

The EU, Migration and Global Justice. Policy Narratives of Human Smuggling and their normative implications

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Abstract

The paper aims to contribute to a debate on the EU's potential role in terms of global justice in the field of migration. In order to do so, the analysis focuses on the narratives emerging from EU policy documents relative to migrant smuggling. Four policy narratives are singled out, differing from one another based on the main actors involved, the specific rationale of the story and the policy response envisaged by the EU. As a result, "criminal", "humanitarian", "deterrence" and "multilateral" narratives of smuggling are examined. Applying a threefold conception of global political justice – as non domination, impartiality, mutual recognition – the normative content of these policies is assessed. Overall, although there are areas in which justice-informed commitments are advanced, the EU does not seem to live up to the high standards it sets for itself (at least rhetorically), nor with a substantial advancement of global justice in the field of migration.

Keywords: Migration, Human Smuggling, EU, Policy Narratives, Global Justice

Riassunto. *L'UE, migrazioni e giustizia globale. Narrative di policy sul traffico di esseri umani e loro implicazioni normative*

L'articolo mira a contribuire al dibattito sul ruolo potenziale dell'UE in termini di giustizia globale nel campo della migrazione. A tal fine, l'analisi si concentra sulle narrazioni emerse dai documenti di policy dell'UE relativi al traffico di migranti. Vengono individuate quattro narrative, che differiscono l'una dall'altra in base ai principali attori coinvolti, alla loro logica e alla risposta politica elaborata dall'UE. Di conseguenza, vengono esaminate le narrazioni "criminali", "umanitarie", "dissuasive" e "multilaterali" del traffico dei migranti. Applicando una triplice concezione della giustizia politica globale – come non-dominio, imparzialità, mutuo riconoscimento – viene valutato il contenuto normativo di queste politiche. Nel complesso, sebbene esistano ambiti in cui vengono promossi impegni informati a concezioni di giustizia, l'UE non sembra essere all'altezza né degli standard elevati che si prefigge (almeno retoricamente), né con un sostanziale progresso della giustizia globale nel campo della migrazione.

Parole chiave: migrazione, traffico dei migranti, UE, narrative di policy, giustizia globale

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1. Introduction

Ever since it made its debut on the global stage, the European Union (EU) has considered itself – and has been widely regarded – as a *sui generis* international actor (Duchêne, 1972; Manners, 2002; Mitzen, 2006). The strong commitment to values such as democracy and human rights, both at home and abroad, has been central to this (self-)perception of the EU as a somewhat "distinct" international actor (Smith, 2003). The EU's response to the so-called "migration crisis", however, seems to have called once again into question such commitment, exposing some serious tensions between its declared adherence to some of these values and the actual engagement in their implementation (Barbulescu, 2017;

Lucarelli, 2018; Riddervold, 2018). Moreover, in the area of migration the EU seems to fail to withstand to a concept of justice consistent with its traditional core values.

One way to explore the EU's approach towards migration is through an analysis of the way in which migration is framed in EU documents, with the aim to highlight the specific justice claims embedded into EU discourse. This is a rather unexplored perspective, as a matter of fact, although political debates on migration are attracting an increasing amount of attention, there has hardly been any systematic investigation of their content from the perspective of justice. In a way that is designed to be complementary to the few other articles appeared on this topic (D'Amato and Lucarelli, 2019), centered on national debates, this piece seeks to contribute to such a discussion by focusing attention on the narratives and their implicit justice claims, emerging at the EU level. More specifically, we will look at EU policy documents in a specific but crucial aspect of migration: human smuggling.

“Smuggling of migrants” or “Human smuggling” are terms that are increasingly common in policy and public discourses; indeed, they refer to a very specific phenomenon, i.e. the “facilitation” of unauthorized entry, transit and residence in a country. As such, Human smuggling is considered a crime against the State – always implying a cross-border dimension – and focuses on the “intermediaries” of migration, more than on the migrants themselves.

As noted by Gabriella Sanchez (2018, p. 1), «migrant smugglers occupy a special place in the European migration crisis discourse»: Most of the times, they are depicted as «the facilitators of irregular migrants' journeys», and as «criminals who take advantage of people's vulnerability and naïveté», and contrasted with “speechless” migrants, deprived of any agency and will. Narratives based on such a rudimentary picture of the smuggling phenomenon abound in EU policy documents as well. In fact, a closer look into these documents reveals that the EU's anti-smuggling policy is rooted in multiple narratives that reflect the multidimensional nature of the issue, the multiplicity of the actors involved and the complex interaction of their respective justice claims. The thorough analysis of these narratives and of their normative content is thus significant because the message they convey is not “empty rhetoric”, as, indeed, «they help to crystallize what is perceived to be politically, morally, and legally palatable» (Albahari, 2018, p. 3) for the EU.

The article is made up of four sections. In the first, the concept of policy narratives is defined, the specific approach of this paper is situated within the wider context of migration debates in Europe and the conceptions of justice underlying the analysis are introduced and discussed. The following section provides an overview of the main policy developments at the EU level in the field of anti-smuggling, especially since the outbreak of the 2015 “migration crisis”. The third part is devoted to the identification of the main narratives emerging from EU policy documents, the analysis of their content and the assessment of potential linkages to established narratives concerning EU’s international role. In particular, the focus is on a limited set of policy documents published between May 2015 and March 2016: taken together, they give shape to EU’s immediate response to the migration crisis, both at the discursive level and in terms of concrete action against human smuggling. In the fourth section the threefold conceptualization of global justice here adopted – based on the categories of non-domination, impartiality, mutual recognition (Eriksen, 2016) – is applied to the main policy narratives, in order to identify the justice claims informing them. Finally, the paper looks into the implications of such findings for the EU migration system of governance.

2. Narratives, Justice and smuggling: a conceptual and a methodological premise

As stated in the introduction, the term narrative refers to the act of «selecting and emphasizing specific aspects of reality (framing) and presenting them in the context of a plot in which a story is told» (D’Amato and Lucarelli, 2019, p. 4). In synthesis, *policy narratives* can be regarded as being made up of three components: i) a set of claims about the policy problem that should be addressed; ii) a set of claims about the causes of the problem; iii) a set of claims about the ways policy interventions are likely to affect the problem¹. Narratives can have different functions: interpretative (provide plausible interpretations of complex phenomena); instrumental (strategically build a belief to achieve a certain goal); ontological (spell out self-representation, self-other relations) etc.

