



## Italy's Migration Policies Combating Irregular Immigration: from the Early Days to the Present Times

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### ABSTRACT

Italian migration policies combating irregular immigration from the early 20<sup>th</sup> century to the present times have been increasingly debated and controversial. Four phases are detectable: the absence of a legal framework while Italy was still an emigration country, the first regulations of the 1980s, policies influenced by both the European integration process and the increase in immigration until 2002 and, lastly, the country's controversial approaches since 2004. What is noticeable is a dichotomy in Italy's migration policies, with generally consistent internal measures and often contrasting external ones.

### KEYWORDS

Italy; migration policy; immigration; irregular immigration; asylum seekers; history of immigration; Arab Spring

Italy, by virtue of its socio-political, economic and geographical features, has in the course of its history often been the object of numerically significant migration phenomena. Its central location in the Mediterranean Sea, with roughly 7,500 km of natural coastline, and its status as an economically and socially developed country have strongly influenced and continue to influence the country's attractiveness regionally (outside Europe), especially in Northern and sub-Saharan Africa.<sup>1</sup> The aim of this article is to examine how Italian migration policies combating irregular immigration have changed over time, with a focus on their legal and political contexts.

Although it is not within the scope of this work to address the most recent political developments at both the Italian and EU level, as they are still unfolding, a wide-ranging investigation of Italian migration policies from the early days to present times can contribute positively to the study of this topic. In defining the nature of this phenomenon, it is appropriate to specify that the immigration flows analysed include both so-called 'economic migrants' and asylum seekers, two categories that make up the greater part of the migration flows directed towards Italy and the rest of Europe, as reported by the UNHCR and the European Union.<sup>2</sup>

The first sections describe the political, legal and historical background before Italy became a country of immigration and the initial regulations introduced in the 1980s. This is followed by a section that covers the timeframe between the mid-1980s and 2002, while

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<sup>1</sup>Amnesty International, *The Global Refugee Crisis*, 5–8.

<sup>2</sup>UNHCR Italia, *Il punto di vista dell'UNHCR; European Parliament, Irregular immigration in the EU*, 1–4.



the next one discusses the more recent approaches. Lastly, the conclusions point out four distinct phases of Italian policy. They contend that there is a noticeable dichotomy in Italian measures addressing irregular immigration and asylum seekers, with generally consistent internal policies and often contrasting external ones. Despite the broad literature dealing with migration, the legal provisions of Italian policies are rather understudied; this article tries to fill that gap, also providing a political and historical contextualisation.

### **The early legal and political framework**

Until the early 1970s, Italy was primarily a land of emigration, with about 26 million Italians emigrating between the year of national unification (1861) and 1976.<sup>3</sup> This was reflected in the relative lack of restrictions on immigration flows. In the legal framework of the time, the very modest but steady immigration<sup>4</sup> and the rare deportations were dealt with as mere matters of public security. They were regulated by the Public Security Code (*Testo Unico delle Leggi di Pubblica Sicurezza* – TULPS), approved for the first time by Royal Decree No. 773 of 1931 and then implemented by Royal Decree No. 635 of 1940, both with Benito Mussolini as the head of government. Article 10 of the Constitution of the Italian Republic, enacted in 1947, regulates the status of foreigners more generally (paras 2 and 3):

The legal status of foreigners is regulated by law in conformity with international provisions and treaties.

A foreigner who, in his home country, is denied the actual exercise of the democratic freedoms guaranteed by the Italian constitution shall be entitled to the right of asylum under the conditions established by law.<sup>5</sup>

In the following years, the migratory balance remained negative, also due to weaker post-colonial ties than other European nations with a longer colonial history, which prevented a substantial counter-migration. The current literature usually identifies 1973 as the watershed year for Italian migration flows, since the international oil crisis and the subsequently more restrictive immigration policies of other European countries turned Italy into a country of immigration, with a positive migratory balance after 1974.<sup>6</sup> Asher Colombo and Giuseppe Sciortino, however, have pointed out that expired residency permits were not deleted from public archives, thus leading to an overestimation of the growth of legal immigrants in the country, which actually only started increasing after 1977 and more strongly in the 1980s.<sup>7</sup> At the same time, irregular immigrants were still mostly unaccounted for.

### **The first regulations of the 1980s**

New economic and regional migratory patterns caused mainly by push factors such as wars, persecution of minorities and extreme poverty in nations of what was then known as the

<sup>3</sup>Del Boca and Venturini, *Italian Migration*, 1-45.

<sup>4</sup>Mainly from neighbouring countries, followed by the US, Russia, Argentina, Brazil and Turkey. See Colombo and Sciortino, "Italian Immigration", 49-70.

<sup>5</sup>[https://www.senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf)

<sup>6</sup>Tintori and Romei, "Emigration from Italy after Crisis", 49-64.

<sup>7</sup>Colombo and Sciortino, "Italian Immigration", 49-70.

'third world' impacted Italian immigration more heavily throughout the 1980s.<sup>8</sup> Those were the years of the great streams of immigrants from African countries, which accounted for 20.3 percent of total immigration in 1989,<sup>9</sup> originating mainly from Morocco, Tunisia and Senegal, joining other national groups already in the country, mostly Eritreans, Somalis, Egyptians and citizens of various South American nations governed by dictatorships at the time. Two attempts to regulate the migratory flows more thoroughly were Bill 694 of 1980 and Bill 1812 of 1982, both of which, however, failed to be approved by the first centrist government led by Francesco Cossiga and the second government led by Giovanni Spadolini, supported by a large, five-party, centrist and pro-European coalition (*Pentapartito*).<sup>10</sup>

Prior to the new regulations that would be implemented in 1986, the inadequacy of Italian migration policies meant that:

[...] the increase was only in illegal immigration, as can be seen in the amnesties of later years...<sup>11</sup>

The conspicuous normative gap thus became the object of political discussion, and a partial response was Law No. 943 of 1986, also known as the 'Foschi Law', approved by the second government (Pentapartito) headed by Bettino Craxi. The new law regulated the rights and duties of foreigners in Italy, as well as their labour market. For the first time, moreover, there was an explicit reference to the fight against irregular immigration, framed in three scenarios: the brokering of illicit flows, the hiring of migrants with the intention of exploiting them, and simply the hiring of an irregular migrant.<sup>12</sup>

With the amnesty of the same year, comparable to those implemented by France, Spain and Portugal in the same period,<sup>13</sup> 118,000 previously irregular immigrants were regularised. A glance at the pull factors involved at this time indicates that manual jobs were paid more in Italy than in France, that per capita income was increasing rapidly and that the country's fertility rates were decreasing in an equally rapid fashion, thus creating a need for immigrants.<sup>14</sup> These elements were further supported by the push factors already mentioned.

