

BLURRING BOUNDARIES. "REFUGEE" DEFINITIONS IN POLICIES, LAW AND SOCIAL DISCOURSE IN ITALY

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The article intends to address the forced migration phenomenon in Italy within the scope of the changing nature of (forced) migration as a whole. We suggest that today we are not only facing a fragmentation of different forms of international protection, but also a more complex process of blurring the boundaries among distinct categories of the so-called forced migrants. For this purpose, we analyze not only the legal framework, but also the social discourse of those who decide the attribution of these labels and of the actors who interact day by day with these different migrants.

1. Introduction

In spite of its strategic position in the middle of the Mediterranean Sea, Italy did not comprehensively deal with asylum issues for a long time. As suggested by many scholars, even immigration is a fairly recent phenomenon for a country that on the contrary faced a long history of emigration.¹

¹ Cf.: VV.AA. (2006) *Le migrazioni. Radici storiche e problematiche attuali di un complesso fenomeno sociale*. Novara, Italy: Istituto Geografico De Agostini; Gil, Loescher (1993) *Beyond charity. International cooperation and the global refugee crisis*. Oxford, UK: Oxford University Press; Maria Immacolata, Macioti and Enrico, Pugliese (2005) *L'esperienza migratoria. Immigrati e rifugiati in Italia*. Rome-Bari: Italy: Editori Laterza; Saskia, Sassen (1999) *Migranti, coloni, rifugiati. Dall'emigrazione di massa alla fortezza Europa*. Milan, Italy: Feltrinelli.

Between the end of the Second World War and the beginning of the Nineties, asylum wasn't even mentioned in any legal instrument of ordinary law, though the Italian Constitution contains a very liberal provision on this matter. In 1954 Italy ratified the Geneva Convention relating to the status of refugees, but until the 1990 Martelli Law² it maintained the geographical limitation, entailing the recognition only of refugees coming from socialist countries in Eastern Europe. Hence, during the entire Cold War period, Italy for the most part ignored the forced migrants coming from Africa, Asia and Latin America: they could only request to be recognized under the UNHCR mandate, the Agency being present in Italy since 1953, but didn't receive any institutional recognition. This is one of the reasons why the refugee presence in the country settled on relatively low numbers: in December 1989, Italy hosted around 11,500 refugees, 7,500 recognized by the Italian government and 4,000 under the UNHCR mandate.³

It was the Martelli Law in 1990 that introduced the first provision for asylum procedure, which still is the main basis for asylum law in Italy. The Martelli law was later amended by the 2002 Bossi – Fini⁴ Law introduced by the then centre-right-wing government. The evolution of asylum in Italy is also related to its role in the European Union. The harmonisation process directly involves Italy not only because of the legal instruments to be adopted, but also because of its crucial position as one of the Southern frontiers of the European Union.

Despite all the political concerns about an instrumental use of asylum, the claims have not sharply increased in these last years, so that at the end of 2005 there were about 18,714 recognized forced migrants.⁵

² Law n. 39 of 28 February 1990.

³ Giovanni, Ferrari (1996), *Rifugiati in Italia. Excursus storico-statistico dal 1945 al 1995*. In the same year, in France for instance there were more than 130,000 recognized refugees.

⁴ Law n. 189 of 30 July 2002.

⁵ 9,042 are refugees under the Geneva Convention, the rest have a permit to stay on humanitarian grounds. See ICS (2006) *L'utopia dell'Asilo: il diritto di asilo in Italia nel 2005*. Turin, Italy: Ega.

This article⁶ intends to address the forced migration phenomenon in Italy within the scope of the changing nature of (forced) migration as a whole. I suggest that today we are not only facing a fragmentation of different forms of international protection, but also a more complex process of blurring the boundaries among distinct categories of so-called forced migrants.

2. Italian Legal Framework on Asylum

Since 1990, the history of asylum and forced migrants in Italy has developed in different directions. Due to the legal fragmentation and the political unwillingness to definitely deal with this issue, the picture of asylum has not become either consistent or comprehensive.

This confusion is partially due to the fragmentation of the Italian provisions and to the absence of an organic asylum law, but it also partly reflects a wider process of category redefinition, which transcends the national borders and cuts across the whole area of forced migration studies.

Because of this fragmentation, it is crucial to present the current situation, trying to give the most exhaustive picture of the different forms of protection a fleeing person can claim in the country and the different legal status depending on these conditions.

2.1 Asylum Seeker

From a formal and general point of view, an asylum seeker is a person who has left his or her country of origin, has applied for recognition as a refugee in another country, and is awaiting a decision on the application. According to the current Italian Law, an individual remains an asylum seeker from the initial filing of his claim until the notification of the result by the Territorial Commission for the Recognition of Refugee Status (*Commissione Territoriale*) in charge for his application.

