

RESEARCH ARTICLE

The Italian Cooperation with Albania on Migration:

Between Externalization and Internalization of Borders

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Abstract

Tied by a shared colonial legacy, significant past immigration, and strong social and economic relations, Italy and Albania, through the protocol they established at the end of 2023, present a compelling example of a new logic and dynamic of migration externalization. Long considered taboo, the transfer of (some) rescued migrants to a non-EU state and, at least initially, the externalization of the assessment of their asylum claims, contribute to the image of the border between Albania and Italy as a fluid, intangible, and unreachable entity. Praised by many EU Member States, this new model exists within an opaque political and legal space that challenges traditional concepts of jurisdiction, territoriality, and the boundaries of human rights. The political and legal implications of these extended – yet artificial – borders, as well as the remapping of migration and asylum policies, are explored in this article, with an eye toward their potential impact on both migrants and the European Union as a whole.

Keywords: Migration; Border shaping; Italy; Albania; Extraterritorial jurisdiction

Introduction

To many observers, Italy plays the role of a forerunner in the governance of migration. Recent developments in this field, such as the 2023 Italy-Albania Protocol on “Strengthening Cooperation in Migration Matters” (hereinafter the 2023 Protocol), provide a key opportunity to assess this claim. This paper aims to analyze the political and legal implications of the 2023 Protocol (Italian Parliament, 2024), which proposes an extension of Italy’s borders – or, in legal terms, of its jurisdiction – onto Albanian territory through the externalized management of Italy’s migration and asylum policies.

The Protocol distinguishes itself from other attempts to manage migration through cooperation with third countries, such as the United Kingdom’s expulsion plan involving Rwanda (UNHCR, 2024). It has been marketed as a more “humane” model, based on cooperation with a “safe country” and a potential EU member state, and is presented, at least in principle, as not intended to bypass Italy’s international and European obligations (Savino, 2023; Faggiani, 2024; Celoria, 2024). This is why the model proposed by Italy has gained increasing relevance, particularly after the Italian Government decided to use these centers as repatriation hubs for irregular migrants already in Italy. Similar to the extra-

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territorial processing of asylum claims, this expanded use of the centers seems to align with both the EU Commission's ongoing and new proposals in migration governance, including the 2024 Pact on Migration and Asylum (EU Commission, 2024; Odysseus Network, 2024), the proposed Regulation on Return (EU Commission, 2025a), and efforts to establish an EU list of safe countries of origin (EU Commission, 2025b). However, upon closer inspection, some of the assumptions underlying this model may be questioned, especially given the operational challenges these centers have faced since their establishment.

This article explores the main features and underlying assumptions of the 2023 Protocol, bridging the literature on the political and legal dynamics of migration, in line with the multidisciplinary focus of the Special Issue (see Introduction by Ceccorulli, Lucarelli, & Puleri). To this end, the contribution is organized as follows. After outlining the long-standing cooperation between Italy and Albania in the area of migration (Section 2), it situates the 2023 Protocol within the literature on the external governance of migration, with particular emphasis on the relationship between externalization and border-shaping (Section 3). Sections 4, 5, and 6 examine the legal implications of the 2023 Protocol, focusing on the issue of extraterritorial jurisdiction that Italy will exercise on Albanian territory, from the perspective of the human rights protections afforded under the European Convention on Human Rights (ECHR) and the potential boomerang effect of what could be described as the "internalization" of foreign borders. The article concludes with some final reflections on the broader implications of the 2023 Protocol.

The Italy-Albania relations in the field of migration

Italy and Albania share a long history of political, economic, cultural, and social relations. Italy's interest in the Adriatic Sea and the Balkans has ancient roots but gained significant momentum, particularly in the late 1930s. In an effort to consolidate political and economic ties, Italy succumbed to colonial ambitions by annexing Albania in 1939 during the fascist regime. Albania regained its independence in 1944, following the developments of the Second World War. From then until the mid-1980s, Albania was part of the Communist bloc. In the final years of the Communist era, a gradual opening towards the Western world began, with Italy emerging as a natural partner due to their historical relations.