¹ Adapted from Boswell, Geddes and Scholten (2011, pp. 4-5).

Specifically, *policy narratives* – the focus of this work – always perform a cognitive function, i.e. involve knowledge claims about the causes, dynamics and impact of a given issue and on possible policy responses (Boswell, Geddes and Scholten, 2011, pp. 4-5).

Most of the analysis of policy narratives focus on public debates, which are the earliest phases of the policy-making process: agenda-setting and policy formation. The first aim of this article is to complement this literature by looking at later phases – i.e. policy adoption and legitimization – exploring narratives within EU policy documents dedicated to a distinct, but extremely relevant aspect: human smuggling. At this stage of the policy-making process, even if “stabilized” and “captured” by an institution (Nițoiu, 2013, p. 242), narratives do not stop to have effects (Shanahan, Jones and McBeth, 2011), but are in fact all the more relevant because they «can function as legitimizing stories for specific policy actions, and at the same time gain strength from being put into practice» (Ceccorulli and Lucarelli, 2017, p. 84). The assumption behind this work is that narratives do not directly cause behavior, «but rather underpin and legitimize implicitly or explicitly EU actions» (Schumacher, 2015, p. 382).

In order to analyze how human smuggling is narrated we look at the main documents that shaped EU’s anti-smuggling policy in the immediate aftermath of the EU’s migration crisis: EU Action Plan Against Migrant Smuggling (European Commission, 2015a); EU Agenda on Migration (European Commission, 2015c); EU Agenda on Security (European Commission, 2015d); EU Trust Fund for Africa (European Commission, 2015b); EU-Turkey agreement (European Council, 2016). After having introduced and contextualized these documents (second section of the paper) we will carefully examine them through a quality-interpretative approach to discourse analysis (third section of the paper) with the goals of i) extrapolating the main narratives, ii) determine their relative strength and iii) identify potential linkages with established narratives of EU’s international role (Tonra, 2011; Christou, 2010; Nițoiu, 2013; Schumacher, 2015; Ceccorulli and Lucarelli, 2017). As noted by Schumacher (2015, p. 384), narratives linkages help legitimize emerging narratives by inducing “threads of coherence” that connects present to past and anticipated future narratives and are thus relevant to evaluate the relative strength of each narrative.

The second goal of the paper is to conduct a normative assessment of the main narratives

that inform EU policy document in relation to human smuggling, with a focus on the potential EU's contribution to global political justice in the field of migration. In order to address this broad question, the paper adopts the three different conceptions of justice: justice as non-domination, justice as impartiality, and justice as mutual recognition (Eriksen, 2016).

When applied to the international level and the migration domain, each definition emphasizes specific challenges to global justice over others. *Justice as non-domination* thus refer to a form of global political justice based on Westphalian state-centered conception whereby there is not prevarication over each other's sovereignty claims, but priority is given to the justice claims of the State and its citizens. In the case of the EU, and the specific context of anti-smuggling policy, we would expect this policy to focus on EU itself, instead of migrants or other actors (NGOs, smugglers) and to privilege EU's prerogatives and justice claims: sovereignty, inviolability of borders, but also respect for third state's autonomy. Moreover, in order to contrast human smuggling, such an approach would also aim to contribute to strengthen or establish international institutional mechanisms and procedures that respect these same principles – international law and inter-governmental institutions.

Conversely, *Justice as impartiality* refers to the ability to develop and apply universal norms in the area of migration, in compliance with universal human rights and the moral priority of individuals. As the term itself suggests, the most important feature in this conception of justice is the very idea of “impartiality”, based on the principle that one ought to treat similar cases alike and different cases differently (Zellettin, 2018, pp. 9-10). The best tool to ensure such an outcome would thus be the creation/maintenance/strengthening of a robust human rights protection regime at the global level. In the contest of the EU anti-smuggling policy, we would thus expect that the main focus would be at the level of individuals, and that it would privilege individuals' (i.e. migrants') justice claims over States' sovereignty. Such an approach would also strengthen *cosmopolitan* law (vs. *international* law) and *supranational* institutions (vs. *intergovernmental* mechanisms) devoted to deal with human smuggling from a human rights perspective.

Justice as mutual recognition refers instead to the EU's ability to recognize and “listen to

the stories of' migrants and other actors involved in their specific identity, taking their self-perception and justice claims into consideration. To avoid unintended injustices and inequity, which might also be caused by well-intended agents, justice as mutual recognition maintains that agency over the definition of justice must be shared. As Eriksen explains, «we cannot know what is just unless all affected are heard» (2016, p. 19). Applied to smuggling, this approach would mean that in principle there is no hierarchy among the actors involved: all those affected by smuggling – EU, Member States, Third States of origin or transit, migrants, smugglers, NGOs – have an equal status and the right to have their perspective, priorities and experiences being heard. In order to contribute to global justice under this perspective, the EU should define its policies through appropriate (discursive) processes that grant fair participation of all the actors involved in defining the normative features of smuggling, and strengthen collaborative institutional frameworks that make possible for all the particular concerns of all the actors affected to be considered.

An investigation of the migration-related action of the EU that takes all three conceptions into consideration, besides being more comprehensive, also allows to look into the intrinsic tension among them, providing a more nuanced and accurate picture of the limits and possibility of the EU's normative role (Fassi and Lucarelli, 2017). Thus, in the last section of the article each of the narratives of smuggling identified before is critically analyzed in order to detect the justice claims that inform them, and the kind of policies that they legitimize. In particular, each narrative is unpacked with respect to the referent of justice (whose justice? EU's, European citizens', third states', migrants', smugglers') and its intrinsic rationale in terms of justice (which conception of justice is being advanced or instead violated?).