The status of an asylum seeker in Italy is very delicate and

⁶ It builds on an empirical qualitative research carried out in Italy – mainly in the cities of Rome, Milan and Gorizia – between January 2006 and July 2007, in context of my PhD in Sociology, University of Milan.

precarious. Before the last reform, introduced by the 2002 Bossi – Fini Law, the situation of asylum seekers used to be conditioned by the extreme length of the procedure (an average of eighteen months, but in many cases even two years or more) and by the impossibility of gaining legal employment during that period. The Bossi – Fini Law⁷, while introducing many restrictions and limitations to the asylum right, also aimed at shortening the length of the procedure through the institution of the Territorial Commissions system and of the fast-track processing for all the detained asylum seekers. Since the implementation of the European Directive on reception,⁸ the asylum seekers are allowed to work if their application is still pending after six months of filing.

Accordingly, we can observe an improvement in the condition of asylum seekers, as far as the right to have a faster decision and the right to work are concerned. Nevertheless, the juridical and social situation of this category is still precarious – as in the past, if not even more.

The new procedure entails, for the first time in the Italian asylum system, the possibility to detain the asylum seekers inside the so called Identification Centres (*Centri di Identificazione, CI*) or in some special cases inside the Temporary Permanence and Assistance Centres (*Centri di Permanenza Temporanea e Assistenza, CPTA*). In that case, the asylum seeker is subject to an accelerated and simplified procedure (*procedura semplificata*) which has crucial consequences on the personal rights of the individual: for example, the Police Headquarters doesn't issue a regular permit to stay but a "nominative certificate proving the individual's qualification of person seeking refugee status, *present* inside the Identification Centre or inside the Temporary Permanence and Assistance Centre".⁹

From a juridical perspective, the detainee's right to a jurisdictional safeguard gets strongly reduced; from a political and symbolical point of view, the vulnerability of the person and the constant threat of irregularity – and then implicitly of deportability and *refoulement* – are highly stressed.

⁷ Implemented through the Presidential Decree n. 303 of 16 September 2004, regulating the procedures for the recognition of refugee status.

⁸ Implemented through the Legislative Decree n. 140 of 30 May 2005.

⁹ Art. 3, Par. 2, Pres. D. n. 303 of 16 September 2004 (emphasis added).

2.2 *Refugee Status According to the Geneva Convention*

The main goal of any asylum seeker remains to be recognized as a refugee, as defined by the 1951 Geneva Convention. In Italy, the Geneva Convention on refugees was implemented by the Law n.722 of 1954 and then referred to in many legal texts, though all contained within general immigration laws.

The refugee definition adopted in Italy is therefore the classical one, the same as in all the other countries signatories of the Convention. As provided by Article 1, the refugee is:

“A person who owing to a 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.”

This definition well clarifies how restrictive is talking about “political refugees” as if they could represent the whole category. And in Italy this is still happening very often. Nevertheless, despite the broad scope of the Geneva Convention – which also refers to racial, religious or membership grounds – that definition is highly exclusionary, too, as demonstrated by the fact that entire groups of forced migrants don’t fulfil those requirements: the most evident cases are the so-called environmental or development-induced refugees.

2.3 *Constitutional Asylum*

The Italian legal system is based on the 1948 Constitution. Interestingly, when talking about refugees and asylum right, the debate seldom focuses on the provision expressed by the Art. 10, Par. 3 of the Constitution itself:

“Foreigners who are, in their own country, denied the actual exercise of those democratic freedoms guaranteed by the Italian constitution, are entitled to the right to asylum under those conditions provided by law.”

Though almost ignored and not so often enforced, this definition should in theory represent the guidance and the premises to any

national legislation on asylum matters. According to this definition, therefore, the condition of a conventional refugee differs from the one of a person entitled to asylum under the Constitution. In the first case, the requisite is the *well-founded fear of a persecution*, while in the second it lies on the *impossibility to exercise the democratic freedoms* guaranteed by the Italian Constitution.¹⁰ It means that to be acknowledged as a conventional refugee further requisites are needed, which are not necessary for ascertaining the right to asylum under the Constitution.

The crucial importance of the Constitutional provision lies on the very nature of the asylum right put forth by that article: Constitutional asylum is an absolute subjective right to entry and stay in the territory of the Republic. This means that it can't be temporarily limited or geographically restricted. Any provision contradicting this spirit should be considered unconstitutional.¹¹

2.4 Humanitarian Protection

Humanitarian protection consists in an individual determination subsequent to the denial of refugee status. It is founded both on the principle of non-refoulement sanctioned by the Art. 33 of the Geneva Convention and on the prohibition of torture provided for by the Art. 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Even if motivated by a condition of generalized violence or by the risk of torture in the country of origin, the decision to grant humanitarian protection is taken case by case, when it is impossible to determine the individual persecution or fear of persecution of the claimant. Until April 2005, the Central Commission could only recommend the Police Headquarters to issue a permit to stay on humanitarian grounds, while in the new procedure the Territorial Commissions assessment has become compulsory.

