455 million in Libya, including €60 million for border and migration management, contributing to new search and rescue vessels and a Maritime Rescue Centre (MRCC) backed by Italian equipment and vessels (Maccanico 2020; Nielsen 2021)

As the partnership unfolded, these arrangements came under fire for suspected collaborations with criminal groups in smuggling and trafficking to prevent migrants from reaching Europe (Maccanico 2020; Porsia 2017; Scavo 2019; UNHCR 2023). Scholars have attributed this collaboration to the complexities of post-revolutionary Libya's political economy, where militias emerging from the civil war competed for control over various economic activities, including migrant smuggling (Raineri 2023). In this context, the influx of EU funds aimed at curbing migration created a lucrative opportunity, and aligning with international anti-smuggling initiatives emerged as a strategic manoeuvre for local groups (Micallef, Horsley, and Bish 2019). Local militias and other key players in the smuggling market co-opted EU's material and financial support by aligning with anti-smuggling efforts, recognizing that continued cooperation with smugglers could undermine their legitimacy (Raineri 2023). This shift did not reduce crime but rather resulted in an increased focus on the exploitation of migrants (Andersson 2018).

In Libya, this change has frequently resulted in the overlapping of migrant smuggling with human trafficking.¹ This convergence, as noted by a humanitarian activist in the country, often involves the same individuals and groups both smuggling migrants out of Libya and exploiting them within its borders (see also Micallef, Horsley, and Bish 2019): 'the same people may be involved in both smuggling migrants out of Libya and exploiting them within the country'. However, the extent and nature of these criminal groups, as well as their interactions with migrants, remain subjects of debate. On one hand, studies suggest these groups operate as highly organized, extensive criminal networks engaged in exploiting migrants (e.g. Raineri 2023). On the other, some researchers advise caution in exaggerating the extent of these networks, highlighting their more ad hoc and individually-driven nature (Sanchez 2020).² Either ways, a vibrant market focused on the containment of migrants has flourished in Libya, partly due to the substantial amount of funds channelled through the EU (Al-Dayel, Anfinson, and Anfinson 2023; Maccanico 2020; Micallef, Horsley, and Bish 2019; Moreno-Lax 2018).

Ibrahim, a young Moroccan man, shared his experience during our conversation at an SAI centre in southern Italy,³ explaining the shift in the system:

Before, *smugglers* [*muharrabin*] made money by quickly getting you out, but now, they profit from making you spend as much time as possible in Libya. [...] I was seventeen when I first tried crossing into Melilla, but it was too difficult. I heard Libya had more smugglers. Now, it's becoming well-known that it's hell over there, but at that time I didn't know ...

The boy detailed his journey from Morocco to a Libyan coastal town, and his subsequent detention in a smugglers/traffickers' connection house.

I spent five months locked in a big room with fifty other migrants, waiting to leave. We attempted the crossing three times; the first was [a failure] because of the bad weather, and the second, the Libyan coast guard turned us back. If I had known earlier, I wouldn't have attempted it. It wasn't like this before. Things have changed now; you spend more time in Libya, and the longer you're there, the more you face exploitation, arrests, and the need for more money. This is a big problem for many Africans [Sub-Saharan migrants]. They're often treated worse than Arabs. But it's not just racism ... it's also because they're outside [connection houses] longer, either because they don't have money for the smugglers and need to work to pay for their journey, or they want to stay in Libya to work. If you don't stay hidden, you risk getting arrested or else. Then they demand 4000 euros to release you, not including what you've already paid for the journey. And if you can't pay, you belong to them.

Against this background, detention centres in the country quickly emerged as one effective way to contain migrants en route to Europe. Migrants found in Libya or on their way from the country, lacking the necessary legal documents, are apprehended and confined to facilities where conventional procedures for release are not in place. Their confinement might occur in official locations overseen by the Directorate for Combating Illegal Migration (DCIM) or in unofficial facilities governed by smugglers, traffickers and militias. The line between the two is often blurred, as numerous DCIM-run centres are also under the influence of autonomous militias and criminal entities (Al-Dayel, Anfinson, and Anfinson 2023). A humanitarian activist, involved in monitoring human rights violations in Libyan detention centres, emphasized that:

The problem is that it's a mix of militias and security forces. Formality and informality is mixed. These are not really clear. Some militias because they have power, they seize important position within security forces. For example, in Tripoli we have three or four militias who got the power, and all of them are involved in security forces and managing migration. At the same time, they are involved in trafficking and smuggling.