3. EU approach to human smuggling: an overview

“Smuggling of migrants” and “Human trafficking” are terms that are increasingly common in discourses – included policy parlance – about irregular migration; in fact, they refer to two different, if interrelated and often overlapping, phenomena. On the international

law level, the two concepts are defined by the 2000 additional Protocols of the UN Convention against organized crime: while, on the one hand, smuggling is a crime against the State – therefore implying a cross-border dimension – and the (at least initial) consent of the migrant, on the other hand, trafficking is characterized by the purpose of exploitation and the lack of consent of the victim.

Within the EU context, rules to clamp down on human smuggling were adopted in 2002 through the so-called Facilitators Package: Directive 2002/90/EC established a common definition of the «facilitation of unauthorized entry, transit and residence» offense – viz. migrant smuggling – while the Framework Decision 2002/946/JHA established a common minimum level of penalties for the offenders². In this respect, the European approach went further than the Smuggling Protocol of the UN Convention, in that it dispensed with the condition of obtaining a financial or other material benefit for the smuggling offense to be established (Mitsilegas, 2018, p. 6). Under the Facilitators Package, any person who intentionally assists unauthorized entry, transit, or residence of a non-UE national in the EU, is to be sanctioned – *unless* they are doing so for humanitarian reasons.

After this initial effort, human smuggling almost disappeared from EU's agenda for more than a decade, until the “migration crises” brought the issue back to fore in 2015 (Perkowski and Squire, 2018). Two aspects of the crisis seem relevant to explain this renewed attention for migrant smuggling. On the one hand, the growing pressure at the European borders and the unprecedented numbers of deaths recorded in the Mediterranean Sea – 3283 in 2014, to 3782 in 2015, to peak at over 5000 in 2016 – urged European institutions to take immediate action³. On the other hand, the amount of (forced) migrants involved in the “refugee crisis” transformed the scale and meaning of the smuggling phenomenon. According to Europol (2016), 90 percent of the over one million irregular migrants entering the EU in 2015 resorted to some form of “facilitation service” provided by smuggling networks, generating a turnout comprised between 3 and 6 billion euros, making smuggling one of today's most profitable criminal activities.

EU's response was laid out in a series of policy documents adopted in rapid succession.

2 In 2006 the EU has also adhered to the UN Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime (Council decisions 2006/616/EC and 2006/617/EC).

3 See IOM Missing Migrant project (<https://missingmigrants.iom.int>).

The first is the European Agenda on Security, issued by the Commission on 28 April 2015 (European Commission, 2015d), which identified the cooperation among Member states and with third countries as a priority in the fight against organized crime networks involved in human smuggling activities. A comprehensive response to the migration crisis was then articulated in the European Agenda on Migration (EAM), published on 13 May 2015 (European Commission, 2015c). According to the EAM, EU's strategy rests on 4 pillars: i) better management of external border; ii) the strengthening of the common asylum policy; iii) a new policy on legal migration, and iv) reducing the incentives for irregular migration with a focus on «root causes» in third countries, on «dismantling smuggling and trafficking networks», and on the «better application of return policies» (Geddes, 2018, pp. 122-123).

On 25th May 2015, the Commission (2015a) adopted what may be regarded as the key document in this domain, the EU Action Plan Against Migrant Smuggling (2015-2020), in which a series of steps to tackle the problem were listed out, grouped into four main priorities: i) Enhanced police and judicial response; ii) Improved gathering and sharing of information; iii) Enhanced prevention of smuggling and assistance to vulnerable migrants; iv) Stronger cooperation with third countries. Alongside the implementation of the Action Plan, a number of complementary initiatives to tackle migrant smuggling have been taken at different levels, thus contributing to give content and shape to EU's anti-smuggling policy, as well as to the narratives that inform it.

Among these developments, one of the most outstanding – and controversial – is perhaps the agreement (formally called “Statement”) between the EU and Turkey, implemented since 18 March 2016, and explicitly devised by the EU Commission as an attempt to fight human smuggling and reduce border fatalities. In practice, the deal entailed the complete closure of the eastern Mediterranean route: every irregular migrant arriving in Greece from Turkey would be returned to the latter; in turn, for each Syrian returned, a Syrian refugee settled in Turkey would be directly resettled to the EU. On top of that, Turkey would receive a compensation amounting to 6 billion euro from the EU, as well as a number of political concessions.

Another major step was the launch of the *Common Security and Defence Policy* (CSDP) mission EUNAVFORMED Operation SOPHIA in the Central Mediterranean, whose

purpose is to «disrupt the business model of smugglers by identifying, capturing and disposing of vessels used or suspected of being used by them», as well as to train the Libyan coastguards and navy (EU Council Decision 2015/778). Also, the border management component of the CSDP missions and operations, such as EUCAP Sahel Niger, EUBAM Libya, EUCAP Sahel Mali, was reinforced in order to contribute to EU's anti-smuggling policy goals. Similar objectives have also been pursued within EU's Partnership Framework with third countries, through dedicated "cooperation platforms" on migrant smuggling and tailored funding from the Emergency Trust Fund for Stability for Africa, launched at the Valletta Summit in November 2015.

In parallel, the role of relevant EU agencies has been significantly strengthened (Scipioni, 2018), giving rise to a complex system of governance in the anti-smuggling domain⁴. In February 2016, Europol, the EU law enforcement agency, launched the European Migrant Smuggling Centre to support Member States' investigations (including pro-active financial investigations) and to increase cooperation and coordination among law enforcement agencies (<https://www.europol.europa.eu/about-europol/european-migrant-smuggling-centre-emsc>, 24/03/2020). Similarly, the European Border and Coast Guard Agency (Frontex)'s mandate was strengthened in 2016, enabling it to operate outside of the EU territory, patrolling the EU's external border and collecting data and intelligence – also through satellite imagery – on smuggling routes and practices.

All these developments are based on a limited set of policy documents that, taken together, give shape to EU's response to human smuggling, both at the discursive level and in terms of concrete action⁵. The next section, in particular, looks at the different narratives that is possible to identify across these documents.

4 CEPOL, Eurojust, the European Asylum Support Office (EASO), the Fundamental Rights Agency (FRA) and the European Maritime Safety Agency (EMSA) also support the EU's action against migrant smuggling.