Following the breakup of Yugoslavia and the subsequent economic, political, and social crises, many Albanians sought refuge in Italy during the 1990s. Initially welcoming those who arrived on its shores, Italy later adopted an increasingly restrictive approach, with repatriations becoming a prominent feature (Marchetti, 2017). The surge in arrivals led Italy to launch "Operation Pelican" in 1991, aimed at providing humanitarian aid to the Albanian population and discouraging further departures. Cooperation between the two countries resumed in the mid-1990s, with the signing of a Treaty of Friendship and Collaboration that addressed economic, social, political, and migration-related matters. In 1997, a Protocol was signed, agreeing to joint patrolling of Albanian and international waters (Castellaneta, 1997). Italy also led a multinational humanitarian mission, "Operation Alba," to address a new crisis in Albania. This military presence offered an opportunity to provide assistance and training to the country. Recognizing the potential disruptions caused by migration and the need to comply with the EU's evolving migration framework, the Turco-Napolitano Law of 1998 called for engagement with both transit and origin countries to better manage migration, with Albania being highlighted as a key example (Einaudi, 2007; Ceccorulli, 2021).

Today, relations between the two countries are stable and multifaceted, with more than a hundred agreements, pacts, memoranda, and letters covering various areas, a significant portion of which specifically address migration. Albania has been a candidate for EU accession since 2014, and in 2022, the official opening of accession negotiations took place. It is therefore no coincidence that Italy has chosen Albania for the offshoring of migration

and asylum procedures. After all, Albania had already demonstrated its willingness to assist other countries with refugee reception (ASGI, 2024a) and, of particular relevance here, had collaborated with Italy by hosting migrants during the controversial Nave Diciotti case. In that instance, Matteo Salvini, who served as Minister of the Interior from 2018 to 2019, denied the docking of rescued migrants in Lampedusa in the absence of an EU redistribution plan (Il Sole 24 Ore, 2018).

The Protocol between Italy and Albania, signed in November 2023 and ratified by the Italian President of the Republic following parliamentary authorization in February 2024, allows Italy to utilize two Albanian areas, designated as border or transit zones, to construct facilities akin to hotspots. In these facilities, a specific group of migrants who are eligible for border, asylum, and return procedures, and are brought there by Italian authorities, can be hosted (Italian Parliament, 2024). The Protocol has the potential to bring about a substantial shift in migration and asylum control policies and laws, both within Europe and beyond (ECRE, 2023; Di Leo, 2023; Broerse, 2024). It has already been criticized as a “worst practice” and “not a model for others to follow” (Carrera et al., 2023; Piccoli, 2023). International bodies and NGOs have repeatedly warned against further steps toward the externalization of border control and asylum processing, highlighting the risks of non-compliance with Italy’s (and Albania’s) human rights obligations, both in terms of the content of the Agreement and the implementation challenges it presents (Council of Europe, 2023; Amnesty International, 2024).

The very reasons for the criticism of the 2023 Agreement are also what make it potentially “the” model for other states to reshape the borders of migration control in Europe. However, this is not a new phenomenon. The externalization of border control and asylum processing is not recent, though it has clearly gained prominence in recent years, further solidified by the new Pact on Migration and Asylum. As a result, a growing body of literature has examined the external governance of migration, its relationship with internal efforts to manage migration and asylum, and the development of various externalization initiatives. Other scholars have also reflected on the impact of these dynamics on the EU and its member states’ liberal credentials (Ceccorulli, Fassi et al., 2023; Lavenex, 2024), as well as on the affected populations, particularly those seeking international protection. In the context of the present case, the literature that addresses the relationship between externalization dynamics, borders, and bordering processes is of particular relevance. This literature challenges traditional conceptions of political organizations’ relations with territory and sovereignty/jurisdiction, and their implications – issues that will be explored in the next section.

