

## Resources or Victims? By Teresa Albano

*Who are the refugees? Who are the migrants? Who are the victims of Trafficking? Both legal definitions and the media are confused, creating an inextricable and disorienting tangle. In the current debate on the policies implemented by Europe, the voice of an expert in the field calls for clarity, vision and humanity.*

Today, the issue of migration seems to be associated, almost inextricably, with the Syrian crisis. It is hard to believe that a refugee can be someone other than a member of the tide of people, who, like a river, have crossed the Balkans and are now locked in the small Greek islands just off the Turkish coast.

Refugees, victims of trafficking, smuggled migrants, asylum-seekers. Terms whose approval at international level has fatigued the minds of excellent jurists, spending hundreds of hours of negotiations, compiling tons of documents, are today distorted, used and abused as if they were synonymous, as if the moving mass of humanity was indistinct and uniform. "People, not numbers," said Pope Francis during his visit to the island of Lesbos. For some individuals, being recognized as persons is not obvious. And sometimes, it is not sufficient to be treated as persons.

The mere existence in life is not enough to be considered a person and act as such, for those who are foreigners (those who have a nationality other than the country in which they are located). For a foreigner to have a recognized legal identity is a process. It means to be interviewed, to be heard and investigated so that the state authority of the host country can analyze, evaluate and judge the reasons, the means, the circumstances that led to the movement of that individual, of each individual. And, consequently, the same authority can decide who is in and who is out, who has the right to stay and who has to be pushed back.

The exercise of power over people is one of the characteristic expressions of the "sovereignty" of the State-nation that has been built, since the French Revolution, through a process by which the definition of a boundary, involves building an identity as a national identity, a common body of citizens, a sovereign people, the national political body.

The "sovereign" power defines who is inside and who is outside that identity and those borders, as explained by Michel Foucault in "The Desire to Know". As a result, the elaboration of migration and asylum policies is, for a State, an authentic "limes" – as it crystallizes its own boundaries, not only of its territory but also in social, ideological, cultural and ethical terms. It is "the State that thinks itself".

### Who is a Refugee?

Although international law gives us a clear definition of "refugee", as one who seeks protection from persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion\*\*, many factors affect the determination of that status.

The person seeking protection must demonstrate that persecution by objective evidence, and for one of the reasons provided for by the Geneva Convention of 1951. On the other hand, the government of the host country must have put in place structures and trained officials competent and dedicated to the collection and analysis of evidence in support of the request for international

protection.

However, the decisions of state bodies will be strongly influenced by the interpretative practice and the democratic "tradition" of the country. A request for protection will not be judged in the same way in all states, but it will be filtered through cultural and political elements that can and do change over time .

Granting international protection is not, in fact, a subjective right. It is a discretionary decision of the State that it taken in the exercise of its sovereignty. The individual has the right to ask for protection and the State has an obligation to assess that request. In fact, although all foreigners have the right to request asylum, only few are recognised refugees, and therefore are granted protection. At the end of the evaluation process, which normally lasts for months or years, (in the worst cases, ) the verdict will be:

- long-term protection: in case of recognition of the refugee status;
- temporary /subsidiary protection: if the applicant does not prove to be a victim of persecution but cannot return because his/her life would be in danger due to wars or widespread violence;
- expulsion from the country of destination, if the asylum request is rejected and the applicant comes from a "safe country" where he/she could return. In this case the person is classified as an "irregular migrant".

While waiting for the decision, the applicants live in a state of limbo, sometimes locked up in detention centers. This process creates a disconnect between the social being and the legal being: socially the person exists but not from a legal point of view. The status of "asylum seekers" – a person who as presented his/her request for international protection to the State **authorities** in the countries of destination - guarantees the recognition of certain fundamental rights, but in many countries applicants cannot work or exercise other rights, such as uniting with family or getting married. Until the final verdict on the request for protection is granted, it is forbidden to exercise a series of economic and social rights. It is emblematic the case of hundreds of Iraqis, tired of waiting for the verdict of the Belgian authorities on their request for asylum, have preferred to return to the country of origin, exhausted from the unnerving waiting for the verdict on their "existence."

