

**INTERNATIONAL PROTECTION IN CASE OF EXTRAORDINARY
ARRIVALS IN ITALY FROM THE EARLY 1990S TO 2012**

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Abstract

In 2012, tens of thousands of people landed on Southern Italian shores, escaping from instability and violence in Northern Africa. These mass arrivals have challenged the Italian asylum system in many ways: first of all, the reception and assistance were problematic, and second, it was not clear what kind of protection to guarantee. These issues are not new to Italy: during the 1990s, Italy was the main destination of mass influxes of displaced persons from Albania, Yugoslavia, and then Kosovo. The research focuses on the effectiveness of the Italian system of protection in case of mass influxes of people seeking protection.

This dissertation is going to discuss the evolution of the Italian legislation on asylum, with the intent to see, in three different case studies, how was the law applied and what problematic did emerge. I have taken into consideration mass influxes following the crisis of Albania in 1991 and 1997 and the collapse of Yugoslavia in the mid 1990s, with a further look to the case of Roma and Sinti from Yugoslavia. In the second part of the research, the effectiveness of the Italian and European protection systems is tested in the last case study concerning the latest mass arrivals following the Arab Spring. The goal of this thesis is to show that the fragmented evolution of the Italian legislation on asylum and the lack of an organic law on the issue have jeopardized, in situation of mass influxes of people, their possibility of obtaining protection and assistance.

Table of Contents

2Introduction.....	6
2Introduction.....	6
Literature Review.....	9
3The Italian Legislation on Asylum.....	13
3The Italian Legislation on Asylum.....	13
The Italian Constitution: Article 10.....	13
From the Geneva Convention to the Bossi-Fini Law.....	15
4The Italian Response to the Albanian Crisis.....	21
4The Italian Response to the Albanian Crisis.....	21
The first exodus: 1990-1991.....	22
The great calm: from 1992 to 1995.....	30
1997: the Albanian Crisis.....	31
Final Considerations	33
5The Italian Response to the Crisis of Yugoslavia.....	35
5The Italian Response to the Crisis of Yugoslavia.....	35
The Yugoslav crisis.....	36
The emergence of nationalism.....	36
The Yugoslav Wars of the 1990s.....	37
The exodus from Yugoslavia: the Italian response.....	40
A new ad hoc legislation.....	43

Response to the Kosovo emergency.....	45
Historical background.....	45
Italy and the Kosovar Albanian displaced persons.....	48
Ad Hoc legislation for Kosovar Albanians.....	50
The case of Roma from Yugoslavia.....	52
6The Italian Response to the mass influxes from North Africa during the Arab Spring ..	56
6The Italian Response to the mass influxes from North Africa during the Arab Spring ..	56
The Arab Spring.....	56
Response to the mass influxes.....	58
Reception: what went wrong.....	58
Political and legal measures: what kind of protection for these people?.....	63
Final conclusions.....	68
7Conclusions.....	70
7Conclusions.....	70
References.....	78

List of Abbreviations

AI	Amnesty International
CIR	Consiglio Italiano per i Rifugiati
CoE	Council of Europe
ERRC	European Roma Rights Center
EU	European Union
NGOs	Non-Governmental Organizations
	UNHCR United Nations High Commissioner for Refugee

2 Introduction

In light of its geographical position, Italy has been one of the main destinations of mass influxes of migrants and of people seeking protection within the Mediterranean area in the last 25 years. The recent wave of unrest spreading through North Africa has caused mass departures of people, mainly from Tunisia, Egypt and Libya, who landed on Italian shores. The arrival of tens of thousands of people created a real emergency in the Italian island of Lampedusa, and the government had to deal with problems regarding legislation and practical reception and assistance. This situation evoked similar episodes that occurred in Italy during the 1990s, and has re-opened a debate over the efficiency of the Italian system of international protection, especially in case of mass influxes of people.

This issue is closely connected to other relevant topics in constant development. The necessity to create forms of international protection different from refugee status is a relatively recent issue for Italy; in fact, the national Legislator has begun discussing and drafting on this issue only starting from the late 1990s. The other forms of protection became essential after the fall of the Berlin Wall, when a period of political chaos, large movements of people and the collapsing of old regimes questioned the effectiveness of the refugee status, as the only form of protection. The Convention relating to the status of refugee, for instance, grants protection to individuals who are persecuted in their country of origin (United Nations. United Nations High Commissioner for Refugees 2010b). The requirement of the element of individual persecution excludes from protection people escaping from war and situations of endemic violence.

The evolution of the Italian system of international protection is a very challenging topic, because it does not only deal with the emergencies of the past but it provides ground to foresee future episodes. It is a topic that on one hand looks at the necessities of people in need of protections, and on the other at the political and legal decisions of the Italian authorities. Another interesting aspect, then, is the parallel developing of a European asylum system that should fill the gaps existing in the national system.

One of the main issues that emerge from the analysis of this topic is the fact that the Italian protection system has evolved in a fragmented and inconsistent manner. The goal of this research is to analyze the development the legislation on asylum and to discuss how it was applied in situation of mass influxes of people seeking protection. To what extent, then, has the Italian legislation of the last 25 years restricted the possibility of seeking protection to the mass influxes of people coming to Italy?

This book is going to focus on the evolution of the Italian legislation on asylum, on the kind of protection the laws concerning asylum provided and, above all, what they lacked. Such analysis will be conducted using five different case studies, that will help us understand in what way, during an emergency, Italy could or did react, according to the legislation in place at the time.

Different sources have been taken into consideration. One of the problems encountered during the research process is the fact that there is no complete and exhaustive analysis of the issue. It is therefore necessary to look at sources on very specific case studies and derive from that a broader argument. This thesis uses scholarly books and articles, but since the issue considered is not extensively analyzed, other kind of sources are necessary. In particular, reports and statements by NGOs like Amnesty

International or by international organizations like the UNHCR; but also newspaper articles when the issue is so specific or so recent that cannot be found in any academic publication. Of course, the analysis of the legislation, both national and international, is fundamental for the purpose of this research.

As for the use of statistics, it has not been extensive. Apart from the data on the number of people landing in Italy, the statistics on claims for international protection and their results are extremely important; unfortunately, their use for the purpose of this research was limited. This data, provided by the Commissione Nazionale per il Diritto d'Asilo (National Commission for the Right to Asylum), is extremely specific concerning the refugee status, but does not provide enough information on other forms of protection. For each nationality, indeed, the commission provides the number of people who have obtained subsidiary and humanitarian protection, but we do not know how many applied for it. In this way, it is extremely difficult to have a clear picture of the situation.

The goal of this research is to show how the Italian legislation on asylum of the last 25 years has not provided for adequate forms of protection, therefore restricting the possibility for mass influxes of seeking international protection. This hypothesis will be tested in the analysis of five case studies, each of them extremely different from the other.

First of all, we are going to look at the Italian legislation on asylum, in order to understand how has the Italian protection system evolved in the last decades. At this point, the effectiveness of the legislation discussed will be tested in four case studies, namely the Albanian case in 1991 and again in 1997, the Yugoslav case between 1991 and 1995, the Kosova case in 1999 and the case of Roma from Yugoslavia who were in most of the cases denied the protection they were eligible for. Then, the research will also

take into consideration the evolution of European legislation on asylum and the way in which it was implemented at a national level. The efficiency of the current European and Italian protection regimes will be tested with the last case study, concerning the response to the mass influx of people coming to Italy as a consequence of the Arab Spring.

Literature Review

The Italian legislation on the right to asylum has developed in a very fragmented and inconsistent manner. As this thesis will suggest, this issue has had a strong impact on the accessibility to protection, but also to reception and assistance, because of a never prompt response of the government in situations of emergency. However, despite the fact that an analysis of the evolution of the Italian legislation on asylum will only be conducted in the second chapter of this thesis, it is important to mention that there is extensive debate on this issue. The main problem of the Italian protection system is the lack of an organic law that regulates all the forms of protection. Such a situation is the opposite of what article 10 of the Constitution displayed. The main elements that might have concurred in the establishment of a very incomplete system of protection will be discussed in this literature review.

The reasons why the Italian parliament has never drafted a complete organic law regulating the system of international protection is not a clear issue. However, there was an attempt to provide for a very extensive right to asylum with the drafting of the Constitution. Bonetti (1997) explains that the members of the Constituent Assembly, of which many had sought refuge in other countries during the fascist period, intentionally provided the right to asylum to a very large spectrum of people. Rescigno (2011) agrees with this interpretation, and underlines the fact that art. 10 of the Constitution gives

protection to mass influxes of people, not only to individual asylum seekers. However, both the scholars also acknowledge that within the Constituent Assembly not all the members agreed on that provision. Politically speaking, each party had its own opinion: on one hand, the communists wanted to provide the right to asylum to those who were persecuted for defending rights related to labor and freedom and ostracized the idea of providing asylum to people persecuted for *any* kind of opinion, fearing that persons who were fighting against democracy in their own countries could be protected in Italy (Rescigno 2011). Communists feared, for example, that once the Franco regime in Spain had collapsed, thousands of Spanish fascists would have come to Italy seeking protection (Rescigno 2011). Bonetti reports another aspect that scared some members of the assembly: what if, one day, an entire people in whose country democratic freedoms are not respected, seeks refuge in Italy? (Bonetti 1997). This element is extremely important for the understanding of the developing of the Italian asylum system. The fear of being *invaded* did not only concern some members of the Constituent Assembly, but has been present in the Italian society for a very long time.

Another factor that has undoubtedly contributed to the fragmented development of the Italian legislation on the right to asylum is the political scenario that characterized Italy during the 1990s. Hein reports that, in fact, in 1994 the proposal of an organic law on asylum was drafted by the CIR and presented to the Parliament, but because of the political instability that caused the establishment of brief technical governments one after the other, the Parliament never discussed it (Hein 2010). There was, indeed, no coalition that was strong enough – and for enough time in power – to consider drafting an organic law on the right to asylum.

In his analysis of the history of the right to asylum in Italy, Hein also considers another important aspect: the lack of implementation of the legislation. Even if today in Italy the law recognizes other forms of protection beyond the refugee status, the application of the law is always problematic (Hein 2010). Fortunately, it is necessary to remark the fact that in theory, Italian legislation on asylum provides for extensive protection, but in practice many persons, despite being eligible, are excluded from protection (Hein 2010).

One of the reasons of the incorrect application of the rules is undoubtedly the existence of such a large number of laws, EU directives, decrees and circolari. The fragmented development of the Italian legislation on asylum has led to the inconsistency of many norms. Hein claims, indeed, that many laws are in contradiction with each other, and as a consequence those who are in charge of enforcing the rules might have problems in understanding which law to apply (Hein 2010). The issue is the following: when the law is not clear, its enforcement will probably be incorrect.

There is a large discussion of law enforcement in Italy in other fields too. While discussing the enforcement of laws concerning disabilities, Marra (2007) suggests that disability has never been addressed as an issue per se, but always incorporated in legislations with a different subject, and that this lack of visibility is problematic for its enforcement. The right to asylum has been addressed in the same way by the Italian legislator: there is no law regulating exclusively the right to protection; instead, provisions on asylum are contained in migration laws (Martelli law, Turco-Napolitano Law, Bossi-Fini law). Torbica and Fattore (2005) also found that Italian political instability itself and the lack of coordination between different levels of institution are critical issues to this respect. We have already briefly discussed, indeed, how the lack of a

stable and durable government has precluded the possibility to draft an organic law regulating asylum.

The scholars who have researched on this issue generally agree on the fact that the ultimate solution to the problems highlighted before is the drafting of an organic law on the right to asylum. According to Rescigno, the inconsistency of the laws on asylum and the inefficiency of their implementation are ultimately due to the lack of a unique corpus of laws regulating every aspect of the right to asylum (Rescigno 2011). Finally Hein, Lanzerini and Nascimbene believe that the drafting of an organic law providing extensive protection and filling the gaps of the previous legislation would be truly faithful to the principles and intentions of the Constitution (Hein 2010, Lanzerini 2009, and Nascimbene 2009).

3 The Italian Legislation on Asylum

Italian legislation on the right to asylum dates back to the draft of the Italian Constitution in 1947, to the ratification of the Geneva Convention relating to the Status of Refugee in 1954 (hereinafter the Geneva Convention) and of the New York Protocol in 1972. Since then, the legislation that rules the right of asylum has been modified several times, mainly in 1990 with the Martelli law, in 1998 with the Turco-Napolitano law and in 2002 with the Bossi-Fini law. During the 2000s, the Italian legislation has mainly incorporated council directives of the European Union (hereinafter known as EU) . This chapter is going to analyze the structure, strengths and weaknesses of the Italian legislation on the right to asylum, in reference to the Constitution and the Geneva convention first, and then to the last 25 years of national legislation.