A new externalization model? Ingredients for a perfect recipe

Few dynamics have been as self-evident over the past decades as the increasing significance of migration for political organizations. The so-called “refugee crisis” of 2015 marked a turning point for the EU, highlighting a crisis of solidarity and the eventual recognition of the dysfunctionality of the existing migration and asylum system (Bauböck, 2018; Hill, 2023). This period also served as a testing ground for new and more long-term approaches to migration governance, such as the “hotspot” approach, which further consolidated the external border and renewed focus on the external dimension of migration. In this regard, the EU-Turkey Statement of 2016 stands as a notable example. Over the years, with the increasing reintroduction of internal border controls, rising instability in the regions surrounding the EU, and the growing influence of anti-immigration political parties, interest in the external governance of migration has intensified, both in academic discourse and in practical policy-making. While EU Member States have always engaged with

third countries, including on migration matters, triangulation with the EU has become unavoidable due to political, legal, and practical considerations.

As a result, scholarly attention to this phenomenon has expanded, with diverse perspectives contributing to the analysis of the many facets of the external dimension of migration (see, among others, Bialasiewicz, 2012; Moreno Lax, 2017; Rippoll-Servent, 2019; Cardwell et al., 2023). Early analyses referred to this approach as “remote control” (Zaiotti, 2016), a multi-faceted form of external governance. In the case of the EU, an important contribution was made by Boswell (2003), who identified two key paths: the externalization of domestic migration governance tools and preventive strategies aimed at altering the conditions that lead to migration outflows. Through a collective effort, Niemann and Zaun (2023) have reflected on the conceptualization of this policy area, its drivers and conditioning factors, the interdependence and interaction between various policy fields, and the influence and responses of third countries. Indeed, attention to the external dimension of migration has led to numerous critical contributions, which emphasize the detrimental effects of securitization, militarization, and dehumanization on migrants’ lives, as well as the political and legal repercussions for the EU as a liberal actor. Overall, discussions around the external dimension of migration and asylum have focused on terms such as “externalization”, alongside de-responsibilization, depoliticization, delegation, and outsourcing.

A related field of inquiry delves deeper into the relationship between external projection and the key dimensions of sovereignty, jurisdiction, and territoriality, as effectively captured by the focus on borders. In fact, externalization inherently involves a shifting border: de-territorialization is the most visible aspect of a movable border, but so too is the reconfiguration of the borders of rights involved in the process. The relationship between the external dimension of migration and borders has increasingly been analyzed across various disciplines, including legal studies, international relations, political philosophy, political geography, and migration and refugee studies. A recent contribution by Sebastian Cobarrubias et al. (2023) aptly reflects this diversity. Within this body of literature, where the border is critically questioned in its many forms, the relationship between the internal and external, or inside-outside, takes on special relevance (Szalai et al., 2022). It is precisely here that our analysis of the Protocol is focused.

Indeed, Italy has well-established tools for managing the external dimension of migration (see, for example, Fontana et al., 2024), which increasingly intersect with the EU’s migration strategy and policies. As noted, Italy has played a key role in facilitating negotiations with Tunisia and Egypt, not to mention its role in relations with Libya. However, the Protocol stands out as the first of its kind. As previously mentioned, the agreement between Italy and Albania differs from other forms of externalization and, to some extent, cannot even be classified as externalization in the traditional sense if we consider externalization as a process that shifts responsibilities to a weaker state with no viable alternatives.

With this Protocol, Italy implements a procedure that achieves multiple objectives. First, by assuming jurisdiction over two areas in Albanian territory, it effectively “internalizes” these areas without extending the scope of its control. Second, and relatedly, this internalization creates an artificial liminal space, equating the areas under Italian jurisdiction with border zones that, however, are never physically reached, thereby presenting a false vision of geographical continuity. Crafted in this way, the border is not only reshaped but also artificially recreated, in a process that radically alters its relationship with sovereignty and territory. Most importantly, this strategy recalibrates the borders of rights, even in cases of full jurisdiction, as will be further explained in the next section.