The exact number of official detention centres remains undisclosed. Estimates from international non-governmental organizations place the count between 17 and 35 (Al-Dayel, Anfinson, and Anfinson 2023). In 2017, the IOM identified 25 active, 18 inactive, nine closed, and two DCIM-supervised facilities under maintenance (Global Detention Project 2018).

Furthermore, DCIM's efforts to shut down centres with human rights abuse histories have often led them to be reopened unofficially under the full control of trafficking and militia groups (Global Detention Project 2018). The shift from 'official' to 'unofficial' detention centres heralds the delegation of migration control to extra-legal entities such as criminal groups. In this transition, migration control become more intricate, giving rise to spaces where already diluted official regulations and norms are further weakened in favour of a politic of containment at all costs. Unlike official centres where there might be some level of governmental regulation and accountability, albeit severely insufficient, these centres operate in a vacuum of formal authority (Al-Dayel, Anfinson, and Anfinson 2023) where detainees are held indefinitely (Global Detention Project 2018; Maccanico 2020; Malakooti 2019). The reality of these conditions was captured in an interview I conducted with a young man from Edo Province, Nigeria, who endured a long journey to Libya and, then, Europe:

As soon as I got to Libya, they grabbed me and threw me in this place, run by “trafficienti”⁴ in the middle of nowhere. I didn’t know what happened to me, nobody knew. It is impossible for the outside world to know what happened to you, to make sure you are still alive. You think prisons [official detention centres for migrants] are bad? These places, they’re worse, like you’re swallowed up by a black hole. Couldn’t even call my family, couldn’t ask for help. In that prison, many people disappear. These trafficienti guys, they’d come, pick people out. Some, they take you to the sea, make you pay more. And others, the bad ones, they sell you, like to militias or whoever. They put you to work—building stuff, cleaning their houses, working on their farms. I was lucky: one of the trafficienti managed to get in touch with my family, demanded more money. They sent it, and that’s how I got out.

It is important to acknowledge that the proportion of migrants detained is only a fraction of the total migrant population in Libya. Recent studies advise against overestimating the number of detainees in Libyan detention centres (Sanchez 2020). Informal estimates from 2023 suggest that approximately 10,000 migrants are held in these centres, both official and unofficial, compared to an estimated total of 700,000 migrants in Libya, most of whom reside in urban areas (author’s interviews with UN officials operating in Libya).

However, the potential exposure to violence by smugglers-traffickers and the risk of detention – regardless of its actual occurrence – looms large in the imaginary of many migrants or would-be migrants, significantly deterring other migrants from travelling in the first place. FitzGerald categorizes migration into remote deterrence, which inhibits initial departure, and immediate physical deterrence, impacting illegal border crossings in the transit country (FitzGerald 2020). There is substantial evidence of the efficacy of remote deterrence (FitzGerald 2020), suggesting that the narrative of violence in Libya may play a significant role in dissuading potential migrants from undertaking irregular journeys.

The notorious reputation of detention centres and the violent criminal groups in the country, rapidly disseminated among migrant communities, has deterred many from choosing the Libyan route, instead opting for less perilous paths such as the Eastern Mediterranean route. Ibrahim’s decision to avoid the Libyan route upon learning of its dangers exemplifies this trend. Similarly, many migrants I interviewed during my research along the Eastern Mediterranean route expressed a preference for a lengthier but safer detour over the perilous Libyan passage, now appropriately referred to as *al-tariq al-mawt* (the death road) due to its high risks and fatality rate. A case in point is Amir, a young man from Iraq in his early twenties, who shared his journey from Turkey to Italy in 2021. Amir had initially contemplated the Libyan route, drawn by the prospects of a swift passage to Europe, but stories from fellow travellers soon altered his course.