¹⁰ ICS (2006) *op. cit.*, p. 33.

¹¹ It is not by chance that already in 2004 the provisions put forth by the Bossi – Fini Law had received the highest number of objections on grounds of unconstitutionality (657) ever raised against an Italian law. Cf.: Amnesty International (2006) *Invisibili. Minori migranti detenuti all'arrivo in Italia*. Turin, Italy: EGA Editore, p. 33.

At the European level, humanitarian protection corresponds to the so-called subsidiary protection regulated by the Refugee Qualification Directive.¹² The word “subsidiary” well explains that it is a complementary form of protection to be applied when the Geneva Convention fails to protect the forced migrants.

2.5 *Temporary Protection*

Temporary protection is granted in case of humanitarian emergencies. In such a situation, the State can decide for a collective assessment and recognition, similar to the so-called *prima facie* refugee status in the South of the world. Unlike refugee status and humanitarian protection, granting temporary protection is not based on an individual determination by a Commission. On the contrary, it consists of an autonomous and sovereign decision by the State – in this case, Italy – to guarantee some rights for a definite period of time and to a particular homogeneous group of people, coming from the same country or territory affected by a conflict or a generalized crisis. Therefore, it is an exceptional procedure guaranteeing an immediate tutelage, above all in the situations where a massive inflow could hinder the normal asylum system.

Even if exceptionally used also in the past – for instance, between 1993 and 1997, 58,500 people coming from former Yugoslavia and 10,000 originating from Somalia benefited of it – it is a 1998 Legislative Decree¹³ that now provides for temporary protection measures in case of relevant humanitarian needs, on the occasion of conflicts, natural disasters or other particularly serious events occurring in non-EU countries.

At the European level, the 1997 Treaty of Amsterdam¹⁴ already mentioned the need to think of

¹² Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted

¹³ Legislative Decree n. 286 of 25 July 1998.

¹⁴ Treaty of Amsterdam, amending the treaty on European Union, the treaties establishing the European Communities and certain related acts, Amsterdam, 1997. Art. 73K, Par. 2/a.

“minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin and for persons who otherwise need international protection”.

3. The Social Discourse upon Forced Migrants

As we have already seen, the institutional answer to the increasing complexity in the field of forced migration is addressed through a transformation of the refugee label by a fractioning, which produces new labels, in order to manage mixed and blurred migration flows.¹⁵

Moving from the institutional level to the asylum procedure and the integration process, we can investigate the different ways for dealing with the issue of defining and distinguishing the categories suggested by the laws. Any actor involved in this process assigns different meanings and boundaries to the categories he is confronted with. The institutional level is crucial in order to provide the official labels, but facing the same definitional problem from the point of view of those who decide the attribution of these labels or interact day by day with these different migrants enables us to draw a more complex picture, where the boundaries are maybe less precise and taken-for-granted, but at the same time more real and tailor-made on the specific cases we deal with.

3.1 *Clandestini or Asylum Seekers?*

The first crucial distinction to be explored is the one between undocumented migrants, the so-called *clandestini*, and asylum seekers. This analysis is particularly important because it determines whether the applicant is given access to the asylum procedure and eligible to apply for asylum. As is well acknowledged by international refugee law, a refugee should not be sanctioned because of its illegal entry or presence in the country of refuge.¹⁶ But in practice, they are.

¹⁵ With regard to this change, cf. Roger, Zetter (2007) “More labels, fewer refugees: remaking the refugee label in an era of globalization”, *Journal of Refugee Studies*, Vol. 20, N. 2, pp. 172-192.

¹⁶ Geneva Convention, Art. 31 (Refugees unlawfully in the country of refuge), Par. 1.

The paradox is that if the migrant is expelled before he can even submit his asylum claim, then nobody will be able to recognize him as a refugee, regardless of whether his claim was well-founded or not. Considering the Italian case, we can observe that if you look at all the migrants entering the country essentially from the point of view of the regularity of their access to the national territory, then the emphasis will be on the adequacy of their documents, more than on the potential need of protection.

