



**LUISS**

**Guido  
Carli**

**LIBERA UNIVERSITÀ INTERNAZIONALE DEGLI STUDI SOCIALI**

**Department of Political Science**

**Chair of International Law**

***The Humanitarian Corridors of the Community of Sant'Egidio:  
A possible solution to unsafe immigration***

**SUPERVISOR**

**Professor Roberto Virzo**

**CANDIDATE**

**Camillo Barone**

**Matr. 080032**

**ACADEMIC YEAR 2017/2018**

*A Mamma, ape guerriera, e a Babbo, padre generoso. Perché grazie a voi posso studiare e sognare*

*A Giuseppe e Diletta, perché credete in me*

*Ai miei amici d'infanzia, perché non siete cambiati*

*Al mio amico più indispensabile, Gesù di Nazareth. Ti ringrazio perchè in questi tre anni ho intravisto il tuo volto nei ragazzi di Palermo del 7 luglio 2016, nei giovani amici di San Patrignano e in tutti gli uomini di buona volontà che mi hanno sostenuto nel tuo nome a Roma e a Wellington*

<b>Introduction.....</b>	<b>4</b>
<b>1. The status of refugee.....</b>	<b>5</b>
<i>1.1 Definition of refugee.....</i>	<i>6</i>
<i>1.2 The status of refugee under international law.....</i>	<i>10</i>
<i>1.3 The status of potential refugee and respect of human rights.....</i>	<i>15</i>
<b>2. Humanitarian corridors: the first option.....</b>	<b>19</b>
<i>2.1 Humanitarian corridors for the transportation of goods and aid...20</i>	
<i>2.2 International Conventions, treaty-based law and custom regulating humanitarian corridors.....</i>	<i>24</i>
<b>3. The second option: humanitarian corridors to help refugees flee their country.....</b>	<b>29</b>
<i>3.1 Definition and international regulation.....</i>	<i>30</i>
<i>3.2 The Italian case of the Community of Sant'Egidio.....</i>	<i>34</i>
<i>3.3 The future of humanitarian corridors in Europe and Italy: an interview with the project creator and manager of the Community of Sant'Egidio's humanitarian corridors, Daniela Pompei.....</i>	<i>38</i>
<b>Conclusion: the way forward.....</b>	<b>45</b>
<b>Bibliography.....</b>	<b>46</b>
<b>Riassunto in lingua italiana.....</b>	<b>49</b>

## **Introduction**

The core argument of this brief thesis deals with something that has never been debated (at least) in the academic sphere and circuits of International Law: the new practise of the humanitarian corridors established in Italy and other European countries by the Community of Sant'Egidio and its main organizational partners civil society associations.

It is true that the history of migrations is full of cases of organised and structured movement of refugees, like the Sant'Egidio case. However, this latter practise is markedly new under the point of view of international law, in the sense that it opens up a new way for creating new humanitarian channels for refugees thanks to a European Union law combined with the effort of collaboration between civil society associations and national and international institutions.

Before analysing the core part of the thesis, which is the evaluation of the Sant'Egidio's humanitarian corridors, it is therefore fundamental explaining the existing international regulation and custom relating the international refugee law. Therefore, Chapters 1 and 2 will deal with the essential elements regarding the status of refugee and the history of the humanitarian corridors that have been created in the 20<sup>th</sup> century.

Chapter 3 instead, will firstly deal with the resettlement programmes of the UNCHR, which we can consider as humanitarian corridors for refugees leaving their first asylum country. Then, through the analysis of the Memorandum of Agreement between the Community of Sant'Egidio and an interview with the founder and manager of the humanitarian corridors Daniela Pompei, we will understand the legal status and path of this new and important practise, which in few years has already saved hundreds of refugees' lives.

## **1. The status of refugee**

Before discussing the two options of the humanitarian corridors, it is first and foremost fundamental to understand who is the refugee and who has the right to be eligible for being called “refugee”.

For this reason, in this initial chapter we will first provide for a definition of the term *refugee* itself, distinguishing its status from the ones of internally displaced person, stateless person and asylum seeker. These statuses are often confused among each other, but actually they are profoundly different, and for each of these categories there exist different rights and different legal limitations.

In the last paragraph of the chapter, after having analysed the international legal sources regarding the refugee law, we will analyse the human rights law that stands at the basis of the right to migrate and of the international recognition of the status of refugee.

## *1.1 Definition of refugee*

First of all, it is of fundamental importance to understand who is eligible of being called a “refugee”. For this reason, it is necessary to provide different definitions that would satisfy the meaning of this legal term. According to the UN Refugee Agency (UNHCR) “a refugee is someone who has been forced to flee his or her country because of persecution, war, or violence. A refugee has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group. Most likely, they cannot return home or are afraid to do so. War and ethnic, tribal and religious violence are leading causes of refugees fleeing their countries”<sup>1</sup>. According to this definition given by the leading international body operating in this sector, the boundaries of the definition of refugee are very precise. There are in fact many reasons for becoming a refugee: it could be due to social and political persecution, impossibility of practicing common political free activities, due to a sudden or unexpected state of war in the country in which the would-be refugee aspires or due to ethnic, cultural or religious violence occurring in a determined nation.

Before analysing more in depth the path and the issues that led to the formation of this definition it is important also to define other typologies of migrants that often are confused with the term of refugee. Indeed, the term “refugee” does not comprehend the social categories of three other groups of people, namely internally displaced persons, stateless persons and asylum seekers.

According to the most recent UNHCR definition, internally displaced persons are “People forced to flee their homes but that never cross an international border. These individuals seek safety anywhere they can find it—in nearby towns, schools, settlements, internal camps, even forests and fields. IDPs, which include people displaced by internal strife and natural disasters (...). Unlike refugees, IDPs are not protected by international law or eligible to receive many types of aid because they are legally under the protection of their own government”<sup>2</sup>. The international refugee law does not protect this category of migrants because its practise falls outside the

---

<sup>1</sup> USA FOR UNHCR, *What is a refugee? A person forced to flee their country because of violence or persecution*, par. 1, available online.

<sup>2</sup> *Ivi*, par. 2.

borders of a given country. It is possible to affirm, in fact, that an IDP is an internal refugee, who may find protection inside the borders of her country during a period of war, persecution or social difficulty. For this reason, the local national law is the guarantor of her rights and duties.

Instead, a stateless person is “someone who is not a citizen of any country.

Citizenship is the legal bond between a government and an individual, and allows for certain political, economic, social and other rights of the individual, as well as the responsibilities of both government and citizen. A person can become stateless due to a variety of reasons, including sovereign, legal, technical or administrative decisions or oversights. The Universal Declaration of Human Rights underlines that ‘Everyone has the right to a nationality’<sup>3</sup>. Statelessness is therefore a legal status that may occur in specific cases in which neither *Jus sanguinis* nor *Jus soli* may apply to a newborn child, who will consequently grow up without enjoying any right in the country in which she resides. This also implies that some stateless persons can be also refugees and that not all refugees are stateless, considering the fact that the majority of stateless persons have never crossed an international border claiming therefore the status of refugee<sup>4</sup>. The 1954 Convention relating to the status of Stateless Persons is the main source of international law regulating the issue.

Finally, an asylum seeker is a person who “must demonstrate that his or her fear of persecution in his or her home country is well-founded. (...) When people flee their own country and seek sanctuary in another country, they apply for asylum – the right to be recognized as a refugee and receive legal protection and material assistance”<sup>5</sup>.

Thus, it is possible to affirm that being an asylum seeker is a pre-condition to become a refugee. A person who wants to be considered a refugee must first declare to be an asylum seeker in order to demonstrate that she is in danger of being persecuted in her country for social, political, cultural or religious reasons.

Historically speaking, there have been two leading international sources of law specifically regulating the legal status and a proper definition for the term “refugee”. They are the 1950 Statute of the Office of the United Nations High Commissioner’s Office for Refugees (UNHCR) and the joint 1951-1967 Convention and Protocol

---

<sup>3</sup> *Ivi*, par. 3.

<sup>4</sup> J. BHABHA, *Children Without a State: A Global Human Rights Challenge*, Massachusetts, United States, 2011, p. 90.

<sup>5</sup> USA FOR UNHCR, *op. cit.*, par. 3.

Relating to the Status of Refugees, both adopted by the General Assembly of the United Nations<sup>6</sup>. The definition contained in the joint Convention and Protocol Relating to the Status of Refugees is very precise and it is presented as first pre-condition to the whole chart in order to define the term with a strict approach<sup>7</sup>. Because of this accuracy in describing the meaning of the legal status of a refugee, in the majority of the cases this definition has been frequently incorporated into the national laws of States in determining the status of the refugee in that particular State. This means that this definition of refugee can also be found in other national constitutions or local national laws regarding the treatment of refugees<sup>8</sup>. On the other hand, the term “refugee” is the sole one that has a clear and extended definition in the Convention. For instance, a term whose definition has been debated has been “persecution”, which is present in the chart more than once. However, even if a definition is not provided, according to Article 33<sup>9</sup> the act of persecuting citizens of a given country may coincide with the impediment of the normal practise of basic

---

<sup>6</sup> The provisions granted by these two charts will be analysed more in depth in the next paragraph (1.2).

<sup>7</sup> Article 1 of the Convention gives a rigorous definition of the term “refugee”, as follows:

“A. For the purposes of the present Convention, the term “refugee” shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization; Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country. Or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national. A person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national”.

<sup>8</sup> A. T. FRAGOMEN JR., *The Refugee: A Problem of Definition*, in *Case Western Reserve Journal of International Law*, Volume 3 issue 1, 1970, p. 51.

<sup>9</sup> Article 33, entitled “Prohibition of expulsion or return (‘refoulement)”, affirms in its first paragraph that “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”.



rights in the area of race, religion, nationality, membership of a particular social group, or political opinion. Although the responsibility of deciding if a real persecution has occurred is at the discretion of national officials, the Convention grants a broad range of examples that help them to solve the issues<sup>10</sup>. In other cases, also the historical quarrel between the validity and invalidity of the admittance of economic migrants into the category of refugees has gained importance. National officials of the Convention's Member States have solved these disputes by making the responsibility for the distinction fall into their own judicial discretion<sup>11</sup>.

As William Thomas Worster has interestingly noted, "an expanded definition of refugee is well accepted in the international community" since "this expanded definition is based both on the direct practices of the states, and on the practice of the UNHCR in setting and applying refugee status determination standards on behalf of those states. Moreover, state practices refusing to apply an expanded definition or attempting to curtail the work of the UNHCR have been considered violations of the rules on refugees. Where states act in ways that are successfully characterized as violations of the law, an alternative customary norm does not develop—instead the rule being violated is reaffirmed"<sup>12</sup>. This means that even in those countries in which the 1951 Convention Relating to the Status of Refugee has not been ratified, the general principles contained in the Convention are accepted and considered as customary. In fact, in leading non-contracting parties like India, Nepal, Saudi Arabia or even the USA, it is possible to find supportive policies regarding the hospitality and inclusion of refugees fleeing from neighbouring countries that practise persecutions. Cooperative behaviours supporting the humanitarian work and policies of the UNHCR are also accepted and included in national policies of non-signatory states<sup>13</sup>. Therefore, it is possible to affirm that the problem of giving an exhaustive definition of refugee often rests within the boundaries of single states that in the majority of the cases rely upon the definition given by customary principles, the 1951 Convention and the Statute and daily work of the UNHCR.

---

<sup>10</sup> A. T. FRAGOMEN JR., *op. cit.*, p. 54.

<sup>11</sup> *Ivi*, p. 58.

<sup>12</sup> W. T. WORSTER, *The Evolving Definition of the Refugee in Contemporary International Law*, in *Berkeley Journal of International Law*, Volume 30 issue 1, 2012, pp. 127.

<sup>13</sup> *Ivi*, pp. 122-127.