The extraterritoriality approach overturned

Based on previous bilateral treaties and in accordance with international agreements on human rights and migration (see Preamble and Article 2), the 2023 Protocol primarily aims to address the issues of irregular migration and human trafficking. To this end, Albania grants Italy the right to construct and operate facilities in specific areas of its territory (namely Shengjin and Gjadër, as outlined in Annex No. 1) to “detain” – for the maximum detention period permitted under Italian law – no more than 3,000 people. These “people” are defined as “migrants”, understood as ‘citizens of third countries and stateless persons for whom it must be determined, or has been determined, whether the conditions for entry, stay, and residence in the territory of the Italian Republic exist or not’ (Article 1(d)). As further specified by Article 3(2) of Italian Law No. 14/24, only migrants who have been brought aboard Italian vessels outside the territorial sea of Italy or other EU Member States – including those rescued or intercepted in distress situations at sea – are transferred to Albania (or more precisely, to Italy’s facilities on Albanian territory).

The initial scope of the Protocol was quite limited; however, as noted in the Introduction, it has recently been expanded to include individuals irregularly residing in Italy. In any case, migrants deprived of their personal liberty under this agreement do not acquire any right to remain in Albania, as their entry and stay in Albanian territory are intended solely for the execution of border and return procedures (Article 4(3)).

It is worth noting that the facilities in question are established with Italian funds and managed by Italian authorities (Article 4(2) and (5)). Accordingly, it is not surprising that Italy and Albania have agreed that these facilities are subject “exclusively” to Italian jurisdiction. Similarly, the Italian personnel carrying out their duties under the Protocol are not subject to Albanian jurisdiction. As a result, migrants deprived of their liberty in these centers are subject to Italian law, including EU law-based rules governing migration and asylum (see the relevant legislation summarized in Article 4(1) of Italian Law No. 14/24; Council and Parliament of the EU, 2013, soon to be replaced by the Pact on Asylum and Migration).

From a legal perspective, this “new” approach overturns a long-standing argument made by countries that are destinations for migrants. These countries have traditionally claimed that the responsibility for actions taken towards people sent to third countries rests with the latter states. This argument has served to place individuals heading to Europe, or seeking asylum within the European Union or at its borders, outside the scope of the protection offered by the human rights treaties binding all EU Member States and Council of Europe (CoE) countries. In contrast to previous externalization attempts, and following the conclusion of the 2023 Protocol, Italy has insisted on its full responsibility for migrants deprived of their liberty in Albania. In doing so, Italy has created the visual image of an extension of its border within Albanian territory, specifically for the purpose of migration control.

Given Italy’s claim of conformity with relevant international agreements and in light of the aforementioned reshaping of borders, at least two specific legal questions warrant exploration: first, whether the 2023 Protocol can be framed within the rationale of extraterritorial control under human rights treaties (discussed in the next section); and second, whether the model adopted by Italy and Albania can be considered a principled, human rights-based framework (addressed in the section after next).

Borders, sovereignty and extraterritorial jurisdiction

In an era of “dehumanizing border governance tactics” (UN, 2022, p. 24), human rights bodies have progressively established that the externalization of migration and asylum management policies does not place migrants outside the “legal space” of protection

provided by relevant treaties. This evolution was made possible because the application of human rights treaties is not solely defined in terms of sovereignty or territorial borders. While sovereignty refers to a state's full and original authority over a group of people within a specific geographic area, the key concept for determining when and where human rights treaties apply is "jurisdiction", which can be understood in terms of effective control, even in the absence of sovereignty (Vandenhole, 2019). Thus, jurisdiction may, on a case-by-case basis, extend beyond the geographical area over which a state exercises sovereignty.