The effects of this prejudice against undocumented migrants can have dangerous effects on the lives of the forced migrants who are not even able to submit their claim to the competent authority. Before realizing it, they can find themselves back in their country of origin or in the last third country they crossed. A serious risk faced by forced migrants coming to Italy consists in being deported to countries where the asylum right is not respected, such as Libya. Between October 2004 and September 2005, for instance, many irregular migrants have been expelled from Italy and deported to Libya, in the frame of the bilateral readmission agreement between that country and Italy, mainly after having been detained in the Lampedusa reception centre. According to Amnesty International, among the 2,778 deported migrants there might have been many refugees who, once in Libya, could have been detained again and finally sent back to their country of origin.¹⁷

At an institutional level, the policies towards migrants in general – and then necessarily also towards potential refugees – are impacted by security considerations. Since the priority is to control and fight against the so-called illegal migrants, then asylum, too, is incorporated into this area of interest and consequently subjected to the same controls and limitations.

The asylum provisions contained in the Bossi-Fini Law confirm this impression. A Jesuit Refugee Service (JRS) worker based in Rome tries to interpret the spirit of the legislator:

“Since I am fighting, I am talking about the need, I am trying to fight the clandestine arrivals, and since asylum can be a weak point of this policy of stricter control, then I put in two

¹⁷ Amnesty International (2005) *Lampedusa: ingresso vietato. Le deportazioni degli stranieri dall'Italia alla Libia*. Torino, Italy: EGA Editore, pp. 23-42.

articles [on asylum] not with a view to dealing with asylum as a whole, but with a view to facing the instrumental claims or the instrumental arrivals.”¹⁸

Also an interviewee working for the Italian Consortium of Solidarity (ICS) stresses the priority given to the security issue by the government:

“The current government has established politics on migrants in general, both economic migrants and refugees, mainly on security grounds. Therefore it is undeniable that in the last five years there has been a deterioration.”¹⁹

The detention²⁰ policy towards irregular migrants and asylum seekers can be interpreted in the same framework. Today the percentage of asylum seekers confined inside the centres is very high,²¹ so that it has become the rule, instead of an exception, as it was supposed to be. This contradicts even the provision set by the Law, which states that “an asylum seeker cannot be detained only in order to assess the asylum claim submitted”.²²

The widespread use of detention against asylum seekers, either inside the CPTA or inside the CI, shows the prejudice leading the legislator: the idea that most of the asylum claims are unfounded and fraudulent, and that the main goal is to facilitate a fast removal of the so-called bogus refugees, together with the other undocumented and irregular migrants. The physical and legal promiscuity among these different centres reveals the true priorities

¹⁸ Interview with a JRS worker, Rome.

¹⁹ Interview with a ICS worker, Rome; the reference is to the then centre-right Government led by Silvio Berlusconi.

²⁰ The Italian word used for detention is *trattenimento*, referring to an administrative injunction limiting the freedom of movement; it is juridically – though not substantially – different from the word *detenzione*, which would imply a penal provision decided by a judge. We decided to keep the word detention in English, since it reflects the real situation and is commonly used in the immigration literature.

²¹ In the first year of activity of the Territorial Commissions, that is from April 21, 2005 to April 27, 2006, more than 62 per cent of claimants have been detained. See ICS (2006) *op. cit.*, p. 118.

²² Art. 1 bis, Par. 1, L. 189/2002.

of the country, not consisting in the real respect of asylum rights, but more in a punitive and deterring policy towards all the migrants trying to enter Italy, regardless of the reasons determining their flight.

"It is obvious that the priority is given to throwing people out of Italy. It is a multifunctional vision of the CPTAs as one-size-fits-all CPTAs, in order to show that the State is strong and controls the migratory clandestine movements and at the same time to show that the State hosts these desperate people after the shipwrecks, the travels of despair. Therefore there is a double-faced behaviour, according to what is more convenient for politics, spending more money on these [the detention centres] then on the reception."²³

Somebody else explains the need for a policy of deeper control by arguing that if you don't prevent mass arrivals, the situation would worsen first of all for the genuine refugees. A strict interpretation of the Convention and an iron hand against undocumented migrants could act as a deterrent. Interestingly – in the words of a Prefect – this argumentation is based on *humanitarian* considerations:

"There is such a mass of people pushing to come that in some ways we must select, since it is the smugglers them-selves who exploit [the migrants]. The problem is that we need somehow, by a faster procedure and a faster answer to the claims, to dissuade those people who come thinking: 'there is a long time to wait, meanwhile I will work somehow, I will be able to recover the money spent for the trip and then it's worth it'. Since they spend between 2,000 and 8,000 Euros for a clandestine trip, and then it turns out that you have to go back to your country in one week, one month, then probably the number of claims decreases and so we can have a selection of the real refugees".²⁴

A firm asylum policy would fight against the smugglers and help genuine refugees to have a fair and fast procedure. But the risk

²³ Interview with a ICS worker, Rome.

²⁴ Interview with the Prefect, President of the Gorizia Commission.

that genuine refugees are caught in the net is always behind the corner. We could then suggest that maybe this is one of the unavowed goals of the Italian governments, even if the individual officers are not aware of it.