The Italian Constitution: Article 10

The first reference to asylum in the history of the Italian Republic dates back to 1947, when the Constitution was drafted. The first part of the Charter lists the fundamental rights belonging to Italian citizens from that moment on; in this section the drafters of the Constitutions included article 10, which is devoted to the condition of foreigners in the Italian Republic. In particular, referring to the right to asylum, the Constitution states : ‘ A foreigner who, in his home country, is denied the actual exercise of the democratic freedoms guaranteed by the Italian constitution shall be entitled to the right of asylum under the conditions established by law.’ (Italy, 1948). According to the Constitution, the individuals entitled to asylum were those who, in their country of origin,

did not have the rights and freedoms that the Italian Constitution guaranteed to Italian citizens. Therefore, the spectrum of people entitled to asylum was very wide. As Bonetti underlines, the members of the Constituency Assembly were perfectly aware of the outcomes that their decision would have resulted in: many of them, for instance, during the Fascist period and until the end of World War II had to leave Italy and obtained asylum in other countries (Bonetti 1997). They were, therefore, well aware of the fact that the protection of asylum seekers was a primary issue they had to take care of. The Constituency Assembly also specified that the right to asylum had to be implemented 'at the conditions established by law' (Italy, 1948), suggesting that the members of the Assembly wanted to leave a door open for possible limitations. During the drafting of the Constitution one of the members of the Assembly, Nobile, stated that although asylum had to be guaranteed to all political refugees, there was a problem: for instance someday thousands of people escaping from wars or other catastrophes might knock at Italy's doors. In such a case the Italian government should have the possibility to put limitations to entry, also because of the economic burden of asylum for the host state (Italy. Assemblea Costituente, 1970). This consideration actually foresaw what was going to happen many years later, when thousands of people arrived on the Italian shores escaping from wars and political and economic chaos; however, in the 1990s, the Italian legislation on asylum would be completely different from the one described before. Furthermore, article 10 of the Constitution had to be enforced by issuing a law regulating the right to asylum; however, until today, this has not happened.

From the Geneva Convention to the Bossi-Fini Law

After the Constitution was drafted, a main innovation was introduced by the ratification of the Geneva Convention in 1954 and of its Protocol in 1972 (United Nations. Treaty Collection, 2012a & 2012b). Ratifying the Convention meant to accept and implement the asylum system described in the cited convention. Paradoxically, in the case of Italy the implementation of the Geneva Convention served as a limitation on the right to asylum granted by the Constitution, that previously covered also those foreigners escaping from war or disorders where their personal safety was in danger (Bonetti 1997).

For decades, after the ratification of the Geneva Convention, the asylum legislation in Italy remained untouched, until the law n. 39/1990 was converted by the Italian Parliament, after being adopted temporarily by the Council of Ministers as DPR 136/90. It is important to highlight the fact that the late 1980s and the early 1990s were a period of transition and profound change for the entire world, Italy included. The collapse of the Soviet Union caused the exodus of thousands of people, and Italy – that had recently become an immigration land – felt the urgency to draft a law to regulate immigration and asylum policies. The Martelli law was also the reaction to an event that occurred in Castel Volturno, near Caserta, in 1989: a South African refugee, Jerry Masslo, was murdered in the street, and the motive of the crime was purely racial (Hein 2010). This caused a sense of frustration among other migrants and refugees and strong indignation among the Italian civil society, which pushed the Deputy Prime Minister, Claudio Martelli, to issue an emergency decree (Hein 2010). The so-called Martelli law contained article 1 regulating some aspects of the asylum procedure process. Namely, the Martelli law abolished the geographical limitations and reservations related to the Convention of Geneva relating to the Status of Refugee that had been implemented by

Italy until that moment (article 1 (1)). Also, the Martelli law prohibited the entrance within the Italian borders of any foreigners who had the intention to seek asylum in Italy and at the same time had already obtained asylum in another state, or had temporarily lived in another state, different from the country of origin, that had ratified the Geneva Convention, or, last, had been found guilty by an Italian Court for crimes related to terrorist associations and organized crime (article 1 (4)). Perhaps the most important paragraph of this law is the seventh, where the law says that until a new and complete legislation on asylum is drafted, the Ministry of Interior is allowed to provide asylum seekers with first assistance concessions (United Nations. United Nations High Commissioner for Refugees, 2010a). The most relevant part of that sentence is the acknowledgment that the lack of an organic law and of a complete legislation on asylum are a reality that Italy has to address as soon as it can.

After the Martelli law of 1990, a new legislation regulating not only migration but also asylum issues, was passed only in 1998. It took at least 4 years for this law to be drafted and passed, mainly because of the political instability of that period (International Organization for Migration, 2012). In 1994 a member of Berlusconi's right-wing government proposed to the Parliament a very restrictive bill on migration, strongly contested by the Church 'on the ground that such synthesis presented immigration as a potential danger, resulting in closure of the borders and precariousness in the protection of fundamental human rights' (International Organization for Migration, 2012 p.28-29). Because of the premature fall of Berlusconi's government, the law was not passed. It was only in 1998 that the left wing government led by Prodi drafted a complete and organic law on immigration, the '*Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*', that contained also

provisions regulating the right to asylum (International Organization for Migration, 2012). This law, technically the Decreto Legislativo 25 Luglio 1998 n.286 but generally referred to as Turco-Napolitano law, mainly regulated immigration policies; however, it also introduced a new measure of international protection. Art. 5 (6) of the new law stated that a permit to stay cannot be revoked, and therefore the person without permit cannot be expelled, if there are serious humanitarian risks for him or her (Italy, 1998). Furthermore, art. 19 (1) re-enforced the principle expressed in art. 5, claiming that in no case whatsoever a foreigner shall be returned to a country where he or she might be persecuted for a number of reasons (race, sexual orientation, language, citizenship, religion, political opinions, personal or social conditions), or to a country where he or she is not granted protection from persecution (Italy, 1998). The inclusion of these new provisions started to fill the gap of international protection that Italy used to have. When a person was not eligible for asylum but there were still humanitarian grounds for not sending him or her back to the country of origin, the humanitarian permit to stay could grant protection. This kind of protection was also applicable for those migrants who were subjected to serious human rights violations and exploitation in Italy (this provision was already contemplated in the Law 6 March 1998, n. 40, art. 16), and was valid for 6 months, but renewable for a year (Italy, 1998). Art. 20, finally, decided the possibility to adopt extraordinary measures for situations of emergency: the prime minister, indeed, might issue a decree law deciding to grant temporary protection for humanitarian reasons, in case of conflicts, natural disasters, or other serious events occurred outside the European Union (Italy, 1998). This measure was clearly designed in light of the emergencies occurred during the 1990s, when Albanians and Bosnians who fled to Italy

seeking protection did not find any piece of legislation contemplating their statuses and granting them the protection needed.

The Bossi-Fini law, like the Martelli law and Turco-Napolitano law, was an immigration law, but also contained some provisions regulating the right to asylum. It was put forward by members of the Northern League and of the right-wing party Alleanza Nazionale, during the Berlusconi government, in 2002 (International Organization for Migration 2012). While being very restrictive on immigration policies, for what concerns asylum the Bossi-Fini law did introduce new provisions.

The Bossi-Fini law modified some procedures that had been previously established by the Martelli law and, most importantly, introduced another kind of protection different from the refugee status and from the humanitarian permit to stay, known as subsidiary protection. Subsidiary protection was established in order to guarantee the security of those people who are escaping from civil wars, foreign occupations and situations of extreme and generalized violence (United Nations. United Nations High Commissioner for Refugees, 2010a). This kind of protection was not contemplated in the previous legislation on asylum, which had resulted in major troubles for Italy in hosting thousands of people from former Yugoslavia escaping from war, for example.

In order to have a complete overview of the law here discussed, I shall briefly summarize the main contents. The Bossi-Fini law modified the Martelli law eliminating article 1 (7), where it was stated that further and more complete legislation on asylum was needed; furthermore, the new law added many other articles to the previous one. For example, it established that asylum seekers cannot be detained for the only purpose of waiting until his or her claim of asylum is verified; however detention might occur in the

following cases: a) in order to verify the person's identity, in case there is no documentation, b) in order to verify the grounds of the asylum claim in case evidence is not immediately available (article 1-bis (1)). On the other hand, detention was compulsory if the asylum seeker is in a situation of illegal stay in the Italian territory or if he or she has received an expulsion order (article 1-bis(2)). The detention previously discussed takes place in centres of identification and UNHCR personnel is allowed to enter the facilities (article 1-bis(3)). In the case discussed in article 1-bis (1), there is the possibility to start a simplified procedure for status determination: 'On receipt of an asylum application, the head of the local police headquarters sends the relevant documents within two days to the Territorial Eligibility Commission, which will interview the asylum seeker within 15 days. The Territorial Commission takes the decision within the following three days. [...] The Territorial Commission can take three different decisions in both procedures: recognition of refugee status; rejection of refugee status; recognition of subsidiary protection.' (United Nations. United Nations High Commissioner for Refugees. La Legge 'Bossi-Fini')

Another important novelty is the fact that specific territorial commissions are established, and they have to be in charge of determining the status of refugee (article 1-quater). Furthermore, the Bossi-Fini law establishes a National Fund for policies and services of asylum -article 1-septies- and a National Commission for the Right to Asylum -article 1-quinquies- (United Nations. United Nations High Commissioner for Refugees. La Legge 'Bossi-Fini').

By 2002, therefore, not only did Italy not have an organic legislation on asylum, but the laws passed only covered some specific aspects of the issue of asylum. This lack of regulation of the right to asylum has been partly solved by the application of European

Union Council Directives that were trying to harmonize the asylum systems of the member states.

To conclude, the Italian legislation on asylum dates back to the Italian Constitution. Since then, the Constitutional Assembly pushed to allow refugee protection to a very large spectrum of people, but left the door open for future restrictions in case of mass influxes of people. It is in this context that we have the first reference to a different legislative approach towards pure refugees and the so called 'displaced persons'. However, when the Geneva Convention relating to the status of refugee and its New York Protocol were ratified, the number of people that could apply for asylum was substantially reduced because of the stricter criteria for eligibility that the Convention applied. The asylum law in Italy was not modified until 1990, when the Martelli law was approved. The Martelli law introduced some procedural innovations, but it left the issue of protection untouched; the Martelli law also highlighted the need to discuss and create a new and more complex law that could discipline the issue of asylum. In 1998 the Turco-Napolitano law introduced humanitarian protection; while the Bossi-Fini law in 2002 introduced another form of subsidiary protection. In light of the events that occurred in the previous decade and of the inadequacy of the Italian asylum system to deal with the mass influx of Albanians from Former Yugoslavia, the Turco-Napolitano law and the Bossi-Fini law introduced alternative forms of protection, to be guaranteed to those people who were escaping from situations of war or endemic violence. The Bossi-Fini law is the last law regulating asylum elaborated by the Italian Parliament.

4 The Italian Response to the Albanian Crisis

The 1990s were a period of great political chaos and turmoil in the Balkan region, and this situation inevitably affected Italy too, mainly because of its geographical position. The waves of migrants that reached Italy during that decade were not homogeneous at all: although there were flows of people coming to Italy during the entire decade, the places they were coming from and consequently the reasons why they were escaping were completely different. The first challenge that Italy had to face consisted of the masses of people escaping from Albania in the early 1990s and again in 1997. Even these two flows involved people from different nationalities, and were faced by the Italian government in different ways. This chapter is going to analyze the different nature of the flows described above, and the ways in which they challenged the Italian asylum system.

Italy had been, for most of its history as a unified country, a land of emigration and this was one of the reasons why it was unprepared to receive the large number of people that reached the country during the 1990s. The first real migration crisis that the country had to face was the one involving thousands of Albanians escaping from their homeland and seeking refuge in Italy. As we will see later in this chapter, the inadequacy of the Italian response to the Albanian crisis was both practical and legislative.

The first exodus: 1990-1991

Between the last years of the 1980s and the first years of the 1990s Albania was experiencing a harsh transition from a communist regime to a democracy. When in 1985 the dictator Enver Hoxha died, Ramiz Alia took his place and inherited a country exhausted by poverty and hunger. Alia decided to start reforming the economic, social and political systems of Albania in order to prevent the country from ultimately collapsing (Del Re, 1999). In 1990 people started being suspicious about the new regime, fearing that Alia would not perform the liberalizations that were announced (Fringuello, 2010c). The crucial point was perhaps the prohibition on freedom of movement outside the boundaries of Albania that was in practice during the previous regime, meaning that leaving the country illegally (without a permit that was almost impossible to obtain) was a crime punishable with imprisonment and forced labor for a minimum duration of 10 years (Fringuello, 2010c). In May 1990 these provisions were abolished, and leaving the country illegally became a simple crime; however, many Albanians were scared of the transition and feared that the authorities were not truly willing to open the country to real democracy (Fringuello, 2010c).

Because of this fear, and looking for a more drastic change, in the spring of 1990 thousands of Albanians sought refuge in foreign embassies; people were also very concerned by the political instability that affected the country and by the spreading poverty (Del Re 1999). Because of these precarious conditions, Albanians also started leaving the country heading to Greece (Del Re 1999), to Italy, France and Germany (Fringuello 2010c). Since Italy still considered the Albanian government a communist regime, people of Albanian nationality seeking refuge in Italy were granted asylum and their refugee status was automatically recognized (Fringuello 2010c). Because the

transition was not really over, Albanians were automatically considered Convention refugees, and were granted asylum as provided by the Martelli law.

When in March 1991 multiparty elections took place, the rest of the world considered this a fundamental and remarkable element proving that a real transition to democracy was taking place (Del Re, 1999). However, in reality, the change toward democracy was harder than expected. The elections were won by the Labor party once again and there were several allegations of election rigging (Szajkowski, 1992); furthermore, Alia was re-elected president, and for sure this represented an element of continuation with the past communist regime. After the March elections, masses of people decided to leave Albania and many of them chose Italy as their destination.

