

FUNDAMENTAL RIGHTS OF MIGRANTS AND THE ITALIAN IMMIGRATION POLICY

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On March 6, 1998, a new law on immigration, entitled "*Disciplina dell'immigrazione e norme sulla condizione dello straniero*", otherwise known as law 40/98, came into effect. The new law completely substituted the previous "*Martelli Law*", which was introduced during a period of great emergency, due to the intense migratory flows coming from Eastern Europe. The law 40/98 attempts to discipline all areas relative to immigration with a certain degree of elasticity. In fact, for the first time, it represents a serious attempt not to leave to chance such a socially relevant issue as immigration. Italy finds itself in a very complex situation, divided between European and Mediterranean aspirations. In short, it is experiencing an identity crisis, battling between the demands and advantages that go along with being one of the founding members of European Union, and those that go along with being one of the preferential partners of the extra-European Mediterranean countries. That is why any attempt made by the Italian 'Governments' to give an answer to the migration issue in the country has to be made in the frame of the objectives set forth by the Barcelona Declaration.

1. Introduction

News of the arrival of Northern African immigrants to the coasts of Sicily and its islands dominated the majority of Italian newspapers in the summer of 1998.

The discussions on the permeability of Italy's borders and their low military control, the renewed requests for penalizing the entrance of illegal immigrants, and the reclusion of illegal immigrants in 'special detention centers' – which were set up following the new law on immigration (L.40/98)¹ and that prompted

¹ In Italian: "Centri di assistenza e permanenza temporanea per immigrati in attesa di rimpatrio". Decreto legislativo 25.07.1998, n.286 (Consolidation Act), art. 14 *Expulsion enforcement* (art. 12 law n.40/98 of 06.03.1998).

many undocumented migrants' riots – created a siege atmosphere in public opinion that has gone unchanged in subsequent years.

This 'invasion syndrome', however, is new neither in Italy, nor in Europe. At the end of the 1980s, the 'invasion' started with Eastern Europeans, after the fall of Communist regimes in Poland, the Czech Republic, Hungary and Romania, and the consequent freedom of movement their citizens finally enjoyed. The long war following the break-up of the former Yugoslavia, which still persists in many ways, led to the sad period of the 'invasion' from the Balkans. Most recently there have been the great flows of immigrants from Albania and Kosovo, and from Kurdish regions in Iraq and Turkey.

The media often presents the problem of immigration, particularly illegal immigration, with excessive alarmism. It often invoked emergency solutions that were not to prove long term answers or would not solve the problem with equity.²

According to the new legislation no distinction seems to be made between types of 'invaders'. The category indiscriminately includes people fleeing poverty, criminals, victims of political persecution, and refugees for humanitarian reasons, the latter, potentially entitled to the right of asylum. The title of non-EU immigrant (*extra-comunitario*) is by now an all-encompassing qualification.

This article provides a series of reference points for beginning an analysis of the complicated and confusing legislative, statistical, and sociological aspects of immigration in Italy. To this end, we have decided to examine some of the most relevant aspects of the

² A complete analysis on the titles of agencies and newspapers in the period of July-September 1998 (defined in the media as «*the long summer of the illegal immigrants*») and December-January 1999 (characterized in the news by the term «immigration emergency») can be found in: «Stranieri e Mass Media: Noi e gli Altri. Come la stampa italiana tratta il fenomeno immigrazione.» Tesi di Laurea di Maurizio Corte A.A. 1997/98 Facoltà di Magistero, University of Verona. Re: Chiarenza F., Corasaniti G. and Mancini P. (1992), «Il giornalismo e le sue regole. Un'etica da trovare», EtasLibri, Milano; also Viglongo E. (1995), «Temi e modelli interpretativi della ricerca su media e razzismo» in Grossi G., Belluati M. and Voglongo E. (1995), «Mass media e società multi-etnica», Anabasi, Milano; Mansoubi M. (1990), «Noi stranieri in Italia. Immigrazione e mass media», Maria Pacini Fazzi, Lucca.

immigration phenomenon in Italy as well as some legislative developments in the past two years. In conclusion, we synthesize Italy's main international engagement in controlling immigration, with particular reference to two demands: the harmonization of European policies, and the interest of maintaining an independent political strategy for the Mediterranean.