Back home in Iraq, you hear terrible things about Libya [...]. I also met people who had firsthand experience with Libya. They talked about harsh treatment, not just the danger of the sea. I never saw Libya myself, but the stories ... they were enough to convince me. In the end, I chose a route I felt I had more control over, even if it meant a longer journey and more expensive.

In summary, the transition from smuggling towards more exploitative practices has significantly altered the experiences of migrants, many of whom now are stuck in the country or avoid the dangerous Libyan route altogether. While the long-term impact

of this change in migration patterns remains controversial (Moreno-Lax 2018, 134), its short-term effectiveness is evident. Despite a recent increase in arrivals via the Central Mediterranean route (UNHCR 2023), externalization measures have generally curtailed departures following key agreements with Libya. This was markedly observed in the steep decline in maritime migrations post-July 2017, subsequent to the signing of the MoU between Italy and Libya (Cusumano and Riddervold 2023).

The game: smuggling networks and state complicity in intra-European migration

In the case of Libya, a market aimed at exploiting migrants has emerged, partly as a response to the funding and resources channelled by the European Union and its member states. This market has increasingly leaned towards the exploitation of migrants. Notably, this development has aligned with the European Union's externalization goals of containment and deterrence. However, in other regions, criminal activities may inadvertently serve state objectives by facilitating or promoting the movement of migrants rather than their immobility (cf. Carling 2002).

In Leprara (a pseudonym), a town on the northwesternmost frontier of Greece, ferries departed daily bound for various Italian ports. These boats would transport not only passengers but also motor vehicles, including a significant number of trucks. Hidden within or beneath these vehicles, undocumented migrants found a place to hide. They are there to play the 'game', a term used by both migrants and smugglers for this high-stakes attempt at evading border control (see also Andersson 2014a; Belloni 2019). Success meant arrival in Italy, and from there, a 'secondary' journey through Schengen territory to a northern European country.

During the day, migrants waited in the hills facing the town in the company of their smugglers. At the time of my research, Ali was the head of the smuggling groups. A robust-but-agile Iraqi man in his fifties, he had represented a group of Iraqi nationals on the hill for several years, before reaching the Greek port as an irregular migrant himself and beginning collaborating with the previous smugglers for rounding up some money.

The majority of Ali's time was spent with the migrants, including the nights. They rested during the day in the hills, often in open air or makeshift shelters, congregating under the trees to prepare tea and wait for nightfall. When evening arrived, the migrants would descend from the mountains and approach the port, slipping through a purposefully disguised opening in the dock's fence. Ali and his partners orchestrated the operations with spotters examining port security's vulnerabilities and random checks. They instructed the migrants on the best methods to sneak into the waiting trucks. The intricacies of the operation were found in the various hiding spots within the trucks, each heavy goods vehicle having its unique characteristics. Space near the rotor in a refrigerated truck might have been utilized for hiding; another method could have involved cutting the fabric of a truck's tarp and descending into it, hiding within the cargo itself. Once positioned within the truck, individuals' fates were left to chance. Failures in this high-risk endeavour could lead to discovery, resulting in temporary detention or, in more severe circumstances, serious physical injury if individuals lost their grip on the truck's axle.

Ali explained to me how he and his crew would take care of migrants. ‘Once a person pays, I take care of them until they have managed to cross the Italian border or that of any other European state’, he says.

A thousand euros is what I ask, but eight hundred for friends. Expensive, you may think. But we don’t just stuff them into a truck and wish them luck. No, we make sure they have food until departure. We stay weeks, even months, with them on the hills. We give them bread, water, even a warm meal if the night is cold. It’s all included in the ticket if they pay in advance. We take care of them. There are rules in the hills. No violence, no mistreatment. It’s a pact between us and them.

Research has shown that migrant smuggling is not organized in a vertical, mafia-style hierarchy (Zhang, Sanchez, and Achilli 2018). Instead, it involves a multitude of groups with rudimentary hierarchies, operating autonomously, who might cooperate with one another for short periods of time (Campana 2018). Many of these are largely managed by immigrants and asylum seekers who have remained in a state of illegality for protracted periods of time (Achilli 2018). Illegality breeds illegality. Paradoxically, however, illegality can also guarantee legality. ‘If I am here, it is thanks to the smugglers, not to Italian democracy’, Rami, a political refugee who obtained asylum only after arriving in Italy illegally, once told me. In the absence of legal and protected entry routes, illegal channels remain the only viable ones to reach Europe and, for those entitled to it, to obtain political asylum.