At this regard it is important to point out that two factors mainly contributed to making Italy the major target of these influxes. The first was, inevitably, a geographical factor: Albania is very close to the Italian Adriatic coast, particularly to Puglia. However, along with the geographical distance, the cultural factor played a fundamental role in their choice. Since it was possible to watch some Italian television channels in Albania, Albanian people knew Italian culture and sometimes even the language, and perceived Italy as a place where their dreams and hopes could come true, as a safe haven (Fringuello, 2010c). However, the Italian response to the Albanian crisis created a sort of disillusionment among Albanians, who realized that Italy was very different from what they had expected.

The attitude of the Italian government toward the fluxes of Albanian people changed over time. In 1990, according to the statistics of the Ministry of Interior, the majority of Albanians who had filed asylum claims were granted asylum: over 825 asylum requests, of which 567 were accepted (Commissione nazionale per il diritto

d'asilo, 2011). As recalled before, the reason why most Albanians were eligible for refugee status was the fact that at that time Albania was still referred to by the rest of the world as a communist regime.

However, by 1991 the situation had changed. Formally speaking, the communist regime was over and elections were held; in reality, the transition was still in doubt and people lived in a situation of political and economic instability and insecurity. This was the reason why 1991 was the year in which tens of thousands of Albanians fled to Italy seeking for refuge.

The journey engaged by Albanians in order to reach Italy had distinctive characteristics: it was a relatively short way (but still dangerous), little boats were used in order to cross the sea and they were usually overcrowded (Hein 2010). The number of boat people that reached Italy in 1991 was very large; furthermore, the number of Albanian asylum seekers was remarkably higher than the year before. In 1991 alone, 18.898 asylum claims were filed by people of Albanian nationality (Commissione nazionale per il diritto d'asilo, 2011), compared to the 825 claims filed in 1990.

What made the situation even worse was the fact that Italian authorities were definitely not prepared to receive what was later defined by the Italian press as the 'Albanian invasion' (Hein 2010, p. 48). This does not simply mean that there were not the facilities to receive these people after a dangerous journey (Hein 2010), but the asylum system itself was inadequate for the emergency. The Martelli law, indeed, was basically granting protection exclusively to Convention refugees, namely those who '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' (United Nations. United Nations High Commissioner for Refugees, 2010b). This definition did not apply to the mass of Albanians reaching Italy in the 1990s, who were not escaping from persecution but from a situation of extreme political and economic instability and endemic insecurity. The Italian legislative framework did not grant an alternative status for people not eligible for the refugee status but still in need of protection. This problem occurred during the 1990s not only for Albanians escaping from violence, insecurity and instability, but also people from former Yugoslavia and from Kosovo who feared to return to a country destroyed by the war and by the repression of entire ethnicities (Hein 2010). Most of these people, after filing asylum claims, were not granted asylum because legally speaking they were not Convention refugees (Hein 2010). As Hein reports, what was missing was the element of specific and individual persecution; a further argument, then, was the fact that giving asylum to an Albanian asylum seeker – for example – because he or she did not feel safe in Albania would mean that, in theory, the *entire* Albanian population would be eligible for asylum (Hein 2010, emphasis added).

The Italian government was therefore facing a dilemma: granting asylum to people who were not eligible for it, or pushing back thousands of people to a place where they were unsafe. Actually, neither of these options was really practicable, and the response of the administrations toward this issue definitely changed with time. As we have seen, in 1990 many Albanians were granted asylum; however, this trend changed in 1991, when out of 18.898 asylum claims filed by Albanians, only 1028 were accepted (Commissione nazionale per il diritto d'asilo, 2012).

In 1991 there were two major exoduses of Albanians to Italy: the first one in February-March, the second in August. The first exodus began on February 9, when 10,000 people, coming from different parts of Albania, gathered in the port of Durazzo in order to leave for Italy (Mehillaj). Almost one month later, in the Italian ports of Brindisi, Bari and Otranto 27,708 Albanians arrived on boats (Mehillaj). Mehillaj reports that the Italian public opinion reacted with strong solidarity toward the thousands of people that were landing in desperate conditions on the Italian shores; furthermore, there was some embarrassment due to the fact that it was practically impossible to guarantee asylum to these people since they were not eligible for it (Mehillaj). Because of this situation, several ships (among others the Tirana, with 3,500 people on board, and the Lirjia carrying 3,000 Albanians) were stuck in the Brindisi port waiting for the government to decide whether to allow people to land or not (Mehillaj). Largely unprepared for the emergency, the Italian government decided to allow Albanians to land and issued an *ad hoc* law in order to temporarily solve the issue.

The adoption of an *ad hoc* law (usually an emergency decree) that could fill the vacuum of the Italian legislation on asylum was subsequently repeated during the 1990s in case of extraordinary mass influxes, and this practice, in theory, has only been replaced with the reception of the Council Directive 2001/55/EC of 20 July 2001 *on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof* (see chapter). Usually, these *ad hoc* laws are designed specifically for emergency situations – that means, it could be applied to Albanians in 1991 but it was not valid for people escaping from former Yugoslavia in 1995. The adoption of *ad hoc* decrees attempts to solve the

immediate emergency but does not provide a long-term solution with the establishment of an alternative status to the one of Convention refugees. Also, it is usually a temporarily solution, which means that it grants protection for a limited amount of time, after which the person owing the temporary permit has to go back to his or her country of origin.

On March 14, 1991 the Italian Ministry of Interior issued the Circolare n.19/91 relating to the issue of the Albanian citizens who entered Italy illegally, providing them with a temporary visa for the duration of one year (Mehillaj). Furthermore, on April 15, 1991, a second *ad hoc* measure was adopted, issuing the suspension of the current immigration legislation and providing Albanians with the possibility to obtain a visa if they found a regular job.

As the influxes were constantly increasing, the Italian government started adopting more restrictive requirements for the entrance of foreigners in the country: from the first months of 1991 those who wished to come to Italy were required to show a letter of invitation written by a person who was already resident in Italy, and this procedure was further restricted in the following months (Fringuello 2010c). This constantly restrictive trend also applied to the decision of the Italian government regarding the fate of those Albanians who were denied refugee status: on one hand, indeed, we can see that most of the Albanians who were denied asylum during the first months of 1991 stayed in the Italian territory, started looking for a job and eventually well integrated (Fringuello 2010c), mainly because of the *ad hoc* measures adopted by the Italian government and because of the favorable opinion of Italians. On the other hand, after the first waves of March, the respons of the government and of public opinion drastically changed.

In August 1991 there was an exodus even bigger than the one which occurred in March of the same year. On August 8, the Albanian ship Vlora carrying 20,000 people

reached the Italian coast (Mehillaj). This time, however, the response of the government and the reaction of the public opinion changed drastically. Italians started looking at Albanians as a threat, not as people escaping from violence, disorder and extreme poverty. That feeling of solidarity was now missing. The government itself adopted very harsh measures in order to stop the influxes of Albanians. The Italian Minister of Immigration Margherita Boniver decided to engage the Italian navy in intercepting and sending back all the boats carrying Albanians that were trying to reach the Italian coast, and this measure was also part of an agreement between the Italian and the Albanian government carried out during those months (Fringuello 2010c). Furthermore, those Albanians who managed to reach Italy, with no exceptions, had to be sent back (Fringuello 2010c). The idea behind this measure was to keep the Albanians in Albania and in the meanwhile to solve the problems of that country through humanitarian and economic aid, with the establishment of 'Operation Pelican' lead by Italy itself (Mehillaj). Even the Albanian government strongly supported both the patrol and the military-humanitarian mission: the head of the coalition government, Bakhmin Fino, stated that 'Italy should patrol the entire Adriatic to stop this exodus because Albania's problems have to be resolved by the Albanians themselves in Albania' (Perlmutter, 1998 p.208). To this regard it is also important to add that according to the Italian government, between February and March 1991, Alia was pushing people to leave Albania in order to attract the attention of the international community and obtain economic aid (Mehillaj).

The patrolling of the Italian Adriatic coast continued for years, and over time it attracted large criticism both in Italy and within the international community. The United Nations High Commission on Refugees was diffident toward this practice for two reasons: there was no certainty that, first of all, refugee claims would be heard, and

second, that the principle of non refoulement would be respected (Perlmutter 1998). Off-shore interdiction is commonly listed as one of the methods that states use in order to limit or deny access to asylum to potential refugees (Price 2009). Nongovernmental organizations too, like Amnesty International, criticized the Italian government for adopting this kind of measure (Perlmutter 1998). Not only did the Italian legislation on asylum not guarantee any kind of protection to the Albanians escaping from disorders, poverty and violence, but the measures adopted by the government were also preventing those who wanted to file asylum claims.

In August, the Italian government was no longer willing to compromise as it had some months before, and unfortunately the situation worsened soon. Perlmutter reports that ‘the treatment of Italian refugees in 1991 had also drawn criticism from the United Nations and human rights groups for not allowing asylum claims and for the ways in which they were housed when they arrived’ (Perlmutter 1998, p.208). In this context something occurred that later turned into a real symbol of indifference and cruelty: more than 20,000 Albanians who had just landed on the Italian shores were brought to the old Vittoria Stadium in Bari, kept there with no water nor food, and later forcibly repatriated (Fringuello 2010c). The stadium was turned into a ghetto, where undesirable people were gathered and forced to stay in inhuman conditions. The situation was so dramatic that according Pittau and Reggio, the events of the Vittoria Stadium were reminiscent of Pinochet’s Chile (Pittau and Reggio, 1992). What occurred at the Vittoria Stadium showed a country unprepared for what it was going through and paralyzed by fear.

The great calm: from 1992 to 1995

After 1991, the mass influxes from Albania decreased drastically. Albanians, indeed, slowly reached better standards of living and the country was in a moment of great euphoria (Del Re 1999). In March 1992 new elections were held and the newly founded Democratic Party won more than 60% of the votes (Del Re 1999). The new president of the Albanian Republic, Sali Berisha, ordered the arrest and imprisonment of part of the *nomenklatura* and the leaders of the former regime; in this way, he wanted to demonstrate a strong rupture with the past regime – even if part of his government, including himself, had had important roles in the Alia regime (Del Re 1999). The initial euphoria did not last for a long time; although soon some conflicts between the three main religious groups of the country, Muslims, Catholics and Orthodox, emerged (Del Re 1999). Also, the transition from communism to a market economy was not easy at all, and soon corruption invaded all levels of society (Del Re 1999). The situation was worsened by the fact that the privatization of properties was coordinated by the state and employees had very low salaries that could not compete with the increasingly high costs of living (Del Re 1999). The discontent of the population was worsened by the increasing unemployment and poverty, and eventually led to the refusal to approve a new constitution in a referendum that was held in November 1994, when 80% of the voting population rejected what the new government proposed (Del Re 1999).

From 1995, new signs of authoritarianism emerged. President Berisha was granted larger powers, and launched an anti-corruption campaign that, according to some, turned the Albanian republic into a ‘democratic dictatorship’ (Del Re 1999 p.57).

1997: the Albanian Crisis

The increasing authoritarianism of the president was not the only cause of the crisis that broke out in Albania in 1997. During the spring, indeed, pyramidal schemes failed, leading to chaos and mass departures. When, since 1992, the government had tried to boost the economy, many financial institutions were created, including the so-called pyramidal companies, which saved public money and had very high interest rates (Fringuello 2010c). A very large number of Albanians invested in these companies and consequently lost all of their money when, in January 1997, the majority of these pyramidal companies failed (Fringuello 2010c). The population reacted dramatically and started protesting. The president of the Republic, Berisha, was accused of supporting these companies and not protecting the population from the risks they were facing: a furious revolt started from the south of the country and soon spread to the north (Del Re 1999). The country was taken by chaos and violence: around 2,000 people were killed during the fights between protesters and the police (Fringuello 2010c).

In this situation, thousands of people left Albania and landed on Italian shores seeking refuge. In only six days, 16,619 Albanians crossed the sea and reached Puglia (Perlmutter 1998). However, the Italian response to the Albanian crisis was definitely an aggressive one: Italy kept patrolling the coast in order to prevent Albanians from landing. Furthermore, in March 1997, while the Albanian government was closing the Tirana airport and the ports in Durazzo, Valona and Saranda making it almost impossible for people to leave, Italy signed an agreement with Albania that stated that in exchange for humanitarian aid, the Italian government had the right to implement a naval blockade in international waters, the so-called 'white flags operation' (Fringuello 2010c). Again, the Italian government was criticized for breaching international refugee law by violating the

principle of non-refoulement (Fringuello 2010c). Also, the CIR – the Italian Council for Refugees - strongly asked the Italian government to provide a new form of protection for the Albanians coming to Italy, since once again they were not eligible for the refugee status (Fringuello 2010c).

On March 20, 1997, the Italian government issued an emergency law *ad hoc* for the Albanian population. The Decree n.60 of March 20, 1997 held that extraordinary measures were necessary in order to face the massive arrival of Albanians to Italy; the most important of these measures was the establishment of temporary protection for foreigners who feared that their personal safety was in danger because of the events occurring in their homeland (Italy 1997). The decree also established the duration of the protection: the temporary permit to stay was valid for 60 days, and could be extended for a maximum of 90 days. Also, as soon as the conditions in Albania got better, the permit would not be valid anymore (Italy 1997). The adoption of this measure demonstrated the necessity to actually guarantee to those people a form of protection; however, just like in 1991, this provision was temporary.