*In Italy, asylum seekers are housed in open centers, although detention of asylum seekers is a common practice in many countries. One extreme example is the Australian policy of holding asylum seekers on the island of Nauru, considered an extraterritorial place. Also the Italian Interior Minister Maroni in 2012, tried to declare Lampedusa as temporarily unsafe port, in the attempt to prevent landings in the island.*

### **Who is a "migrant"?**

By definition, an international migrant is a person who is living in a country other than his or her country of birth. This definition, elaborated for statistical purposes, does not make reference to the drivers of the individual movement, if voluntary or forced. Indeed, although not enshrined in international instruments, the term "migrant" usually refers to a person who willingly moves to establish his/her residence in a country other than the home one, while a refugee is usually "forced" to leave his home due to the prosecution suffered in the country of origin.

The only internationally agreed definition refers to "migrant worker" as one who "has been engaged, is engaged or will be engaged in a remunerated activity in a State other than their own." This description, contained in a UN convention and ratified only by so-called emerging countries, asks us questions about the policies that underly this definition: persons or arms? Who are these people on the move?

The High Commissioner of the United Nations (UNHCR) speaks about a million refugees fleeing the Syrian crisis. The International Organization for Migration (IOM) speaks about 1,232 migrants who have lost their lives trying to cross the Mediterranean. Before the Turkey-European Union agreement, the media described the march of thousands of "refugees" on the Balkan route as a biblical exodus. After the agreement, they spoke of "irregular migrants" who tried to cross the borders at all costs, with the help of smugglers.

Clearly using the one or the other category has a huge effect on the public perception of these people on the move. Somehow it suggests the idea that the "good" migrant, the refugee, is worthy of being protected (at least until proven otherwise) while the "bad" migrant, the one that uses the smugglers in order to evade border controls, represents a threat and as such should be treated accordingly.

### **Identity and free movement**

The dilemma of the European Union (EU), expressed symbolically by the opposing positions of Orban and Merkel (The German Chancellor is for reception policies, while the Hungarian Prime Minister is for the closure of the borders, ed), reveals much more of a migration-related "crisis" than the one resulting from the Syrian war.

Legally, the EU has pursued a common policy on the movement of persons only for the domestic market. "European citizens" can move freely within the Community area, while external borders, to the east and south, are called to defend Europe from the "external threat".

The internal community space, however, is far from obvious. In the thirty years preceding the First World War, about two and a half million Jews left Eastern Europe. And in the ten years following the end of the Great War, about nine and a half million refugees moved around the European continent. These were people fleeing from persecution and political revolutions, but were also expelled because their nationality or ethnicity was not "correct" or acceptable in the, still fragile, newly formed, nation-states, trying to attain stability on the basis of national identity.

Only the shock of the Second World War led to the formulation of an international convention on refugees to put a limit to the power of the state, when "denationalization", resulting from not being of "pure" German or Italian nationality, was used as the ultimate State weapon. Deprived of their citizenship, thousands of people found themselves in a space where every legal protection was suspended and anything became possible because. The historical traces of the origin of the Convention can be found in the Additional Protocol of 1967 which eliminated the so-called "geographical limitation". Until 1967 only Italians, Austrians, Hungarians, Polish, French could be granted international protection, only those who were fleeing torn-apart Europe could be recognized as refugees. From '67 onwards, anyone in the world could be recognised as such.

### **The senseless agreement with Turkey**

Based on these international standards, the European Union was able to formulate its "common" policy on asylum, which, however, does not establish definitions and criteria, already provided for in international instruments, but regulations and procedures.

Among them, the much mentioned Dublin Regulation, a real inter-government agreement, establishes that the Member State responsible for the asylum claim of any individual is the State of first entry. This places on the countries of the EU external border a disproportionate burden, which forces them to encourage secondary movements of migrants into central and northern Europe. The real problem lies in the fact that the right of asylum can be claimed only by those who have

already set foot in the host country, in this case the EU territory. This is what induces the migrants to undertake very risky trips, run by smugglers.

In this case, blaming only the smugglers for being the problem does not fully place the proper responsibilities where they should be. It is certainly true that people whose lives are at risk because of war and persecution need to leave the places of violence to seek refuge. And it is certainly true that in the lack of legal and safe avenues to flee, then smugglers provide a service where the state does not. It is an "illegal" service, not so much because it is the expression of the intent to harm someone or something, but because it occurs outside the laws that govern the movement of foreigners in the inter-state areas. Without the help of a smuggler, an asylum seeker is condemned to die at home.