## ***1.2 The status of refugee under international law***

As previously mentioned, the status of refugee under international law is mainly regulated internationally by the joint 1951-1967 Convention and Protocol Relating to the Status of Refugees and the 1950 Statute of the office of the United Nations High Commissioner for Refugees (UNHCR) that historically have disposed and set principles regarding the international governance of refugees.

Article 1 of the Convention provides a detailed definition of the term “refugee”, therefore explaining who is eligible of being called with that denomination. The Convention ceases to apply to refugees that are in the possibility of re-acquiring their lost nationality, in case the circumstances that allowed them to be considered under persecution cease to exist or in case they have acquired a new nationality in a safe country<sup>14</sup>. In addition, the Convention does not apply to refugees with respect to whom there are “serious reasons for considering that” they have committed crimes against peace, war crimes, crimes against humanity, “serious” non-political crimes or acts violating the principles and purposes of the United Nations outside the country to which they ask refuge<sup>15</sup>.

The refugee is asked to respect the laws and regulations of the recipient state for the maintenance of public order (Article 2) but at the same time he is granted freedom to practise his religion and freedom of religious education, without any discrimination of race, religion or country of origin (Articles 3 to 5).

Chapter II of the Convention provides for juridical status to refugees in all Contracting States, granting them the right of non-political and non-profit-making association with “the most favourable treatment accorded to nationals of a foreign country” (Article 15) and the right to have free access to the courts of law on the territory of all Contracting States (Article 16).

Article 17 states that every migrant entitled to be called refugee has the right to be employed in whatever sector of society and that any measure or discrimination imposed on the freedom of finding proper wage-earning employment must be impeded. Article 18 continues stating freedom of establishing any sort of commercial and industrial company for refugees, claiming for the hosting State to recognise to

---

<sup>14</sup> Convention and Protocol Relating to the Status of Refugees, Article 1(A) (B).

<sup>15</sup> *Ivi*, Article 1(F).

each refugee his skills, capabilities and diplomas previously obtained before his departure (Article 19).

Chapter IV of the Convention is dedicated to welfare provisions towards refugees. Article 20 provides for the right of rationing of food and products in short supply, claiming that refugees are entitled to receive the same amount that is reserved to nationals. The same system applies for housing regulations (Article 21), where the public authorities of Contracting States in case of specific housing laws must consider refugees' needs as equivalent to all other non-nationals lawfully resident in their territories.

With regard to public education, Article 22 of the Convention clearly states that Contracting States must grant elementary education to refugees and facilitate the accessibility (remission of fees and charges and the award of scholarships) to higher education programmes, through the official recognition of foreign school certificates, diplomas and degrees. Article 24 instead proceeds with listing all labour legislation and social security policies that must be recognised to refugees with equal consideration that is given to nationals. They include remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements; holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, the enjoyment of the benefits of collective bargaining etc.

Chapter V of the Convention deals with administrative measures of the social life of refugees, with particular reference to the freedom of movement (inside and outside Contracting States, because refugees are entitled to move and to choose their own place of residence) and facilitation in providing documents. These can be identity papers, travel documents and any other legal certifications that would help the refugee to conduct his daily activities in all the territory of the Contracting State hosting him. According to Articles 29 and 30 then, it is forbidden for Contracting States not to facilitate a safe and fast transfer of personal assets and material belongings for refugees with the means of charging fiscal measures to them. For this reason, whatever is necessary for refugees for their resettlement in another country to which they have been admitted must be admitted and granted.

Article 31 instead states that refugees escaping from persecution clandestinely towards the borders of a Contracting State of the Convention should not receive penalties if he can prove without delay to the authorities that he entered the State

clandestinely because of persecution or anyway because of features listed in Article 1 of the Convention. However, in case of expulsion of a refugee (that occurs just because of cessation of eligibility or of public security to be proven with due process) the expelling State Contracting States must allow such a refugee a reasonable period within which to seek legal admission into another country (Article 32).

Article 33 is one of the most important ones, it is entitled “Prohibition of expulsion or return (“refoulement”)”, but is known for “Non-refoulement” principle. It states that

“1. No Contracting State shall expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.”

The “Non-refoulement” principle is solidly grounded into international law (even if there are still debates about its belonging to *jus cogens*<sup>16</sup>). It is considered an individual human right that must be respected anywhere by any legal State facing the problem of encountering a single or group of people fleeing from a place where he or they may have been persecuted for reasons of race, ethnicity, political opinion or religion<sup>17</sup>. It is therefore severely forbidden for a country receiving asylum seekers to return them towards the borders (or the harbours in case of high seas) of the country they are escaping from, where they could re-experience once again all sorts of violations of human dignity. This applies for all members, undertakings and group of citizens belonging to a given State, and it does not take into account the geographical place in which the act occurs (i.e. anyone facing the problem must intervene and act according Article 33 of the Convention)<sup>18</sup>.

---

<sup>16</sup> J. ALLAIN, *The jus cogens Nature of non-refoulement*, in *International Journal of Refugee Law*, Vol. 13 issue 1, 2001, pp. 533-558.

<sup>17</sup> G. S. GOODWIN-GILL, *The Right to Seek Asylum: Interception at Sea and the Principle of Non-Refoulement*, in *International Journal of Refugee Law*, Vol. 23 no. 3, 2011, p. 444.

<sup>18</sup> T. SELINE, *International Law and Practice: The Principle of Non-Refoulement And the De-Territorialization of Border Control at Sea*, in *Leiden Journal of International Law*, Vol. 27 no. 3, 2014, p. 661.

Article 34 concludes Chapter V of the Convention by stating that each Contracting State is asked to facilitate the process of Naturalization, namely the official acquisition of local citizenship. Contracting States therefore shall in particular make every effort to accelerate naturalization proceedings by reducing as far as possible the charges and costs of such proceedings.

Among the executory and transitory provisions and the final clauses of Chapters VI and VII, what is to be taken into consideration is Article 42, which deals with the reservations that Contracting States may make to the Convention. Hence, according to Article 42, when it comes to the signature, accession or ratification of the Convention, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16(1), 33 and 36-46 inclusive, by addressing a direct communication to the Secretary General of the United Nations. This means that the Convention must be considered extremely rigid – impossible to repeal or to be withdrawn from – in the matters of the definition of the legal stance of a “refugee”, the non-discrimination principle (especially freedom of religion), the free access to courts and the right not to be returned back to the borders of a non-respectful of freedom country.

Another important source of international law is the Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR), approved by the United Nations General Assembly in December 1950. In the introductory note and in Article 2 it is stated that the work of the High Commissioner is humanitarian and social and of an entirely non-political character.

Article 1 of the Statute states that the scope of the UNCHR is providing international protection and seeking permanent solutions by assisting Governments and other private organizations facilitating voluntary repatriations of refugees when it is possible in new national communities.

Article 6 (A) states that the competence of the High Commissioner shall extend to those that are considered refugees under a certain list of Arrangements, Convention and Protocols. In addition, it extends to those who have a “well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion”. It also extends to whom “is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country”. And finally to whom, “not having a nationality and being outside the country of his former habitual residence, is unable

or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it". As it is possible to note, the definition of the eligibility of being called "refugee" provided by the UNCHR is highly similar to the one given by the joint Convention and Protocol Relating to the Status of Refugees.

What is different from the Convention can be found in Article 8 of the Statute, where it is clearly states that the duty of the UNCHR must be found in facilitating and promoting the general protection of refugees through the establishment of different legal and social initiatives. These initiatives can be: the conclusion and ratification of international conventions, the improvement of the situation of refugees, the reduction of the number requiring protection, the promotion of the admission of refugees into other States' territories, the transfer of their assets, the maintenance of communication and sharing of information between refugees and hosting Governments and the facilitation of the implementation of welfare provisions.

### ***1.3 The status of potential refugee and respect of human rights***

What is important to understand in the question of the international refugee law is that it stems from precedent and acquired international humanitarian law, with particular regard to the issue of human rights. The potential refugee status indeed is commonly obtained when a breach of human rights occurs. For this reason, it is crucial to provide a general framework of the main human rights legal provisions that count in the process of acquiring the status of refugee.

The first international treaty to take into account when dealing with human rights is the 1948 Universal Declaration of Human Rights, which in Article 13 affirms that “(1) Everyone has the right to freedom of movement and residence within the borders of each State.

(2) Everyone has the right to leave any country, including his own, and to return to his country.”

Article 13 of the Universal Declaration of Human Rights is divided into an internal and external part (that can be considered intertwined), each of them claiming internal and external human rights. In paragraph 1 it is provided the right of residing anywhere inside the borders of a given country, with the guarantee of the freedom of movement and independent relocation to be exercised in any authorised residence in the nation. On the other hand, paragraph 2 provides the citizen with the right to leave (which includes the right to escape) his own country, without necessarily requiring the obligation to return<sup>19</sup>.

Article 14 instead, states that

“(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.”

There are two important features that must be taken into consideration to analyse this article: the first is the concept of persecution and the second is the one of non-

---

<sup>19</sup> J. GILBERT, *Nomadic Peoples and Human Rights*, New York, United States, 2014, p. 73.

political crimes. It must be also noted that these two concepts were then utilised in the 1950 Statute of the Office of the UNHCR and in the 1951 Convention Relating the Status of Refugees, respectively in Article 6 (A) and in Article 1. Therefore, Article 14 of the Universal Declaration of Human Rights gave the basis to these two other international conventions for rendering binding the protection of refugees fleeing from any sort of persecution. The concept of persecution, in fact, is the most relevant discriminating factor when an asylum seeker seeks protection elsewhere. Accordingly, becoming a refugee implies being persecuted because of political crimes. Also this latter point was re-affirmed and proclaimed binding in the 1951 Convention: in order not to allow the Nazi generals to escape without being executed after World War II, it seemed highly reasonable not to define refugees those are escaping for being persecuted for crimes that are non-political in nature. This is the reason why every asylum request must be first discussed by the Contracting States' authorities<sup>20</sup>.

Consequently, it is interesting to understand what constitutes the legal concept of "persecution". The most up-to-date legal definition of persecution in Italy has been given in 2014 by a legislative decree approved jointly by the Government and the Parliament<sup>21</sup>. In Article 7 it is clearly stated that in order to have the presence of a persecution, there must be serious violation of fundamental human rights as established in Article 15 of the Universal Declaration of Human Rights. The possible violations can include: acts of physical or psychological violence, sexual harassment, disproportionate discriminatory judiciary or legislative provisions, forced involvement in war crimes or military activities, religious violence, gender violence and childhood violence.

In order to better understand how the status of potential refugee is directly intertwined with the respect of fundamental human rights, it is important to consider the act of persecution as a consequence of the breach of other international conventions aiming at the abolition and punishment of inhuman illegal acts. Among these we can find the 1987 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, commonly known as the UNCAT. Since its ratification by 163 Contracting parties it has been considered

---

<sup>20</sup> S. KAPFERER, *Article 14(2) of the Universal Declaration of Human Rights and Exclusion from International Refugee Protection*, in *Refugee Survey Quarterly*, Vol. 27 issue 3, 2008, pp. 53-75.

<sup>21</sup> Article 7, Legislative Decree 21st February 2014, no. 18.



as part of customary international law for its authoritative prohibition of all forms of cruel and inhuman treatment towards human beings<sup>22</sup>. Article 1.1 provides for an immediate definition of torture, the first element of the text that must be firmly condemned by every State taking part in the provision:

“For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

After having declared the necessary internal provisions that must be adopted by the Contracting States in order to prevent the use of torture and other violent measures, in Article 3 the Convention passes to analyse the external actions among Contracting States, re-establishment in a different stance the fundamental principle of *non-refoulement*:

“1. No State Party shall expel, return (*refouler*) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

3. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.”

Therefore, every suspicious breach of the Convention by any Contracting States that may include the recurrence to torture and violence must be condemned, and the victims of such acts must feel entitled to seek protection in any other Contracting State. For this reason the 1987 UNCAT reaffirms in a decisive manner the already

---

<sup>22</sup> General Comment no. 2 of date 2007 of the Committee Against Torture on the implementation of Article 2 by State Parties, p. 2.

discussed principle of *non-refoulement* of Article 33 of the Convention Relating to the Status of Refugees.