The Italian government also established new facilities for the reception and assistance of Albanians, and programs for integration, schooling and voluntary repatriation were developed (Fringuello 2010c). Meanwhile, the naval blockade was still in place. On March 28, the Albanian ship *Kater i Rades* sank, after colliding with the Italian Army ship *Sibilla*. More than a hundred people were on board the Albanian ship, of which only 37 survived (Fringuello 2010c). This tragedy, however, did not lead to a change in the Italian policy: the patrolling continued, and this time even closer to the Albanian coasts (Perlmutter 1998).

In November 1997, a directive issued by the government decided the repatriation of all Albanians present on the Italian territory that had arrived after March 1 of the same year, and by the 30th of the same month, all the centres of reception and assistance were closed (Fringuello 2010c). The emergency was officially over.

Final Considerations

One important issue to consider when speaking of the Italian response to the Albanian crisis of the 1990s is the view of public opinion toward what was happening. There was a general feeling of fear toward those masses of people that were perceived as slowly *invading* the country. As Perlmutter puts it, ‘What has happened can best be described as the criminalization of the Albanian refugee. [...] Albanians had become identified with a particularly brutal form of prostitution, in which any resistance is met with physical retribution’ (Perlmutter 1998 p.212). Also, they were perceived as lazy, not willing to work and lacking initiative; they represented the ‘earlier, poorer, more barbaric version of Italians’ (Perlmutter 1998 p.212). Also, both the mass media and politicians tended to highlight crimes committed by Albanians, making the population even more socially excluded within the Italian society (Fringuello 2010c).

This criminalization of Albanians had two main consequences: on one hand, it directly caused a lack of solidarity from many common people. Many might recall the statement of an Italian Northern League Member of Parliament, Irene Pivetti, who, the day before the Albanian ship sank in 1997, said that the Albanian displaced persons had to be thrown in the sea (Mehillaj). These words show the complete indifference that many Italians had toward the tragedy of Albanians in need of protection. Of course, the direct consequence of this attitude was the fact that the government did not have any

incentive to implement policies that actually welcomed Albanians and guaranteed full protection and integration. As public opinion was skeptical and reluctant to let Albanians in, so was the government.

The second and last consideration refers to the emergency decrees that were adopted by the Italian government in 1991 and in 1997 in order to face the emergency. They were *ad hoc* provisions, created specifically for people of one nationality, that automatically excluded any other population. As said before, the adoption of *ad hoc* laws is only a temporary solution; it acknowledges that there is a vacuum in the Italian legislative framework, but it does not provide a long-term solution that applies for people of all nationalities.

5 The Italian Response to the Crisis of Yugoslavia

During the 1990s, the Italian asylum system was not only challenged by the Albanian crisis of 1991 and 1997. Indeed, this was a period of turmoil, wars and displacement in the entire Balkan region. Apart from the events which occurred in Albania, that have been already discussed in the previous chapter, the Federal Republic of Yugoslavia experienced traumatic conflicts, mass displacement, ethnic cleansing that eventually led to the dissolution of Yugoslavia itself (United Nations. International Criminal Tribunal for the former Yugoslavia). The main consequence of the conflict, for Italy, is without any doubt related to the masses of displaced persons who fled from Yugoslavia and sought refuge in Italian territory. A similar situation occurred in Kosovo in 1999, when the main destination for people escaping from Serbian ethnic cleansing was, once again, Italy. This chapter will also discuss the case of Roma from Yugoslavia and Kosovo who, after fleeing to Italy, were often subjected to discrimination and denied protection (Hein 2010).

It is again important to highlight the fact that Italy, which had barely been a country of immigration, was suddenly *invaded* (as many newspapers suggested) by masses of people that it was not ready to receive. As this chapter will suggest, the Italian response to the emergencies that it had to face were sometimes inadequate, from both a practical and legislative point of view: on one hand there were no facilities nor plans to receive the people in need of protection; on the other the asylum system as conceived by the Martelli law did not provide for any form of alternative protection applicable to

people from Yugoslavia and Kosovo – but also from Albania. This chapter is going to analyze comprehensively the response of the Italian governments to the Yugoslav and Kosovo crises and to conclude whether the measures adopted were adequate or not and, if not, what were the consequences.

The Yugoslav crisis

The emergence of nationalism

After World War II, Tito created in the Federal Republic of Yugoslavia an environment in which all the different nationalities had the same weight, and none could outweigh the others. As Bennett reports, ‘No nation would be allowed to dominate the Federal People’s Republic of Yugoslavia the way that Serbs had dominated the first Yugoslavia incarnation. Communist Yugoslavism was hostile to all the parochial nationalism of the peoples of Yugoslavia, while attempting to cultivate multinational and thoroughly Yugoslav patriotism’ (Bennett 1995, p. 54). However, when in May 1980 Tito died, the country did not only lose its leader, but also the person who had guaranteed until that moment the harmony and stability of the region. From that moment, indeed, nationalism emerged and in particular ethno-nationalist politicians entered the scene; most notably, Slobodan Milosevic in Serbia and Franjo Tudjman in Croatia (Jones 2006). Tudjman was the nationalist leader of Croatia who, in continuation and revival of the fascist Ustashe regime, allowed and, according to Jones, contributed to, a harassment campaign that was carried out against the Serbian population of Krajina (Jones 2006); Milosevic, who became president of Serbia in 1987, also had a strong nationalist agenda (Milosevic 1997). Milosevic, in particular, relied on the ‘allegedly self-evident, justified, and painful grievance of the Serbs, now victims in the heart of their own ancestral land, denied by Albanians their historic right to live where they belonged’ (Milosevic 1997, p.

110). The reference was to the Serbian province of Kosovo, where the majority of the population was Albanian. As Jones reports, ‘in 1989, Serbs initiated a repressive drive in Kosovo that ended the province’s autonomy within Serbia [and] threw tens of thousands of ethnic Albanians out of their jobs’ (Jones 2006, p. 214). Both Milosevic and Tudjman based their nationalist feeling upon a sense of revenge for the injustices and discriminations that their people were subjected to until that moment.

At the beginning of the 1990s, the emergence of a wide economic crisis in the entire Federal Republic and the birth of strong nationalist movements in the federate states fueled claims for more powers and autonomy, and sometimes even independence (Fringuello 2010a). In particular, Serbia was accusing Slovenia and Croatia of wanting secession, while Slovenia and Croatia themselves blamed Serbia for attempting to dominate the entire federation (Fringuello 2010a).

The Yugoslav Wars of the 1990s

On June 25, 1991, Slovenia declared its independence from the Federal Republic of Yugoslavia (Fringuello 2010a). The declaration of secession was followed by an intervention of the Yugoslav People’s Army (JNA); however, Slovenian forces won the brief conflict, also known as the Ten-Day War (United Nations. International Criminal Tribunal for the former Yugoslavia). Croatia declared its independence on the same day Slovenia did; however, this time the war that followed was bloody and long (United Nations. International Criminal Tribunal for the former Yugoslavia). As Croatia declared secession, its Serb national minority did not recognize the new state and claimed that Serbs wanted to remain part of the Yugoslav federation (Fringuello 2010a). A five year long war followed, in which the Serb minorities, supported by Serbia and by the JNA, managed to take control of almost one third of the Croatian territory and declared it to be

an independent Serb state (United Nations. International Criminal Tribunal for the former Yugoslavia). Despite a cease-fire in 1992 and the deployment of a United Nations peacekeeping operation, the UNPROF, the conflict continued until 1995, when Croatia managed to re-take possession of its entire territory (Fringuello 2010a). As stated before, this conflict was not only not as short as the Slovenian one, but it was also more violent and brutal. According to the International Criminal Tribunal for the former Yugoslavia, major crimes against humanity and war crimes were committed by the Croatian forces, especially during the last offensive of 1995, with which Croatia re-conquered part of its territory (the operation is referred to as Operation Storm) (United Nations. International Criminal Tribunal for the former Yugoslavia).

While Croatia was trying to re-obtain under its control the region that the Serbs had conquered, another major conflict exploded in Yugoslavia, perhaps the deadliest of all. Bosnia and Herzegovina was in the heart of the Yugoslav confederation, and its population was extremely heterogeneous: it was made up of 43% Bosnian Muslims, 33% Bosnian Serbs, 17% Bosnian Croats and the remaining percentage of other nationalities (United Nations. International Criminal Tribunal for the former Yugoslavia). As it happened in Croatia and Slovenia, what triggered the third conflict was a claim for independence. In March 1992, the 60 % of the people of Bosnia and Herzegovina voted for independence in a referendum that, however, was boycotted by the Serbian minority (United Nations. International Criminal Tribunal for the former Yugoslavia). One month later the Serbs, just like they did in Croatia, declared the territories under their control to be an independent Serb republic: the war exploded, and the Serb minority was once again supported by Serbia and the JNA (United Nations. International Criminal Tribunal for the former Yugoslavia). While the Serb military forces took control of more than half of the

Bosnian territory, the Croat minority followed the trend and declared its independence from Bosnia, with the support of Croatia (Fringuello 2010a). In February 1992, the UN forces UNPROF were deployed in order to guarantee peace and stability (Fringuello 2010a); however, their presence did not prevent violence from spreading. Fights between Muslims, Croats and Serbs for control over Bosnia caused massacres and mass exoduses of people who felt that they were not safe anymore in their homes. Acts of violence were committed by all forces; however, the Serb government outweighed the measures enforced by its counterparts, planning and carrying out what is referred to as ethnic cleansing (Jones 2006). Serb forces carried out mass executions of (mainly) Muslim boys and men (this practice is referred to as gendercide) and widely practiced the rape of Muslim women: as Jones underlines, ‘ it was in the Bosnian context that the term “genocidal rape” was minted, stressing the centrality of sexual assaults of women to the broader campaign of “cleansing”’ (Jones 2006, p.218). The deployment of UN forces, as stated before, did not help the situation in any way: the ICTY states that ‘The single worst atrocity of the war occurred in the summer of 1995 when the Bosnian town of Srebrenica, a UN-declared safe area, came under attack by forces lead by the Bosnian Serb commander Ratko Mladić. During a few days in early July, more than 8,000 Bosnian Muslim men and boys were executed by Serb forces in an act of genocide. The rest of the town’s women and children were driven out.’ (United Nations. International Criminal Tribunal for the former Yugoslavia). It the end of 1995, in Dayton, US, a cease-fire was declared and the an agreement was found in declaring the sovereignty of two separate states, the Serb Republic of Bosnia Herzegovina and the Federation of Bosnia and Herzegovina (Fringuello 2010a.). The war was officially over.

The exodus from Yugoslavia: the Italian response

After the breakup of Yugoslavia Italy was, for Yugoslavians who were fleeing their homes, the main destination after Germany - where there was already a large community from Yugoslavia settled there between the 1870s and 1980s (Hein 2010). For many of them, then, Italy was not a final destination but a country of transit that would have allowed them to move to any other country in Europe (Hein 2010).

The number of people who had to flee from Yugoslavia in the first half of the 1990s was very high: the UNHCR reports that, referring exclusively to Croatia or Croatian nationals, in the 5 years of the civil war 900,000 Croats of all the ethnicities fled, 70,000 Serbs living in Croatia sought refuge in the Serbian territory, 900,000 Croats were displaced (United Nations. United Nations High Commissioner for Refugees). The UNHCR also reports that the conflict in Bosnia and Herzegovina displaced around 2,2 million people, of which 1,2 million fled outside Yugoslavia, seeking international protection; the remaining million people were internally displaced persons (IDPs) (United Nations. United Nations High Commissioner for Refugees).

Fringuello claims that, mainly because of the geographic proximity, more than 80,000 people from October 1991 to 1996 left Croatia, Bosnia Herzegovina, Serbia and Macedonia for Italy (Fringuello 2010a). The Italian administration was now facing a situation similar to the one that occurred with the Albanian exodus a few months before. Although, as we will point out later, the two episodes are very different one from the other, the problem for Italy was the same: asylum seekers from Yugoslavia, just like asylum seekers from Albania, were not eligible for the status of refugee. According to the National Commission for the Right to Asylum, only 10 Yugoslavians over 18 obtained refugee status in 1993; 43 over 75 in 1994; 6 over 75 in 1995 (Commissione Nazionale

per il diritto d'asilo, 2012). The main reason why the status of the people from Yugoslavia did not comply with the one of the Convention of Geneva relating to the Status of Refugee is the fact that they were not individually persecuted; mainly, they were escaping from the warzones and from situations of endemic violence (Fringuello 2010a). Also, there was another element, this time more practical, that prevented the status of refugee from being applied to displaced persons from Yugoslavia: as said before, it was not an individual condition, but it possibly concerned an entire population. It would have been highly problematic to start asylum procedures for thousands of people at the same time, verify their eligibility and give a response in a relatively short period of time (Fringuello 2010a).