5 The bulk of the analysis is based on the EU Agenda on Migration (European Commission, 2015c), EU Agenda on Security (European Commission, 2015d), EU Action Plan on Migrant Smuggling (European Commission, 2015a), EU-Turkey Agreement (European Council, 2016), EU Trust Fund for Africa (European Commission, 2015b).

4. Narratives of migrant smuggling in EU policy documents

In his seminal work, Emery Roe defined policy narratives as «stories (scenarios and arguments) which underwrite and stabilize the assumptions for policymaking in situations that persist with many unknowns» (1994, p. 34). Each story revolves around a specific set of actors, a set of claims about the nature of the problem (the rationale), and cause-effect claims about the ways policy interventions (solutions) are likely to affect the problem. Regarding the methodological approach, in order to extrapolate the narratives from the documents a discourse analysis approach is applied. In particular, due to the limited number of documents explored, the approach is purely qualitative-interpretative (Yanow, 2006). However, of the four narratives identified (see tab. 1), one – the criminal narrative – stands out as the most recurrent and pervasive in the texts, and should thus be considered as the dominant narrative.

Narrative	Main actors	Problem (rationale)	Proposed Solution
<i>Criminal – smuggling as a criminal threat</i>	Smugglers (agents)	<ul style="list-style-type: none"> • Criminal networks are thriving from smuggling • Links between smuggling and other crimes • Lack of information 	<ul style="list-style-type: none"> - Increase information gathering and exchange - Strengthen investigation and prosecution + CSDP - Research and risk analysis
<i>Humanitarian – smuggling as abuse</i>	Migrants (victims)	<ul style="list-style-type: none"> • Need to prevent the exploitation of migrants • Prevent migrants' death 	<ul style="list-style-type: none"> - Open legal channels - Revise directive 2004/81/EC
<i>Deterrence – smuggling as a service</i>	Migrants (agents)	<ul style="list-style-type: none"> • Reduce (incentives to) irregular migration 	<ul style="list-style-type: none"> - Enhance the effectiveness of return - Support/pressure to third states
<i>Multilateral - Smuggling as an international problem</i>	EU & third states (agents & victims)	<ul style="list-style-type: none"> • Third states' inability to deal with smuggling (Weak States, lack of resources) • Corruption (complicity) 	<ul style="list-style-type: none"> - Support: capacity building - Pressure: Data collection and sharing - Address the root causes - Encourage partner countries to adopt UN Protocol

Fig. 1 - Overview of the narratives identified.

4.1 The criminal narrative - smuggling networks as a threat

The first narrative that the analysis of the aforementioned documents brings to light is one that depicts smuggling as a serious crime, perpetrated by “ruthless” criminals, and linked to other transnational threats such as trade in arms, drugs or human beings, cyber/financial/organized crime and terrorism. As such, and also due to the lack of knowledge about the phenomenon, smuggling is framed both as a crime and as a threat in need of a ‘firm’ and swift security response by the EU.

In the criminalization of smuggling, one recurring element are the huge, illicit profits that criminal networks make at the expense of the migrants. Although the smuggled people are present in this narrative, the focus here is definitely on smugglers – often presented as groups, or more or less sophisticated ‘networks’, usually associated with mafias and criminal organizations.

In particular, in line with the so-called «business model approach» to smuggling (Baird, 2013), special attention is devoted to the economic motivation of smugglers – as opposed to the migrants, who are “risking their lives” and (implicitly) other actors (EU, NGOs) that are trying to save them. Moreover, smugglers are accused of further endangering their clients to maximize their profits, as they «often squeeze hundreds of migrants onto unseaworthy boats – including small inflatable boats or end-of-life cargo ships – or into trucks» (European Commission, 2015a, p. 1).

This focus on the smuggling business was already noticeable in the Agenda on Migration, which set the goal to «transform migrant smuggling networks from ‘low risk, high return’ operations into ‘high risk, low return’ ones» (European Commission, 2015a, p. 1). The Action plan elaborates on this point defining migrant smuggling as a «highly profitable business, with criminal networks thriving on the low risk of detection and punishment». While data on profits obtained by smuggling networks globally are not available, the narrative usually points out that “isolated cases show that these are substantial» (European Commission, 2015a, p. 1).

Accordingly, one of the main responses envisaged by the EU is to «disrupt the business model of criminal groups and bring the perpetrators to justice» (European Commission,

2015a, p. 2), enhancing the capacity of Member States to investigate and prosecute smugglers – including proactive financial investigations to seize and recover criminal assets – and the ability to EU agencies to provide support. Such investigative and prosecution actions, however, rapidly translates into a much more muscular approach to prevent and clamp down on migrant smuggling by sea, envisaging «systematic efforts [...] to identify, capture and dispose of vessels intended to be used by smugglers» (European Commission, 2015a, p. 3). Suspicious vessels around the Mediterranean shall be systematically monitored through the European Border Surveillance System (Eurosur), while the use of satellite systems (EU SatCen) would allow to extend the surveillance beyond EU borders to the «pre-frontier area» (Mitsiligas, 2018). Moreover, in conjunction with the establishment of a CSDP operation targeting migrant smuggling networks, Frontex was to provide to the Member States «financial and technical support to tow boats to the shores and scrap them» (European Commission, 2015a, p. 3).

The depiction of smuggling as a serious threat characterizing this narrative also lean on two other aspects. On the one hand, the EU claims that there is the lack of information and the resulting uncertainty that surround the smuggling phenomenon (European Commission, 2015a, p. 4). On the other hand, smuggling is assumed to be a “poly-criminal” activity linked to other crimes such as trafficking in human beings, drugs and other commodities, severe labour exploitation, financial crimes, terrorism. The discursive context within which this narrative is embedded was already framed by the EU Agenda on Security, adopted by the Commission on 28 April 2015. In this document, smuggling is connected to other cross-border crimes identified as one of the three main priorities for European security in the next five years – together with terrorism and cybercrime:

serious and organised cross-border crime is finding new avenues to operate, and new ways to escape detection. There are huge human, social and economic costs –from crimes such as trafficking in human beings, trade in firearms, drug smuggling, and financial, economic and environmental crime. *Organised crime groups involved in the smuggling of migrants* exploit the vulnerabilities of people seeking protection or better economic opportunities and *are responsible for the loss of lives in the name of profit*. Organised crime also feeds terrorism and cybercrime through channels like the supply of weapons, financing through

drug smuggling, and the infiltration of financial markets⁶ (European Commission, 2015d, p. 12).