## From the creation of the Schengen area to the 2002 Bossi-Fini Law

### ***The 'Martelli Law'***

These years coincided with the creation of the open borders Schengen area, a condition that was made possible by the ever increasing level of European integration that had started with the 1957 Treaty of Rome and progressed up to the Single European Act of 1986. The Schengen Agreement was initially signed in 1985 by the northern half of the European Economic Community (EEC), while the southern half was still porous and affected by poorly controlled irregular migration, a condition that complicated and delayed its entry into the agreement. Italy is a case in point, its policymakers had to put serious effort into convincing their European counterparts that the country could manage such flows, despite

<sup>8</sup>Zaslove, "Closing the door?", 99-118.

<sup>9</sup>Caritas Italiana, *35 anni di immigrazione*, 1-9.

<sup>10</sup>Veugelers, "Recent immigration politics in Italy", 33-49.

<sup>11</sup>Colombo and Sciortino, "Italian Immigration".

<sup>12</sup>Italian Parliament, *Law No. 943 of 1986*, 30 December 1986, art. 12. <https://www.gazzettaufficiale.it/eli/id/1987/01/12/086U0943/sg>.

<sup>13</sup>Convey and Kupiszewski, "Keeping up with Schengen", 939-53.

<sup>14</sup>Del Boca and Venturini, *Italian Migration*.

the well known issues. It was in this climate that then Prime Minister Craxi's Deputy Prime Minister, Claudio Martelli, began a series of consultations, both national and European, to ensure that the government's new immigration law was sustainable in the context of a progressively united Europe.<sup>15</sup>

A more structural approach to the matter was therefore proposed and implemented during the sixth government led by Giulio Andreotti, again supported by the Pentapartito coalition, which approved Law No. 39 of 1990, the so-called 'Martelli Law'. Originating from Law Decree No. 416 of 1989, it regulated immigration more thoroughly: it redefined refugee status, hardened and specified in detail the procedures and grounds for refusal of entry for undocumented migrants, clarified expulsion procedures, set out more specific requirements for residency in Italy and, above all, introduced for the first time the programming of migrant flows from abroad, a measure that would take into account the needs of the Italian labour market at the time.<sup>16</sup> Despite the new and more stringent regulations mentioned above, the Martelli Law also provided for a new amnesty through which self-employed workers could be regularised, regardless of the 'reciprocity conditions' with the countries of origin that were previously necessary.<sup>17</sup> It is considered one of the most extensive and flexible amnesties of modern Italian times, since it led to the legalisation of about 222,000 irregular immigrants.<sup>18</sup>

Passed in a historical period characterised by increasing migration flows towards Italy as well as by a proportional intolerance of this phenomenon, the Martelli Law implemented important criteria for the management of both regular and irregular immigration. These included the strengthening of the grounds for entry and of identification and refusal processes, as well as the rationalisation of the means of deportation. As a consequence, Italy was able to sign – but not yet implement – the Schengen Agreement nine months later. The analysis of Sara Castellazzi provides an effective summary:

The decision to intervene systemically, moreover, was not only dictated by the increasing pressure of public opinion but also by the need to adapt Italian legislation to the policies of other European countries and EU policies. [...] Overall, the so-called 'Martelli Law', even though there was in many ways room for improvement, certainly represented a first concrete attempt to tackle the problem, and is credited with having introduced the tools to manage flows that still form the basis of the legislation on immigration, such as the programming of flows through the introduction of quotas or the regulation of visas.<sup>19</sup>

Law No. 39 of 1990 was criticised for having managed the emergency, but not the phenomenon itself, including irregular immigration. It is important to remember that, in 1991, there were about 350,000 irregular migrants in Italy, accounting for half of the total number of foreigners.<sup>20</sup> Those were years of strong political and social turmoil in Eastern Europe due to the collapse of the Soviet Union, a process that had to some extent affected the development of the Schengen area.<sup>21</sup> Poland, in particular, was torn between attempts to reform the country, the activities of *Solidarnosc* and martial law, all of which contributed

<sup>15</sup>Veugelers, "Recent immigration politics in Italy".

<sup>16</sup>Italian Parliament, *Law Decree No. 416 of 1989*, 30 December 1989, art. 1-13, <https://www.gazzettaufficiale.it/eli/id/1990/03/21/090A1329/sg>.

<sup>17</sup>Italian Parliament, *Law No. 39 of 1990*, 28 February 1990, art. 10. <https://www.gazzettaufficiale.it/eli/id/1990/02/28/090G0075/sg>.

<sup>18</sup>Castellazzi, "Le implicazioni legislative", 113-5.

<sup>19</sup>*ibidem*, 116-7. Author's translation.

<sup>20</sup>Fondazione ISMU, "Stima della presenza straniera".