For example, under the European Convention on Human Rights (ECHR), Article 1 stipulates that states Parties must secure the rights and freedoms defined in the Convention to everyone "within their jurisdiction". The European Court of Human Rights (ECtHR) has held that "jurisdiction" is, in principle, a "territorial" concept (Danisi, 2021a). However, exceptional circumstances may justify the application of the ECHR beyond a state's borders – i.e., extraterritorially. In simple terms, when a Party to the ECHR exercises physical or territorial control over a person or geographic area beyond its borders, it is obligated to uphold the Convention as it would within its own territory¹. This evolution has led to the condemnation of violations suffered by migrants who were intercepted before they could even enter European borders – without any prior assessment of their individual circumstances – despite requesting asylum². The pushback operations conducted by Italy in international waters within the Mediterranean Sea are perhaps the most prominent example of cases where the ECtHR found multiple human rights violations³. These cases exemplify the flexible nature of borders in shaping the application of human rights treaties, which is assessed on a case-by-case basis (Gammeltoft-Hansen, 2014).

Concerning the 2023 Protocol, such an evolution suggests that migrants detained in Albania would, in any case, fall under Italy's jurisdiction for the application of human rights obligations. The fact that Italy has agreed with Albania to take responsibility for all operations inside and outside the facilities is irrelevant because, even without this formal recognition, the same result would have followed from the consistent application of the principles outlined so far. In fact, by implementing the 2023 Protocol, Italy would exercise both personal (over migrants) and spatial (over facilities) extraterritorial control in a defined Albanian territory, which leads to the obligation to uphold its ECHR-based obligations. In this sense, human rights protection legally defines the borders of migration control, often preceding states' intentions, strategies, or political interests. From this perspective, despite Italy's claims, the 2023 Protocol is not substantially different from other forms of cooperation with third countries, although the official position of the Italian government clearly prevents jurisdiction from becoming a contested issue between the involved states and the migrants themselves.

This evolution is also relevant for the control exercised over maritime borders, a critical issue in the context of the 2023 Protocol, given the circumstances that lead migrants to be transferred to Albania. Despite the existence of legal "black holes" in the law of the sea, there is no doubt that individuals in distress at sea should always be searched, rescued, and brought to a place of safety (Mann, 2018; Starita, 2019). This obligation is reinforced by human rights treaties, particularly in terms of the procedural protection of the right to life (Danisi, 2021b). Since the 2023 Protocol assumes that migrants will be rescued and placed on Italian vessels, once aboard, these migrants come under the control of Italian authorities,

¹ See ECtHR (Grand Chamber), 5 May 2020, *M.N. v. Belgium*, No. 3599/18 (admissibility).

² For a case entailing push-back operations, see ECtHR, 2 February 2023, *Alhowais v. Hungary*, No. 59435/17.

³ ECtHR (Grand Chamber), 23 February 2012, *Hirsi Jamaa et. al. v. Italy*, No. 27765/09.

and the obligation to protect their lives applies, irrespective of where they are found⁴. The fact that the 2023 Protocol refers to migrants located “outside Italian or EU territorial waters” does not change much from a human rights perspective, further complicating the concept of a movable border.