It could be read as part of a wider programme that may be called *preventive refoulement*,²⁵ meaning that Western governments are more and more inclined to prevent asylum seekers from having access to the territory and to the asylum procedure.

The attempt is to keep the forced migrants near the areas of crisis, maintaining in this way a direct or indirect control over refugee management. In any country, the border represents the last chance to remove people without transgressing the principle of non-refoulement. Obviously, it depends on the interpretation of the border and of the concept of refoulement, but by labelling all the undocumented migrants as *clandestini* their removal is eventually legitimated.

3.2 "Humanitarian" Protection

After the Bossi-Fini Law was enacted and seven decentralized Territorial Commissions for the Recognition of Refugee Status (*Commissioni Territoriali*) were established in 2005, there has been a great change in the field of protection. Since the very beginning, the number of people granted humanitarian protection exceeded by far the number of people granted refugee status. Accordingly, the approval rate of humanitarian protection rose from 7.32 per cent in 2003 and 26.82 per cent in 2004 up to 41.95 per cent in 2005. Last year, in 2006, out of 9,260 assessed claims, 46.80 per cent of people were granted humanitarian protection, as against 9.5 per cent who received a positive answer to their claim to obtain refugee status.

Interestingly, if we add the figure related to humanitarian protection to the one related to refugee status, we realize that more

²⁵ Chiara, Marchetti (2006) *Un mondo di rifugiati. Migrazioni forzate e campi profughi*. Bologna, Italy: EMI. The *preventive refoulement* consists in a long chain of policies, ranging from the militarization of the borders and the externalization of procedures, to the readmission and cooperation agreements with the origin or transit countries and to the protection zones, safe areas and refugee camps in the South of the world.

than half of the claims have to be considered as in some way successful, which means that the recurring emphasis put on the instrumentality of the asylum claims and on the possibility of an invasion of "fake refugees" is absolutely unfounded.

But we also have to investigate the other side of the coin. Is it positive that the number of refugees is so low as compared to the "humanitarians"? And, most important, how is this distinction established?

The Territorial Commissions are composed by four members each, headed by a Prefect supported by a Police Headquarters' official (*Questura*), a UNHCR's worker and a local administration's representative (*Enti Locali*). The interview of the asylum seeker can last from less than fifteen minutes up to more than an hour.

The Commissions are first of all called to assess the asylum claim on the grounds of Article 1 of the Geneva Convention. Only if the person doesn't fulfil the requirements expressed by the Convention and is accordingly denied refugee status, can the Commission then also consider the granting of the humanitarian protection. As a UNHCR Commissioner declares:

"The principle is that you should first of all consider the status, even in the face of a country where you can say that there is generalised violence, danger of torture in the case of return. But you have to start from the assumption of the examination of the requirements under Article 1."²⁶

But at the same time it is commonly acknowledged by the Commissioners and other interviewees that the practice goes in a slightly different direction:

"Then again, that about some countries we are more inclined to cut it short and give humanitarian protection, yes, I can't say it doesn't happen: the answer is yes. The luck is that these people are not repatriated, the mistake is that we know that there are big differences between humanitarian protection, B status, and the grant of the real status. There can be some mistakes."²⁷

²⁶ Interview with the UNHCR member of the Milan Commission.

²⁷ Interview with the UNHCR member of the Milan Commission.

"As far as I am concerned, I've always tried to distinguish well the two situations, the humanitarian and the status [...] But often, in the case of lack of credibility or of doubts, maybe we tend to grant the humanitarian protection instead of the status."²⁸

"It is the easiest way to be chosen: if UNHCR says that people coming from that country should at least not be refouled, then the humanitarian status is immediately granted, without even considering the possibility to grant refugee status."²⁹

According to the practice described by the interviewees, it seems that the decisional process often contradicts the general principles sanctioned by law and international conventions. The humanitarian status becomes much more common also because it is granted to people who would have had the right to become refugees *strictu sensu*.

"As far as the figure related to the refugee status recognition is concerned, the overall datum is under the average we expected, and so this fact needs to be assessed [...]. The high number of humanitarian protection measures could also be a sign of a restrictive approach to the Convention on which we will have to work, for sure."³⁰

A restrictive approach to the interpretation of the Convention may have negative effects on a wide number of asylum seekers. Paradoxically, asylum seekers coming from countries in which conflict and violence are widespread, and who should therefore be treated with particular care, are on the contrary examined perfunctorily and receive a verdict reflecting a prejudice instead of a careful evaluation. Migrants who should *at least* be granted humanitarian protection obtain on the contrary an almost automatic denial of refugee status and the consequent recognition of a B status.

²⁸ Interview with the UNHCR member of the Gorizia Commission.