Taken together, the amount, scope and type of measures elaborated by the EU to contrast migrant smuggling convey the notion of a serious security threat, which demands «a powerful demonstration of the EUs determination to act» (European Commission, 2015, p. 3). Significantly, observers have used the expressions «EU's war against smuggling» (Albahari, 2018), or «anti-smuggling Crusade» (Mitsilegas, 2018) to define the EU's stance in the policy developments concerning the issue. In this view, the *criminal narrative* of migrant smuggling echoes the “security narrative” that the literature has identified more generally in relation to migration. Analyzing the EU Global Strategy, Ceccorulli and Lucarelli (2017, p. 89) describe this narrative as drawing on «the idea of an increasingly blurred internal-external divide and the alleged connection between migration and other security threats» such as smuggling, organized crime and terrorism, which «makes external border management a necessity». Furthermore, both narratives seems to have strong linkages with the “threat/risk narrative” that Christou (2010) and other scholars (Nitou, 2013; Schumacher, 2015) identify as one of the main strand in EU external relation, and has its roots in the European Security Strategy 2003 and the notion of multi-dimensional security threats that characterize the post-cold war environment.

4.2 Humanitarian narrative – smuggling as abuse

Within the smuggling discourse, the humanitarian narrative shifts the attention from the smugglers to the smuggled people, conceived here as (innocent) victims of “cruel”, “ruthless” criminals that exploit the vulnerable condition of the migrants, and put their lives in danger.

One common denominator in these stories is the lack of agency attributed to migrants, who appear completely at the mercy of the smugglers. According to the EU Action Plan on migrant smuggling, «The criminal networks organize the journeys of large numbers of migrants desperate to reach the EU», thus «putting the migrants lives at risk» (European

⁶ Emphasis added.

Commission, 2015a, p. 1). Moreover, smugglers seem willing to resort to any means “to attract migrants”, including internet and social media, but then they «treat migrants as goods, similar to the drugs and firearms that they traffic along the same routes» (European Commission, 2015a, p. 1). The EU agenda on Security reinforces such a vision, stating that «One of the major problems the EU is currently facing is that criminal networks exploit individuals’ need for protection or their desire to come to Europe» (European Commission, 2015d, p. 18).

Such behavior is often associated and explicitly linked to risks of death or exploitation: «Scores of migrants drown at sea, suffocate in containers or perish in deserts» (European Commission, 2015a, p. 1). While the number of deaths at the time testimonies of a huge human tragedy – over 3000 in 2014, 1700 in just the first 4 months of 2015 – the future prospect seems even bleaker: If irregular migration by sea has «increased exponentially [...] so have the risks the migrants are exposed to when crossing the Mediterranean» (European Commission, 2015a, p. 1).

Concurrently, the Action Plan denounces that the «human rights of migrants are often gravely violated through abuse and exploitation» along the smuggling routes (European Commission, 2015a, p. 1). In this view, the EU recognizes that it should make a greater effort to «provide smuggled migrants, in particular vulnerable groups such as children and women, with assistance and protection» (European Commission, 2015a, p. 7), and in this view put forward a revision of Directive 2004/81/EC9 on residence permits issued to victims of trafficking in human beings and to smuggled migrants. At the same time, the document acknowledges that concrete actions to counter and prevent migrant smuggling need to be matched with measures ensuring the protection of the human rights of migrants – for example in sensitive issues such as the gathering of information during the asylum determination process (European Commission, 2015a, p. 6). Moreover, the EU recognize that smuggling networks can be weakened if fewer people seek their services and therefore, «it is important to open more safe, legal ways into the EU» (European Commission, 2015a, p. 2).

Overall, the humanitarian narrative translates into a call for action for the EU: «To try to halt the human misery created by those who exploit migrants, we need to use the EU’s

global role and wide range of tools to address the root causes of migration [...] The impact of global poverty and conflict do not end at national frontiers» (European Commission, 2015, p. 2). This narrative has a clear resonance with a humanitarian discourse that scholars have detected more generally in relation to irregular migration (Steinhilper and Gruijters, 2018). At the same time, this humanitarian view of smuggling can also be linked to the “value narrative” ingrained in the EUGS, that «underlines the importance of upholding the EU’s values when dealing with migration» (Ceccorulli and Lucarelli, 2017, p. 88). To the extent that the EU’s values are understood as universal, this narrative is cosmopolitan in nature and implies respecting migrants’ human rights at every step of the migration process.

4.3 Deterrence - Smuggling as a service

The third narrative that emerges from the close reading of the documents is still centered on smuggled migrants, yet this time they are not depicted as innocent victims, but rather as active part of the problem. While less pervasive than other narratives, this story is relevant in that it highlights what is framed as a secondary goal of EU’s anti-smuggling efforts, but often looks as the ultimate concern of the EU – stopping irregular migration in itself.

The EU Agenda on Migration states clearly the double goals of the fight against migrant smuggling: «to prevent the exploitation of migrants by criminal networks” and “reduce incentives to irregular migration» (European Commission, 2015c, p. 7). In this way, anti-smuggling policies are discursively linked to the return of irregular migrants: «efforts to crack down on migrant smuggling must be matched with strong action to return the migrants that have no right to stay in the EU to their home countries». An effective return policy is thus considered «a strong deterrent, as migrants are less likely to pay a high price to smugglers to bring them to the EU if they know that they will be returned home quickly» (European Commission, 2015a, p. 2).

Such a linkage is then reinforced by the claim that, «to attract migrants”, smuggling networks exploit the fact that «relatively few return decisions are enforced» (39,2% in 2013) (European Commission, 2015a, p. 7). Consequently – the argument goes – the goal is to

enhance the effectiveness of the EU's return system, by amending Frontex's legal basis in order to strengthen its role, making a better use of the Schengen Information System, and, particularly, engaging with third countries. The Commission also envisages stronger technical support to countries of origin or transit, to help improve their capabilities to integrate the returnees, but also «stronger efforts to convince third countries to take back their nationals that are irregularly present in Europe, which is an international obligation» (European Commission, 2015a, p. 8).