Like all legitimate business enterprises, Ali’s group had an anecdote that explained the group’s genesis – a foundational story, if you will. All began five years ago’, Ali explained me:

The port was wild then. Different groups, different gangs, all fighting for control. We were like dogs fighting over a piece of meat. There was no order, just chaos. People [migrants] crowding in front of the port’s dock walls day and night, wandering around the city. Disorder was everywhere, thefts in homes increased, town folks complained, and the police ... They were losing face.

Tensions among different smuggling groups escalated, leading to violent conflicts, including stabbings. This unrest drew police intervention, resulting in arrests and the dispersal of those not detained. However, this series of events did not signify the cessation of Ali’s operations in the region.

Ali recounted a conversation with the police chief, who proposed that he and his group temporarily leave the area for a few months. This suggestion was aimed at de-escalating the current tensions, with an implicit understanding of their eventual return. Ali interpreted this as an expression of confidence from the authorities in his group’s discreet and efficient approach to their activities. He remarked, ‘We are trusted because they know we manage our work well, discreetly, better than the others’.

Further, Ali revealed that his dealings were not only known to the Greek security services but also tacitly approved by them. He believed this unspoken endorsement was due to the role his group played in regulating migrant flow in both the port and the town. This regulation, he argued, served as a crucial buffer, preventing the social, economic, and political disruptions that could arise from migrants staying too long in the town.

Remarkably, this dynamic gains significance within the broader context of the Dublin Regulation, which mandates that the first EU country an asylum seeker enters is responsible for their asylum claim. It’s conceivable that authorities might see Ali and his group’s

activities as somewhat alleviating the state's burden of managing migrants. This perspective is supported by the consistent objections from frontline member states regarding the disproportionate strain the Dublin system exerts on their infrastructure and domestic asylum systems (Achilli 2018).

Ali's associate, Karwan, corroborated this perspective, acknowledging their familiarity with the local police: 'Yes, they know us'. He elaborated on their role with a tone of self-assured pride:

They depend on us to keep things under control at the port and in town. They know exactly what's happening. In this port, it's us who run the business, with the police turning a blind eye. [...] This understanding, it's because of the role we play. If these people [migrants] stayed too long in the territory, it could create problems [for the local residents]. So, we are always careful not moving too many people, choosing only a few at night who goes down from the mountains. It's not easy, but it's how things work here.

When I met Ali and his group, they discreetly run their operations in Leprara. They strategically limited their activities to a small number of migrants each night, aiming to maintain a low profile and mitigate risks for both themselves and the migrants. Despite these precautions, however, their operations faced certain limitations. Migrants discovered by port authorities were often returned to Ali, sometimes after a brief detention. Ali described this interplay between smugglers and law enforcement using a game of cat-and-mouse analogy, as he phrased it, akin to 'Tom and Jerry' cartoons: It's like a game of Tom and Jerry. We're always on the move, trying to stay one step ahead, while the police seeks to catch us. [...] They have to play their part, of course – chasing us, seeking for migrants [hidden in the trucks]. But they never arrest us as long as we stick to the rules [namely, smuggling people].

Interestingly, Aldo, a former member of the Italian military Police Force 'Guardia di Finanza', made similar observations regarding the alleged interactions between Ali's groups and local authorities. During my interview with him in a coastal town in southern Italy, he expressed concerns about the Greek authorities' awareness of activities in Leprara and other locations along Greece's northwestern coast:

They [Greek authorities] know, oh, they know all too well what is happening, but they do very little. They all know who the smugglers are. They have the intelligence, the evidence. They can act, stop them. But they don't. [...] The logic is clear: smugglers, you see, they are helping them, in a way, to get rid of a problem they don't know how to handle—migrants. By law [Dublin Agreements] migrants should stay there [in Greece]. To them, the smugglers can be part of a solution, a means to an end. They are facilitating the removal of migrants. I can't say I agree with it, not morally. But I can understand it. I can see the problem, the compromise they have to make.