<sup>21</sup>Zincone and Caponio, *Immigrant and immigration policy-making*, 1-20.

to Polish emigration to Italy.<sup>22</sup> This, and the 35,000 Albanian asylum seekers that landed in Apulia in just a few months in 1991, led to a new public debate linking immigration and crime for the first time.<sup>23</sup>

### ***The 'Turco-Napolitano Law'***

The next step in terms of management of migratory flows was the so-called 'Dini Decree', namely Law Decree No. 489 of 1995, approved by a 'government of experts' led by Lamberto Dini. It was influenced by the European integration process that had just been advanced by the Maastricht Treaty of 1992, which designated migration and asylum as matters of common interest.<sup>24</sup> Through this decree, expulsion procedures were broadened in scope and immigrants who had committed crimes had to remain at a fixed address prior to their deportation. This led to the most controversial measure of the decree, the establishment of the first detention centres, which would later become one of the main features of laws aimed at counteracting irregular immigration.

The decree also provided for another amnesty, regularising the legal status of about 250,000 previously irregular immigrants.<sup>25</sup> But the decree was intended as a stop-gap measure given the emergency nature of irregular immigration and, while put to the vote five times, it failed to be passed, thus lapsing after 60 days.<sup>26</sup> Nevertheless, some of its provisions, in particular the amnesty, were implemented within two months. Others, such as the one referring to detention centres, were later incorporated into Italy's new legislation dealing with immigration, Law No. 40 of 1998, better known as the 'Turco-Napolitano Law', after then Minister of Social Solidarity Livia Turco and then Interior Minister Giorgio Napolitano. Both were members of the first Prodi government, a centre-left coalition. The law was approved a year after Italy's entry into the Schengen Agreements and also a year after the signature of the Treaty of Amsterdam, which provided for stricter measures concerning regular and irregular immigration.<sup>27</sup> But the development of this law was also partially influenced by a few events that took place in those months. In the words of Alessandro Dal Lago:

For a few months after its discussion, the Turco-Napolitano bill seemed to be stuck in the Prodi government's in-tray. Suddenly, in August 1997, two or three crimes whose perpetrators were foreigners – insignificant episodes in the context of normal crimes that fill the chronicles in summer – were an opportunity for a campaign of alarm and panic that was unprecedented in Italian history. [...] And it was in this surreal atmosphere that, in August 1997, the government decided to speed up the approval procedures for the Turco-Napolitano bill on immigration.<sup>28</sup>

The new set of rules aimed at managing both regular and irregular migration in a less transitory fashion than before, promoting the progressive integration of new immigrants, while introducing more stringent checks at the borders (article 9), increased use of the instruments of refoulement (article 8) and deportation (articles 11, 12 and 13) against irregular migrants, as well as temporary detention centres, in cases in which:

<sup>22</sup>Kosic and Triandafyllidou, "Albanian and Polish Migration to Italy", 1413–46.

<sup>23</sup>Bontempelli, *Il governo dell'immigrazione in Italia*, 115–36.

<sup>24</sup>European Community, *Maastricht Treaty*, art. K.1. Maastricht, 7 February 1992, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISUM:xy0026&from=EN>.

<sup>25</sup>Paparusso et al., "Immigration Policies in Italy", 499–546.

<sup>26</sup>Di Mauro, *Origini dei centri di permanenza temporanea*, 2.1.

<sup>27</sup>European Community, *Amsterdam Treaty*, Title IIIa. Amsterdam, 2 October 1997. [www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf](http://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf).

<sup>28</sup>Dal Lago, *Non-persone: l'esclusione dei migranti*, 27–8.

**Table 1.** The increase in regular immigrants residing in Italy.

YEAR	NO. OF REGULAR IMMIGRANTS
1970	144,000
1979	205,000
1986	450,000
1991	649,000
1998	1,091,000

Source: Caritas Italiana, *35 anni di immigrazione in Italia*, 1-9.

**Table 2.** Number of irregular immigrants in Italy in 1998; the five main nationalities.

NATIONALITY	NO. OF IRREGULAR IMMIGRANTS
Moroccans	24,939
Albanians	19,380
Romanians	17,232
Tunisians	15,980
Former Yugoslavians	14,762
Total	235,000

Source: Dal Lago, *Non-persone: l'esclusione dei migranti*, 27-8.

[...] it is not possible to carry out the deportation immediately by escort to the border, or to turn back the foreigner due to his/her need for assistance; [...] or if further investigations have to be undertaken in order to establish the migrant's identity and nationality for the purposes of obtaining travel documents; [...] or if suitable means of transport are unavailable [...].<sup>29</sup>

The Turco-Napolitano Law also introduced a new amnesty, which regularised 217,000 irregular workers.

Article 47 of the new law laid the foundations for Legislative Decree No. 286 of 1998 containing the 'Immigration and Status of Foreigners Code' (*Testo Unico delle disposizioni circa la disciplina dell'immigrazione e norme sulla condizione dello straniero*). This consolidated an element of fundamental importance for the migration policies of the following years, that is, the principle of 'determination of entry flows', with which new and more specific entry quotas were established, according to the needs of the Italian job market.<sup>30</sup> As for the presence of irregular immigrants in the country, it was becoming numerically significant, as demonstrated by an assessment carried out on 15 April 1998, which indicated that there were still 235,000 irregular immigrants in Italy, despite the amnesty approved one month earlier.<sup>31</sup>

Along with the series of push factors previously mentioned, the large number of irregular immigrants on Italian soil was (and still is) due to a number of pull factors: the fact that the Italian demographic growth rate is close to zero, the increasing disparity between its developed economy and that of the countries of origin and transit,<sup>32</sup> the frequent lack of Italian workers for unskilled jobs<sup>33</sup> and, lastly, the presence of a large, underground economy.<sup>34</sup> A number of authors have argued that the latter represents a strong pull factor in that it attracts prospective irregular workers who are more willing to accept irregular

<sup>29</sup>Italian Parliament, *Law No. 40 of 1998*, 6 March 1998, art. 12.1. <http://www.camera.it/parlam/leggi/980401.htm>.

<sup>30</sup>Italian Parliament, *Legislative Decree No. 286 of 1998*, 25 July 1998, art. 21. <https://www.camera.it/parlam/leggi/deleghe/98286dl.htm>.