The deterrence rationale underlying this specific narrative of smuggling also resonates in other policy documents, with the EU-Turkey Statement of 18 March 2016 being probably the most compelling example. As mentioned, the goal of the agreement is stop irregular migration from Turkey to the EU. Nonetheless, the whole arrangement and the specific 9 points that substantiate it are explicitly and unambiguously framed as part of the EU effort to curb migrant smuggling:

Turkey and the EU also agreed to continue stepping up measures against migrant smugglers and welcomed the establishment of the NATO activity on the Aegean Sea. At the same time Turkey and the EU recognise that further, swift and determined efforts are needed. In order to break the business model of the smugglers and to offer migrants an alternative to putting their lives at risk, the EU and Turkey today decided to end the irregular migration from Turkey to the EU (European Council, 2016).

In terms of narrative linkages, such a narrative partially resounds with the deterrence narrative that emerges as dominant among European authorities – and agencies such as Frontex – in relation to the migration crisis, where «the term 'crisis' is mainly used to refer to the number of arrivals and Europe's perceived inability to accommodate them» (Steinhilper and Gruijters, 2018, p. 208). In this view, irregular migrants are described both as a burden on European societies and a potential security risk, «an unspecified threat that needs to be contained» (Steinhilper and Gruijters, 2018, p. 208). At the same time, the deterrence narratives seem to partially overlap with the “selective narrative” identified in the EUGS, according to which, in order to ensure «safe, regulated and legal» arrival of persons in need of international protection, massive, chaotic, unmanaged flux should be stopped – as the EU-Turkey statement is assumed to do (Ceccorulli and Lucarelli, 2017).

4.4 Multilateral narrative - Smuggling as an international problem

The last narrative of smuggling that is noticeable across the policy documents is what we can call a “multilateral narrative”, in which smuggling is not framed as an issue – or a threat – that concerns only or specifically the EU, but as an international problem that involves many countries, and that thus requires a strong international effort in order to be properly addressed. This story thus depicts a “united front” against migrant smuggling – composed of the EU, the countries of origin and transit – that strengthen their cooperation at every possible level in order to defeat this common challenge. Here, the EU and third states became the main actors, inefficacy against migrant smuggling the main problem, increased cooperation the solution.

The European Agenda on Security already singled out cooperation against the smuggling of migrants inside the EU and with third countries as a priority in the fight against organized crime networks, and the concept is frequently reiterated throughout the Action Plan. In this document, cooperation with third countries along the entire smuggling is presented in connection with «persistent EU efforts to address the root causes of irregular migration» (European Commission, 2015a, p. 8), and it seems to involve at least two elements: the diplomatic level and capacity building programs.

First of all, we get the sense of a common, concerted effort: the idea is to «launch or enhance the bilateral and regional cooperation frameworks with relevant partners focusing on practical measures to address smuggling of migrants», also through the Rabat, Khartoum, Budapest and Prague Processes, the ACP-EU Dialogue, the EU-Africa Migration and Mobility Dialogues, as well as political dialogue mechanisms under the Cotonou Agreement and the European Neighbourhood Policy. Moreover, the EU shall encourage partner countries to become parties to the UN Convention on Transnational Organised Crime and the UN Protocol on Smuggling of Migrants and increase cooperation and coordination with international organizations such as IOM, UNHCR, UNODC or Interpol (European Commission, 2015a, p. 9).

Secondly, this narrative identifies “weak law enforcement capacities” in third countries as a major obstacle to an effective exchange of information and co-operation, as well as the

investigation and prosecution or smuggling offences. The “common front” here looks less uniform, and different capabilities of the EU and third countries seem to imply different roles and responsibilities. As a consequence, the providing of EU’s financial and technical assistance to these countries «for starting or improving the collection, sharing and analysis of data on migrant smuggling» and to support the development of «national and regional strategies against migrant smuggling», «anti-corruption policies», as well as «the setting up of integrated border management systems», is presented as a priority (European Commission, 2015a, p. 8). Moreover, the reinforcement of CSDP missions and operations, such as EUCAP Sahel Niger and EUCAP Sahel Mali, on border management, is also presented as part of a strategy aimed to the achievement of these objectives and the EU’s goal to improve coherence and maximize impacts in *its* action against migrant smuggling abroad.

Not surprisingly, this “multilateral narrative” shows strong linkages with the second strand of narratives in EU external relations and foreign policy – i.e. the “duty and opportunity” narrative. According to this view, the recourse to a threat/security narrative leads the EU «to engage with the narrated security challenges in order to uphold the EU’s self-presented identity» – a purpose that the EU pursues especially by extending its systems of governance and transposing its norms and values (Schumacher, 2015, p. 385)⁷. Focusing on how migration is conceived and narrated in the EUGS, it is easy to find here echoes of the “global responsibility narrative” – i.e. the idea that EU’s global action «is necessary to address the root causes of conflicts and poverty and “champion the indivisibility of human rights”, all objectives that inevitably touch on migration” – as well as the “resilience narrative”, which is centered on the ability of third states «to reform, thus withstanding and recovering from internal and external crises” with the goal to «enable migrants and refugees to stay close to home and avoid taking dangerous journeys» (Ceccorulli and Lucarelli, 2017, pp. 91-92).

⁷ This narrative, in particular, seems to have strong linkages with many sub-narratives identified by Nițoiu: «Good neighbourliness», «EU as a democratizing force», «EU as a promoter of peace» narrative (Nițoiu, 2013, pp. 250-251).

5. EU narratives and conceptions of justice

The aim of this last section is to single out distinctive conceptions of justice from each of the narratives identified so far. We address these broad questions based on the three different conceptions of justice proposed in the introduction and singled out above: justice as non-domination, justice as impartiality, and justice as mutual recognition. As we have seen, each conception puts the emphasis on some aspects/issues of justice over others; considering them simultaneously enables us to factor in the inevitable coexistence of different justice claims, and the intrinsic tension among them.