With regard to maritime borders, at least two significant issues emerge. First, while human rights obligations should apply to all migrants found at sea, regardless of who rescues them, the 2023 Protocol creates an unjustified distinction between migrants rescued by NGOs or private vessels and those embarked on Italian vessels. Even more problematically, despite being in similar situations, the Protocol establishes a specific treatment – i.e., their prior detention in Albania – only for migrants found outside Italian or EU territorial waters. Second, the concept of a “place of safety” must be interpreted in light of the specific needs of the rescued individuals (Danisi, 2021b). On one hand, this means that the specific conditions of migrants may require the identification of the nearest available harbor, for example, when minimizing sailing time is crucial for medical reasons. On the other hand, identifying a safe place entails an individualized assessment of each migrant’s situation, which must exclude potential alternatives that might expose them to the risk of human rights violations, especially of the right to life (Art. 2 ECHR) and of the principle of non-refoulement (Art. 3 ECHR). This individualized assessment cannot be conducted on the vessel itself when specialized expertise is required – for instance, in the case of children, trafficked women, specific asylum-seeker groups (such as LGBTQ+ individuals or those fearing gender-based persecution) – and directly contradicts the automatic detention to which these individuals would be subjected in Albania. For both of these reasons, given its geographical location relative to the expected rescue or interception outside Italian and EU territorial seas, Albania cannot be considered “the” place of safety for every migrant covered by the 2023 Protocol, contrary to Italy’s prior assumption.

In short, externalization policies encounter a limit when they intersect with the human rights obligations binding a state exercising jurisdiction over migrants or facilities located in a third country. The resulting “internalization” of Albanian areas within Italy’s migratory control borders explicitly places responsibility for any potential human rights violations suffered by migrants within the scope of Italy’s obligations under the 2023 Protocol. Moreover, while the extraterritorial jurisdiction does not extend Italy’s sovereignty over the relevant Albanian territory, Albania remains the sovereign state over the areas “lent” to Italy. It will continue to exercise its jurisdiction for human rights protection, creating a clear overlap between Italy’s extended borders and Albania’s sovereign borders. These legal implications, along with other issues that deserve further discussion, suggest a “boomerang effect” that may render this specific externalization attempt as ineffective as other comparable policies.

The “internalization” of borders: a boomerang effect?

Italy’s decision to assume a priori responsibility for all actions carried out by Italian agents in Albania, as well as potentially by others operating within the relevant facilities, sets an important precedent. Based on the analysis conducted so far, Italy acknowledges that transferring migrants under its authority to a third country that benefits from Italian funding involves, through jurisdiction, the application of its international and EU law obligations.

⁴ Ibid. At UN level, see also Human Rights Committee, 4 November 2020, *A.S. and Others v. Italy*, UN doc. CCPR/C/130/D/3042/2017.

This approach marks a fundamental distinction from previous externalization attempts by the Italian government.

First, it is worth recalling the current cooperation with Libya, another form of migration control externalization that has sparked ongoing debates (UN, 2023; Balboni et al., 2019). Italy has consistently denied exercising jurisdiction over the treatment of migrants – including asylum seekers – in Libya, despite agreements in place and the allocation of Italian funds to combat irregular migration. However, it is an undeniable fact that Libya operates in cooperation with Italy, or even on Italy's behalf, in many instances. Although a clear distinction exists in the management of migrants in Libya under the two models, at least when migrants intercepted in international waters are transferred to the Libyan coastguard by Italian authorities, implying physical control over migrants, Italian jurisdiction cannot be denied (Moreno-Lax, 2020).

In other words, likely due to a popular perception of Albania as sharing a “common” European background and its assumed “safe” status, Italy justifies its approach by creating a legal fiction – treating migrants as if they were on Italian territory – despite the fact that this approach is, in practice, not entirely dissimilar to its “covert” cooperation with Libya. As a result, it may now be more difficult for Italy to justify its hands-off stance regarding the treatment of migrants, especially when such treatment occurs within the framework of Italian-Libyan cooperation in migration management, despite the absence of Italian personnel in Libya and the apparent lack of “internalization” of Libyan borders.