The people who were fleeing from Yugoslavia reached Italy not only by sea, like the Albanians did –and even in these cases most Yugoslavians did not face a journey in small and unsafe boats, but they used regular ferries; most of the times, they crossed the border with Slovenia (Fringuello 2010a). The international community did not take into consideration the possibility of evacuating the Yugoslavian population; instead, safe areas were established (like the unfortunate Srebrenica) and the evacuation of most of the people who fled was organized by local associations, or even groups of families that organized the arrival and reception of displaced persons from Yugoslavia (Fringuello 2010a, p. 129). Of the 80,000 people who fled to Italy from Yugoslavia, only 2,000 were accommodated in reception centers organized by the State (Hein 2010, p.58): as stated in the previous chapter, Italy had barely been a country of immigration before, and it lacked the essential facilities to guarantee the reception of such a large number of people in need.

All the other people were actually received and hosted by towns, local associations, churches and NGOs (Hein 2010). Among others, the CIR (Consiglio Italiano per i rifugiati) played a very important role in this situation. The CIR was created in 1990, with the support of the UNHCR, with the aim to create a system of reception, humanitarian and legal assistance to the people coming to Italy seeking protection, that could be complementary to the state system (Hein 2010).

The conflicts and the violence perpetrated in Yugoslavia were widely covered by the Italian media: every day newspapers, radio and television reported to the Italian people what was going on in the Western Balkans. The awareness of the Italian people of the atrocities committed against the Yugoslavian population created a strong feeling of sympathy and solidarity: in many towns people organized fund raisings in order to send humanitarian aid to Bosnia and Serbia, and even to bring groups of displaced persons to Italy (Hein 2010). As Hein from CIR underlines, Italians psychologically accepted the presence of thousands of de facto Yugoslav refugees in Italy, but they also actively participated in the reception: in this sense, civil society was doing what the state, for lack of experience and facilities, was not able to do (Hein 2010).

Hein holds that this feeling of compassion, that did not appear some months before when thousands of Albanians in need of protection reached Italy (see chapter 3), was generated by three main elements: first of all, the fact that a brutal conflict exploded in Yugoslavia that, geographically speaking, is very close to the Italian peninsula; second, the constant and large media coverage of the atrocities committed during the war; and last, the fact that the reasons why Yugoslavs were fleeing and seeking international protection were clear and evident to Italians (Hein 2010). Italians believed that Yugoslavs were genuine de facto refugees, and there was no fear that seeking protection

was an excuse for entering the country illegally to find a job or looking for better conditions, like other migrants.

A new *ad hoc* legislation

In part because of the emergency, in part because of the solidarity expressed by Italians, the government realized that it was urgent to draft a new piece of legislation that could provide protection to the displaced persons from Yugoslavia. This time, due to the nature of the conflict and the humanitarian crisis that was occurring in the republics of Yugoslavia, the temporary permit to stay (used with the Albanians) was not a solution. The government decided therefore to issue humanitarian permits to stay with a Circolare of the Minister of Interior of September 28, 1991; the permits to stay issued for humanitarian reasons were valid for three months, and they could be renewed when expired (Graziani 2006). The government then drafted another decree law (DL 350/92) that was converted into law (Legge 390/92) sixty days later, on September 24, 1992. The newly created law issued extraordinary measures in order to provide humanitarian assistance to the displaced persons from Yugoslavia: the law established the release of *nulla osta* with the validity of 60 days for the entrance into the Italian territory, with the possibility of renew it when expired (Italy 1992). In 1993, after numerous appeals by NGOs, the validity of the humanitarian permit to stay was extended to one year, and it would automatically renew until the conflict was officially over (Fringuello 2010a).

There were, however, some problems in applying the emergency law discussed above. For example, the law does not clarify who is eligible for the humanitarian permit to stay. It was only on April 14, 1994, that the President of the Council of Ministers issued a directive that specified whom the Italian government considered to be eligible for the permit to stay for humanitarian reasons (Fringuello 2010a). The directive stated

that the humanitarian permit to stay had to be provided to the citizens of former Yugoslavia who, because of war or situations of endemic violence, human rights violations and severe forms of discrimination caused by belonging to a specific ethnic or religious group, were forced to leave their home and properties (Graziani 2006). Special attention was given to deserters, conscientious objectors, unaccompanied minors, injured or sick people and their helpers, spouse, parents or children of Yugoslav citizens living in Italy, and refugees holding a *protection letter* issued by the UNHCR offices in former Yugoslavia (Fringuello 2010a). Those who did not match into any of these categories had the possibility to file an asylum claim to the Ministry of the Interior (Graziani 2006).

Furthermore, the law n.360/1992 did not specify what the procedures of entrance into the Italian territory were, and because of the lack of any indication to this regard, many displaced persons from Yugoslavia, after reaching the border between Italy and Slovenia, were sent back by the Italian forces (Hein 2010). It was only in 1995 that the Minister of the Interior issued a Circolare granting the possibility to enter Italy to most of the displaced persons from Yugoslavia (Hein 2010).

In July 1997, the Minister of the Interior revoked the recognition of the status of displaced persons for the people of former Yugoslavia because, according to the Italian government, since the conflict was over there was no ground for keeping a humanitarian channel open. However, citizens of the republics of former Yugoslavia could still file asylum claims and, if denied refugee status and if a serious risk for their lives was verified, they could still obtain a humanitarian permit to stay (Fringuello 2010a). Those displaced persons who had already obtained a humanitarian permit to stay had, instead, the possibility to renew it for one year (Fringuello 2010a). One year later, in August 1998, the humanitarian permit to stay was declared null by the Italian government, and

those displaced persons who were already in Italy or were planning to reach it, had three possibilities: file an asylum claim, ask for the conversion of the humanitarian permit to stay into a permit to stay for work related reasons, or into a permit to stay for humanitarian related reasons (Fringuello 2010a).

As a whole, Italy received around 80,000 displaced persons from former Yugoslavia; 70,000 of them obtained a humanitarian permit to stay, of which 57,000 between October 1991 and October 1995 only (Hein 2010). The measures of international protection applied by the Italian government were, again, ad hoc and temporary measures (like it was for Albanians and like, a few years later, it would be for Kosovar people). The ambiguity of some norms sometimes had serious consequences, like in the case of displaced persons from Yugoslavia who, at the Slovenian border, were sent back by the Italian forces (Hein 2010). The lack of facilities, instead, was balanced by the incredible efforts of the Italian civil society to guarantee assistance to the people of Yugoslavia (an element that was missing, however, in the Albanian crisis of 1991 and 1997).

Response to the Kosovo emergency

Historical background

The last phase of the period of instability and turmoil in the Balkans started with the explosion of war in the region of Kosovo, in the Republic of Serbia. The people living in this region mainly belonged to the Albanian ethnicity, and only a minority of the population was Serb (Fringuello 2010b). In Kosovo there had always been ethnic hostilities, mostly due to the fact that despite the Albanian majority, the region was considered by Belgrade as the heart of the Serb culture and identity (Fringuello 2010b).

During the rule of Tito, the Albanian majority obtained a certain level of autonomy, in 1967 first (Gustincich 1999), and in 1974 later, when the new Yugoslav Constitution provided Kosovo with the status of autonomous province (Fringuello 2010b). Despite the autonomy obtained, during the 1980s Albanians protested strongly against their condition, and pushed the central government to guarantee absolute autonomy to Kosovo, making it an independent republic (Gustincich 1999), just like all the other republics that were part of the Yugoslav Confederation.

However, apart from the strong desire of the Albanians of Kosovo to gain complete independence from Belgrade, there was another factor that worried Serbia. The Albanian population of Kosovo, indeed, was rapidly growing: by 1981, Kosovo Albanian women had had an average of 6 or 7 children each (Gustincich 1999). Furthermore, the average age of Albanians in Kosovo was 24, and the 52% of the population was above 19 years old (Gustincich 1999). Therefore, the Albanian population of Kosovo was extremely young and constantly growing in number. At the same time, the Serb population of Kosovo had decreased from 27% in 1945 to 15% in 1981 and to 9% in 1991 (Gustincich 1999). This demographic situation of Kosovo was of great concern for Serbia, which was strongly committed in keeping its strong influence in all parts of its territory.

The situation, however, became crucial after Milosevic came to power. In 1989, for instance, Milosevic revoked the autonomy (Fringuello 2010b) that Kosovo had obtained during the years of Tito's rule. Discriminatory laws against citizens of Albanian ethnicity were passed (Fringuello 2010b) and many Albanians were dismissed from the public administration (Gustincich 1999). In 1991, the New York Times reported: 'The Serbian republic's Parliament voted last month to abolish the Kosovo Academy of

Sciences and Arts. Three ethnic Albanian journalists were jailed. Close to 100,000 ethnic Albanian workers have been dismissed in Kosovo. About 400 ethnic Albanian faculty members have been dismissed from Kosovo University in Pristina, the region's capital' (Binder 1991).

The reaction of the Albanians of Kosovo soon exploded: in 1991 a referendum was launched by the clandestine government of Kosovo, and 99,87% of the people voted for independence from Serbia (Gustincich 1999). In the same article quoted above, Binder wrote in the New York Times that 'acting on the results of a referendum held in September, the Kosovo Republican Assembly met clandestinely on Oct. 19 and approved a measure declaring that the Republic of Kosovo is a sovereign and independent state' (Binder 1991). In 1992, Rugova was elected president of the new Kosova Republic, which however was not recognized as an independent entity by Belgrade (Gustincich 1999). In opposition to Rugova's position, that was fundamentally non-violent, in 1997 the UCK (Kosovo Liberation Army), was founded and started to plan and carry out attacks against Serbian forces, causing the strong reaction of the latter (Gustincich 1999). From this moment on, the interethnic hostilities that had been emerging in the Kosovo region exploded, and the Serb central government responded to the violence of the UCK with acts of repression of the Albanian population (Fringuello 2010b). The ethnic hatred toward the Albanians of Kosovo was fueled by the mass media: official television channels and radio divulged false information of abuses committed against the Serbs of Kosovo, including sexual abuses against Serb women (Fringuello 2010b). Between March and February 1998, the Serb forces attacked the Drenica valley, and officially started the war: the Serb and Yugoslav armies, led by Milosevic, started the ethnic cleansing of Kosovo, with the intent to kill or expel the Albanian majority (Fringuello

2010b). European countries initially agreed to send an observer team in order to monitor a first ceasefire between Serbia and the UCK; however, after both sides had committed violations of the cease-fire, the mass murder of dozens of Albanian Kosovar men in Racak on January 16, 1999, made any peaceful settlement of the dispute impossible to enact (Jones 2006). In March 1999 the Serb government launched, as Sell claims, ‘a massive campaign of ethnic cleansing, aimed not only at tipping the demographic balance in Belgrade’s favor but also – by driving hundreds of thousands of desperate Albanians over the border into the fragile neighboring states of Macedonia and Albania – at threatening the Western allies with the destabilization of the entire Balkan peninsula’ (Sell 2002). As a response, NATO took action against Serbia and started to bomb Serbian facilities throughout Yugoslavia. According to some scholars, the NATO bombing of Yugoslavia actually triggered a much more brutal and strong reaction by Milosevic (Jones 2006); just like in Bosnia, Milosevic carried out gendecidal killings in Kosovo (Jones 2006). In June 1999, also because of the political pressure of Russia (Jones 2006,), Serbia finally withdrew its forces and a UN mission was established in order to monitor the aftermath of the conflict (Fringuello 2010b).

Between 1998 and 1999, some 10,000 ethnic Albanians were killed and 800,000 were expelled to Albania and Macedonia, with the largest mass deportation of civilian population in decades (Jones 2006).

Italy and the Kosovar Albanian displaced persons

During the Kosovo war Italy was again one of the major targets for people seeking international protection. As for the Yugoslav displaced persons, sometimes Italy was not the final destination, but only the first step to reach another country in Europe (Fringuello 2010b). When the fluxes of Kosovar Albanians heading to Italy intensified,

their means were mainly little and unsafe boats with which they crossed the Adriatic sea in order to reach the coast of Puglia (Fringuello 2010b); to this extent the flows are similar to the ones of Albanians in 1991 and 1997, even though the reasons why these people were seeking protection and consequently their status was really different. When the NATO campaign was launched, the Italian government declared a status of emergency, foreseeing that it would lead to a massive exodus of people (Fringuello 2010b).

However, it was not clear in which way the Italian government was going to deal with the emergency. At first, the government supported the idea that Kosovar Albanians should be transferred to Italy where they could have international protection; this stance was also welcomed by NGOs, believing that it could obstruct the human smuggling and trafficking of Kosovar Albanians to the Italian shores, and also allow them to have a decent and safe journey (Fringuello 2010b). However, less than a month later, the Italian government drastically changed its position, and stated that Italy was going to provide humanitarian aid to Kosovars directly in the Balkan region: this solution would not have accomplished Milosevic's plan of ethnic cleansing (that also involved mass deportation of Albanians out of Kosovo), from an economic point of view, then, it was more convenient to help the refugees in a state close to Kosovo, and Albania had already agreed to reception displaced persons from Kosovo (Fringuello 2010b). Therefore, Italy launched the 'Operazione Arcobaleno', a fund raising operation that raised more than 67 million euro for humanitarian assistance of the Kosovar Albanians (Fringuello 2010b). This element shows that again the Italian population had a strong feeling of solidarity toward the peoples of Kosovo, just like during the Yugoslavia crisis.