Another crucial article of the 1987 UNCAT is Article 8.2, which provides for automatic and inevitable extradition measures in case there is a dispute between a State that makes extradition conditional on the existence of a treaty and a State that has not signed any extradition treaty with the above-mentioned first one. In this common dispute, the request of extradition must be accepted and respected in case both the States are part of UNCAT, with the Convention itself being the legal basis for extradition in respect of such offences.

Many other important international conventions also stand for the status of potential refugee in the respect of human rights. They are the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children; the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the Convention on the Rights of the Child; the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict; the Declaration on the Elimination of Violence Against Women and so on.

## **2. Humanitarian corridors: the first option**

In this second chapter, a description of the first typology of humanitarian corridors will be provided. Indeed, it is possible to make a distinction between two kinds of humanitarian corridors: the first ones aiming at bringing assistance, aid and supplies to populations in need, the second ones aiming at helping refugees flee their country where they face persecution, discriminations or great instability in conduction their daily lives.

In the first paragraph of this chapter it will be possible to find some historical examples for providing the best definition for humanitarian corridors for assistance and aid. There are in fact both past and present cases of negotiations for the creation of this special typology of humanitarian intervention.

On the other hand, in the second paragraph a legal comprehension of this practice will be presented, with particular reference to the 1949 Geneva Conventions and the 1998 Rome Statute of the International Criminal Court.

## ***2.1 Humanitarian corridors for the transportation of goods and aid***

In order to enter with more details into the issue of humanitarian corridors, it is first of all fundamental to understand the difference between the two main typologies of humanitarian corridors.

The first typology is the transportation of goods and aid. It consists in a temporary demilitarised zone (or secured area) in which it is possible for third parties of a war (or for the officials responsible for aid of one of the parties involved in the war) to bring humanitarian aid to who is suffering the consequences of an armed conflict. These humanitarian corridors may involve many types of aid: the supply of food and water, medical aid, economic aid, goods, services etc.

It is possible to provide some examples that may exemplify the history and main characteristics of the humanitarian corridors for the transportations of goods and aid. The first one is linked to its invention that is the foundation of the International Red Cross. Jean-Henri Dunant, a Swiss entrepreneur who travelled across northern Italy in 1859, was left shocked by the scenery of the aftermath of the Battle of Solferino, at the view of more than 40.000 corpses of soldiers and wounded troopers. He organised in the next several days improvised medical treatments with the local villagers of the nearby towns and on his way back to Geneva in Switzerland he meditated on the lack of medical and moral assistance in conflicts and wars<sup>23</sup>. After this shocking experience, Dunant decided to write a book in which he recounted all the details of his contribution to the dead and wounded soldiers, claiming more dignity for wounded fighters in international conflicts and civil wars, and invoking the creation of an international Convention aiming at the foundation of an international body that would ensure the daily protection and assistance to combatants on the battlefield<sup>24</sup>. In 1863, after having met with lawyers, doctors and presidents of public associations, Dunant managed to reunite in Geneva eighteen official delegates from national governments, six delegates from other non-governmental organizations and seven non-official foreign delegates<sup>25</sup>. In 1864 the

---

<sup>23</sup> J. H. DUNANT, *A Memory of Solferino*, Geneva, 1862, p. 13.

<sup>24</sup> S. O. JACOB, V. POULIOT, I. B. NEUMANN, *Diplomacy and the Making of World Politics*, Cambridge, 2015, p. 181.

<sup>25</sup> The nations represented by delegates sent by official national authorities were: Austrian Empire, Grand Duchy of Baden, Kingdom of Bavaria, Second French Empire, Kingdom of Hanover, Grand Duchy of Hesse, Kingdom of Italy, Kingdom of the Netherlands, Kingdom of Prussia, Russian Empire, Kingdom of Saxony, Spanish Empire, United Kingdoms of Sweden and Norway, and United Kingdom of Great Britain and Ireland.

representatives of 12 states and kingdoms signed the first Geneva Convention, that later was signed and extended also to overseas nations. The main points of the Convention mainly dealt with the protection of soldiers, military prisoners and wounded combatants. Volunteer forces for relief assistance on the battlefield were instituted, in order to protect the most vulnerable ones during military crises. Furthermore, the obligation not to hit with any weapon the medical volunteers during operations of rescue and first aid on the battlefield was established, with the introduction of the symbol that distinguished them (the Red Cross)<sup>26</sup>. Although the establishment of the International Committee of the Red Cross did not reflect the same characteristics of the current modalities of humanitarian corridors, it marked a watershed in the history of humanitarian aid in wars and conflict crises.

Another historical example that marked the history of humanitarian corridors for aid and goods is the one of 1948 during the famous Berlin Blockade. At the outbreak of the Cold War between the Western Allies and the Soviet sphere, a diplomatic crisis between the USA and the USSR sparked a humanitarian crisis. Germany was divided into two macro-areas, the first led by USA, UK and France (which later became the independent Federal Republic of Germany) and the second led by the USSR (which later evolved into the German Democratic Republic, vassal state of the Soviets). Berlin too was divided in two areas (West and East), but it was entirely located in the USSR region of influence. When the USA launched the new German own currency, the Mark, the USSR protested asking to withdraw the decision<sup>27</sup>. Inevitably, the distance between the two states increased to the point that the Soviets decided to blockade all the entrances to Berlin. The railways and the streets leading to Berlin were obstructed, and the population was confined to the city, living in precarious conditions without any facility and supply, like food, water, medical treatments and raw materials for starting independent productions (only recently the war was over and Berlin had been completely destroyed). The Western bloc responded by blocking all the coal and steel supplies directed to the East Berlin and the Eastern bloc<sup>28</sup>. The sole solution to travel hauling humanitarian aid for the starving Berliners confined in the Eastern bloc was the one of creating an airlift, i.e. a humanitarian corridor aimed

---

<sup>26</sup> For more details, see the First Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, approved on August 22<sup>nd</sup> 1864.

<sup>27</sup> R. G. MILLER, *To Save A City: The Berlin Airlift, 1948-1949*, Texas, USA, 2008, p. 32.

<sup>28</sup> B. TURNER, *The Berlin Airlift, The Relief Operation That Defined The Cold War*, Leicester, 2017, p. 24.

at bringing food and water stocks, medical necessities, coal and steel to heat houses and to allow the city of Berlin not to remain isolated from the rest of the world. The airlift began in June 1948 and ended in September 1949, after the Soviet officials withdrew the blockade in May 1949. In 18 months, the US Air Force and the UK Royal Air Force (with the support of Canada, Australia and New Zealand) transported 2,326,406 tons, almost two-thirds of which was coal, during 278,228 flights to Berlin. The cost of the Airlift was divided between the USA, UK, and the Federal Republic of Germany and its costs range from approximately US\$224 million to over US\$500 million<sup>29</sup>.

The 1948-1948 Airlift of the Berlin Blockade can be considered a perfect example of one of the first humanitarian corridors of history for the transportation of goods and aid. Although it was not the result of an official treaty or conventions between some states, it was tacitly approved and it represents an historical example of a humanitarian corridor aimed at saving human lives.

It is possible to find also more recent examples of humanitarian corridors for the transportation of goods and aid. One of these is the humanitarian corridor created in November 2009 in the region of North-Kivu, in the Democratic Republic of Congo. Thanks to an agreement between the Tutsi general Nkunda and the Congolese president Kabila (mediated by the former Nigerian President Obasanjo), buffer zones were created amid the two combatants and United Nations' food supplies and essential drugs for hospitals given by a British-based aid agency were delivered to thousands of civilians<sup>30</sup>.

Another important humanitarian corridor for aid and goods has been the one of January 2009 in the context of the Gaza Strip War, fought by the Israeli and the Palestinian forces on the borders between Egypt and southern Israel. Almost ten days before the end of the conflict, numerous executive directors of human rights and aid non-governmental international organizations helped by the United Nations support, stated that a humanitarian corridor was urgently needed in Gaza in order to avoid a tremendous humanitarian "catastrophe"<sup>31</sup>. For this reason, a humanitarian corridor

---

<sup>29</sup> G. C. TINE, *Berlin Airlift: Logistics, Humanitarian Aid, and Strategic Success*, in *Army Logisticians, Professional Bulletin of United States Army Logistics*, Volume 37 issue5, 2005.

<sup>30</sup> D. BLAIR, *Thousands receive aid in DR Congo as ceasefire holds*, in *The Telegraph*, 2008.

<sup>31</sup> UNITED NATIONS MEETINGS COVERAGE AND PRESS RELEASES, *Press Conference by Humanitarian, Human Rights Organizations on Gaza*, 2009.

was later officially established thanks to a fast agreement between the Israeli forces and Hamas: it allowed the humanitarian operators to bring to the suffering civilians considerable food and drugs supplies, which were desperately needed<sup>32</sup>. Although the effort for the creation of this humanitarian corridors was notable, the halt of the humanitarian blockade lasted solely for less than a day, since the combats resumed lately after<sup>33</sup>.

Finally, it is noteworthy also to mention the humanitarian corridors for aid created in Syria in May 2017. Thanks to a very demanding agreement signed in Astana by Turkey, Russia and the forces of the Syrian President Bashar al-Assad, four de-escalation zones were established in four different key geographical areas of the Syrian territory. The aid given by the United Nations and other non-governmental organizations in the four areas reached almost 2.5 million people in need of help<sup>34</sup>.

---

<sup>32</sup> S. PACE, *Israel Opens Up Humanitarian Corridors in Gaza as Fighting Continues* in *Voice of America*, 2009.

<sup>33</sup> AL JAZEERA AND AGENCIES, *Israel resumes Gaza raid after lull*, 2009.

<sup>34</sup> D. COLLINS, *Syria's 'de-escalation zones' explained* in *Al Jazeera Middle East*, 2017.

## ***2.2 International Conventions, treaty-based law and custom regulating humanitarian corridors for assistance and aid***

As it is possible to read in the previous paragraph, humanitarian corridors for goods and aid, which are fully considered “humanitarian access” in a given country, are for the majority of the cases negotiated by international organizations (like the United Nations) and non-governmental organizations with the parties or local actors of the contextual armed conflict. This means that the modalities of the creation of a humanitarian corridor for goods and aid differ from one another. Notwithstanding this, it is possible to note that there is an important normative framework that must be considered by IOs, NGOs and conflicting parties when they have to define the boundaries of assistance and aid in an armed conflict and the negotiations for providing the best solution in critical situations<sup>35</sup>. The most important general provisions of internal law regulating humanitarian access are contained both in international charters and in bodies’ regulations. These are the Charter of the United Nations; the declarations and resolutions of the UN General Assembly (even if it is considered to be “soft law”, although its authoritative status); the resolutions of the UN Security Council; the decisions and precedents set by the International Court of Justice and the instruments such as the Guiding Principles on Internal Displacement<sup>36</sup>. Undoubtedly, the December 1991 UN General Assembly’s resolution 46/182<sup>37</sup>, which has become part of customary law, is considered the milestone of humanitarian intervention and assistance. This landmark resolution, which was influenced by the combats of the Gulf War during its process, includes 12 guiding principles for every typology of humanitarian intervention, which can be summarised as follows:

- Humanitarian assistance must be brought with the three principles of humanity, neutrality and impartiality. Later in 2004, with the UN General Assembly resolution 58/114<sup>38</sup> the principle of independence was added to these three principles.

---

<sup>35</sup> SWISS FEDERAL DEPARTMENT OF FOREIGN AFFAIRS, *Humanitarian Access In Situations of Armed Conflict – Field Manual Version 1.0*, 2011, p. 29.

<sup>36</sup> *Ivi*, p. 30.

<sup>37</sup> United Nations General Assembly resolution 46/182, adopted on December the 19<sup>th</sup> 1991.