Ali's experience, characterized by a tacit understanding between smugglers and law enforcement, mirrors a broader trend observed in migrant smuggling. As other studies have demonstrated (e.g. Super 2024), it is somewhat of an open secret that smuggling activities seldom occur without the implicit approval of border authorities. The reasons for this approval vary, encompassing financial motives, such as bribes, as well as more strategic considerations. By permitting some degree of smuggling, authorities may alleviate the challenges of migrant accumulation, thereby indirectly dispersing the population to reduce local strain. Moreover, this approach can align with broader

geopolitical interests, transforming migrant issues into leverage in international negotiations. An illustrative example is a Syrian smuggler who was active in Western Turkey but ceased operations following the EU-Turkey agreement in March 2016.⁵

After the EU-Turkish deal, the government began to make our lives impossible. They received funding from Europe to retain migrants within Turkey, so we were no longer useful to them. [...] Before it was different ... Before that, they needed them [migrants] gone, away from their sight. I helped them do just that. Those migrants, lost and wandering, we shipped them away. I was useful to the government. They [authorities] knew my name. I was no stranger to them. Police officers and I even used to share breakfast more than once a week. [...] I was part of something, you see? Part of a system that worked for both sides ... Actually three sides! Migrants would reach their destinations, I'd get the money and got to help people, and the government had someone helping sorting out migrants. But the agreement between Europe and Turkey changed everything. The [Turkish] government got money from Europe to keep migrants. They [Turkish authorities] began to make our lives impossible. The same men I used to share my morning tea with turned their backs on me. I wasn't helping them get rid of migrants anymore; I became a threat all of the sudden.

This account, along with Ali and Aldo's narrative, reveals a layered interplay between formal regulations and informal practices at Europe's borders. Here, interactions between temporarily aligned actors – such as smugglers and border authorities – are driven by a variety of imperatives, encompassing economic interests, moral considerations, political pressures, and also the complexities of complying with European migration policies and international agreements.

The illegal production of legality

As we transition from our empirical explorations in Libya and Greece, the notion of the 'illegal production of legality' becomes clearer. The case studies reveal how smuggling and trafficking groups not only play a crucial role in legitimizing the EU's migration agenda in the Mediterranean (see, for example, Moreno-Lax 2018), but also in enabling the operation and effectiveness of formal migration policies.

Aihwa Ong's work can provide an analytical framework to understand these mechanisms. In her book 'Neoliberalism as Exception' (Ong 2006), Ong debunks the traditional view of state sovereignty as a monolithic concept. Contrary to the belief that neoliberalism diminishes the state's role, she explores how Asian states uniquely manage territory and citizenship by subcontracting part of sovereign power to third parties. Ong introduces the concept of 'graduated sovereignty' (Ong 2006, 78) to describe the varying degrees of state control over different parts of national territory, influenced by their role in the global market. This leads to varied legal frameworks within a country, with some areas like special administrative regions and free trade zones having different rules than others. These areas often see reduced regulations and increased influence of non-state entities. Ong's perspective reveals that states can achieve certain goals, like economic development, even in areas where the normal rule of state law is suspended. This effectively counters the common notion of state power as a zero-sum game, where activities like smuggling or border liberalization are often perceived as weakening state's authority.

The concept of 'graduated sovereignty' can be applied to understand the EU's migration policy and its engagement with criminal groups. Just as Ong describes certain zones being subject to distinct governance due to their global market roles, the

EU and its member states rely on a stratified system of border management, where specific zones and routes are governed under different standards and by different actors (see also Aliverti 2023).⁶ This differential governance is visible in both case studies.