In May 1999, however, the government had to change its stance once again, since the war was not coming to an end and people from Kosovo seeking protection were landing en masse on the Italian shores (Fringuello 2010b). Furthermore Macedonia was not granting protection to Kosovar Albanian displaced persons, and there was the risk of refoulement (Hein 2010). The UNHCR urged states to take action in favor of the Kosovar Albanians in need of protection, and Italy agreed to evacuate from Macedonia 5000 people and to house them in Italy in the former NATO base of Comiso, in Sicily (Hein 2010). As it happened years ago for the Yugoslav conflict, local associations, NGOs and groups of families or friends also organized the reception and the assistance to many of the displaced persons coming from Kosovo (Fringuello 2010b).

***Ad Hoc* legislation for Kosovar Albanians**

In May 1999, when the government agreed the evacuation from Macedonia, a decree was drafted in order to give temporary protection to the people of Kosovo (Fringuello 2010b). The decree (n.12/1999), was adopted according to the '*Testo Unico sull'immigrazione*' of 1998, that allowed the government to give temporary protection in case of severe humanitarian reasons, conflicts, natural calamities or other serious events in countries not belonging to the European Union (Graziani 2006). On May 27, then, a Circolare of the Minister of the Interior clarified the fact that temporary protection was provided only to the citizens of the Federal Republic of Yugoslavia who entered Italy starting from March 26, 1999 (Graziani 2006).

Many international organizations providing humanitarian assistance in Kosovo believed that Kosovar Albanians were eligible for refugee status according to the Geneva Convention; however, they welcomed the decision of the Italian government to guarantee

temporary protection because of the impossibility to verify the status of thousands of people in a short period of time (Fringuello 2010b).

Those who obtained temporary protection also had the right to be accommodated in a reception centre and to receive assistance (Fringuello 2010b). The Ministry of the Interior put the CIR in charge of organizing the reception, assistance to and integration of the people with temporary protection (Hein 2010b). Instead of what happened during the Albanian and the Yugoslav crisis, this time the displaced persons who obtained protection were also given the possibility to go to school in order to learn Italian, they had legal assistance so that they were aware of their rights, and they were guaranteed psychological assistance (Hein 2010). According to Hein, it was extremely important to find a way to really integrate those people into the Italian society and to give all the different kinds of assistance they needed (Hein 2010).

As we have seen, the way the Italian government dealt with the Kosovar crisis was more responsible, also because of the experiences with Albanians and Yugoslavians. This time, in particular, Italy was extremely efficient in providing assistance to the displaced persons of Kosovo. However, the initial ambiguity of the Italian position on how to deal with the crisis generated a delay in providing a legal status for those in need of international protection (Hein 2010). The decree and the ministerial Circolare were only drafted in May 1999, while the first Kosovars started landing in Italy in July 1998. Indeed, the Circolare specifies that only those who entered Italy after March 26 were eligible for temporary protection (Graziani 2010). The Kosovar displaced persons who landed in Italy before March 26 could file asylum claims; if the refugee status was denied, there was the possibility of repatriation to Albania, Macedonia, or even Kosovo (Hein 2010). In October 1998, a group of Kosovar Roma was deported from Italy to

Macedonia, which was going to send them back to Kosovo; at that point the CIR stepped in and urged the Italian government to respect the principle of non-refoulement (Hein 2010).

It is also important to highlight the fact that being the protection temporary, it was valid until the end of the war, when the respect of human rights and stability in Kosovo were accomplished. Indeed, starting from June 1999, the repatriation of all Kosovar Albanians to Kosovo began (Graziani 2010).

The case of Roma from Yugoslavia

The case of Roma people from Yugoslavia and Kosovo highlights the weaknesses of the system of international protection established by the Italian government.

During the 1990s Roma and Sinti from Macedonia, Serbia and Bosnia reached Italy seeking international protection. At the beginning they gathered in already settled communities of Roma in the peripheries of big cities like Rome, Naples, Turin, Florence, in 'nomad camps' where conditions were inhuman and sometimes these camps were located close to a river and therefore at risk of being inundated (Hein 2010). Most of the times Roma were not allowed to file for humanitarian protection and did not receive any kind of assistance (Hein 2010). A census carried out by the CIR revealed then that Roma who escaped from Yugoslavia were not *nomads*, but they had lived for decades in the same place during the rule of Tito, and only with the exploding of the conflict they were forced to leave (Hein 2010): why, then, were they excluded from international protection?

The ERRC, European Roma Rights Centre, sent various letters to the Italian authorities; in one of them, in 1997, the ERRC expressed its concern about the treatment

of approximately 50,000 ex-Yugoslav Roma that lived in Italy, stating that ‘the Roma concerned come predominantly from Republics of the former Yugoslavia, including Bosnia. The ERRC is aware that the situation of Roma all over the former Yugoslavia is presently precarious and believes that Roma have reason to fear discrimination and exclusion in the new states’ (European Roma Rights Centre 1997). The ERRC added that Roma were often targets of violence: ‘repeated violent attacks against Roma’ the ERRC stated ‘[...] underscores the fact that even areas not affected by the ethno-genocidal wars in Bosnia and Croatia, Roma run the risk of being subjected to ethnically motivated attacks’ (European Roma Rights Centre 1997).

A similar situation occurred with the war in Kosovo. In particular, starting from June 1999, when the conflict was over, repatriation of Kosovar Albanians began and in August the government announced that it was not going to guarantee temporary protection anymore (Graziani 2006 and Fringuello 2010b). At the same time, in Kosovo, reprisals of ethnic Albanians against Serbians and Roma (who were believed to support the Serbs), began, and this caused another exodus to Italy, this time mainly of Roma from Kosovo (Graziani 2006). However, Roma were not eligible for temporary protection because the conflict in Kosovo was over, and therefore there were no grounds for applying the decree of May 1999 and the following Circolare (that stated that temporary protection could be obtained until the end of the war) (Graziani 2006). Therefore, Roma from Kosovo were considered regular migrants, and they were subjected to repatriation and expulsion; this situation, however, was severely contested by the UNHCR, that stated that the situation of endemic violence existing against Roma in Kosovo made them eligible for international protection (Graziani 2006). The ERRC again urged the Italian government to guarantee protection to Roma from Kosovo, stating that their expulsion

from Italy would be ‘inhuman and degrading treatment in violation of article 3 of the European Convention of Human Rights (ECHR) as well as Article 7 of the International Covenant on Civil and Political Rights (ICCPR). [...] Since Roma as a group have been targeted for violent attack by ethnic Albanians and all Roma from Kosovo can demonstrate a well-founded fear of persecution in that province, they should be considered refugees in the sense of the 1951 Convention relating to the status of refugees’ (European Roma Rights Centre 1999).

Sigona (2003) suggests that the exclusion of Roma from any kind of protection and assistance in these two emergencies of the 1990s is due to the fact that Roma are generally considered to be *nomads* and thus cannot be refugees (although, as discussed above, most of them were not nomads at all. Furthermore, the old and deeply rooted stereotypes have strongly affected both the public opinion and public policy (Sigona 2003).

Sigona also reports the statement of an army General who, in July 1999, discussing about the influxes of displaced persons arriving from Kosovo, claimed: ‘On those boats there are bogus refugees who want to take advantage of our generosity. They pretend to be Kosovans but they are nomads!’ (Sigona 2003, p.74). The image of the Roma as liars, cheaters, is a deeply rooted prejudice in Italy (Sigona 2003). What is extremely important, however, is the way in which such prejudices can have a strong impact on policies and legislation. The French sociologist Liégeois claimed, on this purpose, that ‘Legislation, for its effects, contributes to feed and reinforce those aspects of the image [...] The law feeds itself with the image. The image helps to rationalize it. the image is, then, re-strengthened by it’ (Liégeois 1980, p.28).

The stereotypes against the Roma people were reflected on the policies of reception, assistance and protection that had to be guaranteed to Roma from Bosnia and Kosovo. The case of Roma shows not only how strong discrimination and prejudices still are, but above all it demonstrates that the lack of an organic law on asylum, and the consequential draft of *ad hoc* laws might lead to the risk of discrimination against people in need of protection and to a serious threat to the lives of these people in case of refoulement.

6 The Italian Response to the mass influxes from North Africa during the Arab Spring

The Italian asylum system was again challenged in 2011 by the mass influxes of North Africans following the Arab Spring. As with the emergencies of the 1990s, this one showed the strengths and weaknesses of the modified legislative system.

The Arab Spring

At the beginning of 2011, a series of revolts exploded in many North African and Middle Eastern states, generating what is known as the Arab Spring. Demonstrations took place in countries where citizens could not enjoy some basic and democratic rights. The first riots exploded in Tunisia in December 2010, despite the fact that Tunisia was considered one of the most stable and prosperous countries in the region (Witnesses Reporting Rioting in Tunisian Towns 2010). The revolt was triggered by the desperate act of a young Tunisian man, Mohamed Bouaziz, who set fire to himself 'in protest, after the police confiscated the fruit and vegetables he was selling from a street stall' (Witnesses Reporting Rioting in Tunisian Towns 2010). On December 29, seven days after the young Tunisian man committed suicide driven by desperation, Tunisia's leader Ben Ali announced that he was going to increase employment rates and at the same time act firmly against the 'minority of extremists and mercenaries who resort to violence and disorder' (Borger 2010). The main reasons behind the demonstrations were the extremely high unemployment and the lack of political and social reforms (Borger 2010);

however, these motivations must be added to the already precarious situation of the country. Many human rights organizations, among which Human Rights Watch, denounced strict censorship, lack of freedom of speech and of information; the organization also accused Ben Ali, who in 2009 was elected leader of Tunisia for the fifth time, of designing laws ‘to exclude outspoken opponents, and acts of intimidation and censorship against those authorized to challenge the incumbent’ (Human Rights Watch 2010).

Soon the uprisings spread through much of Northern Africa. In January protests broke out in Algeria against the high unemployment and the increase of food prices (Algerian riots resume over food prices 2011,) while in Tunisia the long-term leader Ben Ali decided to leave the country after weeks of unrest of the population asking for a regime change (Chrisafis & Black 2011). In Egypt, after 30 years of autocratic rule of Hosni Mubarak, protests broke out after a man set himself on fire, proving the Tunisian uprising to be really contagious (Jones 2011). People also started protesting in Yemen, Palestine, Jordan and Lebanon (Blight, Pulham, & Tropey, 2012), creating an almost unprecedented wave of unrest in the Arab world. The Egyptian leader Mubarak responded firmly to the uprising, brutally crushing any form of dissent and protest, as reported by the Guardian (Beaumont, Shenker, & Khalili 2011), but the reaction of the government did not prevent Egyptians from protesting, and even larger demonstrations took place in February in Tahir Square, in Cairo (Shenker, & Kahili, 2011). On February 11 , Mubarak announced his resignation, and a military government was appointed to govern the country (McGreal, & Shenker 2011). The following day, protests re-exploded in Algeria, where ‘Algerian police have beaten back around 2,000 demonstrators who tried to rally in central Algiers as aftershocks from the Egyptian revolution rumbled

throughout the Middle East' (Chulov 2011), while street clashes occurred in Yemen, Bahrain and Iran (Black 2011).

Finally, the wave of unrest arrived in Libya. In the eastern city of Benghazi, the police clashed with hundreds of anti-government protesters, and among the latter dozens were killed (Violence in Bahrain and Libya 2011). As the protest spread among other cities of Libya, Gaddafi continued firmly to repress any form of dissent, while the UN and the international community was calling for him to stop the violence against the civilian population (Blight, Pulham, & Tropey, 2012). A real civil war broke out between Gaddafi and the rebels, and the UN Security Council, on March 18th, passed a resolution issuing 'to take all necessary measures [...] to protect civilians and civilian populated areas under threat of attack' (United Nations. Security Council 2011). The war between the rebels, supported by NATO, and the forces led by Gaddafi continued until August, when the rebels arrived in Tripoli and took the power (Blight, Pulham, & Tropey 2012).

Protests continued in Syria, Egypt, and in other countries of the Arab world, and in the countries discussed above the transition to democracy was not very straightforward; however, since most of the mass influxes to Italy during the Arab Spring came from Tunisia and Libya, it is important to focus on the waves of people escaping from these two countries, and on what kind of protection were they granted once they arrived in Italy.

Response to the mass influxes

Reception: what went wrong

The Council of Europe reports that the first mass influx from North Africa arrived on January 29, and it was constituted mainly of Tunisians, even if, after a few weeks, the

influxes became more diversified and also included Libyans and Egyptians (Council of Europe 2011). On February 11, the CIR called upon the Italian government to re-open the facilities of Lampedusa for the reception of migrants and asylum seekers (Consiglio Italiano per i Rifugiati 2011). After the 2009 agreement with Libya, the number of migrants and asylum seekers landing on the Sicilian shores had decreased so much that there was no reason to keep the Centers of reception open (Council of Europe 2011).

The Treaty of Friendship, Partnership and Cooperation was signed by Italy and Libya in 2008, and it contained provisions against illegal migration to Italian shores (Amnesty International 2010). According to the treaty signed, Italian and Libyan forces would cooperate to intercept boats carrying migrants before they could reach Italy; however, this practice put at serious risk asylum seekers who did not have any form of access to asylum procedures (Amnesty International 2010), and eventually, in 2012, the European Court of Human Rights declared its illegitimacy. The Treaty, however, was extremely effective in decreasing the number of migrants arriving in Italy. AI reports a statement of the former Minister of the Interior Mr. Maroni, who stated that ‘the number of migrants arriving to Italian shores was reduced by 74 percent in 2009 compared to 2008’ (Amnesty International 2010).