<sup>31</sup>Di Bello, *La devianza degli immigrati*, 1.6.

<sup>32</sup>Koff, "Security, Markets and Power", 397-415.

<sup>33</sup>Doomernik, "Migrant Smuggling between Two Logics", 113-29.

<sup>34</sup>Testai, "From (e)migrant to (im)migrant", 24-38.

conditions.<sup>35</sup> Moreover, the consequences of the global economic crisis have meant that the unemployment gap between immigrants and native workers has decreased markedly in countries like Italy, thus providing a further factor of attraction.<sup>36</sup> This, in turn, has led to a condition in which immigration in Italy experiences varying degrees of “economic acceptance and political rejection”,<sup>37</sup> resulting in a dichotomy between strict external controls and lax internal ones.<sup>38</sup>

### ***The ‘Bossi-Fini Law’***

In 2002, the Turco-Napolitano Law was replaced by Law No. 189, better known as the ‘Bossi-Fini Law’, named after two of the first signatories: Umberto Bossi, former Minister for Institutional Reforms, and Gianfranco Fini, then Deputy Prime Minister in the second Berlusconi government, a centre-right coalition. The new legislation, which amended the Immigration and Status of Foreigners Code and was approved one year after the signature of the Nice Treaty, needs to be contextualised. Alarmism about migrants had not subsided, as two political parties (the Northern League and National Alliance, respectively headed by Bossi and Fini), which do not tolerate the phenomenon of irregular migration and exploit it politically,<sup>39</sup> were part of the governing coalition. 50,000 migrants and asylum seekers had landed on Italian shores in 1999, a peak that then subsided to about half that figure in the following three years. Nevertheless, the total number of irregular migrants in Italy in January 2002 came to 750,000, or about 34 percent of the total foreign presence, the highest proportion of irregulars since 1996.<sup>40</sup>

The Bossi-Fini Law provided for the use of Italian Navy ships to combat the trafficking of human beings, as well as increased penalties for this type of activity; new residency permits more strictly linked to a real workplace; changes to entry quotas; and more widespread use of deportation. The new law, however, also resulted in another amnesty designed to cover domestic workers, caregivers for the elderly, sick or disabled, and workers with an employment contract of at least one year.<sup>41</sup> As Colombo and Sciortino put it:

Once again, the Bossi-Fini bill saw a repetition of what had already been observed in the previous reforms on immigration legislation: the introduction of restrictions on new immigrants entering the country had to be counterbalanced by a new amnesty for those irregular immigrants already living in Italy.<sup>42</sup>

Paradoxically, given the political anti-immigration setting of the Bossi-Fini Law, this was the largest amnesty for illegal workers ever passed in Italy; it regularised 646,000 people in the following months, according to data from Italy’s national statistical institute (ISTAT).<sup>43</sup> Some of the measures contained in the law sparked a broad debate regarding their severity, as evidenced by the charges of unconstitutionality brought forward by Amnesty International in its *2006 Annual Report*:

<sup>35</sup>Reyneri, “Role of underground economy”, 313-31.

<sup>36</sup>Reyneri and Fullin, “Ethnic penalties in the transition”, 247-63.

<sup>37</sup>Ambrosini, “Immigration in Italy”, 175-94.

<sup>38</sup>Triandafyllidou and Ambrosini, “Irregular Immigration Control”, 251-73.

<sup>39</sup>Abbondanza and Baito, “Electoral payoff of immigration flows”.

<sup>40</sup>Fondazione ISMU, “Stima della presenza straniera”.

<sup>41</sup>Italian Parliament, *Law No. 189 of 2002*, 30 July 2002, art. 33. <https://www.camera.it/parlam/leggi/02189l.htm>.

<sup>42</sup>Colombo and Sciortino, “The Bossi-Fini law”, 162-79.

<sup>43</sup>McMahon, *Immigration and Citizenship*, 48.

The law set up identification centres for the detention of asylum seekers and a quick procedure for the determination of the right to asylum for the detained applicants. This generated concerns about the access to asylum procedures, about the detention of asylum seekers in violation of standards required by international law and the violation of the principle of non-refoulement that prohibits the forcible repatriation or deportation of asylum seekers to countries where they could be at risk of serious human rights abuses.<sup>44</sup>

The following year, Italy's Constitutional Court declared that the questions of unconstitutionality were inadmissible.<sup>45</sup>

The foregoing shows that 20 years of Italian immigration policies, starting from the mid-1980s, were successful to a certain extent in managing the ever increasing flows of regular immigrants, mostly by adapting them to the needs of the country's labour market and broadly following the path set out by European legislation – despite some delays. Nevertheless, they failed to address the phenomenon of irregular immigration in a structural way, as they were characterised by measures aimed mainly at tackling emergency situations. Expulsions were seldom enforced and the common and unvarying feature was the *sanatoria* the amnesty for irregular immigrants, five of which were adopted between 1986 and 2002, regularising the legal status of almost 1.5 million migrants.

The progressively more restrictive nature of the laws over the years should nonetheless be noted, as this was undoubtedly related to the growing presence of immigrants in Italy – both regular and irregular – which numbered 807,812 in 1991 and 2,188,667 in 2002,<sup>46</sup> as well as, to some extent, common European policies. The next section investigates Italy's more recent immigration policies, still affected by the number of seaborne migrants and asylum seekers, especially those coming from Libya.

## **Internal and consistent, external and contradictory: the dichotomy of Italy's immigration policies since 2004**

### ***The Italy-Libya agreement***

The years immediately following the Bossi-Fini Law were characterised by a number of adjustments. These were enacted by the second government led by Silvio Berlusconi, a centre-right coalition government that had built part of its consensus on anti-immigration rhetoric. This resulted, for instance, in the more restrictive measures towards undocumented migrants introduced by Legislative Decree No. 241 of 2004,<sup>47</sup> and the implementation of European directives. The Treaty of Lisbon, approved three years later and ratified by Italy in 2008, as a necessary compromise due to the non-ratification of the Constitutional Treaty of 2004, clarified the EU's competence in the field of immigration, introduced the 'principle of solidarity' between member states and provided stronger legislation against irregular immigration and human trafficking.<sup>48</sup>

However, the revolution in Italian immigration policies towards economic migrants and asylum seekers occurred in 2008, with the fourth Berlusconi government. Law Decree No.