How do the narratives identified in the analysis of EU anti-smuggling policy match with

Narrative	Referent	Justice as non-domination	Justice as impartiality	Justice as mutual recognition
<i>Criminal</i>	EU; Smugglers	+ -		-
<i>Humanitarian</i>	Migrants (victims)		+	+ -
<i>Deterrence</i>	Migrants (agents)	+	-	-
<i>Multilateral</i>	Third States; EU	+ -		-

Fig. 2 - Narratives on smuggling and conceptions of justice.

the conceptions of justice employed in this piece? As fig. n. 2 suggests, the question does not lend itself to a straightforward answer for the following reasons: i) There is no perfect match between narratives and conceptions of justice; ii) multiple references to different justice perspectives can be detected within the same narrative; iii) the same conception of justice can be identified in multiple narratives (with the exception of justice as impartiality); iv) in a given narrative, even within the same conception of justice we can find different justice claims, that often denote both the respect (+) and the violation (-) of the same principles. A more in-depth analysis is thus required to make sense of the overall normative picture that emerges from this approach. In what follows, we proceed by considering one conception of justice at time, and then disentangling the linkages emerging from a cross-narratives, cross-categories reading.

5.1 Defending EU borders?

The *criminal narrative* of smuggling echoes a perspective of justice based on a Westphalian view, where the conceptualization, definition, and management of the phenomenon reflect the primacy accorded to the State's right – and moral obligation – to control borders in order to protect the domestic political community (Walzer, 1983). Accordingly, those who allow, facilitate or concretely implement the violation of this sovereign right are regarded and treated as criminals, while the subject of this violation – the migrant as a human being, with all his rights and demands – seems to disappear from the scene. Such an approach to smuggling seems only to have strengthened since the “migration crisis” of 2015, in tune with a general change in attitude towards migration both in the MSs and at the EU level, as other contributions show. As it has been noted, «media images and political rhetoric have been effective at stoking anti-immigrant sentiment and prompting voters to favour regimes that seek to impose strict nation-state borders and controls and xenophobic immigration policies» (Zhang, Sanchez and Achilli, 2018, p. 6). At the same time, however, within the wider process of externalization of the EU governance of migration, the expansion of anti-smuggling policies beyond EU borders has created new conceptual tensions and normative challenges that cut across different narratives and conceptions of justice.

The prevailing narrative of smuggling is thus one in line with a conception of *justice as non domination*, in which the State (the EU, in this case) defends its citizens against the threat posed by criminal networks (usually conceived as made of foreign nationals) and can legitimately implement policies – policiary, judiciary, military – in order to prevent, contrast and punish these illegal and “un-just” acts. The condition for this to be “just” in a non domination perspective is that the action does not entail arbitrary domination on others. Here is where the *criminal narrative* and the *multilateral narrative* come into conflict with each other from this first perspective of justice. If the *criminal narrative* itself does not imply domination, the actions that are legitimated on the basis of such a narrative can. It is the case of the relationships between the EU and third countries of origin or transit through mechanisms such as the Partnership Frameworks (Compacts) already established with

Senegal, Mali, Niger, Nigeria, and Ethiopia. The EU's engagement to stipulate agreements with these countries to contrast human smuggling, seem to be subordinated to the interest of the European political community in protecting its own borders even at the cost of exercising forms of domination on third countries. As one observer puts it, these policies of externalization have framed smuggling, and migration more generally, "as a risk", and then «transferred the attendant risks to third states» (Anderson, 2016). This imbalance – most visible where power differentials between the EU and third states are more pronounced – has translated into a normative tension each time the EU has tried to "impose" its priorities on other (third) States, ultimately violating their own sovereign autonomy and thus the conception of justice as non-domination.

5.2 *Worsening Human Rights?*

The *humanitarian narrative*, as noted before, is focused instead on the smuggled migrants, conceived here as (innocent) victims of "cruel" criminals, or at least as vulnerable human beings whose life often is put in danger in their efforts to reach Europe with any means. In this narrative, individuals are the ultimate units of moral concern and the rights of the migrants – be they regular or irregular – seem to take precedence over other actors and justice claims. As such, this narrative is clearly in line with a conception of *justice as impartiality* that grants individuals as human being the central stage, and calls for strengthening human rights protection regime at every possible level.

This conception of justice, however, might conflict with those emerging from both the *criminal*, the *deterrence* and *multilateral* narratives, and with the policies that they legitimize. A first aspect to consider is the potential weakening of human rights as a by-product of the processes of externalization of the fight against human smuggling and the ensuing "securitization" of third states' borders. A recent overview on the subject, for example explains how the criminalization of informal movements in countries such as Libya, Niger and Algeria is leading to an increase in the risks of crossing borders, which in turn produces a "professionalization" of smuggling services, advantaging the most

structured groups (poly-criminal networks), and ultimately resulting both in an increase in the smuggling business turnover (Triandafyllidou, 2018, p. 213) and in higher risks of exploitation for the migrants. Moreover, the final result has been a proliferation of ever more dangerous routes and potentially more deaths (Anderson, 2016).

On the other hand, although legitimized by the *deterrence* narrative and its *non-domination* perspective, strengthening EU's cooperation with countries with shaky human rights and democratic credentials can rise more than one concern from a justice as impartiality viewpoint. The EU-Turkey statement, for example, while proving extremely effective in stopping the inflow of migrants across the Aegean Sea – dropped from around 850.000 in 2015 to 30.000 in 2017 – has also ignited a number of controversies relative to its normative implications. The “deal” has had crucial consequences both for EU-Turkey relations and for the migrants themselves. In terms of inter-governmental relations, it obliged the EU to list Turkey as a “safe third country for refugees”, so that returns would not be considered illegal under international law (*non refoulement*), and also relaunched EU-Turkey accession talks, notwithstanding the alarming deterioration of Turkey's civil and political rights record (Freedom House, 2018). As for the migrants, the protection of their rights and the acknowledgment of their circumstances, the conditions of the 4 million people *de facto* blocked in the country (of which 3,5 Syrians) – as well as the side-effect of pushing migrants towards other, riskier routes – have been a big concern for both NGOs and IOs (UNHCR, 2018; Amnesty International, 2017).