Since the first turmoil exploded in Tunisia, however, waves of people started leaving the country to reach Italy: the CIR reports that in January alone, 25 boats carrying 245 people reached Lampedusa, which is half of all arrivals from Tunisia in 2010 (Consiglio Italiano per i Rifugiati 2011). Furthermore, Christopher Hein, the director of CIR, commented that ‘What has now being defined as a humanitarian emergency was perfectly foreseeable [...] it is known that sudden and deep change situations in

neighbouring countries provoke massive flights of refugees, displaced and migrants, as it already happened in the past in Albania, Bosnia and Kosovo” (Consiglio Italiano per i Rifugiati 2011). Again, just like in the situations mentioned before by Hein and already discussed in the previous chapters, Italy was largely unprepared to cope with the new mass influx from North Africa.

From the end of January, thousands of Tunisians arrived in Lampedusa, but since the reception centres were closed, they ‘ found themselves on the streets with no shelter from the rain and the low temperatures and in appalling conditions of hygiene’ (Council of Europe 2011). The Italian government, on one hand, was extremely slow in re-opening the facilities, and on the other did not immediately provide for the transfer of the foreigners to the mainland (Council of Europe 2011). Amnesty International called upon the Italian government to respect the rights of the migrants and to allow asylum seekers to file asylum claims, after the Minister of Foreign Affairs had suggested that Italy and other EU member states had to stop the mass influx of Tunisians and that the patrolling of Italian shores had to be strengthened (Amnesty International 2011a). AI also condemned the Italian Guardia di Finanza for opening fire against a vessel carrying Egyptian migrants and asylum seekers, asking for the Italian government to address a humanitarian issue with humanitarian measures, and not to return boats carrying migrants and asylum seekers from North Africa (Amnesty International 2011a).

The Council of Europe (2011) reports that at the end of March the situation in Lampedusa was almost unchanged, with around 3000 people sleeping on the docks and still stuck on the island, with no immediate possibility of being transferred . The AI delegation on the island found that, despite a reception centre finally being re-opened, thousands of people were left in the street, in inhuman conditions, and were not provided

with basic assistance, that is shelter, food, and medical treatment (Amnesty International 2011b). The transfer of people to the mainland was still slow, and the chaotic situation on the island, according to AI, jeopardized the possibility to file individual claims for asylum (Amnesty International 2011b). Furthermore, tension was high among Tunisians and people of other nationalities, especially because they had no clear understanding of what was happening (Amnesty International 2011b).

The situation in the Sicilian island did not improve in April, when Charlotte Phillips, from the International Secretariat of AI, argued that the humanitarian crisis in Lampedusa could and should have been avoided, adding the fact that thousands of foreigners were literally abandoned on the island, despite the fact that they were coming from countries hit by war, political crisis or deep poverty (Amnesty International 2011c). Phillips added that the inadequacy of the Italian response to the mass influxes appeared incomprehensible, if we think that the countries neighboring Libya has received more than 400.000 people (Amnesty International 2011c).

The tension finally broke out on September 20th, when a group of migrants set fire to the reception centre as a means of protest against their forcible detention and the possibility of being repatriated (Council of Europe 2011). After strongly condemning the acts of violence, the CoE also recognized that the uprising was predictable: ‘ Italy’s detention policy for Tunisian migrants on Lampedusa is problematic, as the reception centre on Lampedusa is not a suitable holding facility / detention centre for irregular migrants. The uncertainty of the migrants as to the duration of their detention was certainly an additional factor that increased tension in the centre .’ (Council of Europe 2011 p.3). Fulvio Vassallo Paleologo, an Italian jurist and president of ASGI -Association of Law Studies on Immigration- reported to the Tribunal of Palermo that

after the fire and the clashes between migrants and police, hundreds of migrants were taken from Lampedusa and put in boats in the port of Palermo -the boats were the Moby Fantasy, Moby Vincent and Audacia (Trattenimenti amministrativi e navi "centri di raccolta:" Esposto presentato alla Procura di Palermo 2011). The jurist claimed that the migrants were unlawfully deprived of their personal freedom; furthermore they were not allowed to leave the boat nor to communicate with the outside (Trattenimenti amministrativi e navi "centri di raccolta:" Esposto presentato alla Procura di Palermo 2011).

The way in which Italy addressed the reception of mass influxes of people from North Africa during the Arab Spring was, once again, highly inadequate. Thousands of people did not enjoy any kind of assistance, and the conditions in which they had to live were inhuman. It is not easy to hypnotize the reasons behind this lack of preparation: because of the quick and overwhelming spread of protests and revolts in the Arab world, it was foreseeable that more and more people would try to reach the Italian shores. Perhaps the Italian government underestimated the extent of the crisis and of its possible consequences, or maybe it was waiting for more support from the European Union. In its analysis of the Lampedusa emergency, the Council of Europe reported that 'several theories were put forward to explain the chaos, with some claiming that the situation was deliberately neglected by the national authorities in order to put pressure on the European Union' (Council of Europe 2011, p.3). It is not possible to know what situation the Italian government found itself in, and whether it was genuinely unprepared or whether it used the difficult situation of Lampedusa to call on the attention of the EU commission and other member states. In either case, the conditions in which thousands of people had

to live in Lampedusa, in violation of some of their fundamental rights, are per se unjustifiable.

Political and legal measures: what kind of protection for these people?

The Italian political and legal response to the emergency moved in two different directions: on one hand, the strengthening of agreements with North African countries in order to control the influxes, and on the other, the issuance of a form of temporary protection for those eligible for it. Concerning the agreements with Tunisia and Libya, the main aim was the fight against irregular migration. On April 5th, the Minister of Interior Maroni announced the fulfillment of an agreement with Tunisia aimed also at reaching a cooperation between the two countries over repatriation of Tunisians who were going to enter the Italian territory illegally after the entry into force of the decree issued on the same day (Nascimbene & Di Pascale 2011, p.352). Amnesty International expressed deep concern regarding the lack of transparency over repatriations, fearing the possibility of summary expulsions; AI also called upon the Italian authorities to ensure that all the persons landed in Italy would be given the possibility to apply for a international protection (Amnesty International. 2011d).

Regarding Libya, the Italian government repeatedly stated that the previous agreement signed with Libya in 2009 was suspended, and in June it reached a new agreement with the Transitional Council of Libya (Nascimbene & Di Pascale 2011). A press release of the Minister of Foreign Affairs announced that, according to the new agreement, Italy and Libya were going to exchange information on influxes of undocumented migrants and help each other in fighting illegal migration, including through forcible repatriation from Italy of undocumented Libyans (Italy. Ministero degli Affari Esteri 2011). Regarding repatriation, it is important to highlight the fact that art.19

of the *Testo Unico sull'Immigrazione* in 1998 prohibited repatriation of those who had obtained a permit to stay or feared of being subjected to persecution in their country of origin (Italy 1998).

In mid-February, Italy addressed a letter to the EU, asking for more cooperation among member states and for a distribution of the burden of the emergency (Nascimbene & Di Pascale 2011). Italy estimated that practically dealing with the situation of emergency required 100 million euro of extra funding from the EU; the Commission, on the other hand, granted only 25 million Euro fund in order to deal with the basic assistance of the migrants (Nascimbene & Di Pascale 2011). Di Pascale reports that on May the Commission stated, in a communication, that 'the financial resources available under the General Programme 'Solidarity and Management of Migration Flows' are insufficient to meet all requests for assistance. First, these funds cannot be easily mobilized, being designed to operate in stable situations and not to deal with the emergencies and crises. Second, the size of the problem far exceed resourced available' (Nascimbene & Di Pascale 2011 p. 345-346).

The Italian government believed that the activation of the Council Directive 2001/55/EC on displaced persons was the best measure to deal with the emergency from a legal point of view. As Di Pascale underlines, 'if adopted, the decision of the Council determines for the displaced persons to which it relates, the application of temporary protection in all Member States' (Nascimbene & Di Pascale 2011, p. 346). For Italy, it represented the opportunity to share the responsibilities toward the displaced persons with other states. Enforcing the Directive, however, is an extremely complex mechanism: the Commission, in fact, must examine the request of a Member State and submit a proposal to the Council, which has to pass the proposal by a qualified majority

(Nascimbene & Di Pascale 2011). On April 11th and 12th the Council met in order to discuss the enforcement of the Directive, but no qualified majority was reached, since most of the members believed that the conditions for mass influx of displaced persons had not been met (Nascimbene & Di Pascale 2011). Since there was not the possibility to activate the Council Directive 2001/55/EU, Italy had to rely on its own legislation in order to cope with the emergency.

On February 12th, the Italian government passed a decree law declaring the status of emergency because of the extraordinary influx of people from North Africa (Italy. Presidenza del Consiglio dei Ministri 2011a). Most importantly, on April 5th, the government issued a decree law regulating the measures of temporary protection for the mass influxes arriving from North Africa. These measures are applicable for people who arrived in Italy from North African countries from January 2nd to April 5th (Italy. Presidenza del Consiglio dei Ministri 2011b). North African citizens can apply for humanitarian protection and, if eligible, are given a permit to stay for humanitarian reasons with the validity of 6 months, but renewable up to a year (Italy. Presidenza del Consiglio dei Ministri 2011b). In 2011, according to the National Commission for the Right to Asylum, 233 Tunisians and 47 Libyans obtained the permit to stay for humanitarian reasons (Commissione nazionale per il diritto d'asilo 2012). Among Libyans, instead, a larger number obtained subsidiary protection (Commissione nazionale per il diritto d'asilo 2012), in light of the fact that there was a real civil war going on in Libya.

The decree adopted for the North African situation was similar to the one issued to deal with the Kosovo emergency (Nascimbene & Di Pascale 2011, p. 353). However, there was a main difference: while the Kosovo decree required people eligible for

humanitarian protection to remain in Italy, art. 3 of the North Africa decree claims that such permit to stay allows a person to travel among the state members of the European Union, according to the Schengen agreements (Nascimbene & Di Pascale 2011, p. 353 and Italy. Presidenza del Consiglio dei Ministri 2011b). This provision, however, caused a series of problems with the European Union, in particular with France. When Tunisians with an Italian permit to stay for humanitarian reasons started crossing the border with France, the French Minister of Interior adopted a circular claiming that ‘residence permits and temporary permits issued by other states to citizens of third countries were [...] not admissible’ (Nascimbene & Di Pascale 2011, p. 353). This episode created a situation of tension between the two states.

On March 30, the Italian Ministry of Foreign Affairs called upon the EU to help Italy to cope with the emergency in Lampedusa, both giving economic aid and allowing the distribution of refugees among EU member states (Italy. Ministry of Foreign Affairs 2011). The Italian Minister Frattini complained about the lack of cooperation among EU member states and accused the EU Home Affairs Commissioner Cecilia Malmstrom, who claimed that Italy had already received European funding for the emergency, of representing the ‘typical expression of a European bureaucracy that thinks money alone solves everything’, while ‘there need to be policy interventions’ (Italy. Ministry of Foreign Affairs 2011).

Another urgent issue that Italy had to cope with was the determination of the legal status of the displaced persons. The status of by these people was extremely diversified, mainly because they originated from different countries. The majority of people coming from Tunisia were economic migrants (Council of Europe 2011), escaping from their country of origin after the uprisings, the change of regime and the continuing episodes of

violence made tourism, the country's main resource, barely existent. However, the CIR pointed out that 'among the Tunisians there might be some people who are guilty of crimes committed during the regime of the former President Ben Ali' that and might therefore be objects of persecution once in Tunisia (Consiglio Italiano per i Rifugiati 2011).

The situation of Libyans, instead, was very different: there were people escaping from the conflict (and as stated before many Libyans were found eligible for subsidiary protection), but there were also many third country nationals. There were, indeed, migrants working in Libya escaping from war or, in the case of migrants from Sub-Saharan Africa, escaping from racism and possible acts of persecution –because black people were believed by the rebels to have worked as mercenaries with Gaddafi (Hein 2011). The situation of third country nationals from Libya highlighted another weakness of the Italian asylum system: third country nationals, not fearing persecution or war in their country of origin but in their country of provenance, are not eligible for international protection. Hein suggested that third country nationals from Libya should be granted temporary protection at first and then, when the situation in Libya stabilized, the Italian government could start programs of voluntary repatriation (Hein 2011). The option suggested by Hein appears to be the most appropriate one because it implies both the voluntary return of migrants to the country where they live and work, and the necessity to protect these people as long as there is any risk for their lives in Libya. Unfortunately, such measures have not been applied, and third country nationals from Libya – not being eligible for any form of protection- have been forcibly repatriated to Libya.

The question of third country nationals should be not forgotten by the Italian authorities, because this kind of situation might occur again, and in that case measures of

temporary protection must be granted to every person coming from a state in emergency situation, whether the person is citizen of that state or not.