This is the reason why the Turkey-EU agreement cannot provide a long-term, sustainable solution. It would have been reasonable if it had been enforced since the very outset of the crises, before those five years of continuous and desperate violence deprived Syrians of the hope of a feasible return home or a realistic integration process in the countries of first reception, Turkey, Jordan, Lebanon, outside the camps and with a regular work permit. Today, the cure that is proposed to "combat against the traffickers of human lives" – as the dominant narration says – may be even worse than the disease. Sealing the Turkish border and returning the "irregular migrants" that, in the future, will attempt to reach the Greek islands via sea in the Turkish territory – preventing them from requesting asylum or regardless such a request – is not only illegitimate, because it violates the EU directive 2011/95/UE, but it is senseless. The efficacy of such a measure to discourage people in need to recur to traffickers is highly dubious. The most probable effect will be the restructuring of migration routes, with a consequent increase in the price and riskness of the journey.<sup>1</sup>

If this happened, it would not be a surprise. The history of the "management" of migration in the last 25 years is a succession of actions and re-actions against national approaches progressively more restrictive towards the entry of a part of the world population – those who are "out" the places of wealth – "in"-side that part of the world where borders are not a barrier but an opportunity of expansion, both cultural and economic. However, something substantial has changed compared to the past.

### **Irregular becomes equivalent to criminal**

The collapse of the Berlin Wall has accelerated exponentially the world-wide economic, social and cultural integration, through the so-called globalization. After the initial thrill of the defeat of communism, that would have reconciled all liberal thinkers in a common home, barriers have progressively been erected to prevent the free movement of persons.

The paradox is, that in a global world where everything moves (goods, money, services, information) legal channels for voluntary migration have gradually been narrowed, thus blurring the line between legality and illegality for immigrants who are looking for an opportunity for cultural and economic growth. This is a paradox that produces distortions and victims.

Where state laws are inadequate, a parallel market of intermediaries comes to the rescue. Traffickers offer to migrants - both "voluntary" and "forced" migrants - transport and placement in the labor market, unfortunately outside of any protection and legal safeguards.

Once at their destination, the "irregular" migrant worker (the "bad" in the dominant narrative) will

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<sup>1</sup> Tra gli altri vedi, Sergio Briguglio, *Accordo Ue-Turchia: un pasticcio sulla pelle dei siriani*, Lavoce.it, 14.03.2016, <http://www.lavoce.info/archives/40193/accordo-ue-turchia-un-pasticcio-sulla-pelle-dei-siriani/>

do anything to look like the forced ( "good." ) migrant. By doing so, it is possible to take time, while the asylum application is examined, and to delay the release of that paper - the expulsion order - that will decide their ultimate escape from legality.

In that precise moment, when migrants become "irregular" (or "illegal", as some others call them) migrants are people "ready for anything" and even "willing" to do anything. They become "bodies available" but they are also "bodies of evidence", the evidence of the crime of illegal immigration. Many countries, including Italy, promise to punish with a prison sentence those who are guilty of having made an unauthorized entry in the national territory, including those who have become "irregular" as a consequence of the loss of their job and, with it, the permission to stay.

As a consequence, the irregular migrant is a criminal for the simple fact of existing, even before committing an act that manifests his intention to harm anyone or anything. It is difficult to recognize these people as victims when we meet them in our homes working without a contract, having long hours and no days off; or when we see them waiting on the road for the gangmaster leading them to the fields to pick fruit and vegetables; or when they are engaged in construction sites, without protection or safety devices. It is difficult for us to understand their desire to resist the exploitation, no matter what the consequences, as if their choice to endure is the expression of "free will". It is unlikely that we will morally condemn the perpetrators for abusing those bodies available for anything and willing to do anything. It will be difficult to prosecute the abusers because, in the late Nineties, another narration of this phenomenon guided the negotiations for the elaboration of the definition of trafficking in human beings.