In Libya, the EU has frequently reverted to collaboration with shady groups to implement on the externalization paradigm. Externalization refers to the processes by which actors extend their asylum responsibilities and migration control beyond their borders (Bialasiewicz 2012; Hyndman and Mountz 2008). The primary goal of externalization is to enable governments to contain migration flows and deter future migrants from undertaking irregular journeys, often employing violent means (Bosworth 2017; Campos-Delgado 2020; FitzGerald 2020; Toaldo 2015). This strategy's rationale becomes apparent when considering Europe's asylum system, where refugees, in principle, are entitled to unique non-refoulement rights under both international and most national laws. Thus, shifting migration control operations away from national borders emerges as a deliberate strategy by EU member states to evade the mandates of legal frameworks and the jurisdiction of the European Court of Human Rights (Lahav and Guiraudon 2006; Lavenex 2006; Panebianco 2022; Pijnenburg 2018).⁷ In this setup, the subcontracting of control operations – whether intentional or unintentional – to entities operating outside legal norms enables EU State Members to accommodate the inherent contradictions in the migration system: balancing the mandate to uphold liberal values while attempting to stem migration flows at all costs.

Essential to this subcontracting of duties and functions to criminal groups has been the overarching move towards flexibility and vagueness that 'has become a hallmark of the haze under which migration governance has developed' (Cardwell and Dickson 2023, 3122). The ambiguity inherent in this approach makes it difficult to discern the concrete levels of collaboration facilitated by these measures, creating challenges in an area where the welfare and rights of migrants are at risk. For instance, numerous studies have shed light on the obscure character of the European Union Emergency Trust Fund (EUTF) in Libya and related projects of externalization,⁸ expressing apprehension over unclear procurement methods (Kipp 2018), and a diminishing grasp and ownership of how funds are utilized (Herrero Cangas and Knoll 2016). As observed, the shift towards informality has enabled militias and criminal groups in Libya to co-opt funding and resources from the EU and its Member States. In turn, these groups have become pivotal in achieving the EU's containment and deterrence migration goals and thereby allowing the EU to indirectly sidestep the legal and moral implications tied to these objectives.

The Greek case study presents another vivid example of how illegal (or illegalized) activities can contribute to the legal framework of migration governance. In the town of Leprara, the activities of human smugglers, such as Ali and his group, are integral to the migration process. These smugglers fill a critical gap left by the absence of legal pathways for migration. Smugglers here not only facilitate the physical movement of migrants but also provides a range of services that are essential for their journey. These services include shelter, food, and guidance, which are crucial for migrants attempting to navigate the perilous onward journey. This scenario is not an anomaly in the field of migration studies. A growing scholarship has shown that human smuggling can also have strong social and moral significance for both migrants and smugglers (Zhang, Sanchez, and Achilli 2018), and how the interactions between them are based

more on cooperation than on exploitation and deception (Achilli and Kyle 2023). What is surprising, however, is the nature of the relationship between the smugglers and the Greek state authorities in Leprara. This relationship is not one of outright confrontation, but rather one of tacit collaboration with the smugglers. This interaction is characterized by a mutual understanding of roles and boundaries, where the Greek security services, while aware of the smuggling activities, permit them within certain limits.

This relationship becomes clear in the context of the Dublin asylum system. Within the EU, interior Member States such as Germany are insulated by peripheral border nations like Italy and Greece. Under the regulations of the Dublin asylum system, the responsibility for evaluating an asylum seeker's case typically falls to the first EU country they enter. Irregular migrants are customarily required to be recorded in the common European database, EURODAC, to establish their initial point of entry into the EU. This system's dynamics have led to particular behaviours by certain state authorities. Studies have demonstrated, for example, how Greek and Italian authorities have frequently opted not to fingerprint migrants who they anticipate will transit through their territories to seek asylum in other countries (FitzGerald 2020, 15). In this context, the tacit allowance for smugglers to operate in Leprara provides local authorities a dual advantage: it allows them to formally comply with the Dublin Agreement while practically managing migration challenges. This approach effectively controls the influx of migrants without overtly breaching their commitment to prevent their onward movement to other European countries. By offering a pragmatic solution to the challenges posed by rigid international agreements in the face of dynamic migration patterns, smugglers paradoxically contribute sustaining the legal framework of migration governance.