5.3 The good, the bad and the ugly: actors' shifting identities in the smuggling drama

The third dimension of justice – justice as mutual recognition – would require the EU to define its policies through processes that grants an equal participation of all the actors involved in defining the normative features of smuggling, and strengthen institutional frameworks that considers the particular concerns of them all. All the narratives addressed here, seem instead to be based on a simplistic, stylized picture of both the smugglers and the migrants – but the discourse could be expanded to include the ONG offering humanitarian

assistance in the Mediterranean – that has also the function to strengthen the moral ground of the proposed policies. In particular, a «dichotomous perspective has emerged in public discourse dominated by government narratives», where the «brutality» of the criminal smuggling networks is opposed to the «vulnerability» of unfortunate migrants (Zhang, Sanchez and Achilli, 2018, p. 7). Critical studies of smuggling, however, increasingly contest such a picture.

First of all, the depiction of smugglers as “callous criminals”, “cruel” captors, and “immoral” actors doesn’t seem to match with scholarly findings, nor with the perceptions of the actors involved. While often described as organized into intricate and sophisticated criminal and mafia’s networks, official data show that most people convicted for smuggling are in fact independent operators, often working on behalf of friends and family members (Sanchez, 2018). At the same time, the depiction of smugglers as foreign nationals is not accurate, as Europol finds that 56% of the smuggling networks includes EU nationals (Europol, 2016). Moreover, the very same neat distinction between those criminals and legal, legitimate, moral actors enforcing the law (EU/States) is perhaps more blurred, since «corruption seems to be one of the key mechanisms, perhaps even the main one, along all the smuggling routes» and corrupt officials – even high-level border officials, police, soldiers, and employees of embassies – participate actively in the smuggling business as organizers or facilitators (Aziz, Mozini and Pastore, 2015, p. 27).

Concerning the smugglers’ self-perceptions and motives, while the main motivation behind their actions is securing financial or in-kind returns, smugglers provide varied rationales for their role. For smugglers who have experienced themselves the challenges encountered by migrants and asylum seekers, helping others to get access to protection appears to be a constant theme (Tinti and Reitano, 2017; Achilli, 2018). For others, smuggling is a way to pay back a favour, that often involve family-clan-ethnic ties. On the other hand, clients do recognize the work performed by smugglers as illicit, but do not necessarily perceive it as criminal, and often describe it as compulsory – a necessary evil amid the challenges posed by immigration and border enforcement – in some cases even altruistic (Sanchez, 2017). For some, their smuggler is a hero (Achilli, 2015).

Conversely, also the role of migrants as “speechless” victimhood of smugglers has been

increasingly questioned (Albahari, 2018). Recent scholarship finds that migrants that recur to smugglers are fully aware of the risks they run into, and they tend to choose very carefully their smuggler, after extensive research on their potential smuggling options and often meeting the smuggler in person before making the final decision. According to Gabriella Sanchez (2017, p. 15), «Reports on factors like reliability, punctuality, risk levels, cost, and quality of transportation are as important in the decision to travel with a specific smuggler as are the more subjective, affective issues like kinship proximity, levels of respect shown towards women and the elderly, quality of care via personal interactions, friendliness, honesty». Although cases of abuse, violence and exploitation abound, most of the times the migrants seem to be very active and conscious actors in the smuggling phenomenon.

6. Conclusion

The paper has tried to contribute to a systematic evaluation of the EU's role in the field of migration from the specific perspective of global justice. In order to do so, the analysis has focused on the narratives emerging from EU policy documents relative to migrant smuggling – that is the facilitation of unauthorized entry, transit and residence in the EU. Four policy narratives were singled out, differing from one another based on the main actors involved, the specific rationale of the story and the policy response envisaged by the EU. As a result, “criminal”, “humanitarian”, “deterrence” and “multilateral” narratives of smuggling were examined.

The investigation has showed that EU anti-smuggling policy is rooted in multiple narratives; as expected, the criminal narrative seems to be the dominant one – and this is especially relevant because it is precisely this discourse that allowed and contributed to the further securitization of EU migration governance, shifting the agenda from a thorny and sensitive normative dilemma focused on migrants – the “open borders” versus “closed borders” debate – towards a much less controversial target for EU and Member States: the contrast of smuggler's networks. However, the recourse to different narratives renders an articulated scenario reflecting the multidimensional nature of the smuggling phenomena and

the multiplicity of the actors involved. Secondly, notwithstanding the fact that smuggling is a quite peculiar aspect of migration, all the policy narratives examined have evidenced substantial linkages with both the narratives characterizing EU's whole approach to migration and narratives more generally related to the EU's external action.

Third, the analysis of the justice claims that inform EU policy narratives on smuggling has revealed a complex normative picture, one in which there is no perfect match between the narratives and conceptions of justice as non-domination, impartiality and mutual recognition. Instead, multiple references to different justice perspectives can be detected within the same narrative, and vice versa. Moreover, even within the same narrative, different justice claims could be found, which in some cases denote both the respect and the violation of the same principle of justice. The cross-narratives and cross-categories reading allows to identify some normative "knots" corresponding to specific justice dilemmas within the EU migration system of governance.

Hence, although the criminal narrative in its Westphalian traits echoes a perspective of justice centered on non-domination – i.e. the sovereign power and the duty to control borders in order to protect the domestic community – the externalization of EU's anti-smuggling policies risks violating this same principle in relation to third states. Similarly, the conception of justice as impartiality, advocated by the humanitarian narrative, clashes with the unintended consequences on the human rights of the smuggled migrants due both to the securitization of the third state's borders, and to EU's support to regimes with questionable democratic credentials – actions that are nonetheless legitimized by the criminal, deterrence and multilateral narratives. Finally, the violation of justice as mutual recognition entailed in all the identified narratives evidences how demanding this notion is, as it would require that all the actors involved in the smuggling process participate in the identification of the normative features of the phenomenon. At the same time, the absence of mechanisms providing for "due hearing" appears crucial in the process of criminalization of smuggling, and in all the policies that this narrative construction allows and justify. Overall, although there are areas in which justice-informed commitments are advanced, the score of the EU anti-smuggling policy that emerges from this normative assessment of policy documents does not seem to live up to the high standards that the EU sets for itself

(at least rhetorically), nor with what would be a substantial advancement of global justice in the field of migration.

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