2. Migration flow towards Italy

The official numbers and analysis on immigration vary between sources, but always contrast with the unofficial data collected by NGOs that deal with immigration issues.³ However, official and unofficial statistics coincide in regards to 'expulsion injunctions' (*espulsioni intimare*) and expulsions that are effectively carried out (*espulsioni eseguite*): they total in average 4,000 monthly, a figure which increases slightly during the summer. The number of expulsions that are carried out is reportedly much lower than those that are intimated: in 1998, only 18% of the intimated expulsions were successfully completed. The fact that the majority of this expulsions (82%) were realized only on paper, results in the unique and dramatic situation of condemning the 'expelled' to live in Italy as illegal immigrants, thus depriving them of rights, protection or assistance.

According to the annual Caritas Dossier on immigration, the number of migrants arriving in Italy is not particularly alarming. However, the data source is the Ministry of the Interior, and therefore, only regards documented immigration. At the beginning of 1998, the total number of regular foreigners in Italy was about 1,240,000, of which about 168,000 from EU countries and little more than 260,000 from other developed nations. At the same time, there were an estimated 200,000 illegal immigrants from various countries. According to the latest statistics reported by the

³ For sake of clarity, we refer to official data from the Documentation Center of the Interior Ministry <http://mininterno.it>; Sistema Statistico Nazionale: <http://pers.mininterno.it/sistan/>; Dossier Statistico immigrazione (1997-99), Caritas Diocesana of Rome, Anterem edizioni Roma; <http://www.chiesacattolica.it/caritasroma>.

Documentation Department of the Interior Ministry, at the end of 1999, the number of regular immigrants in Italy reached 1,252,000. The NGOs estimate a figure of 1,500,000, which includes those minors who have legal recognition only on their parents' residence permit (*permesso di soggiorno*), as well as the new residents that have still not been registered because of bureaucratic procedures. According to data noted at the beginning of 1999, it is estimated that the immigrant population grows 20% every year in average. The level of migration flows from Northern Africa remains stable, while that from Eastern European countries, particularly Albania, the former Yugoslavia and Romania, is on the increase by 30%⁴. Generally, we can affirm that the immigrant population in Italy is growing by 19% with respect to last year. If we compare these numbers to the 12 million non-EU immigrants that reside in the European Union, Italy's situation does not seem to justify the public fear of a very unlikely 'invasion'.

3. Why immigrants choose Italy

The majority of immigrants in Italy look for opportunities to build a more dignified life for themselves and their families. Most of them know quite well that Italy is not the utopian country that they see on the television, and they also know that the realization of their dreams will be very difficult.

Italian public opinion is increasingly founded on the belief that «more immigration means more criminality.»⁵ This pervades other EU nations as well, even if in a less pronounced manner. Such a belief originates from the existence of increasingly reinforced links

⁴ 28.8% of the immigrants come from Africa (in total, about 297,600 people), of which: 145,840 from Morocco, and 47,300 from Tunisia; 2.4% from the Middle East and surrounding areas and 16.5% from the Far East and Indian Sub Continent. (Source: *Caritas Roma Dossier Statistico Immigrazione*, using statistics from the Internal Ministry).

⁵ Ref.: Maurizio Corte, *op.cit.*; Barbagli M. (1998), *Immigrazione e criminalità in Italia*, Il Mulino, Bologna. Belotti V. (1997), *Indagine sulle opinioni nei confronti dell'immigrazione straniera in Veneto: dalla compiacenza alla diffidenza*, in *Quaderni di Ricerca 1*, Venezia 1998, published by Osservatorio regionale immigrazione Veneto and Fondazione Guiseppa Corazzin.

between Italian and foreign criminal organizations, particularly those operating in the Balkans. Although much research has been produced on this subject, it seems to emphasize one point: that it is not the quantity of immigrants that favor the growth of organized delinquency, inasmuch as the difficult conditions within the country of immigration, particularly regarding its legal capacity to regulate undocumented immigration.