In conclusion, the case studies of Libya and Greece provide insightful illustrations of the reproduction of the legal apparatus through criminal or criminalized groups and their actions. In both case studies, however, this process is not about creating new legal norms or producing a new legal framework but rather about sustaining and actualizing existing ones in a way that circumvents their inherent contradictions.⁹ In Libya, the EU's indirect collaboration with traffickers allows it to manage migration flows in a way that aligns with its externalization goals, despite apparent contradictions with its stated commitment to liberal values and human rights (Barbulescu 2017; Manners 2002). Similarly, in Greece, the tacit acceptance of smuggling activities enables local authorities to manage migration pressures without openly breaching the Dublin Agreement. These criminal or criminalized actions bypass the legal system's internal conflicts, effectively allowing the legal apparatus to be actuated without directly confronting its contradictions. This approach underscores the subtle yet profound dynamic in migration governance: the reliance on criminal (or criminalized) actions to reconcile and execute the conflicting elements within legal frameworks, thereby ensuring their continuous function and relevance in the face of complex, real-world challenges.

Conclusion

The two case studies offer distinct yet complementary perspectives on how criminal groups influence migration governance. The Libya case study illustrates how these groups can contain migration, while the case of Leprara demonstrates their role in facilitating migration flows. What the two case studies ultimately show is the functioning of

what I define as ‘illegal production of legality’ – a complex process wherein groups operating outside the legal domain, such as smuggling and trafficking groups, play a significant role in enabling key policies and practices that contribute to the management of international mobility. This process occurs through various mechanisms and interactions, including informal and ambiguous policy implementations, and the complex web of collaboration and conflict between states and non-legal actors. In so doing, this article has sought to go beyond both mainstream perspectives that see crime as a mere challenge to migration governance (e.g. Naim 2010) and critical studies that frame the role of crime in migration governance in the terms of a state-driven process of ‘criminalization’ (e.g. De Genova 2002).

Two interrelated objections may be raised when focusing on the symbiotic relationship between organized crime and state interests in managing migration. First, it might be argued that the idea of criminal groups enacting specific migration policies is simplistic, if not altogether conspiratorial, as it is unlikely that these groups are coopted by state authorities or supra-national agencies to pursue a clear, predefined objective. Second, it might be objected that the cooperation between the EU and its State Members with these groups are an anomaly rather than a standard practice, since the former normally operate within the rule of law.

Regarding the first issue, migration governance involves a multitude of actors with evolving roles and differing agendas and interests (Andersson 2014b; Geddes and Scholten 2015; Triandafyllidou 2022). Demonstrating that criminal actors can also be instrumental in the implementation of what is perceived or treated as ‘legal’ in migration governance prompts the question: to whom and for what purposes? There is no uniform answer to this question. Indeed, if criminal activity is instrumental to the policies and practices enforced by specific stakeholders, it can be significantly disruptive to others, or even to the same stakeholders at different temporal and geographical junctures. Likewise, it is possible that these criminal entities hold a marginal role in migration governance altogether. In this article, I have chosen to single out patterns of cooperation between criminal actors and state/supranational institutions in two specific contexts because these stakeholders are typically perceived as fundamentally opposed. As such, an exploration of their interaction may offer a more profound understanding of the role of ‘crime’ within the multifaceted landscape of migration governance. Nevertheless, this study does not suggest a deterministic view of criminal influence but rather highlights patterns of interaction in specific contexts.

The second objection arises from a perception that interactions between criminal groups and migration authorities are the result of deliberate, formal collaborations. However, it is important not to overstate the intentionality of these interactions. The case studies suggest that such collaborations are often characterized by unspoken agreements rather than explicit partnerships. In Libya, the vague nature of EU policies has reinforced the role of criminal networks in migration governance (Cardwell and Dickson 2023). The extent to which this entrenchment was a deliberate strategy by EU institutions remains unclear. Similarly, in the Greek town of Leprara, the relationship between border authorities and smuggling groups evolved into a tacitly accepted coexistence, mutually beneficial yet governed by unspoken rules. Of course, we can entertain the possibility that these collaborations can take more explicit and intended forms. In Libya, there are allegations that the Italian government and key members of militias

involved in trafficking and smuggling have met in high-level meetings intended to steer migration governance (Scavo 2019). In Greece, Ali claimed to have met secretly with the chief of police to discuss local management. However, whether this is true or not is not the primary concern here. What matters is that criminal or criminalized activities can, intendedly or unintendedly, reproduce specific forms of legality.