<sup>38</sup> United Nations General Assembly resolution 58/114, adopted on February the 4<sup>th</sup> 2004.



- Each State is firstly responsible for the protection of its own population living in its territory in case of natural disasters or other emergencies like civil wars and international crises.
- In order to protect the sovereignty, the territorial integrity and national unity of the assistance recipient State, the consent of the latter is strictly necessary to be obtained by third humanitarian organizations parties.
- States whose population is deemed in need of humanitarian aid should cooperate with international organizations and other humanitarian actors in order to bring as soon as possible the above-mentioned assistance, reciprocally facilitating the work. UN General Assembly's resolution 46/182 also established new important bodies and processes inside the system of United Nations, which have been re-modified during the following years. Among these we find the Inter-Agency Standing Committee (IASC), the Central Emergency Revolving Fund (which in 2005 became the Central Emergency Response Fund- CERF) and the Consolidated Appeal Process (CAP). It is important to note that in dealing with international humanitarian assistance, the most important role is played by the Office for the Coordination of Humanitarian Affairs (OCHA), which was created in 1998 after the suppression of the Department of Humanitarian Affairs (DHA). Essentially the OCHA has the same humanitarian role of its "older brother", the DHA. Its mandate is given by the resolution 46/182 and it has the power to guide and assist Member States' delegations and other humanitarian professionals in respecting the humanitarian principles contained in the resolution. Most importantly, it gives every year to Member States and organizations the capacity to comprehend in the proper manner the existing framework of humanitarian crises in the world, in order to provide deep knowledge to start the humanitarian action<sup>39</sup>.

Additionally, it is fundamental in this context to cite what the Internal Criminal Law and the International Humanitarian Law have to say about a hypothetical blockade of a humanitarian corridor for goods and aid. It is important to cite three important international conventions in this frame, which are the 1998 Rome Statute of the

---

<sup>39</sup> OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS, *OCHA on Message: General Assembly resolution 46/182*, 2012, p. 1-2.

International Criminal Court, the 1949 IV Geneva Convention and its 1977 Additional Protocol I<sup>40</sup>.

Indeed Article 8 (2) (b) (xxv) of the 1998 Rome Statute of the International of the International Criminal Court states that

“[For the purpose of this statute, ‘war crimes’ means:]

Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions.”

We can intend that blocking a humanitarian corridor for goods and aid include the breaching of this important article, which directly refers to other articles of the Geneva Conventions and the Additional Protocols.

Consequently, some articles of these latter Conventions must be highlighted, keeping in mind that they are the same ones that led the General Assembly to the approval of resolution 46/182 in 1991. These ones are Article 23 (1) that states that

“Each High Contracting Party shall allow the free passage of all consignments [...] of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.”

and Article 55 (1) that affirms that

“To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population [...]”

This means that the 1949 IV Geneva Convention provides in detail for the survival of civilians in a context of war or civil war. And whether or not the ‘Occupying Power’ is at the moment of war the responsible for assistance and aid, it must never attempt to put at threat its population by rendering impossible the transportation of necessary primary goods such as essential foodstuffs and basic medicines for the vulnerable and weakest citizens<sup>41</sup>. This crucial principle is furtherly reiterated in Article 59 (1), where the ‘Occupying Power’ is firmly asked to cooperate with national and

---

<sup>40</sup> ICRC ADVISORY SERVICE ON INTERNATIONAL HUMANITARIAN LAW, *War Crimes under the Rome Statute of the International Criminal Court and their sources in International Humanitarian Law – Comparative Table*, 2012, p. 15.

<sup>41</sup> F. M BURKLE JR, *Measuring humanitarian assistance in conflicts*, in *The Lancet*, Vol. 371 issue 9608, 2008, p. 189.

international bodies that aim at supplying important assistance and aid to the population in need. Indeed, it is declared that

“If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal.”

This compelling concept of the survival of the population is also central in Article 54 of the 1977 Additional Protocol I. It is explained that intentional starvation must be considered an international war crime, especially when it occurs with the specific intent of destroying and rendering useless the aid that is destined by third parties to the deprived population in need:

“(1) Starvation of civilians as a method of warfare is prohibited.

- (2) It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population [...] for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party [...].”

Not less essential are two rules of Customary International Humanitarian Law, namely rule 55 and 56. In rule 55, it is affirmed that humanitarian assistance must be free and unimpeded in its passage for the sake of local civilians. State practice reveals that under no circumstance an occupying power could blockade essential aid to its population, even if the humanitarian relief comes via third States, both in international and non-international armed conflicts<sup>42</sup>.

Instead, in rule 56, in declaring that

“The parties to the conflict must ensure the freedom of movement of authorized humanitarian relief personnel essential to the exercise of their functions. Only in case of imperative military necessity may their movements be temporarily restricted.”

it is strictly enunciated the crucial freedom of movement for the personnel of international humanitarian organizations and the right to operate with total security while delivering assistance and aid. This means that landmines, traps and other intentional human obstacles should never threaten the organised humanitarian

---

<sup>42</sup> ICRC, *Rule 55, Access for Humanitarian Relief to Civilians in Need*, in *IHL Database – Customary IHL*, available online.

assistance on its way to the population in need (in our case humanitarian corridors for goods and aid). Although the humanitarian movements may be restricted, it is important to note that the military causes for this restriction must be temporary and of “imperative” relevance<sup>43</sup>.

---

<sup>43</sup> ICRC, *Rule 56, Freedom of Movement of Humanitarian Relief Personnel*, in *IHL Database – Customary IHL*, available online.

### **3. The second option: humanitarian corridors to help refugees flee their country**

In this chapter, we will pass to the core subject of this thesis: the existing practises of the resettlement programs of the UNHCR and the following creation of the “humanitarian corridors” of the Community of Sant’Egidio, famous Italian NGO operating in Italy and several other countries of the world in the context of the social vulnerability.

We will first analyse the history and the legal features of the resettlement programs, that represent a humanitarian intervention different from the one analysed in chapter 2. In this case, we are dealing with the movement of refugees and with determined legal practises for facilitating safe immigration.

In the third and last paragraph of the chapter, we will be helped in this analysis by an interview to an international operator and leader of the Community of Sant’Egidio, Daniela Pompei.

### ***3.1 Definition and international regulation***

Humanitarian corridors to help refugees flee their countries are another typology for humanitarian intervention in favour of the most vulnerable ones. If in the previous chapter we discussed the modalities of creation and the international regulation for humanitarian corridors for bringing each sort of humanitarian assistance (food, medical supplies and so on), in this paragraph we will deal with the so-called “resettlement policies”, which have been the starting point for the creation of the Community of Sant’Egidio’s humanitarian corridors. In fact, resettlement is one of the most important policies applied by the UNHCR, the United Nations High Commissioner for Refugees since its foundation.

The UNHCR defines resettlement as something that

“involves, under the auspices of the UNCHR, the selection and transfer of refugees from a State in which they have sought protection to a third State that has agreed to admit them - as refugees - with permanent residence status. The status provided by the resettlement State ensures protection against refoulement and provides a resettled refugee and his/her family or dependents with access to civil, political, economic, social and cultural rights similar to those enjoyed by nationals. Resettlement also carries with it the opportunity to eventually become a naturalized citizen of the resettlement country”<sup>44</sup>.

As explained above, resettlement is the movement of refugees towards a third welcoming country from the country in which they have for the first time asked political asylum after having escaped from their country of origin, which may be in a state of crisis, civil war or in a state of persecution of minorities.

Before 1947, resettlement policies were almost inexistent and there were non-governmental organizations and associations that provided for help to those minorities who were in need to escape, such as Jews during the European and Russian persecutions during the 30s and the 40s. The beginning of the practice of resettlement dates back to the second post-war period. It has been calculated that between 1947 and 1951 almost 1 million displaced people were resettled in third countries. They were almost all citizens of countries of the European Eastern bloc,

---

<sup>44</sup> UNHCR - THE UN REFUGEE AGENCY, *Information on UNHCR Resettlement*, 2016, par. 1, available online.

who besides suffering the destruction of the Second World War, were experiencing the physical and political invasion of the USSR. Almost 80% of them was resettled outside the European borders, in the UK, USA, Canada, Australia and New Zealand, where there was a desperate need of labour forces and repopulation policies. In the following decades, the International Refugee Organization (IRO) that organised the resettlement flights for European refugees, was substituted by the UNHCR in 1951, which from that moment on resettled millions of refugees during the worst wars of the second half of the 20<sup>th</sup> century. The principle ones were the Soviet invasions, the Chilean persecutions, the Vietnam War, the Gulf War, the Yugoslavia crisis and the Myanmar crisis<sup>45</sup>).

Under a legal standpoint, we can affirm that, besides the duty of cooperation contained in 1951 Convention Relating the Status of Refugee analysed in the first chapter of this thesis, also the 1950 Statute of the Office of the UNHCR is accountable for the creation of resettlement policies when it states in Article 9 that “The High Commissioner shall engage in such additional activities, including repatriation and resettlement, as the General Assembly may determine, within the limits of the resources placed at his disposal”.

An important point in the question of resettlement, that will arise again when we will analyse the Italian humanitarian corridors, is who is eligible among the refugees of being resettled in a third country. There are some important criteria<sup>46</sup> listed by the UNHCR to prioritise the beneficiaries of this service:

- Refugees in need of legal or physical protection: in this category, we can find refugees who face the risk of immediate or long-term threat of refoulement to the country of origin or expulsion to another country from where the refugee may be refouled. Again, refugees who may suffer arbitrary arrest, detention or imprisonment or refugees subject to threat to physical safety or human rights in the country of refuge which renders asylum untenable. The risk of persecution must be real and direct, not accidental, it could be not only towards an individual but also towards a group and short term interventions by the UNHCR may also be considered.

However, it must be taken into consideration that the asylum states are always

---

<sup>45</sup> G. THOM, P. POWER, M. PIPER A. M., *New issues in refugee research*, in *UNHCR – The UN Refugee Agency Policy Development and Evaluation Service*, research paper no. 253, 2013, p. 4.

<sup>46</sup> UNHCR – THE UN REFUGEE AGENCY, *Resettlement criteria*, available online.

responsible for the protection and respect of refugees' human rights inside their respective borders.

- Refugees who are survivors of violence and torture<sup>47</sup>: mental ill refugees can be comprehended in this group.
- Refugees with medical needs: here there are refugees that are not sufficiently well treated in the asylum country, that are suffering for irreversible or life threatening diseases and the ones that do not have proper equipment for being constantly cured. If in the hypothetical resettlement country the suffering refugee will be ensured of being adequately cured with the proper materials, he/she is eligible for being relocated by the UNHCR.
- Women at risk: the women who face gender discrimination, violence and persecution in their asylum country are eligible of being resettled in third states where their self-sufficiency and security is granted.
- Family reunification: here there are refugees whom lives depend economically on the incomes of relatives living in third countries, which can then be their resettlement country. In family reunification programmes, emotional features are also strictly taken into account.
- Children, adolescents and elderly: these are the most vulnerable ones, the first that are taken into consideration by the UNHCR operators, especially in case the minor is unaccompanied or there is the possibility of relocating him/her in the country where his/her parents or relatives reside.
- Refugees without local integration (and voluntary repatriation) prospects: in dealing with these refugees, many factors of their daily lives in asylum countries are considered: the cultural, religious, socio-economic (and psycho-social) context and quality of life in terms of access of basic rights.

It is important to note that according to UNHCR not all states are eligible for becoming third welcoming countries for refugees. In fact, every year the total number of refugees far exceeds the available places in welcoming country. This

---

<sup>47</sup> In this case term "torture" must be interpreted with its legal definition established in Article 1 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which affirms that "for the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions".



means that third countries must guarantee for refugees a better conduct of life compared to the one in the first country of asylum<sup>48</sup> (this could be a reason for understanding why the third welcoming countries are always the same, such as Canada, Australia, New Zealand, USA and the Northern European countries). Further, the costs of the journeys from the asylum country to the third country are all covered by the countries themselves, which have to provide for interview/selection missions, medical checks and pre-departure orientation, exit visas from country of asylum, travel from the country of asylum and on-arrival services in the new country of resettlement. UNHCR instead, provides for the technical and coordination group between the candidate refugees and the states<sup>49</sup>. Anyway, the third welcoming countries must be ready to recognise full naturalisation to the hosted refugees after a determined period of time.