### **Trafficking and smuggling of migrants**

In 1999, when drawing up the *Protocol to Prevent, Suppress and Combat Trafficking in Human Beings, especially Women and Children*, there was the clash between two different narratives of the trafficking phenomenon: one side intended to protect labour rights of all workers, both migrants and nationals men and women, from exploitative practices, including the rights of sex workers; the other was determined to protect the integrity of women and children, as vulnerable subjects par excellence, from prostitution and other forms of commercialization of their bodies.

It would seem that both narrations are realistic and can be reconciled. Instead, the whole negotiation process was dominated by a harsh confrontation of two opposing positions on prostitution: the abolitionism and the legalisation. \*\*\* The urgency to protect at all costs the innate vulnerability of women against male perversion prevailed over the need to identify measures to counterbalance the sovereign (over)power of the state in matters concerning the treatment of foreigners and the protection of migrants' vulnerability, often induced by the same migration policies of the state.

The result was the following definition of human trafficking as: "*the recruitment, transportation, transfer, accommodation or receipt of persons by threat to use force, or actual use of force or other forms of coercion by means of abduction, fraud, deception, abuse of authority or a position of vulnerability or of the giving or receiving of payments or other benefits in order to obtain the consent of a person having authority over another for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or removal of organs.*"

Despite the many efforts, the interpretation of this definition leaves little doubt: the illicit behaviors to be prosecuted are substantiated in the "recruitment, transportation, transfer, accommodation or receipt of persons." Mentioning the exploitation as ultimate goal of these

behaviour – that have nothing of innerly “illicit” – poses the challenge to demonstrate “beyond any reasonable doubt” the exploitative intentions of those who are “recruited, transported, transferred ...”. In reality the victims, those who presumably suffered the abuse and the violation of their rights as a consequence of the exploitation, are usually invited to demonstrate their opposition to migrate as one of the main means to demonstrate their “innocence”.

In essence, the Trafficking Protocol substantially punishes forced migration rather than exploitation. This definition mirrors the narrative of a phenomenon that affects mainly women and children who, being “naturally” unable to decide their own destiny, rely on bad advisers that lead them astray and into prostitution.

On the contrary, the Smuggling Protocol punishes organized migration, irregular and “voluntary,” i.e. the transfer of a person into the territory of another State in violation of the rules of entry. The definition of smuggling mirrors the narrative of a phenomenon that essentially involves consenting males who launch themselves at the adventure. Significantly, the latter protocol contains a clause of non-punishment of smuggled migrants, clearly placing the criminal liability on intermediaries and not on the irregular migrants.

On the contrary, the Protocol on Trafficking does not contain such a clause, leaving the veiled question that, after all, if a woman or a child gets into trouble it is a bit ‘even their fault’, as if they had asked for it, being deaf to good advisers.... The sexuophobic definition of human trafficking has resulted in the sacrifice of exploited workers on the altar of female purity. The result is a very low number of victims identified, and an even lower number of convictions of perpetrators. Paradoxically, trafficked persons seem to prefer being exploited, rather than being constantly questioned about their being “non consensual” victims. They seem to be unexpectedly ungrateful towards the offer of being “integrated” after a long process where their lives, expectations, aspirations are dissected and examined in order to verify if they “knew”, if they “wanted”, if they “took any sort of advantage” and, possibly, even pleasure....

### **The unexpected boomerang effect**

What are the consequences of these discussions that intertwine and interact with each other? The first effect is a process of “inferiority” of migrants, both “good” and “bad” migrants.

Foreigners are seen and perceived as “lives to lose,” as temporary guests who have to “pay” a high price for their desire to be like us. Because they are not like us. They are “out” also when they are “inside”, they are excluded also when they live next to us and contribute, thanks to the exploitation of their work, to bringing down the expenses of companies and unscrupulous employers, driven by a globalization that requires them to innovate and internationalize to compete successfully.

The second effect is to “normalize” the exploitation of the migrant. If the individual in front of me is not like me but “less”, then my exploitation is not only justifiable, but it is “just”. This drama not only involves individuals, companies, governments, in the global North-West, traditionally perceived as the sought-after destination. The global South-East, is no longer just the area of origin but also of destination in a world where migration routes are constantly redesigned.