To conclude, this article illuminates a critical area of study ripe for further exploration. Future research should aim to bridge key conceptual and empirical gaps. Frameworks like ‘hybrid governance’ and ‘criminal governance’ offer promising avenues, but they are often limited by a state-centric focus, neglecting the transnational nuances of phenomena like migration. A deeper empirical investigation is also crucial to fully comprehend the varied impacts of criminal entities and their interactions with diverse stakeholders in the migration landscape, including NGOs and international organizations. Moreover, this article has emphasized ‘functionality’ – namely, how criminal or criminalized actions can maintain system continuity by addressing certain fundamental contradictions within the legal apparatus of migration governance. An equally compelling line of inquiry could explore the subtle or significant shifts these actions may induce in migration governance. Further research will contribute significantly to a more comprehensive understanding of the multifaceted role that criminal activities play in shaping migration policies and practices, and transnational governance at large.

Notes

1. As per international law, migrant smuggling and human trafficking are distinct phenomena. Migrant smuggling involves the consensual facilitation of illegal entry of a person into a state where they are not a national or resident, typically in exchange for financial or other material benefit. Conversely, human trafficking entails the coercion, deception, or abuse of power for the purpose of exploitation, which can include forced labor and sexual exploitation, regardless of the victim’s movement or consent to initial travel (United Nations 2000).
2. My research findings points to this direction. As a research informant, based in Libya for a United Nation agency, put it over the course of an on-line interview: ‘the perception of traffickers as part of a distinct, criminal world is misleading. In Libya, everyday locals engage in trafficking, often without realizing that. For example, many people, when they employ a migrant, confiscate their passport, and force them to work ... That’s trafficking, but it’s not always recognized as such by the locals. Sometimes, it is even done with good intentions. They give migrants a work, sometimes they even treat them like family, have dinner with them, but still commit acts that are criminal, like taking their passport, denying them holidays, or even beating them.’
3. The SAI system is the Reception and Integration System, Sistema di Accoglienza e Integrazione, formerly known as SPRAR, then SIPROIMI.
4. ‘Trafficanti’ (singular ‘trafficante’) is an Italian term commonly used interchangeably to refer to both migrant smugglers and human traffickers.
5. The EU-Turkey Agreement is a deal between the European Union and Turkey to reduce migrant influx into Europe. It stipulates that Turkey will accept the return of all irregular migrants crossing into the Greek islands from Turkey, in exchange for EU financial aid and political concessions.
6. Transposing this analytical framework to the EU externalization measures in Libya demands a metaphorical expansion of ‘graduated sovereignty’ from a domestic to a transnational realm. In this dynamic, the EU wields a form of extraterritorial influence, creating a layered sovereignty over migration control (Lemberg-Pedersen 2019; see also Hyndman and Mountz 2013).

7. It is important to recognize that externalization is merely one of several strategies used to sidestep pro-migrant rights rulings or viewpoints. Gammeltoft-Hansen and Vedsted-Hansen describe this as part of the "dark side of globalization", where a 'cat-and-mouse' dynamic emerges between European state policy practices and human rights laws and principles (2016, 3).
8. Trust Funds, established and overseen by the European Commission, are multi-donor financing mechanisms designed to enable swift international cooperation and development responses to major emergencies (EC 2013).
9. Recent research help to elucidate how legal structures, while intended to maintain order and safety, can paradoxically lead to situations where lawlessness and violence become intertwined with governance practices (Aliverti 2023; Super 2024).

Acknowledgements

I would like to express my sincere gratitude to the anonymous reviewers whose insightful comments and suggestions significantly contributed to the improvement of this article. I also extend my thanks to Alice Massari, Anna Triandafyllidou, Antje Missbach, Federica Infantino, Jean-Pierre Casarino, Lorenzo Piccoli, and Ophelia Nicole-Berva for their valuable feedback and expertise, which enriched the depth and accuracy of this work. I take full responsibility for any errors that remain in the article; they are solely my own.

Disclosure statement

No potential conflict of interest was reported by the author(s).

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