Non-governmental organization (NGO) partners are increasing year by year their presence collaborating in the resettlement processes from identification to integration. The role of NGOs in the resettlement programmes has become crucial in order to promote resettlement through advocacy efforts, as well as with direct engagement of stakeholders through training and operational capacity building. Collaboration between NGOs coming from all partner countries and the UN High Commissioner for Refugees is also relevant regarding the deployment of NGOs' personnel, which clearly helps and strengthens the operations carried out by the UNHCR in the daily work with refugees<sup>50</sup>. This also explains why the Community of Sant'Egidio and its partners have succeeded in the negotiations and operational works of their "humanitarian corridors", which will be evaluated in the next paragraph.

---

<sup>48</sup> UNHCR - THE UN REFUGEE AGENCY, *cit.*, par. 5.

<sup>49</sup> *Ivi*, par. 12.

<sup>50</sup> *Ivi*, par. 10.

### ***3.2 The Italian case of the Community of Sant'Egidio***

It is important to briefly illustrate what the Community of Sant'Egidio is. It was founded as a simple catholic association by Andrea Riccardi in 1968, while he was a simple high school student in Rome (later he began the academic career in historical studies and in 2011 was appointed minister of Internal Cooperation for his merits achieved in Sant'Egidio). Its original mission in the 70s was bringing food and support to homeless people in Rome, but in the later decades it grew up opening offices in more than 70 countries all over the world, with the mission of what they call “the 3 P”, namely Prayer, the Poor, and Peace<sup>51</sup>. Indeed, the Community of Sant'Egidio became notorious in the eyes of the international community especially for its commitment towards international peace, international cooperation and inter-religious dialogue (once a year the Community organises an inter-religious meeting with all representatives of religions and other Christian confessions). Becoming a real NGO, the Community of Sant'Egidio has played a striking role in many international crisis since the 90s, operating as a peace mediator in the Rome agreements for the peace in Mozambico in 1992, in Guatemala in 1996, in Albania in 1997 and in Guinea in 2010<sup>52</sup>. In the last three decades, the Community of Sant'Egidio has notoriously conducted numerous campaigns supporting refugees and victims of war, crises and civil wars, campaigning also against torture, death penalty and landmines. For all these activities, the Community of Sant'Egidio has received plentiful national and international awards<sup>53</sup>.

The project of the humanitarian corridors is an interesting and absolutely new and original achievement of the Community of Sant'Egidio in the field of the refugee law and humanitarian activism. The so-called “humanitarian corridors” come from the commitment of the Community of Sant'Egidio in cooperation with the Waldensian Table and the Federation of the Evangelical Churches (FCEI). In the maximum of the international immigration crisis in the Mediterranean between 2014 and 2016, the leaders of these three organizations organised a meeting to discuss for finding concrete modalities to fight unsafe and deathful immigration by sea. Indeed, the

---

<sup>51</sup> A. BARTOLI, *Catholic Peacemaking: the experience of the Community of Sant'Egidio*, presented at *The US Institute of Peace Workshop*, February 5 2001, p. 5.

<sup>52</sup> COMMUNITY OF SANT'EGIDIO, *La Comunità*, available online.

<sup>53</sup> R. P. IMBELLI, *The Community of Sant'Egidio – Vatican II Made Real*, in *Commonweal*, Volume 20 n. 11, 1994, p. 20.

emergency was (and it still is today) the increase of the death toll of migrants in the Mediterranean Sea and in the Sahara desert coming especially from sub-Saharan African countries. For this reason, they desired to look for new possibilities for a safe migration for refugees without necessarily ask for new legislation, namely without protesting and campaigning for new national or European laws in the issue of migration. After having spent months studying the existing European legislation on migration, they found a possible solution for creating new humanitarian channels for refugees in Article 25 of the European Regulation 810/2009 of the European Parliament and of the European Council establishing a European Community Code on Visas (it is commonly known as the “European Regulation on Visas”)<sup>54</sup>. Article 25 (1) (a) of this regulation, entitled “Issuing of a visa with limited territorial validity”, states that

“A visa with limited territorial validity shall be issued exceptionally [...] when the Member State concerned considers it necessary on humanitarian grounds, for reasons of national interest or because of international obligations”.

Consequently, when the three organizations went to the bargaining table with the Italian ministries of Domestic and Foreign Affairs, presented their willingness of organizing a safe humanitarian flight for 1000 refugees coming from Lebanon, Morocco and Ethiopia. Their legal and safe entrance in Italy would have depended on the legal basis of granting them a visa with limited territorial validity because of the “humanitarian grounds” cited in Article 25 of the European regulation on visas. In the end, this long negotiation allowed 1000 migrants living in those three countries to obtain the refugee status in Italy and the consequent legal visa before leaving for Italy itself. Because of these modalities, we can affirm that the project of the humanitarian corridors of these three civil society’s organizations is the first ever one in Europe. The organizations and the two ministries signed the Memorandum of Agreement on the 15<sup>th</sup> of December 2015 and it was preceded by a long analysis of the 1000 refugees coming from the three above-mentioned countries. In fact, the selection of the refugees comprehended numerous security checks by the Italian Domestic Ministry, the Italian consulate in Lebanon, Morocco and Ethiopia and finally by the local police forces in Italy and in the respective countries. The eligible

---

<sup>54</sup> Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code).

refugees taking part in the humanitarian corridors towards Italy have been individualised by operators of the three organizations on the field, in refugee camps, with the cooperation of the UNHCR, local parishes, associations and activist groups. They were almost all children, families, women, women at risk, elderly with diseases and refugees looking for familiar reunification in Europe. It is important to note that this initiative has been totally auto-financed by the three organizations thanks to the “8 per mille” received each year by the Federation of the Christian Evangelical Churches and the Waldensian Table, and the “5 per mille” of the Community of Sant’Egidio. Furthermore, the value of social integration is fully respected by the three organizations, which have provided for refugees houses and in general places where to live and conduct a respectable daily life. Other partners of Sant’Egidio daily help the children of the humanitarian corridors learning the Italian language and customs, besides letting them attend official school classes. Most of all, the 1000 refugees welcomed by the Community are sent to live in mostly all Italian regions and towns among associations, families parishes and groups, according to what Sant’Egidio calls the *accoglienza diffusa* (“scattered hospitality”).

Due to the success of the first agreement of the humanitarian corridors, on the 7<sup>th</sup> of November 2017 the Ministries of Foreign and Domestic Affairs signed a new Memorandum of Agreement for the safe entrance and recognition of humanitarian visa for 1000 more refugees with the Community of Sant’Egidio and the other two Christian organizations. The majority of the flights coming from this corridor is from Lebanon and at the moment of writing a part of the refugees still have to enter into Italy (it is important to remember that the refugees of the humanitarian corridors are divided in more than one flight, in fact their arrivals are divided in almost two years).

The most interesting aspect of this new practise is that its legal source comes from a European regulation, and this means that it could be applied in all the Schengen and European Union countries in which the 2009 regulation on visas is in force. This is why the Community of Sant’Egidio has been able to open up new humanitarian corridors also in France (March 2018), Belgium (December 2017) and Andorra (September 2018).

On the 12<sup>th</sup> of January 2017, the Community of Sant’Egidio has signed with the above-mentioned ministries a new agreement for a new humanitarian corridor, this time in partnership with the Caritas Internationalis and the Italian Conference of

Bishops (CEI), which financed the project. This corridor is destined to refugees coming from Eritrea, Somalia and South Sudan, comprehending in total 500 sub-Saharan refugees<sup>55</sup>.

The project of the humanitarian corridors enacted by the Community of Sant'Egidio in concert with the other two Christian confessions have awarded numerous international awards and plaudits – besides the Italian ones – in the European Parliament and Commission, by the UNHCR and in the General Assembly of the United Nations<sup>56</sup>.

---

<sup>55</sup> To have a clearer understanding of this Memorandum of Agreement it is possible to fully read it online.

<sup>56</sup> To have a clearer understanding of the first two Memoranda of Agreement of the Community of Sant'Egidio, the Waldensian Table and the FCEI it is possible to fully read them online.

### ***3.3 The future of humanitarian corridors in Europe and Italy: an interview with the project creator and manager of the Community of Sant'Egidio's humanitarian corridors, Daniela Pompei***

Since there are no academic debates and comments about the new legal practise of the Community of Sant'Egidio's humanitarian corridors, the author of this thesis has retained an interesting idea interviewing one of the founders of such a project, Daniela Pompei.

Daniela Pompei is one of the first coordinators of the programme, as well as one of the most important leaders and volunteers of the entire Community. She has always been present in the negotiation process of the humanitarian corridors and has always welcomed at Fiumicino airport the refugees coming thanks to the Sant'Egidio's safe flights.

Pompei is also responsible for the refugees' hospitality sphere, which is spread through all over Italian regions and cities. Being also responsible for maintaining the relationship with the Italian press regarding news about the humanitarian corridors, she has been extremely kind in answering to the following questions.

**Interviewer:** *Could you explain to us what the humanitarian corridors consist of, since the day of their birth as a project?*

**Daniela Pompei:** The project of the humanitarian corridors of the Community of Sant'Egidio begins between 2014 and 2015. Between 2013 and 2015 there was a dramatic increase of the migration fluxes by sea. But the most dramatic phenomenon that was emerging in that period was the death toll in the sea. We can say that the origin of this was in our seeing all these passed away people during their "journeys of hope". In October 2013 there was the Lampedusa's terrible shipwreck (where 300 people lost their lives, ed.), in July 2013 Pope Francis visited Lampedusa as his first apostolic travel, we were there because as Community of Saint'Egidio we were dealing with a project for Moroccan, Tunisian and Eritrean refugees coming from the

“arab springs”. In the years the Community has always put particular attention on refugees who lost their lives in the sea, organizing prayer meetings to remember their names, gather their stories, not to forget them.

**Interviewer:** *So, has the beginning a spiritual basis?*

**D.P.:** Yes, it has. There is always a human attitude in order to understand who the “other” is, trying to suffer together with the sufferer. The Community of Sant’Egidio has always tried to feel the problems of all the refugees coming to Italy. The first ones were the Albanians in 1991, but in precedent years other nationalities arrived in our country. Therefore, there is this attitude that requires us to look for concrete ways for helping the refugees. In 2014 and 2015 we heard about some “humanitarian channels”, but we did not know what they consisted of. In summer 2014 with some activists of the Community (we were 4, coming from different professional sectors, there was also a magistrate) we started to study extensively the European legislation, because we wanted to find a concrete instrument that could help us let the refugees enter legally, and not with clandestine and dangerous ships. Studying the Italian legislation regarding immigration, studying the European regulations on visas, we found in Article 25 of the European regulation on visas a possible legal entry route for refugees. In this article we can find the possibility for single Member States to concede visas for “humanitarian reasons”. These visas possess limited territoriality of the welcoming country (in our case Italy), so they are not subject to the Schengen treaty law. We formulated the proposal to the authorities and in that summer we also took part in Antwerp in an inter-religious meeting organised by the Community of Sant’Egidio in which numerous cultural themes are proposed to the public. In that context we met the moderator of the Waldensian Table and we discussed about doing something together about migrants. Back to Rome, we met again and discussed about economic funds that were necessary for starting a project for refugees, because our projects are fully auto-financed. The Waldensian Table put part of its “8 per mille”, and so did we with part of our “5 per mille”, and we asked for a meeting to the Minister of Foreign Affairs and the Minister of Domestic Affairs.