<sup>44</sup>Amnesty International, *Rapporto Annuale 2006*, 5.

<sup>45</sup>In its judgment no. 22 of 2007, <https://www.giurcost.org/decisioni/2007/0022s-07.html>

<sup>46</sup>Fondazione ISMU, *Stima della presenza straniera*.

<sup>47</sup>Italian Parliament, *Legislative Decree No. 241 of 2004*, 14 September 2004. <https://www.parlamento.it/parlam/leggi/decreti/04241d.htm>.

<sup>48</sup>Peers, "Legislative update", 219-47.

92 of 2008 established newer and tighter norms concerning both undocumented migrants and foreign citizens sentenced to more than two years in prison, including EU nationals.<sup>49</sup> The main breakthrough, though, came as a consequence of the long sought, difficult and controversial Italian-Libyan rapprochement.

This rapprochement produced the Treaty of Friendship, Partnership and Cooperation between the Italian Republic and the Great Socialist People's Libyan Arab Jamahiriya<sup>50</sup>; signed in 2008 and ratified the following year. The treaty, in which Italy condemned its colonial past and established a "special and privileged relationship" with its former colony, was presented as a definitive settlement of the decades of disagreement between the two countries. It was made up of three main sections, of which the last one is particularly relevant to the discussion here. It provided for new cooperation in the field of non-proliferation, a joint fight against organised crime and terrorism and finally – a matter of great importance for Italy – new Libyan steps to stem the enormous tide of asylum seekers and economic migrants originating in Central and Eastern Africa transiting through Libya to reach Italy. In fact, maritime arrivals had increased once again, reaching 22,939 in 2005 and 36,951 in 2008, the year of the agreement between Italy and Muammar Qadhafi's Libya, a country that had not signed the 1951 Refugee Convention.

Tripoli agreed to block migration routes coming from the southern borders of the country, build detention centres on Libyan territory, make any support for human traffickers illegal and prevent migrants' boats from reaching Italian shores.<sup>51</sup> Paragraph 2 of article 19 of the agreement on combating irregular migration, stated:

Again, on the subject of clandestine immigration, the two Parties shall promote the realisation of a system of control of land borders in Libya, to be entrusted to Italian companies with the necessary technological requirements. The Italian government will bear 50% of costs, as for the remaining 50% the two parties will ask the European Union to bear such expense, in view of the agreements previously concluded between the Great Jamahiriya and the European Commission. (Art. 19)

Rome and Tripoli's 'stop factor' achieved immediate numerical results, as confirmed by the drastic drop in arrivals by sea. In 2009, only 9,573 economic migrants and asylum seekers reached the Italian coast, while in 2010 the number further decreased to a total of 4,406. Even though Italy was not the only country developing African-based migration policies (Spain had already implemented and dismantled both the GRECO Plan and the Africa Plan<sup>52</sup>), the new Italian policy in the Mediterranean attracted a barrage of criticism both in Italy, from Catholic and non-Catholic NGOs, opposition parties and intellectuals, and abroad, especially from the UNHCR and Amnesty International. The criticism was primarily focused on the fact that no monitoring – something manifestly opposed by the Libyan authorities – was set up to verify that Libya's detention centres respected the basic human rights of migrants.<sup>53</sup> As Philip Marfleet and Fran Cetti pointed out, there were significant humanitarian and political implications deriving from Italy's controversial policy:

<sup>49</sup>Italian Parliament, *Law Decree No. 92 of 2008*, 23 May 2008, <https://www.camera.it/parlam/leggi/decreti/08092d.htm>.

<sup>50</sup>Italian Government, *Trattato di amicizia, partenariato e cooperazione tra la Repubblica Italiana e la Grande Giamahiria Araba Libica Popolare Socialista*, art. 14-23. Benghazi, 2008. [https://it.wikisource.org/wiki/Trattato\\_di\\_amicizia,\\_partenariato\\_e\\_cooperazione\\_tra\\_la\\_Repubblica\\_Italiana\\_e\\_la\\_Grande\\_Giamahiria\\_Araba\\_Libica\\_Popolare\\_Socialista](https://it.wikisource.org/wiki/Trattato_di_amicizia,_partenariato_e_cooperazione_tra_la_Repubblica_Italiana_e_la_Grande_Giamahiria_Araba_Libica_Popolare_Socialista).

<sup>51</sup>Fondazione ISMU, *Sbarchi di migranti registrati*.

<sup>52</sup>Panizzon et al., *Palgrave Handbook of Labour Migration*, 417-21.

<sup>53</sup>The situation was comparable to Australia's contemporary 'Pacific Solution'. See Abbondanza, *Il liberalismo dell'Australia*, 8-14.

The Italian State had pursued a policy of 'externalization', extending measures of migration control outside its territory. Migrants were now to be pursued in North Africa with the aim of inhibiting their journeys to Italy. Consistent with the anti-immigration policies of the Berlusconi government, the Italian border had, in effect, been moved to Libya.<sup>54</sup>

The next step in Italian migration policies was Law No. 94 of 2009, with which the government extensively modified the Immigration and Status of Foreigners Code, introducing the so-called "crime of clandestine immigration".<sup>55</sup> The latter, which needs to be contextualised along with Italy's mandatory prosecution laws, aroused criticism both within the country and abroad, as it made migrants *sans papiers* more vulnerable to exploitation while also flooding Italian courts. One month later, Law No. 102 of 2009 was passed, introducing the country's sixth amnesty mainly for domestic care workers, including EU citizens. The new amnesty regularised 222,000 irregular workers and immigrants,<sup>56</sup> thus following the path of previous amnesties regardless of the type of government in charge and apparently in contrast with the country's stern external policies.