²⁹ Interview with a UNHCR protection officer, Rome.

³⁰ Interview with a UNHCR officer, in charge of the supervision of the Commissions work, Rome.

From this point of view we can be satisfied with the high number of humanitarian protection measures only if we think that there are many critical situations all around the world where people are forced to leave, though not corresponding to the classical refugee type and therefore not fulfilling the requirements of the Geneva Convention, but this trend is only partially positive.

The main issue, at this level, is not about distinguishing people worthy of international protection from people who should be expelled and removed, according to the national legislation. A new problem arises when we are called to draw the boundary between people entitled to refugee status and people who can only claim a complementary form of protection. Today, it seems that humanitarian protection is something like a residual category, resulting from the exclusion of the full refugee status and the impossibility to repatriate the migrant. All the rest are *umanitari*, as they are in short called in Italy.

In this way there is no careful examination either of the deep changes occurring in the international forms of violence and conflict, or in the effects that this label produces on the bodies and the minds of the asylum seekers.

Both from a symbolic and a concrete point of view the two status categories are not equal. The word "humanitarian" in itself evokes a solution offered to people suffering due to a particular crisis, not on political but on humanitarian and passionate grounds. The State – Italy in this case – would just grant a temporary permit to stay until the peak of violence ceases. It strongly depends then on what we define as conflict, crisis and generalized violence. The risk is that, in spite of the supposedly non-political attitude as to this form of protection, the decisions are based on a highly political assessment.

That is what happened to people coming for example from Togo, from Turkey or even from Iraq, who were granted humanitarian protection only as long as the situation in their country was considered dangerous and were on the contrary denied any kind of protection overnight, mainly because of strategic and political considerations.

"Before, the Turkish Kurds were granted refugee status, then after Ocalan they started to get humanitarian protection. Now the decisions of the Central Commission – I don't know what

the decisions taken by the Territorial Commissions will be like – but the Central Commission, until last year, used to come out with documents saying, as motivations for the complete denial of refugee status, without any possibility to be granted humanitarian protection: Turkey is a country on the way for democratisation, for the rule of law. That's it."³¹

From this point of view the vulnerability of entire groups of people increases – instead of decreasing – when they are assigned the humanitarian label. As they are granted humanitarian status with a fake individual assessment, which then proves to be based on general considerations, in the same way they can be all denied any form of protection, just because the political mood has changed.³²

3.3 “Refugees” vs. Immigrants

We should now consider a third stage, which though not having any effect on the juridical status of the migrants, is nevertheless crucial for understanding the common perception around the forced migration issues expressed through the definitions and the discourse of the social workers and of the volunteers who face daily these different categories of people.

First of all, as reported by many interviewees, refugees today are not perceived as belonging to a clear and consistent category. Lack of credibility of their stories is quite common, even among people working daily with them. As stated by a volunteer helping in a subsequent reception centre in Milan, “You should never trust them when they tell you some things.”³³ There is also a widespread confusion about their juridical status, as demonstrated by the perception that an asylum seeker or even a refugee is not really a migrant legally staying in the country. Alluding to some refugee recipients, another volunteer states: “Until a short time ago, if we just had the inkling that they were not regular, we would have frankly

³¹ Interview with a ICS worker, Rome.

³² The conditions of the *umanitari* are problematic in Italy also because they don't enjoy the same rights as the refugees. For instance, they can't ask for a family reunification and this contributes to the perception of being a second-class forced migrant.

³³ Interview with a social worker of *Centesimus Annus*, Milan.

tried not to take them."³⁴ Also the instrumentality of the claims is frequently addressed, as if asylum was to be interpreted as the only legal way to have access to the country and therefore commonly used by fraudulent claimants: "The impression is that now there are much more entries where the only way [to do it] is: submit your asylum claim."³⁵

Even the description of the itineraries and of the way of travelling seems to lump together the experience of the refugees with the experience of economic migrants. As reported by a social worker dealing with refugee families:

"We can say that there is less improvisation on their side, too, that is to say that a desperate flight is less and less frequent. There are more programmed immigration projects, caused by good reasons, valid for the permit to stay, but more programmed."³⁶

The overall perception is that all these actors bear in mind the classic figure of the refugee and that they automatically compare that typology to the people in the flesh they meet every day in their services. From this point of view, we can interpret their comments as an attempt to redefine the current refugee patterns. Accordingly, if they think that the classic refugee is the only "real", genuine refugee, then the ones they daily meet are perceived as less authentic.

"In my opinion, here they are not all in personal serious conditions to claim the *political* refugee status. It is a ruse. [...] We have three or four *real* refugees, not more: the difference is that you realize whether in front of you there is a person - and you notice it immediately - who really suffered, who would have a serious problem if he repatriates, who has his family (not the parents, but the wife, the children) on the other side. You immediately notice the *real political* refugee."³⁷

³⁴ Interview with a social worker of *Centesimus Annus*, Milan.