**Interviewer:** *Why do you think such an important project was born thanks to a non-governmental organization and not by virtue of public institutions?*

**D.P.:** I think that we talk to refugees, we have conversations with them and we hear their stories. We live day by day with them. Hearing the stories of people coming

from Lybia, of men and women who faced terrifying journeys after having been sold by mercenaries, motivates you to find immediate concrete solutions that are not necessarily the change of legislation. We were aware that we did not have the power for asking new laws to the authorities, but we had the power to look for and apply the instruments that already existed. Humanitarian corridors are a great exercise of collaboration between institutional organs and non-governmental organizations. And it is really significant that they are Christian non-governmental organizations.

**Interviewer:** *Could you explain how the Community of Sant'Egidio chooses the refugees that are selected for being part of the humanitarian corridors towards Italy?*

**D.P.:** The process of the negotiation of the Protocol of Agreement between the Italian government and us has been quite long, because it was something new, because obtaining the status of refugee before coming to a country's territory has never existed. Usually a migrant can ask for asylum when he/she arrives to a country for asking humanitarian protection, not before arriving. This is the innovation in the humanitarian corridors. We wanted a legal entry corridor for refugees that would be possible just as the one for the ones going to Lampedusa, with the condition that this entry would be safe and not clandestine. For this reason the beneficiaries of our Protocol with the Italian government are "potential asylum seekers", *prima facie* recognised refugees by UNCHR in the country of origin or of transit, minors, women with children, unaccompanied women, invalid people (the "vulnerable" ones according the European regulation of *non-refoulement*), and the ones subject to the principle of "vulnerability" according the UNCHR. Further, we had operators of the Community of Sant'Egidio and of the Federation of Evangelical Churches that went in loco in refugee camps, in cities. Candidate refugees were also signalled to us by UNCHR, local churches, local associations or relatives of refugees that are already residing in Italy.

**Interviewer:** *So what were the greatest obstacles of the project, especially under a legal and bureaucratic point of view?*

**D.P.:** They did not exist before! We did not create a new law, but we applied an existing one in a new manner. The utilisation of visas for "humanitarian reasons" was residual, quite never adopted: they were almost 4 or 5 cases in one year. We asked for 1000 visas in one year! The negotiation has been long, considering the fact



that Italy has never adopted a procedure like this. Until 2015, a modality of safe entry for previously recognised refugees has never existed in Italy. European Union possesses regulation for the integration of refugees, but just for the ones who illegally arrive at European frontiers. We wanted to find a legal and safe way for entering in our country. European resettlement programmes of 2015 regarded refugees recognised as such by the UNCHR in the countries of transit; Sant'Egidio's humanitarian corridors regard people not yet recognised as refugees. Procedural difficulties have been the creation of negotiation, application and monitoring tables with the two ministries. We identified the candidates, the possible beneficiaries of our humanitarian corridors, then we notified them to some offices at the central administration of Domestic and Foreign Affairs, which have the duty to inspect and verify their security. Then they are sent to the Italian Consulate of the country of origin of candidate beneficiaries, where they have the faculty to meet and interview them. Further, they take the fingerprints of candidate refugees, which are immediately sent to local offices of the Italian police. We want Italian authorities to respect all security criteria before the emission of the *nulla osta*. Finally, once the security procedure is finished, approved refugees' visas are subject to one last check by local police in the country of origin. Alitalia is our airline company of reference, which we contact at the end of every security process. In the meanwhile, the Community of Sant'Egidio, the Waldensian Table and the Federation of Evangelical Churches must notify to the Domestic Ministry the place in which the refugees are going to live in Italy after their arrival at the Fiumicino Airport.

**Interviewer:** *This is in fact a crucial step of the entire welcoming procedure of Sant'Egidio. The humanitarian corridors do not end at the airport. Could you explain how the integration process evolves after the arrival of the refugees? How did this solidarity network come to life?*

**D.P.:** Our first choice since the birth of the first humanitarian corridors has always been to announce (through press conferences) to all the Italian population the need of welcoming these coming refugees. A great number of Italians manifested to us their solidarity and their willingness to take part in the project. Associations, parishes, private firms, groups of friends, workers, professionals, wrote to us asking to host refugees for a determined period of time. The refugees went to live in 17 Italian regions, for a total of 94 cities.

**Interviewer:** *The former vice-minister of Foreign Affairs with delegation to International Cooperation, who is also one of the leaders of the Community of Sant'Egidio, Mario Giro, defined the humanitarian corridors “a light of hope”. Has his support been important for your work to overcome the major obstacles?*

**D.P.:** Yes, it has been important. However, it is not only Mario Giro's role that helped us. The support has come from all the Italian government as a whole, especially because Paolo Gentiloni sustained our project, when he was minister of Foreign Affairs (and later during his premiership). We worked at first with him and Mario Giro for the part regarding the visas, but then the competence shifted to Domestic ministry when dealing with security and checks procedure. We needed to have both their cooperation. Yes, humanitarian corridors are a light of hope, a real path for changing the reality of immigration without changing the legislation. This gave hope to many Italians who did not share the European policies of refoulement: I am referring to the April 2016 agreement between EU and Turkey. Italy instead showed that saving human lives must be our first priority. On the other hand, our humanitarian corridors showed to the world that another manner for entering in Europe is possible, not only the risky one via sea. Our intention was not only saving lives, but also fighting human traffickers and their way of profiting of human lives through unsafe immigration.

**Interviewer:** *Although they have affirmed that Sant'Egidio's humanitarian corridors are a new and safe way for protecting refugees, many critics have posed the problem that the beneficiaries are and could be too few. What would you respond to these critics?*

**D.P.:** In the same period of the humanitarian corridors, the Italian government has welcomed through the European resettlement programmes 1100 people. Our humanitarian corridors allowed 1500 people to enter in Italy. This must be considered a success: we are simple associations of civil society and did more than national institutions did. It is true, we are talking about numbers that are not comparable to the numbers of migrants who choose the sea, but it is important to take into consideration that we are members of civil society and that we have demonstrated that a new path for immigration is possible. This means that now States could adopt this new legal instrument for granting a safe entry in Europe to refugees, without decreasing the level of security for European citizens.

**Interviewer:** *Indeed, in France (Paris Charles De Gaulle) and Belgium (Bruxelles Zaventem) other humanitarian corridors have been created thanks to the work of the Community of Sant'Egidio and its main Christian partners. Do you think that there is a lack of political willingness for officialising this new instrument and spreading this practice?*

**D.P.:** There is always politics behind this kind of decisions. However, our capability in demonstrating that this practice is possible can help politics in its decisions. Many European organs have come to us to ask for details of the functioning of the humanitarian corridors, there has been a request for introducing private “sponsorships” for welcoming refugees. Private citizens, professionals and groups can officially grant for the integration of a determined number of refugees for a determined period of time with the State doing the security procedure. We would like to introduce this system as the European official system for letting enter migrants in a safe manner. Humanitarian corridors are not the only answer. Immigration today has become extremely complex, and it needs more than one answer. It also requires the courage to open humanitarian corridors for economic migrants, not only for potential asylum seekers. The Italian demography is suffering and we need workers. This problem is common in all countries of European Union. A new line of reasoning in the EU institutions is therefore needed.

**Interviewer:** *Have there been informal communications between you and some European Union representatives about the issue?*

**D.P.:** We had informal communications with the commissioner for Immigration Avramopulos and some Italian Members of the European Parliament. We had conversations with some political parties. Importantly, the Community of Sant'Egidio's offices in other European countries have started negotiations with their respective governments, and new humanitarian corridors have been created in France and Belgium. Also in Andorra a Protocol for a humanitarian corridor for 20 refugees has just come to its conclusion. We hope that now, with the change in government, in Spain new negotiations can start.

**Interviewer:** *And finally, what about Italy? What will be the future of Italian humanitarian corridors with this shift of government and political orientation?*

**D.P.:** The Italian minister of Domestic Affairs Matteo Salvini has never had bad words for Sant'Egidio's humanitarian corridors. He informally met some leaders of the Community<sup>57</sup> and said that he had never had problems in admitting the feasibility of these corridors. Let us hope it is true<sup>58</sup>.

---

<sup>57</sup> F. BECHIS, *Caro Salvini, andiamo avanti sui corridoi umanitari. Parla il presidente di Sant'Egidio*, in *Formiche.net*, 2018.

<sup>58</sup> For further details on the issue, see F. BECHIS, *Ok ai corridoi umanitari modello Sant'Egidio. Parola di Salvini (a Formiche)* in *Formiche.net*, 2018.

## **Conclusion: the way forward**

The Italian President of the Republic Sergio Mattarella during a meeting with the leaders of the Community of Sant'Egidio in 2016 has said that “the creation of the humanitarian corridors for migrants and refugees places Italy at the forefront of solidarity and represents a momentum for the concrete realization of the principles of the Italian Constitution”. I retain that President Mattarella has addressed the issue in the proper manner: the humanitarian corridors led by Sant'Egidio and his main partners are one concrete solution for the emerging crisis of illegal and unsafe immigration. It clearly originates from the effortful research of remedies in the current international legislative system. Humanitarian corridors do not need new laws, provisions, regulations or mass demonstrations by the population: Sant'Egidio has clearly showed to Europe (and to the world) that a new solution is possible. However, without the sustain of public institutions in the framework of a joint cooperation in the European Union, the practise of the humanitarian corridors could risk to die or to stay like it is at the moment, namely confined to small numbers.

Immigration has always existed as such, but currently it has become another risky way to die without being noticed, becoming a simple number in global statistics. The world is dramatically changing, and both the European and most of the African populations are looking for fast and desperate answers. I strongly reckon that the European need for security and the African need for a better life far from persecution, hanger and death can be met in an extended and well-structured organization of multiple humanitarian corridors throughout the entire European Union's soil. European security and African life promotion are our last hope in the context of the social disintegration that we are witnessing today, and the humanitarian corridors can be the last option we have for a *sustainable*, dignified and respectable international immigration system.

## Bibliography

- AL JAZEERA AND AGENCIES, *Israel resumes Gaza raid after lull*, 2009.
- J. ALLAIN, *The jus cogens Nature of non-refoulement*, in *International Journal of Refugee Law*, Volume 13, Issue 1, 2001.
- A. BARTOLI, *Catholic Peacemaking: the experience of the Community of Sant'Egidio*, presented at *The US Institute of Peace Workshop*, February 5 2001.
- F. BECHIS, *Caro Salvini, andiamo avanti sui corridoi umanitari. Parla il presidente di Sant'Egidio*, in *Formiche.net*, 2018.
- F. BECHIS, *Ok ai corridoi umanitari modello Sant'Egidio. Parola di Salvini (a Formiche)* in *Formiche.net*, 2018.
- J. BHABHA, *Children Without a State: A Global Human Rights Challenge*, 2011.
- F. M BURKLE JR., *Measuring humanitarian assistance in conflicts*, in *The Lancet*, Volume 371, Issue 9608, 2008.
- D. COLLINS, *Syria's 'de-escalation zones' explained* in *Al Jazeera Middle East*, 2017.
- B. CONFORTI, *Diritto Internazionale*, 1987.
- J. H. DUNANT, *A Memory of Solferino*, 1862.
- A. T. FRAGOMEN JR., *The Refugee: A Problem of Definition*, in *Case Western Reserve Journal of International Law*, Volume 3, Issue 1, 1970.
- J. GILBERT, *Nomadic Peoples and Human Rights*, 2014.
- G. S. GOODWIN-GILL, *The Right to Seek Asylum: Interception at Sea and the Principle of Non-Refoulement*, in *International Journal of Refugee Law*, Volume 23, Issue 3, 2011.
- ICRC ADVISORY SERVICE ON INTERNATIONAL HUMANITARIAN LAW, *War Crimes under the Rome Statute of the International Criminal Court and their sources in International Humanitarian Law – Comparative Table*, 2012.