Second, treating Albanian areas as if they were part of Italian borders creates a stark contradiction in terms of admission to EU territory. On one hand, migrants are excluded from entering both Italy and Albania, except for the facilities where they would be automatically detained. On the other hand, in order to comply with its international human rights obligations (e.g., Article 3 of the ECHR), Italy is required to grant admission to such migrants at least for the purpose of assessing their individual situation when they apply for asylum. To circumvent this requirement, the 2023 Protocol introduces an additional legal fiction: it treats the Albanian detention facilities, at least for asylum seekers from a predefined list of safe countries, as entry points outside the Italian/EU legal space. While Italian judges have taken prompt action to expose this legal fiction by correctly challenging the assumption of Albania as a “safe third country”⁵, the contradiction now becomes even more apparent. The artificial shaping of borders shifts continuously in line with specific political and legal interests, undermining the consistency of the migration framework.

Third, despite all the above, the 2023 Protocol treats migrants as if they were effectively located in Italy. This implies that domestic and EU law on migration and asylum, including the Common European Asylum System (CEAS) and, soon, the Pact on Migration and Asylum, should be fully applied within these “new” borders. Yet, this approach contradicts what EU institutions have consistently stated: EU law has no extraterritorial effect, and the CEAS does not provide for the assessment of asylum claims outside EU borders. For instance, the 2018 EU Council Non-Paper on disembarkation options excluded the possibility that EU law could apply if disembarkation occurs outside the territorial space of EU Member States. Similarly, a preliminary assessment of the 2023 Protocol by EU authorities found that it operates outside EU law. This stance aligns with the Court of Justice of the EU (CJEU)’s ruling on the 2016 EU-Turkey Statement, where the CJEU confirmed that EU law was not involved, as the

⁵ On many occasions, the ECtHR reiterated that being a state party of the ECHR is not sufficient *per se* to be identified as a “safe country” for all asylum seekers. A state party of the ECHR like Italy, which wishes to send an individual in another member state of the CoE, must always verify the safeness of the country of destination *in light of* the personal circumstances of the individual to be transferred: see for instance ECtHR, Grand Chamber, 21 January 2011, *M.S.S. v. Belgium and Greece*, no. 30696/09, para. 353 and ff.

agreement was between EU Member States (not the EU itself) and Turkey (Danisi, 2017). How can these established principles be reconciled with Italy's new stance on the application of EU migration and asylum law, given that a) Albania is outside the EU borders, and b) the agreement is not an EU-Albania agreement? These questions remain unresolved for now.

Fourth, in terms of practical implementation, the 2023 Protocol does not fully exclude the possibility of migrants hosted in these facilities initiating administrative procedures before Albanian judges (see Article 10(2)). There was no alternative option. If Albania retains sovereignty over the areas where the facilities are located, its international human rights obligations remain in place. As noted earlier, under the ECHR, Albania's jurisdiction is concurrent with Italy's. Albanian judges could therefore hear complaints about the failure to take appropriate actions to protect human rights, even if Italy exercises jurisdiction. At the same time, considering Italy's obligations under the ECHR (Article 5 on the right to liberty and security), migrants hosted in Albania must still have effective access to an Italian judge to assess the legality of their detention and the conditions in which they are held. In the latter scenario, a positive decision in favor of the migrants would require Italy to transfer them to its territory, because, under the 2023 Protocol, if they are released, they would not be entitled to enter or stay in Albania. In short, if the primary purpose of the 2023 Protocol was to prevent people from reaching Italian shores and expedite the identification and expulsion process, the system may produce the opposite result, with a real risk of duplicated legal proceedings before both Italian courts and Albanian authorities.

Finally, based on the analysis conducted so far, a positive implication should not be underestimated. The "internalization" of the Albanian facilities within Italian "borders," as implied in the 2023 Protocol, provides migrants with a crucial protection under human rights law. In fact, the observance of its international obligations prevents Italy from excluding *a priori* the risk of direct or indirect refoulement – i.e., the risk that migrants could be subjected to torture, inhuman, or degrading treatment if transferred to Albania or, via Albanian authorities, to other countries without access to an effective asylum system. An individual assessment of the situation of migrants found at sea should, in fact, be conducted before transferring them to other countries, whether they are Council of Europe member states or not. From this perspective, Italian judges may find ways to delay, if not block, the implementation of the Italy-Albania cooperation⁶. The example of offshore asylum processing initiated by Australia, implemented in Nauru and Papua New Guinea, should serve as a clear warning in this respect (Foster et al., 2021), as the UN Human Rights Committee recently highlighted, pointing out the stark contrast between these policies and the International Covenant on Civil and Political Rights, to which Italy and all EU member states are also parties⁷. Such unintended consequences could also have implications for the next wave of EU migration and asylum policies, to which we now turn.