Ironically and as in all prohibition, the more states react with strict laws, raising physical and legal barriers, the more the informal and illegal markets of migration are reinforced and rooted. Instead of keeping the “unwanted” outside the borders, the most stringent immigration laws have the effect of stimulating trafficking and exploitation, trapping migrants within the countries of destination. Resorting to forced expulsion is not only difficult but also uneconomic, in the absence of certified identity of irregular migrants.

In the long run, a two-tier labour market will result from this trend. A plentiful supply of cheap labour force without rights will foster unfair competition with the other, more protected categories of workers, the "citizens". Social dumping practices will induce a general erosion of labour rights for both foreign and national workers. It is difficult to keep "out" speculative practices that got rooted "in."

### **A Europe in trouble and its faulty policies**

The dominant narrative paints a picture of the (male) hero-state that rushes to fight against inhuman traffickers who exploit the desperation of poor innocent (female) victims. Reality is much more nuanced. States, hostages of vulgar populism that they contributed to foster, pursue misguided immigration policies whose countereffects are worse than the cure: a number of deaths and of "lives to lose" that approaches the proportions of a genocide .

The popular story tells us that we cannot accommodate them all, that they are too many and there are not enough resources. The reality tells us about the most serious demographic crisis that Europe is going through since World War II.

Germany only will need 23 million people by 2050 to maintain the balance between the working population and those retiring from the labor market. Welcoming all refugees and displaced Syrians, four million in all, into the European continent of 500 million people, would, in fact, have a minimal effect. In the early Nineties, Europe became a home for a greater number of people fleeing the crisis in Yugoslavia and the following one in Kosovo. In 1956, following the Soviet repression in Hungary, 200 thousand people poured into a poor Vienna, depopulated and marked by war. But the refugees, who at the time came to represent 4% of the total Austrian population, were welcomed because both the state and the people decided that this was important.

Today the "old" Europe needs millions of young men and women, enterprising and willing to ensure the future well-being of all. The continent needs young people who pay taxes and not exploited irregular workers who only favor a few speculators. Europe needs people, not numbers.

### **Resources not victims**

Despite the present impasse between Turkey and the European Union, the forward-looking opening of borders proposed by Chancellor Merkel has called for what we hope will be a serious discussion on migration and asylum policies, not only in Europe but internationally. This is a theme that was addressed at the UN General Assembly in September 2016, calling for the adoption of a Global Compact for Safe, Orderly and Regular Migration in 2018.

It would be useful to provide flexible legal migration channels, accessible and realistic for both the refugees, "forced" migrants, as for the "voluntary" migrants. Strengthening family reunification is the best incentive to planning for the future.

There would not be any dreaded "invasion." Only 3% of the world population is a migrant. This mobility rate has remained unchanged for the last 50 years and consolidated demographic research predicts that it will continue to be so in the future.

To foster equitable policies for both the old and new citizens, it is essential to recognize the right to vote, at least in local elections, to migrants and refugees who pay taxes continuously for at least five years. "No taxation without representation" is a basic principle of democracy and civilization, but above all it would counterbalance political forces whose message is largely xenophobic.

For this purpose, it would be desirable for us, "citizens" of the places of destination, to release the

"foreigners" from the stereotypes into which we have crystallized them. Migrants and refugees are neither "good" nor "bad", but have aspirations, desires and dreams, as we have. They, like us, want to participate in the global world. By doing so, we can return their identity to them and meet them as "persons", finally dispelling fears, the fears that make us capable of being manipulated by politicians who only aspire to their own electoral advantage.

Personally I think it's time to reconcile finally the "inside" and "outside" by abolishing the division. This migration crisis is the manifestation of a moment of important global social transition, a deep complex transition, which will require a huge cultural, emotional, social and economic investment.

The dilemma is not whether or not to accept some, few unfortunate persons, but to allow every person to pursue life choices freely and on an equal footing. The real question is whether the freedom we have won, and " that how dear,They know who for her sake have life refused"

(Dante, ed), is an exclusive prerogative of one part of the world population and not another.

It is not a question of sharing what we have, but to allow all a way of being: being resources and not victims.

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*\*\* Geneva Convention of 1951 on the status of refugees*

*\*\*\* Combonifem May 2015, pp. 30-31*