- R. P. IMBELLI, *The Community of Sant'Egidio – Vatican II Made Real*, in *Commonweal*, Volume 20, Issue 11, 1994.
- S. O. JACOB, V. Pouliot, I. B. Neumann, *Diplomacy and the Making of World Politics*, 2015.
- S. KAPFERER, *Article 14(2) of the Universal Declaration of Human Rights and Exclusion from International Refugee Protection*, in *Refugee Survey Quarterly*, Volume 27, Issue 3, 2008.
- J. KLABBERS, *International Law*, 2013.
- R. G. MILLER, *To Save A City: The Berlin Airlift, 1948-1949*, 2008.
- OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS, *OCHA on Message: General Assembly resolution 46/182*, 2012.
- S. PACE, *Israel Opens Up Humanitarian Corridors in Gaza as Fighting Continues* in *Voice of America*, 2009.
- N. RONZITTI, *Introduzione al Diritto Internazionale*, 2004.
- T. SELINE, *International Law and Practice: The Principle of Non-Refoulement And the De-Territorialization of Border Control at Sea*, in *Leiden Journal of International Law*, Volume 27, Issue 3, 2014.
- SWISS FEDERAL DEPARTMENT OF FOREIGN AFFAIRS, *Humanitarian Access In Situations of Armed Conflict – Field Manual Version 1.0*, 2011.
- A. TANZI, *Introduzione al Diritto Internazionale Contemporaneo*, 2003.
- G. THOM, P. POWER, M. PIPER AM, *New issues in refugee research*, in *UNHCR – The UN Refugee Agency Policy Development and Evaluation Service*, Research paper no. 253, 2013.
- B. TURNER, *The Berlin Airlift, The Relief Operation That Defined The Cold War*, 2017.
- UNITED NATIONS MEETINGS COVERAGE AND PRESS RELEASES, *Press Conference by Humanitarian, Human Rights Organizations on Gaza*, 2009.
- USA FOR UNHCR, *definitions*.

W. T. WORSTER, *The Evolving Definition of the Refugee*, in *Contemporary International Law in Berkeley Journal of International Law*, Volume 30, Issue 1, 2012.



## **Riassunto in lingua italiana**

### **I Corridoi Umanitari della Comunità di Sant'Egidio: una soluzione possibile all'immigrazione clandestina**

È da almeno due anni a questa parte che i corridoi umanitari organizzati dalla Comunità di Sant'Egidio i suoi maggiori partner compaiono su numerosi organi di stampa nazionali ed internazionali. Si tratta di un modello del tutto nuovo sia dal punto di vista della pratica nel diritto internazionale che da quello prettamente sociale e politico. Tale modello rappresenta una novità così grande che le uniche fonti a cui attingere per comprenderlo meglio sono gli accordi stessi siglati da Sant'Egidio con le istituzioni italiane; per questo motivo, infatti, si è pensato di analizzare i corridoi umanitari nell'ultimo paragrafo della tesi anche attraverso un'intervista ad una delle ideatrici nonché responsabile del progetto, Daniela Pompei. Prima di esaminare nel dettaglio la nascita e lo sviluppo di questa pratica è però necessario capire cos'è il diritto internazionale del rifugiato, la sua storia nelle convenzioni e nei trattati internazionali e la differenza con le altre denominazioni delle categorie dei soggetti facenti parte del fenomeno dell'immigrazione internazionale.

Secondo l'ACNUR, l'Alto Commissariato delle Nazioni Unite per i Rifugiati, il rifugiato è colui che è stato costretto a lasciare il proprio paese per motivi di persecuzione politica, sociale, cultura, tribale, religiosa, di genere e così via. Nella maggior parte dei casi il rifugiato ottiene tale status poiché scappa da conflitti bellici, a causa dei quali non solo è impossibile l'esercizio dei diritti umani fondamentali, ma è impraticabile anche il ritorno alla propria vita quotidiana nel paese di nascita o di residenza. Il termine "rifugiato" non va confuso perciò con altre situazioni migratorie in cui comunque oggi versano centinaia di migliaia di altri esseri umani. Gli sfollati interni (*internal displaced persons*) sono migranti che hanno abbandonato il loro luogo di residenza per i motivi sopra citati ma che allo stesso tempo non sono stati in grado di varcare il confine del proprio paese. Per questo motivo il diritto internazionale del rifugiato non può occuparsi del loro status, e il sostentamento delle loro vite messe a rischio dalle instabilità che hanno causato la loro fuga ricade interamente sulla responsabilità del loro stato di origine.

L'apolide invece è colui che non nel corso della vita non ha mai ottenuto una cittadinanza, e per questo non è in grado di godere dei benefici provenienti dai diritti e dai doveri che qualsiasi nazionalità elargisce in forme diverse ai cittadini. Ciò non significa che un apolide non potrebbe diventare anche un rifugiato e viceversa, ma le statistiche mostrano che gli apolidi nel mondo sono cittadini che non hanno mai varcato confini statali e che subiscono questa condizione a causa di combinazioni familiari e di nascita legate ai diritti sulla cittadinanza nei singoli stati (ad esempio un apolide potrebbe essere rappresentato da un individuo nato in un paese in cui non vige lo *jus soli* da genitori aventi cittadinanza in un paese dove eccezionalmente non vige lo *jus sanguinis*).

Il richiedente asilo infine, non va confuso col rifugiato perché tale condizione è quella che precede l'ottenimento dello status del rifugiato qualora le autorità vigilanti del paese accogliente ne diano atto. È corretto dunque affermare che non tutti i richiedenti asilo possono poi accedere allo status di rifugiato, al contrario tutti i rifugiati devono necessariamente porre domanda di asilo al primo paese di arrivo per ottenere la protezione internazionale che scaturisce dallo status.

Il diritto internazionale del rifugiato è perlopiù dettato dalla storica Convenzione relativa allo status del rifugiato del 1951 (con annesso il Protocollo successivo del 1967) e dallo Statuto della fondazione dell'ACNUR, l'Alto Commissariato ONU per i Rifugiati. In entrambe le convenzioni viene fornita una definizione dettagliata della persona che è idonea a ricevere lo status di rifugiato, e ciò che deve essere notato è che tali definizioni spesso nel corso dei decenni sono state inglobate nei singoli sistemi legislativi dei paesi membri delle convenzioni. Infatti, lo status del rifugiato viene elargito dai tribunali e dalle autorità dei singoli stati, che hanno differenti legislazioni in merito all'assegnazione dello status; tuttavia, è possibile affermare che ciascuno stato annovera nel proprio diritto consuetudinario le autorevoli definizioni date dalle suddette convenzioni, persino alcuni stati che dal 1951 in poi hanno deciso di non essere membri della Convenzione relativa allo status del rifugiato, come gli Stati Uniti d'America, l'India, l'Arabia Saudita ed altri.

La Convenzione del 1951 (con il Protocollo del 1967) è senza dubbio la pietra miliare del diritto internazionale del rifugiato. I primi articoli dei primi capitoli garantiscono piena protezione internazionale per tutti i rifugiati che ottengono lo status dopo aver dimostrato di essere in fuga da paesi con presenza di persecuzioni

politiche, sociali, tribali, culturali e religiose. Una volta ottenuto lo status, il paese accogliente è chiamato a garantire piena vivibilità sociale e lavorativa al rifugiato e alla sua famiglia (in caso di successivo ricongiungimento familiare), rendendolo partecipe di tutti i diritti e doveri dettati dalla legislazione del paese stesso. Ciò che di più importante vi è nella Convenzione relativa allo status del rifugiato è l'articolo 33, dove viene espresso il principio del *non-refoulement*. Dal francese *refouler* (respingere), la parola presente in questo articolo indica chiaramente che nessuno stato ha facoltà di respingere un rifugiato in fuga verso il paese persecutorio da cui egli proviene. Il principio è talmente importante che alcuni studiosi lo indicano come parte dello *jus cogens* internazionale. Difatti, l'Articolo 33 è anche parte della breve lista di articoli (citati nell'Articolo 42 della Convenzione) che non possono assolutamente essere modificati dagli stati membri.

È chiaro dunque pensare che alla base del diritto internazionale del rifugiato vi sono i diritti umani fondamentali sanciti dalla Dichiarazione Universale dei Diritti dell'Uomo del 1948. È consequenziale assumere che il rifugiato esiste in quanto è precedentemente esistita una chiara ed attestata violazione dei suoi diritti umani fondamentali, tanto che gli Articoli 13 e 14 della storica Dichiarazione del 1948 garantiscono all'essere umano la piena libertà di movimento e di richiesta di asilo in caso di persecuzione (vengono citati a riguardo atti di violenza fisica o psichica, violenza sessuale, di giustizia discriminatoria sproporzionata, il forzato coinvolgimento in guerre civili o azioni militari internazionali, violenza contro gruppi di fede, di genere o contro l'infanzia). Tuttavia, come detto precedentemente, resta ai singoli paesi formulare un valore legislativo al termine "persecuzione": la definizione legale italiana più aggiornata è contenuta nell'Articolo 7 del decreto legislativo del 21 febbraio 2014. Il principio legalmente imprescindibile del *non-refoulement* per i rifugiati è anche espresso nell'Articolo 3 della Convenzione del 1987 delle Nazioni Unite contro la Tortura e altri Crudeli, Disumani e Degradanti Trattamenti e Punizioni, dove viene chiaramente enunciato che respingere un rifugiato che abbia fatto esperienza di tortura o di imprigionamento coatto (così come definiti nella convenzione) è una grave violazione del diritto internazionale.

Passando invece ad una prima analisi del fenomeno dei corridoi umanitari, è importante distinguere due tipologie: i corridoi umanitari creati in loco in zone di crisi (con guerre civili o internazionali in corso) e quelli aerei o navali creati per il

trasporto sicuro di rifugiati in nuovi paesi di accoglienza. Prima di giungere ai corridoi umanitari per rifugiati messi in atto dalla Comunità di Sant'Egidio è necessario capire cosa sono i corridoi umanitari per il trasporto di beni di prima necessità e poi i casi storici di corridoi umanitari per rifugiati che hanno preceduto i nuovi organizzati dall'associazione italiana.

I corridoi umanitari del primo tipo sono delle interruzioni programmate di una guerra internazionale o civile, che hanno lo scopo ben preciso di soccorrere le popolazioni civili in grave difficoltà materiale (e psicologica) attraverso ingenti trasporti di beni di prima necessità come acqua potabile, cibo, farmaci essenziali, servizi ospedalieri mobili, sostegno economico e molto altro. Il primo caso di corridoio umanitario della storia, che senza dubbio ha segnato uno spartiacque nelle modalità di combattere i conflitti internazionali, è quello creato da Jean Henri Dunant, imprenditore svizzero che nel 1859 visse un forte momento di sconvolgimento interiore (durante un viaggio di affari privati) alla vista dei 40.000 cadaveri rimasti uccisi nella battaglia di Solferino nell'Italia settentrionale. In poche ore Dunant organizzò un centro di soccorso con l'ausilio dei cittadini dei paesi limitrofi destinato ai soldati ancora agonizzanti sul campo di battaglia. L'esperienza lo portò alla stesura di una lunga lettera-pagina di diario in cui oltre a raccontare il terribile accaduto, viene invocata da parte sua l'urgente necessità di creare una convenzione internazionale volta alla protezione e alla tutela dei combattenti nei conflitti armati. Dopo anni di sforzi, nel 1864 Dunant riesce nell'impresa di far firmare a 12 diplomatici di stati e regni europei (un numero elevatissimo considerati i tempi) la prima Convenzione per il Miglioramento delle Condizioni dei Militari Feriti in Guerra. La convenzione inoltre sanciva la fondazione di un corpo di volontari portanti una divisa con sopra l'emblema della Croce Rossa, che da quell'anno in poi sarebbe diventato il corpo ufficiale di soccorso dei feriti di guerra, sul quale vige ancora oggi l'imprescindibile diritto di non essere attaccato in alcun modo da qualsiasi tipo di arma. Il corpo internazionale della Croce Rossa svolse un ruolo a dir poco eroico durante le drammatiche vicende della prima e della seconda guerra mondiale, circostanze in cui ebbe la libertà di agire proprio grazie alla protezione contenuta nelle Convenzioni di Ginevra. Altri esempi di corridoi umanitari creati con tale scopo sono il ponte aereo di Berlino durato 11 mesi e creato dalle forze occidentali per resistere al blocco umanitario imposto a Berlino Ovest dalle truppe sovietiche nel 1948; i corridoi creati nel 2009 dalle Nazioni Unite nel Nord Kivu, in Congo, grazie all'accordo tra il

presidente congolese Kabila e il generale dei Tutsi Nkunda che permisero una breve pausa dalla guerra civile per rifornire di beni e servizi essenziali i migliaia di abitanti; i corridoi durati un solo giorno nel 2009 a Gaza, grazie ad un accordo lampo tra Hamas e le forze israeliane; e infine la creazione nel 2017 di zone di *de-escalation* in Siria, grazie ad un accordo estremamente teso ad Astana tra Russia, Turchia, Iran e Israele, che ha permesso il soccorso da parte dell'ONU e altre decine di ONG a più di 2,5 milioni di abitanti siriani stremati dal conflitto tuttora in corso.