Conclusion

The relentless exploration of new methods, modalities, and approaches to migration and asylum governance by Italy continues to both surprise and astonish observers. From unilateral humanitarian missions to agreements with Libya, quarantine vessels for migrants, "close ports" policies, to name but a few, Italy has undoubtedly served as a laboratory for

⁶ See, for instance, the domestic proceedings leading to the important judgment of the Court of Justice of the European Union (Grand Chamber), 1 August 2025, *Alace and Campelli*, joined cases C-758/24 and C-759/24.

⁷ See the important decisions of the Human Rights Committee: *Mona Nabhari v. Australia*, 25 October 2024, UN doc. CCPR/C/142/D3663/2019, and *M.I. et al. v. Australia*, 31 October 2024, UN doc. CCPR/C/142/D/2749/2016.

new forms of experimentation in migration governance. Indeed, its geographical position plays a key role, as does its standing within the European Union. However, when questioned about the 2023 Protocol, the European Commission distanced itself from the agreement, offering a specific territorial interpretation of EU law borders, aligning them with Italy's territorial waters, which raised significant doubts among experts and scholars alike (Carrera et al., 2023). Although the Protocol is a bilateral agreement, the impression that the EU is somehow part of Italy's plan emerges in the analysis. First, as many commentators have pointed out, Italian law aligns closely with EU law, and there is no way to exclude the latter's involvement. Second, in an attempt to address the thorny issues of search and rescue and disembarkation – areas where Italy has been at the forefront – the EU had already suggested the possibility of disembarkation in a non-EU country following search-and-rescue operations by member states' flag vessels (European Commission, 2018). Third, the EU's encouragement to establish lists of "safe countries" is also relevant here: until 2019, Italy was notable for not having such a list; today, it is one of the countries with the longest list of 'safe countries' (recently updated), a move that undoubtedly shifts the burden of asylum off-shoring (ASGI, 2024b). Most importantly, the upgraded border procedures in the Pact on Migration and Asylum, which describe a disarticulation between a person's physical and legal presence (ASGI 2024a, p. 10), have effectively rendered the concept of borders immaterial. In fact, the increasing emphasis on de-territorialization and the manipulation of the border through concepts such as the border procedure, safe countries, and even hotspots – within which the Albanian centers are now included – has been significantly propelled by EU policies in recent years. The automatic detention of individuals transferred to Albania provides yet another layer to the EU's ongoing push for deterritorialization.

While many Member States have applauded Italy's initiatives, directing their praise to the European Commission (Joint Letter, 2024), the focus must remain on the implications of the 2023 Protocol, particularly for Italy itself. The Protocol offers little in the way of tangible benefits, serving primarily as a powerful deterrent and an even more powerful electoral tool, with the ultimate and singular objective being the denial of entry to both Italian and European territory. If human rights are genuinely prioritized, the impact on migrants and asylum seekers must not be overlooked. These individuals bear the brunt of the Protocol's most concerning effects, particularly within the context of a fully securitized approach to migration, which has only been further entrenched by the inclusion of Italian centers as key national security and defense structures under Decree 124/2023 (Carrera et al., 2023).

Italy has pioneered a "new" form of externalization, blending the internalization of borders with the concept of a "movable border". However, this approach perpetuates old problems and weaknesses across all dimensions. It is to be hoped that the political, legal, and practical implications outlined here will demonstrate that this "new" approach is far from a viable option for other European states.

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