³⁵ Interview with a social worker of *Cooperativa Sociale l'Arcobaleno*, Lecco.

³⁶ Interview with a social worker of *Servizio Casa delle famiglie - Consorzio Farsi Prossimo*, Milan.

³⁷ Interview with a social worker of *Centesimus Annus*, Milan (emphasis added).

The “real” refugee claims asylum on political grounds, while it seems that present forced migrants have more often economic or humanitarian reasons to leave their origin country.

From this perspective, we can understand why so many interviewees make reference to four characteristics, which used to be the distinctive features of refugees in the past.

- **Credibility:** once, the personal story told by the asylum seeker referred to a wider and well acknowledged international context, such as the one of the Cold War. In that frame, the individual experience was recognized and legitimised as part of a larger credible picture.
- **Regularity:** Since in the past refugees were a quite rare exception and a well defined concept, it was almost natural to think of them as a special category among the other migrants, with an indefinite right to stay and a permanent status. The regularity of their entry and of their stay was not questioned.
- **Instrumentality:** The reasons for fleeing the origin country were almost self-evident. A refugee coming from Eastern Europe or the few coming from Latin America or South Asia were escaping from well known socialist or authoritarian governments. Their claim *could not* be instrumental or fraudulent.
- **Improvisation:** According to the common opinion, one of the elements differentiating a refugee from an economic migrant was that the refugee was forced to leave all of a sudden, because of the worsening of external conditions, independent from his will. Accordingly, the travel and the country of destination couldn't be programmed, either.

If these are the distinctive characteristics of real refugee, than we understand why there are so many doubts about the genuineness of current refugees.

Since the actual refugee experience doesn't seem so self-evident as many interviewees think it used to be, consequently also the boundary between refugee and humanitarian status becomes more blurred:

“They come from a difficult situation, for sure. But then [...] above all lately, being difficult to enter through other channels, the asylum claim becomes for many of them a way to have access

to the territory. Some nationalities certainly have difficult situations and internal tensions, but if I consider whether the asylum seeker has a personal situation, then not everyone has a personal situation, so that many are on humanitarian grounds instead of real refugees."³⁸

These descriptions also show that the distinction between refugees and economic migrants is becoming less clear-cut. The characteristics shared by these two categories seem to many observers more important than the ones separating them.

"I don't think that their problems are much different from the ones of other [migrants]. They don't receive any privileged treatment from the point of view of the law, they are completely equivalent, therefore not any particular aid."³⁹

"There is not a big distinction, in the meaning that [when] a person arrives, he enters the social context. The means of arrival, of insertion are exactly the same of any immigrants. [...] If a twenty-years-old girl has lived hard times, they are not different from those of another twenty-years-old girl from the same country who entered in a different way and has a different document. I'm convinced of this. Secondly: if this person is here and she is alone and she is a woman and alone, I need that she faces some things, she can't live in the cloud-cuckoo-land just thinking that she is an asylum seeker."⁴⁰

As we can see, though it is impossible to give an exhaustive account of the representations provided by the different actors involved with forced migrants from a non-institutional position, it is clear that a big change is in progress. The legal instruments offer fixed definitions, or at least it takes a long time and a harsh political negotiation before the changes occurring in the society become acknowledged by the institutions. The non-institutional subjects are more flexible and free, since they deal with real people with personal

³⁸ Interview with a social worker of *Cooperativa Sociale l'Arcobaleno*, Lecco.

³⁹ Interview with a social worker of *Servizio Casa delle famiglie – Consorzio Farsi Prossimo*, Milan.

⁴⁰ Interview with a social worker of *Cooperativa Sociale l'Arcobaleno*, Lecco.

histories and problems, instead of abstract categories. They need to find their own way to define and distinguish different categories of migrants, so that they can be oriented in the everyday choices and policies.

Therefore, we should not underestimate the ambiguity and the superimposition of the descriptions and of the labels used by social workers and volunteers: they may tell us something about the actual trends not only of the Italian asylum system but also of the changing nature of forced migration today.