### ***The Arab Spring***

The following chapter in Italy's migration policies was inevitably shaped by the outbreak of the Arab Spring in 2011, which started in December 2010 in Tunisia and rapidly triggered a series of mass protests in neighbouring countries, the Middle East and African countries with comparable social, economic and political issues. This transnational phenomenon had multiple consequences, many of which are still taking place, such as the devastating war in Syria, now in its sixth year, and the ensuing humanitarian 'refugee crisis'. However, as regards the subject of this article, the most important outcome was undoubtedly its contribution to the largest influx of seaborne migrants and asylum seekers that Italy and Europe have ever had to face. It also led to problems within Europe due to the reluctance of a number of Northern and Eastern European governments to share the migratory and economic burden.

It is generally agreed that the 2011 international military intervention in Libya, initially opposed by Italy,<sup>57</sup> that left Libya without a government or state structure able to hold together the many ethnic, religious, sectarian and territorial components, opened the way to new waves of asylum seekers and economic migrants heading towards Italy and the rest of Europe.<sup>58</sup> Even though a strait of only 140 km separates Italy from Tunisia, Libya was once again the territory from which the vast majority of migrants and asylum seekers headed for Italy. Torn by civil war, secessionist groups and rising Islamic terrorism, the Italian government declared the previous agreements with Libya *de facto* void.

The spread of the Arab Spring and the deteriorating situation in the Middle East, along with the termination of the previous climate of cooperation between Italy and Libya, resulted in the largest exodus of people heading for Italy in recent history. In 2010 there were 4,406 arrivals, while in 2011 there were 62,692, a figure that dropped to 13,267 in 2012 and then increased again to 42,925 in 2013.<sup>59</sup> Italy tried once again to work out a cooperative policy

<sup>54</sup>Marfleet and Cetti, "Identity Politics", 233.

<sup>55</sup>Italian Parliament, *Law No. 94 of 2009*, 15 July 2009, art. 1, 15a. <https://www.parlamento.it/parlam/leggi/09094l.htm>.

<sup>56</sup>Italian Parliament, *Law No. 102 of 2009*, 3 August 2009. <https://www.camera.it/parlam/leggi/09102l.htm>.

<sup>57</sup>Lombardi, "Berlusconi Government and Intervention", 31-44.

<sup>58</sup>Fella and Ruzza, *Anti-Racist Movements in the EU*, 140.

<sup>59</sup>Fondazione ISMU, *Sbarchi di migranti registrati*.

with Libya – this time with the Libyan National Transition Council (NTC) as the interlocutor of Mario Monti's government of experts – in an attempt to cope with the steady flow of irregular immigration. As underlined by Marfleet and Cetti:

While armed conflict in Libya was still raging, Italy signed a memorandum of understanding with the country's Transitional National Council, the two parties committing to control irregular movements. After the death of Colonel Gaddafi and the final defeat of his armed forces, Italy demanded – and obtained – a further agreement aimed formally to “curtail the flow of immigrants”.<sup>60</sup>

In 2012, the widespread concerns of several international organisations about Italy's previous migration policy, carried out in cooperation with Qadhafi's Libya, resulted in the country's condemnation by the European Court of Human Rights (ECHR). The latter ruled that the forced repatriation to Libya and Somalia of migrants violated their right to flee from countries where they would be risking their lives if they were to return.<sup>61</sup>

As had happened before, though, Italy's external policies were substantially different from its internal ones, as shown by the approval of Legislative Decree No. 109 of 2012 under the Monti government, and supported by a large, multipartisan coalition. The new law enforced CE directive 2009/52/CE concerning the employment of irregular workers, and eventually resulted in the seventh and last – so far – amnesty of the country, which regularised 23,000 people.<sup>62</sup>

### ***Italian migration policies after 2013***

Exogenous factors, however, continued to shape the Italian approach to irregular immigration. The turning point was represented by the sinking of a Libyan vessel near the Italian island of Lampedusa on 3 October 2013, which caused 366 deaths and 20 missing at sea. In addition to being one of the greatest maritime disasters in the Mediterranean in the twenty-first century, the event struck a chord with Italian public opinion to the point of triggering a strong stance by the grand coalition government then headed by Enrico Letta. On 18 October 2013, the 'Mare Nostrum'<sup>63</sup> mission carried out by Italy alone was launched, a dual-purpose operation with both a military and a humanitarian dimension, aimed at saving lives in the Mediterranean and prosecuting human traffickers.<sup>64</sup>

The Italian mission was not exempt from criticism: the main one depicted it as a major pull factor.<sup>65</sup> The following year, 2014, Italy's *annus horribilis*, was characterised by the rescue at sea of 170,100 migrants and asylum seekers headed for the peninsula, many of whom would otherwise have perished during the crossing.<sup>66</sup> According to the UNHCR, this flow of seaborne migrants was the largest in the world in 2014, a year in which there were 348,000 maritime journeys by economic migrants and asylum seekers worldwide, of which 207,000 were in the Mediterranean Sea.<sup>67</sup>

<sup>60</sup>Marfleet and Cetti, "Identity Politics", 230-31.

<sup>61</sup>European Court of Human Rights, *Hirsi Jamaa and Others v. Italy*.

<sup>62</sup>Italian Parliament, *Legislative Decree No. 109 of 2012*, 16 July 2012. <https://www.gazzettaufficiale.it/gunewsletter/dettaglio.jsp?service=1&datagu=2012-07-25&task=dettaglio&numgu=172&redaz=012G0136&tmslp=1343719748160>.

<sup>63</sup>From Latin, 'our sea'.

<sup>64</sup>Cuttitta, *From Cap Anamur to Mare Nostrum*, 21-37.

<sup>65</sup>Hammond, "The Mediterranean Migration Crisis", 1-12.