I corridoi umanitari per il trasporto di beni di prima necessità sono annoverati dagli studiosi come parte della *soft law* del diritto internazionale, perché sono quasi sempre frutto di accordi multilaterali fra diverse forze diplomatiche. In realtà, una fonte importante del diritto di intervento umanitario internazionale proviene dalla risoluzione legalmente vincolante dell'Assemblea Generale dell'ONU 46/182. In essa viene stabilito che gli interventi umanitari (come la creazione di suddetti corridoi) devono essere guidati dai quattro principi di umanità, imparzialità, neutralità ed indipendenza, devono essere accettati dai paesi sul cui suolo è in corso la crisi umanitaria, e soprattutto viene sancito l'obbligo morale per questi ultimi di cooperare con le Nazioni Unite e le organizzazioni umanitarie nell'ambito del soccorso della popolazione civile.

Nello statuto di Roma del 1998 sulla creazione della Corte Penale Internazionale, nell'Articolo 8 viene stabilito che l' "inedia intenzionale" sofferta dai civili in tempi di guerra è considerata grave violazione dei diritti umani, e la responsabilità di ciò – dice lo Statuto – è da attribuire alle nazioni che impediscono l'organizzazione di soccorsi umanitari. Tali principi vengono ribaditi nell'Articolo 55 della quarta Convenzione di Ginevra del 1949 e nell'Articolo 54 del secondo Protocollo del 1977, dove la tattica militare della *starvation of civilians* (far morire per inedia e mancanza di supporto ospedaliero o di medicinali i civili dello schieramento avversario) è abolita in toto, soprattutto indirettamente attraverso l'impedimento della formazione dei corridoi umanitari e del libero passaggio dei cooperanti internazionali che portano soccorso ai sofferenti. Tutto ciò è contenuto anche nelle norme 55 e 56 del diritto umanitario internazionale consuetudinario redatto dalla Croce Rossa Internazionale.

I corridoi umanitari del secondo tipo hanno l'obiettivo di trasportare rifugiati e richiedenti asilo da un paese considerato pericoloso per la loro sopravvivenza ad un

altro che possa loro garantire sicurezza e protezione quotidiana. Gli unici casi di corridoi umanitari per rifugiati che la storia ci ha consegnato (salvo rare eccezioni) sono quelli delle politiche di *resettlement* (reinsediamento) per rifugiati messe in atto dall'ACNUR, l'Alto Commissariato ONU per i Rifugiati (in inglese UNHCR). I primi reinsediamenti dell'ACNUR sono cominciati subito dopo la seconda guerra mondiale, quando in Europa vivevano ormai circa più di un milione di cittadini dispersi che però non avevano la possibilità di tornare nel proprio paese di origine. Si trattava in maggioranza di cittadini di paesi dell'Est Europa, che tornando nelle loro città avrebbero dovuto fare i conti con l'invasione fisica e politica da parte dell'Unione Sovietica, che in quegli anni cominciava la sua ascesa nel controllo di tutto il blocco orientale dell'Europa. Per questo motivo, l'IRO (International Refugee Organization) che dal 1951 si chiamerà UNHCR, attraverso voli aerei e lunghi viaggi in nave organizzò lo spostamento dei rifugiati in paesi sicuri extra-europei (ma comunque di stampo e alleanza occidentale) come Gran Bretagna, Stati Uniti, Canada, Svezia, Norvegia, Australia e Nuova Zelanda. Le politiche di *resettlement* hanno permesso lo spostamento sicuro di milioni di esseri umani in tutto il ventesimo secolo, operando durante le maggiori crisi e guerre internazionali come la rivoluzione cilena, la guerra del Vietnam, la guerra del Golfo, le crisi di Myanmar e Jugoslavia, e infine la recente crisi siriana).

Oltre che dal dovere di cooperare con l'UNHCR presente nella Convenzione relativa allo status del rifugiato del 1951, i programmi di *resettlement* per rifugiati sono giustificati dal punto di vista legale anche dall'Articolo 9 dello Statuto di fondazione dell'UNHCR, in cui viene esplicitamente affermato che l'organo internazionale possiede tutte le facoltà di impegnarsi in tali attività.

La necessità di creare questi corridoi per rifugiati è dettata dal fatto che spesso questi ultimi ottengono lo status di protezione internazionale in paesi sicuri dal punto di vista bellico, ma poco adatti al sostentamento dignitoso della loro vita. Per esempio, nel caso del recente conflitto siriano, molti rifugiati di questa nazione si sono riversati nei paesi limitrofi come Giordania e Libano, che nonostante vivano uno stato di relativa pace non hanno comunque le piene facoltà finanziarie e sociali di ospitare un numero elevato di rifugiati sul loro territorio. Per questo è necessario che le fasce più deboli dei rifugiati vengano trasferiti in paesi (che offrono la propria candidatura in modo volontario) che possano garantire loro piena protezione nel

condurre una vita dignitosa, con un serio programma di integrazione, occupazione e spesso anche di naturalizzazione della cittadinanza. Ciò significa che non sempre i richiedenti asilo del mondo riescono ad ottenere lo status di rifugiato in paesi che garantiscano loro i diritti di cui dovrebbero godere a pieno, come spiegato nella Convenzione dei rifugiati del 1951. Ed è in questo contesto problematico che dal 1950 ad oggi l'UNHCR tenta di porre soluzioni.

Ma soprattutto, è in questo contesto che la Comunità di Sant'Egidio ha creato una nuova forma di reinsediamento per i rifugiati, ovvero i corridoi umanitari. La Comunità di Sant'Egidio è un'associazione di spirito cristiano cattolico, ma composta da operatori laici, nata nel 1968 grazie alla spinta del Concilio Vaticano II. Cresciuta negli anni in Italia con la volontà di occuparsi dei poveri, dei senza-tetto e della preghiera ecumenica, si è distinta negli anni 90 per aver operato come mediatrice di pace nella risoluzione di conflitti armati in Mozambico, Guatemala, Albania e Guinea (nel 2010).

Il progetto dei corridoi umanitari nasce tra il 2014 e il 2015, anni in cui l'Europa ha vissuto la drammatica ecatombe del Mar Mediterraneo, divenuto negli anni (insieme al deserto del Sahara) la tomba di centinaia di migliaia di migranti morti senza nome, cercando di raggiungere l'Europa con i mezzi più pericolosi. Lo scopo di Sant'Egidio infatti era diventato quello di trovare una soluzione concreta per far arrivare rifugiati dai luoghi di conflitto attraverso vie sicure non cercando di cambiare la legislazione vigente in tema migratorio conducendo campagne politiche, ma di usare i mezzi legali già esistenti per salvare vite umane il prima possibile. Ebbene, dopo mesi di studio, i volontari più navigati della Comunità di Sant'Egidio, insieme ad altri operatori della Tavola Valdese e della Federazione Cristiana delle Chiese Evangeliche d'Italia, hanno trovato nell'Articolo 25 (1) (a) del Regolamento Europeo sui Visti del 2009 l'espresso possibilità di conferire ai migranti un visto a limitata validità territoriale per "motivi umanitari". Prima di allora ogni anno venivano rilasciati pochi visti con quella particolare attribuzione, ma grazie ad una serrata ed intensa negoziazione con le istituzioni, Sant'Egidio e i suoi partner riescono a chiedere ai ministeri dell'Interno e degli Esteri il rilascio di 1000 visti per motivi umanitari a 1000 migranti che sarebbero arrivati in Italia con un volo aereo sicuro organizzato e pagato da Sant'Egidio da Etiopia, Marocco e Libano. Il 15 dicembre 2015 viene firmato il Protocollo d'Intesa tra Sant'Egidio, Tavola Valdese, la

Federazione delle Chiese Evangeliche d'Italia, ministero degli Esteri e ministero dell'Interno. Il caso è unico nel diritto internazionale, per il motivo che lo status di rifugiato per i 1000 migranti del Protocollo viene assegnato prima dell'arrivo del rifugiato stesso sul luogo del paese di asilo, e non dopo la richiesta d'asilo come prassi consueta richiede. Possiamo affermare che si tratta di una rivoluzione tutta italiana (ma soprattutto europea, perché il tutto è stato permesso da una legge dell'Unione Europea) in quanto la pratica dei corridoi umanitari ha aperto una nuova strada per la lotta all'immigrazione clandestina, che nell'appena trascorso decennio è stata la causa di morte per migliaia di migranti sub-sahariani e medio-orientali. La pratica ha avuto un successo talmente elevato che Sant'Egidio e i suoi partner hanno siglato un nuovo Protocollo per nuovi corridoi umanitari per altri 500 migranti (stavolta con l'aiuto della Conferenza Episcopale Italiana e di Caritas Internationalis) il 12 gennaio 2017 e poi per altri 1000 migranti il 7 novembre 2017. Con il sostegno dello stesso articolo 25 della legge europea sopra citata, la Comunità di Sant'Egidio ha permesso la realizzazione di altri corridoi umanitari in Francia, Belgio e Andorra, mentre in Polonia è in corso una trattativa con le medesime modalità.

I corridoi umanitari rappresentano anche un modello intelligente di integrazione, chiamato *accoglienza diffusa*, che consiste nell'integrare i rifugiati arrivati attraverso i voli sicuri a piccoli gruppi su tutto il territorio nazionale, chiedendo il sostegno volontario di famiglie, privati cittadini, gruppi e associazioni, liberi professionisti e parrocchie. Infatti, la sicurezza nella selezione dei rifugiati e nel metodo di integrazione è uno dei principi guida della Comunità.

Senza dubbio è possibile affermare che se il progetto dei corridoi umanitari della Comunità di Sant'Egidio e della loro lungimirante *accoglienza diffusa* venisse applicato con scaltrezza politica su tutto il territorio dell'Unione Europea (è possibile farlo proprio perché regolamentato da un codice europeo!) il bisogno di sicurezza dei cittadini europei e il bisogno di condurre una vita dignitosa di molti cittadini africani (senza morire in mare o nel deserto) verrebbero ad incontrarsi, creando un nuovo modello di accoglienza tutto nuovo nella storia e soprattutto tutto Europeo.

I corridoi umanitari della Comunità di Sant'Egidio hanno ricevuto più volte il plauso di leader nazionali e globali nonché di importanti commissioni di premi di pace internazionali. Come dichiarato dall'ideatrice e manager dei corridoi umanitari Daniela Pompei nell'intervista posta a conclusione di questa tesi, colloqui informali



sono stati avviati con le istituzioni europee e con i leader del nuovo governo pentastellato insediatosi a Roma il 1° giugno 2018. Adesso non resta nient'altro che sperare e continuare a promuovere la fattibilità e la concretezza di questo nuovo modello di integrazione.