4. Italian Asylum Policies in a Changing World

Over the past years, an important debate has been emerging about the changing world of forced migrations and the possibility to re-discuss the meaning and the boundaries of the "refugee" concept. Until some time ago, many scholars asserted a quite *essentialist* position, assuming the refugee category as an almost ontological entity, bearer of a specific experience and somehow recognizable and detachable from the other groups of economic and forced migrants.⁴¹ That was – and still mostly is – the official position maintained by the UNHCR, too.⁴² But lately a second approach – a more *constructionist* one – has emerged, according to which the refugee category is seen as a result of a historical, political, humanitarian process and thus susceptible to revisions and strongly influenced by operational considerations and policies.⁴³

⁴¹ Stephen, Keller (1975) *Uprooting and social change: The role of refugees in development*. Delhi, India: Manohar; Barry N., Stein (1981) "The refugee experience: defining the parameters of a field of study", *International Migration Review*, Vol. 15, N. 1/2, pp. 320-3; Michael G., Wenk (1968) "The refugee: A search for clarification", *International Migration Review*, Vol. 2, N. 3, pp. 62-69).

⁴² Erika, Feller (2004) *Are refugees migrants? A dangerous confusion*, SID lecture series "Migration and Development: Challenges for a World on the Move", Amsterdam, Netherlands: Vrije Universiteit, 27 January 2004; UNHCR (2006) *Addressing Mixed Migratory Movements. A 10-Point Plan of Action*. Geneva, Switzerland: UNHCR.

⁴³ Richard, Black (2001), "Fifty Years of Refugee Studies: From Theory to Policy", *International Migration Review*, Vol. 35, N. 1, pp. 57-78; Liisa, Malkki (1995b) "Refugees and exile: from 'refugee studies' to the national order of things", *Annual*

On the one hand, the emphasis is put mostly on the refugee category, the Geneva Convention being considered a landmark to be defended at all costs. A potential confusion among different labels is perceived as dangerous, since it could lead to a delegitimisation of the achievements labouriously accomplished in recent years. Obviously, nobody would claim that the other migrants have no rights and even the UNHCR has begun talking about "mixed flows",⁴⁴ but the assumption is that to better protect refugees, according to the UNHCR mandate, you should concentrate on their plight and stress the differences – more than the similarities – between them and other migrants. From this point of view, the blurred definitions of the Italian case presented in the article are necessarily a matter of concern.

On the other hand, starting from the pioneering work by Roger Zetter,⁴⁵ the labels – and so also the "refugee" one – have been criticized for their powerful impact on the lives of the individual migrants and for the stereotyping and controlling processes they entail. Although an inescapable part of public policy making, labels are far from neutral and they can have the paradoxical effect of increasing the vulnerability – instead of the protection – of people in need. From this perspective, the Italian context could be differently addressed: less powerful labels wouldn't be a problem *per se*.

Building on these remarks, there are at least two levels on which to analyse the Italian case. If we consider the institutional and legal framework, we realize that the fragmentation of categories can be read as a positive attempt to interpret a changing context, but it doesn't necessarily lead to a higher level of protection. By multiplying the forced migration labels, the intention seems rather to empty out the meaning of the refugee figure than to add new substantial rights

Review of Anthropology, Vol. 24, pp. 495-523; Giulia, Scalettaris (2007) "Refugee studies and the international refugee regime. A reflection on a desirable separation", *Refugee Survey Quarterly*, forthcoming; David, Turton (2003) "Refugees, forced resettlers and 'other forced migrants': towards a unitary study of forced migration", *New Issues in Refugee Research*, UNHCR Working Paper, n. 94; Roger, Zetter (1991) "Labelling refugees: forming and transforming a bureaucratic identity", *Journal of Refugee Studies*, Vol. 4, n.1.

⁴⁴ UNHCR (2006) *op. cit.*

⁴⁵ Roger, Zetter (1991) *op cit.*

to other categories of migrants. Paraphrasing a recent article, "more labels, fewer refugees",⁴⁶ but also "lower levels of protection".

At the same time, as shown by the words of the non-institutional actors, the world of migrations is on the move. It wouldn't be useful to be nostalgic of the refugees of the past, while the international scenario has changed so sharply in the field of migration flows, conflicts, persecution and international relations. We need to acknowledge that, even if we don't meet so many classic refugees anymore, there are more and more people in need of protection who don't find adequate answers on our territory, either because they don't fulfil the institutional requirements to be labelled as refugees, or because in daily practice they look too similar to the other migrants to deserve any special treatment.

Combining these two observations, we could say that institutions have well understood the call for differentiated forms of protection, but that the answers are insufficient or counterproductive, at least from the point of view of the migrants.

It is probably true that today it is almost impossible to segment in terms of vulnerability a population of migrants often bearing similar and overlapping characteristics in the modes of travel, in the reasons for flight, in the attitudes towards the host country. If we acknowledge that categories have actually become blurred, we can't but address the forced migration phenomenon together with the other forms of migration. Otherwise we risk indirectly and maybe unconsciously legitimize a restrictive regime towards mixed migration flows and paradoxically reinforce the use of asylum claims as a possible instrumental way for a legal stay in the country.

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⁴⁶ Zetter, Roger (2007), *op. cit.*

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