<sup>66</sup>Italian Navy, *Dati statistici Mare Nostrum*. <https://www.marina.difesa.it/cosa-facciamo/operazioni-concluse/Pagine/mare-nostrum.aspx>.

<sup>67</sup>UNHCR Italia, *Nel 2014, oltre 348.000 persone*, 1-4.

**Table 3.** Maritime migrants and asylum seekers landed in Italy since 2004.

YEAR	MARITIME ARRIVALS
2004	13,635
2005	22,939
2006	22,016
2007	20,455
2008	36,951
2009	9,573
2010	4,406
2011	62,962
2012	13,267
2013	42,925
2014	170,100
2015	153,842
2016	181,436
2017 (8 months)	99,119

Source: Papavero, *Sbarchi, richiedenti asilo e presenze irregolari*, 1-9.

Note: Endogenous and exogenous determinants are easily detectable: the Arab Spring as a push factor since 2011 and Italy's Libyan-based policy as a 'stop factor' in 2009, 2010 and 2012. The idea that Mare Nostrum, Triton and EUNAVFOR Med have been a pull factor, however, is still challenged.

Italy's unstable political climate, the precarious situation of its economy at the time – in recession until the end of 2013 – and its continuing protests within the European Union regarding the lack of an EU commitment to both the logistics and the economic sustainability of the fight against irregular immigration, ultimately resulted in the scheduled termination of Mare Nostrum. It was only partially replaced by 'Triton', the new Italian-led Frontex mission in the Mediterranean, on 1 November 2014. The scope of Triton, however, is very narrow with respect to the Italian mission: the latter often operated off the Libyan coast, while the EU operation limits its scope to a few miles beyond Italian territorial waters.<sup>68</sup> This was – and still is – further complicated by the fact that the responsibility for addressing immediate migration emergencies initially falls on the closest country, as do the procedures for asylum seekers.<sup>69</sup> Concerns regarding the inadequacy of the European mission were expressed by Cecilia Malmström, European Commissioner for Internal Affairs of the second Barroso Commission, during the launch of Triton:

Triton will have to replace, will have to substitute Mare Nostrum, despite being unable to have the same scope of the latter. Mare Nostrum has been a very ambitious mission, and I do not know if we will find the means to do exactly what Italy did.<sup>70</sup>

A blunt answer came in April 2015, when about 1,200 migrants and asylum seekers lost their lives in two shipwrecks in the Mediterranean, an event that spurred the European Union to launch EUNAVFOR Med, also known as Operation Sophia, an Italian-led EU mission aimed at neutralising migrants' smuggling routes in the Mediterranean.<sup>71</sup> As occurred previously with Mare Nostrum, however, EUNAVFOR Med has been criticised for being a potential pull factor and for the increasingly manifest unsustainability of a single country

<sup>68</sup>Cusumano, "Emptying the sea with a spoon?", 91-98.

<sup>69</sup>As set down in Article 13 of the 2013 Dublin III Regulation. Council of the European Union, *Council Regulation (EC) No. 604/2013*, 26 June 2013, art. 13. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0604&from=en>.

<sup>70</sup>Albahari, *Crimes of Peace*, 31-2.

<sup>71</sup>Del Valle, "Search and Rescue in Mediterranean", 22-40.

dealing with such vast migratory flows. Indeed, the flows have continued to increase, with Italian and other EU vessels rescuing 153,842 seaborne migrants and asylum seekers in 2015, 181,436 in 2016<sup>72</sup> and 99,119 in the first 8 months of 2017,<sup>73</sup> all of whom disembarked in Italy. These figures give an idea of the magnitude of the Mediterranean 'migration crisis'.

In response to much pressure from Italy and Greece, the EU recently adopted measures, such as improved search and rescue missions, tougher interventions against people smugglers, internal resettlement and relocation quotas, a list of safe countries for readmission agreements and, lastly, potential agreements with countries of origin and transit.<sup>74</sup> The European Union-Turkey deal signed in 2016 exemplifies the EU's attempts to address the migratory crisis on its eastern front, a cooperation that appears to be in the mutual interest of both parties involved, despite significant political and social issues.<sup>75</sup> Apart from this agreement, however, the slow proceedings and the many divisions within the European Union make it difficult to actually enforce the majority of these measures.

Looking at the policies Italy has introduced to combat irregular immigration, it is possible, to draw a line between its internal and external policies. The legal provisions of the former suggest that the country has been rather consistent throughout the years, with an evident three-pronged approach: the adoption of European directives; the implementation of immigration reforms that have dealt – with some delay – with new migration phenomena; and, lastly, the unvarying use of amnesties for irregular immigrants and workers. Instead, Italy's external policies of the last decade have shown a conspicuous lack of consistency, with the country's Libyan-based policy markedly in contrast with Mare Nostrum, Triton and EUNAVFOR Med. A clear dichotomy therefore emerges from the analysis of Italy's migration policies since 2004.

## Conclusion

Italian migration policies towards economic migrants and asylum seekers have changed significantly over the years, mainly because of five factors: (1) the physiologically slow adaptation of laws to the changing national and regional socio-political climate; (2) the increasing weight of European competences concerning immigration; (3) the impact of transnational events that were difficult to predict and prevent; (4) the country's internal political instability; and (5) the constant state of emergency underlying the increasing maritime arrivals of asylum seekers and economic migrants, a phenomenon which now appears to be less transitory and more structural.<sup>76</sup>

By examining these events from a historical perspective, four phases are clearly detectable. The first one covers the timeframe ranging from Italy's national unification in 1861 to

<sup>72</sup>For 2015 and 2016, Italian Ministry of the Interior, *Cruscotto statistico al 31 dicembre 2015 e 2016*, 1 January 2016 e 2017. [http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/cruscotto\\_statistico\\_giornaliero\\_31\\_dicembre\\_2015.pdf](http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/cruscotto_statistico_giornaliero_31_dicembre_2015.pdf). [http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/cruscotto\\_statistico\\_giornaliero\\_31\\_dicembre\\_2016.pdf](http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/cruscotto_statistico_giornaliero_31_dicembre_2016.pdf).