Final conclusions

The Arab Spring has produced a series of emergency situations that are reminiscent of those that Italy had to cope with during the 1990s. From a legislative point of view, this time Italy had the means to deal with the emergency and could activate other forms of protection beyond the refugee status. Unfortunately, the European mechanism of protection enforceable with the Council Directive on displaced persons highlighted the contradictions of the European Asylum system: what is the point in having laws regulating emergency situations, if the EU does not enforce these laws? Implementing the Council Directive on displaced persons would have allowed to temporarily protect more people, ensuring not to violate anyone's right to international protection and, above all, it would have allowed to share the burden of the emergency among all EU member states. It seems safe to claim that within the EU there was a lack of cooperation between member states, and that Italy was left alone dealing with the practical emergency, receiving thousands of people to whom guarantee assistance.

At the same time, the way in which the Italian government coped with the emergency in Lampedusa is barely justifiable. After the emergencies of the 1990s the country should know how to react to such situations. The slowness in re-opening the reception centre in Lampedusa and in organizing the transfer of people from the island to the mainland created a real humanitarian crisis, and forced people escaping from very difficult contexts to live in inhuman conditions. Once again, the Italian government was

completely unprepared to deal with a situation that was highly predictable, as claimed by Hein in a CIR press release on February 11 (Consiglio Italiano per i Rifugiati 2011).

A very interesting analysis on the management of the emergency in Lampedusa was carried out by Campesi: he argues that the Italian government, during the crisis, adopted a very precise discursive strategy when addressing supranational and subnational institutions, evoking with the former the existence of a ‘humanitarian emergency’ with the intent to obtain more aid by the EU, and with the latter the idea of a ‘humanitarian catastrophe’, more familiar with the Italian audience (Campesi 2011, p.5). Campesi further argues that ‘the emergency language deployed by the Italian government was deliberately ambiguous: it did not commit to any specific framing of the Lampedusa crisis and instead fluctuated between a humanitarian reading and a securitarian one. This ambiguity was of course rooted in political opportunism’ (Campesi 2011, p.6-7). Perhaps, the political context of Italy during the Arab Spring might have played a role in this dynamics. In particular, the presence of the xenophobic Lega Nord in the Berlusconi right-wing government may have been highly influential to this regard.

7 Conclusions

This thesis tries to analyze the structure of the Italian asylum system and its development over the last 25 years. Specifically, the aim of the research is to highlight the weaknesses and contradictions of the measures of international protection regulated by the Italian legislation on asylum. This legislation was developed in a fragmented and incomplete way. Until 1990, when the Martelli law was passed, the only reference to the right to asylum within the Italian legislation consisted of article 10 of the Constitution (in reality never enforced) and of the ratification of the Geneva Convention and the New York Protocol. Substantially, the Martelli law re-enforced the principles and measures of protection already included in the Geneva Convention; therefore, by 1990, the only form of international protection provided by Italy remained the refugee status. The inadequacy of such restrictive legislation was emphasized by the emergencies that Italy had to cope with during the first part of the 1990s: the Albanian crisis first and the Yugoslavian crisis subsequently.

In 1991, after elections took place and the transition to democracy began, thousands of Albanians started leaving their country of origin in order to seek refuge in Italy (Del Re 1999). The masses of Albanians who landed in Italy in the first years of the 1990s were escaping from situations of extreme political and economic instability and insecurity, not from individual persecution. For this reason, they were not eligible for the only form of international protection provided by the Italian legislation. Italy found itself extremely unprepared for the emergency, not only from a legislative point of view, but

also considering the fact that such an event was unprecedented in the history of the Republic, and there was a lack of facilities that could guarantee basic assistance to the Albanian people landing on Italian shores (Hein 2010). The Italian response to the crisis was not consistent. At first, the government issued the release of temporary permits to stay for Albanians (Mehillaj); however, as the influxes intensified, its stand became more restrictive (Fringuello 2010c). The Italian Coast Guard began to intercept boats carrying Albanians before they reached the Italian territory, and those Albanians who managed to land on Italian shores were immediately repatriated, these measures were also enforced in light of an agreement reached with the Albanian government (Fringuello 2010c). Off-shore interdiction of Albanians was largely criticized at the time, because it prevented genuine asylum seekers from applying for the refugee protection (Perlmutter 1998). The practical reception of Albanians did not improve either, and the tragic episode of the Stadium Vittoria in Bari demonstrates it. When, in 1997, the pyramidal companies failed, causing great economic distress through the country, Albania fell into chaos and violence and the exodus of people leaving for Italy began once again (Fringuello 2010c). As a reaction, Italy kept enforcing off-shore interdiction and implemented a naval blockade in international waters in order to prevent Albanians from landing on Italian shores (Fringuello 2010c). At the same time in 1991, the government issued another *ad hoc* law providing temporary protection to the Albanians whose safety was at risk in their homeland.

The second episode that outlined the weakness of the Italian legislation on asylum was the emergency derived from the collapse of Yugoslavia (Hein 2010). When the war broke out, Italy was again largely unprepared to cope with the mass influxes of people coming from Yugoslavia. The legislation on asylum had remained untouched, therefore a

new *ad hoc* law was drafted by the government in order to provide protection to the displaced persons from Yugoslavia. The decree issued humanitarian permits to stay; however, since the wording of the law was not specific at all, there was a problem of application. Particularly, it was not clear who was eligible for such form of protection: only two years later, with a Circolare of the Minister of Interior, was this point clarified (Fringuello 2010a). Concerning the lack of facilities, the situation was improved by the commitment of Italian civil society, that took care of the reception and assistance of the displaced persons while the government was not able to provide such services (Hein 2010). The strong commitment and solidarity shown by Italian civil society really made the difference in this situation and filled the gaps of the –again- inefficient response of the Italian government to the emergency.

A remarkable step toward the recognition of alternative forms of protection was undoubtedly the drafting of the *Testo Unico sull'Immigrazione* (the Turco-Napolitano law) in 1998, that introduced the possibility to issue temporary permits to stay for humanitarian reasons in case of emergency. This measure was enforced for the first time only one year later, during the Kosovo emergency. The campaign of ethnic cleansing launched by Milosevic against the Kosovar minority of Serbia caused the exodus of thousands of people (Jones 2006). After a failed attempt to provide for humanitarian aid directly in Kosovo, Italy issued a decree providing for humanitarian permits to stay. Kosova displaced persons were also considered by some NGOs to be eligible for the refugee status, because they were persecuted for belonging to an ethnic group; however, the Italian government preferred to issue measures of temporary protection (Fringuello 2010b). This time, programs of cultural integration were started, and the Albanian displaced persons with humanitarian permits had the possibility to go to school and learn

Italian (Hein 2010). For what concerns the practical assistance given to Albanians, this time Italy was more prepared than in other occasions, and the reception was well organized, also with the help of CIR. Although the Italian government was generally more organized and ready to deal with the emergency, there were some shadows on the response to the crisis. As discussed in chapter 4, the initial indecision on what strategy to adopt caused a delay in providing international protection to those in need. Despite the fact that this time there were the legislative means to provide for humanitarian permits to stay, the government did not enforce these measures immediately, with the consequent exclusion of some displaced persons from the protection regime.

The case of Roma people from the Balkans not only showed how the issuance of ad hoc decrees can sometimes be problematic, but also emphasized the existence of a serious issue of discrimination against Roma and Sinti by the Italian authorities. Their exclusion from reception and assistance, and from any form of protection was unjustifiable, considering the risks that Roma and Sinti would face if returned back to Yugoslavia (European Roma Rights Centre 1997). This issue provides elements for a larger discussion on the causes of the deep prejudices and discrimination that Italians hold against Roma and Sinti that the reader is encouraged to research more in depth.

In 2002, the Italian regime of protection incorporated a new provision, included in the Bossi-Fini law, the so-called subsidiary protection. From this moment, the national asylum system provides the foreigner with three different forms of protection: refugee status (Geneva Convention and Martelli law), subsidiary protection (Bossi-Fini law), and humanitarian protection (Turco-Napolitano law). It was then further completed with the implementation of a series of EU Council Directives aimed at harmonizing the asylum systems of EU member states. The importance of the Council Directive 2001/55/EC is in

the fact that it provides for temporary protection in case of mass influx of displaced persons, and the permits to stay released in such situation allow a person to travel among EU member states, so that the burden of the emergency can be shared. However, there are some problematics arising from the directive on displaced persons. First of all, since it has never been applied, it is not clear what are the conditions to be met for triggering the enforcement of such measure of protection. The directive itself does not clearly specify when an influx starts to be a *mass* influx, and there are not numerical references to this regard. It is safe to assume, then, that it is entirely up to the Council to determine the existence or not of a mass influx of displaced persons.

The ineffectiveness of the enabling mechanism of the Council Directive 2001/55/EC was demonstrated by the events that occurred after the Arab Spring that saw thousands of people from North Africa landing on Italian shores. When Italy addressed the EU and asked the Council to enable the mechanism for the release of temporary protection for displaced persons, the Council did not agree on the actual existence of the mass influx of displaced persons, and Italy was left alone in coping with the emergency (Nascimbene, Di Pascale 2011). The government, like in the case of Kosovo, issued a decree providing temporary protection for humanitarian reasons (in accordance with the *Testo Unico sull'immigrazione*). The practical reception of the people escaping from North Africa, on the contrary, was catastrophic, especially for the situation of humanitarian crisis that was created in Lampedusa. When the first influxes arrived the reception centre was closed, and the people were left in the street at very low temperatures and without any kind of basic assistance (Council of Europe 2011). Even when the centre was opened, this situation continued for months, among the loud protests of NGOs. This episode might be reminiscent of what happened during the Albanian

emergency, with the difference that today Italy has plenty of experience in dealing with this kind of emergency. Another problem emerged in this situation: the legal status of third country nationals. As discussed in chapter 6, this is a completely new issue that however might occur again in the future. Since both the national and European legislations on asylum do not provide for any kind of protection to third country nationals, hopefully they will soon move in that direction and fill this gap within the protection regime.

The tentative conclusions that can be drawn after this discussion are several. The analysis carried out above suggests that the problems that Italy has faced in dealing with situations of emergency derived from the arrival of mass influxes of people have two main reasons. First and above all, the lack of an organic legislation ruling the right to asylum. The Italian asylum system, in fact, has developed in a very irregular way, usually as a reaction to situations of emergency – and the issuance of many *ad hoc* laws testifies it. However, there has been no attempt to harmonize the system and fill its gaps. Presumably, this was one of the reasons why the Italian government has almost never adopted prompt measures in cases of emergency.

There was, however, the hope that the implementation of the EU Directives on asylum could improve the situation. This hope was partially betrayed when it became clear that it is very difficult to enforce some measures of protection, like in the case of the Council Directive 2001/55/EC. However, as we are moving toward the creation of a European Asylum System, it will be interesting to see the developments not only in the drafting of new legislation, but also in its actual enforcement.

Another important element is the organization of reception and assistance of the displaced persons. As discussed before, during the 1990s Italy slowly managed to

organize a functioning system of reception and assistance, and during the Kosovo crisis the system was proved to be effective. However, after more than 10 years, the images broadcast from the island of Lampedusa showing people left in inhuman conditions suggest that the situation has changed. It is not easy to indicate the reasons for this regression. On one hand, it is true that the European Union did not cooperate much with the Italian authorities, and did not provide Italy with all the funding requested. On the other hand, the Italian government was inexplicably slow in re-opening the reception centre, in organizing the transfer of people to the mainland and in providing humanitarian assistance.

While the legislation on asylum and its application have overall evolved positively, the practical reception and assistance have never been so neglected. This is an important aspect to take into consideration, because an inefficient response of the host state in this sense causes unnecessary suffering to people who, in most cases, are already escaping from dramatic situations.

Another interesting aspect that might be considered is the role played by politics in such context. Regarding legislation, both right wing governments (with the Bossi-Fini law) and left-wing governments (with the Turco-Napolitano law) have contributed to introduce new forms of protection and, at the same time, have neglected the need to draft an organic law regulating the right to asylum. As for the response to mass influxes, it has not changed much in the emergencies of the 1990s, depending of what coalition was in power. The situation of Lampedusa following the Arab Spring, however, might be an exception. If the humanitarian crisis created in Lampedusa was a political strategy, as claimed by Campesi (2011) and as reported by the Council of Europe (2011), the

influence of the xenophobic Lega Nord in the adoption of such strategy would be undeniable.

Hopefully, the method of reception of the mass influxes will be reconsidered by Italian authorities, especially in light of the successful experience in the case of Kosovo, with the cooperation of organizations specialized in the issue, like the CIR. It is also important to say that civil society has a very influential role in pushing the government to take measures in a certain direction. The most relevant example are the case of Yugoslavia and Kosovo. When Italians express solidarity toward a people escaping from difficult situations, the government will be pushed to respond to the emergency more effectively. On the other hand, when Italians have feelings of fear and discrimination against a determined nationality (see Albanians, Roma and Tunisians), the authorities will have no pressure to act promptly.

The ultimate solution to the problems discussed in this thesis is, however, the drafting of an organic law regulating all forms of protection, their enforcement in situations of emergency and the practical response that the state has to implement. At the moment, however, this is not a priority for any of the political forces of the Italian scenario. In the meantime, since the European Union is continuing to draft on the issue, we have to hope that the enabling mechanism of the directives are facilitated, so that the European legislation on asylum can actually be more effective.

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