<sup>73</sup>Italian Ministry of the Interior, *Cruscotto statistico giornaliero del 31 luglio 2017*, 1 August 2017. [http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/cruscotto\\_statistico\\_giornaliero\\_del\\_31\\_luglio\\_2017.pdf](http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/cruscotto_statistico_giornaliero_del_31_luglio_2017.pdf).

<sup>74</sup>Barbulescu, "Still a Beacon of Human Rights?", 301-8.

<sup>75</sup>Zoetewij and Turhan, "Above the Law-Beneath Contempt", 151-165.

<sup>76</sup>Abbondanza, *Italy as a Regional Power*, 277-283.

the mid-1970s, when the country was predominantly a land of emigration and the lack of a structured legal framework reflected this condition. The second deals with the transition from emigration to immigration, therefore spanning from the mid-1970s to 1986, year of the Foschi Law. The third phase is characterised by the Italian immigration reforms that were heavily influenced by both the European integration process and an increase in total immigration, thus ranging from the Martelli Law of 1990 to the Bossi-Fini Law of 2002. The fourth phase stretches from the passing of the country's internal migration policies in 2004, through its frequently contrasting and equally controversial external policies, up to the present unsustainable situation.

In addition to outlining the determining factors and timeframes, the article also traces the legal and political paths followed by Italy in reforming its policies concerning irregular immigration. While the impact of the push and pull factors mentioned is evident, they lead to a few further considerations. The *fil rouge* that binds all Italian migration policies, from the Foschi Law of 1986 to the Law Decree No. 109 of 2012, is the use of *sanatorie*, amnesties, with various governments having regularised the legal status of approximately 1.7 million previously irregular immigrants and workers. Secondly, this politico-legal instrument has been used by administrations of various hue – centre-left coalitions, centre-right coalitions (paradoxically, the most flexible ones), grand coalitions and so-called governments of experts – thus underlining the consistency of Italy's domestic policies.

A third consideration highlights the contradiction inherent instead in Italy's external policies of the last decade aimed at combating irregular immigration. The 2008 Libyan-based policy was criticised for its severity and was later condemned by the ECHR for its failure to guarantee respect for human rights, while the more recent Mare Nostrum, Triton and EUNAVFOR Med operations have been contested because their humanitarian nature allegedly turns them into pull factors. A fourth and final consideration emphasises the dichotomy of Italian migration policies addressing irregular immigration, with generally consistent internal policies and often opposite external ones.<sup>77</sup>

Bearing all this in mind and considering the complexity of the migratory challenge faced by Italy since the outbreak of the Arab Spring, it seems appropriate to reiterate that the old distinction between irreproachable Northern European policies and reprehensible Southern European ones is overly simplistic and, therefore, inaccurate.<sup>78</sup> Timothy G. Hammond's conclusion reminds us that what we are witnessing reasserts the centrality of the Mediterranean and the transnational nature of the largest migration crisis of the post-war era. In his words:

At the heart of the irregular migration crisis we are reminded of the Mediterranean's reemergence as a focal point for world affairs in an age when multifarious hybrid conflicts and their associated borderless threats challenge normative state-centric perceptions on how to address such challenging situations.<sup>79</sup>

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<sup>77</sup>At the time of writing, a new shift in Italian migration policies is taking place, with Italy having reached EU-backed agreements aiming at curbing the world's most active maritime migratory route. These agreements involve the introduction of a new code of conduct for NGOs operating in the Mediterranean, supplying money, equipment and training for Libya's border and coast guard, deploying ships from the Italian Navy in Libyan coastal waters, and implementing deals with local groups that control Libya's internal areas crossed by migrants and asylum seekers. An assessment of this new policy has not yet been carried out, though its nature seems to confirm the variability of Italy's external migration policies, as opposed to the relative consistency of its internal ones.

<sup>78</sup>Finotelli and Sciortino, "The Importance of Being Southern", 119-38.

<sup>79</sup>Hammond, "The Mediterranean Migration Crisis", 1-12.

**Table 4.** Summary of Italian migration laws.

Law	Year	Scope of the Amnesty	Government in Charge	Political Context
Law No. 943 of 1986, 'Foschi Law'	1986	118,000	2 <sup>nd</sup> Craxi government	<i>Pentapartito</i> , a large, centrist and pro-European coalition
Law. No. 39 of 1990, 'Martelli Law'	1990	222,000	6 <sup>th</sup> Andreotti government	<i>Pentapartito</i> coalition, in charge during the creation of the Schengen Area
Law Decree No. 489 of 1995, 'Dini Decree'	1995	250,000	Dini government	<i>Governo tecnico</i> , a government of experts supported by a large coalition, in charge following the Maastricht Treaty and influenced by the increase in both regular and irregular immigrants, including seaborne ones
Law No. 40 of 1998, 'Turco-Napolitano Law'	1998	217,000	Prodi government	Centre-left coalition government, guided by the country's entry into the Schengen Agreements and by the Treaty of Amsterdam
Law No. 189 of 2002, 'Bossi-Fini Law'	2002	646,000	2 <sup>nd</sup> Berlusconi government	Centre-right coalition government, in charge following the Nice Treaty and influenced by the coalition's composition and the increase in both regular and irregular immigration, including maritime arrivals of migrants and asylum seekers
Law No.102 of 2009	2009	222,000	4 <sup>th</sup> Berlusconi government	Centre-right coalition government, formed one year after the signature of the Treaty of Lisbon and influenced by the coalition's composition and the increase in maritime arrivals. It produced the agreement with Libya and introduced the 'crime of clandestine immigration'
Legislative Decree No. 109 of 2012	2012	23,000	Monti government	<i>Governo tecnico</i> supported by a large, multipartisan coalition. It temporarily reached an agreement with the Libyan NTC

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