It is possible to identify specific factors about immigration in Italy: the prevalence of immigrants from non-European nations over those from European ones (ratio of 9 to 10), and the increasing stable character that immigration has assumed in the past several years. For example, 89% of the residence permits are given for the purposes of family reunification or for work, the latter of which remains the principal reason that brings immigrants to Italy in a permanent way. Indeed, official statistics report immigrants' increasing integration in the national labor market. An estimated 60,000 foreigners are self-employed.

What's most alarming is that immigration for humanitarian reasons is relatively very high in the percentage list: approximately 41,000 people fled their country of origin because their lives were in danger. A great number of them come from Southern and Eastern Mediterranean countries. Their nationality is difficult to determine. Almost all of them destroy their documents out of fear that Italian authorities will discover their nationality and repatriate them. In Italy few possibilities for obtaining asylum exist, but the process is very long. The confusion surrounding the asylum law (a draft of a law has been sitting in Parliament since 1996)⁶ is in itself a deterrent to those who intend to save their lives relying on the Italian Constitution.⁷ Not surprisingly, there were less than 2,000

⁶ Bill (203-554-2425) on humanitarian protection and asylum. Approved by the Senate of the Republic November 5, 1998; currently under examination of the Commission for Constitutional Affairs in the Chamber.

⁷ Constitution of the Italian Republic, approved by the Constituent Assembly on 22/12/1947, published on 27/12/1947 (Gazzetta Ufficiale no. 298, edizione straordinaria), and implemented on 01/01/1948, art. 10: *«L'ordinamento giuridico italiano si conforma alle norme del diritto internazionale generalmente riconosciute. La condizione giuridica dello straniero è regolata dalla legge in conformità delle norme e dei trattati internazionali. Lo straniero, al quale sia*

asylum applicants in 1997. A sharp increase in asylum applications occurred in 1998, almost exclusively attributable to the events in the former Yugoslavia and in the Kurdish territories of Iraq and Turkey. Although the official figures for 1999 are still unavailable, they are generally estimated to be similar to those from the previous year. In fact, despite the recent conflict in Kosovo, many refugees did not apply for political asylum because the Italian legislation provided them with temporary residence permits for humanitarian reasons.⁸

impedito nel suo Paese l'effettivo esercizio delle libertà democratiche garantite dalla Costituzione italiana, ha diritto d'asilo nel territorio della Repubblica, secondo le condizioni stabilite dalla legge. Non è ammessa l'estradizione dello straniero per reati politici.»

⁸ With the legislative decree of May 12, 1998, entitled «*Misure di protezione temporanea, a fini umanitari, da assicurarsi nel territorio dello Stato a favore delle persone provenienti dalle zone di guerra dell'area balcanica*», the Italian Government provided for the refugees coming from 'the Balkan area' (sic) the possibility to apply for a temporary residence permit for humanitarian reasons, which would expire on December 31, 1999. These particular residence permit allowed the refugees to work in Italy, which is not possible for an asylum seeker, at least until the asylum procedure is successfully completed. The legislative decree provided the possibility for the asylum seekers coming from the Balkan war areas to interrupt the asylum procedure and opt instead for the temporary residence permit. This provision persuaded many asylum seekers to interrupt the asylum procedure immediately after having drawn the funds provided for them by the Interior Ministry. Funds, which were not provided for the refugees who opted *ab initio* for the temporary residence permit.

Some of the main legislative rules with reference to the emergency on the refugee flows from the Balkan war areas follows: 26.03.1999 Decreto del Presidente del Consiglio dei Ministri "Dichiarazione dello stato di emergenza per fronteggiare un eventuale eccezionale esodo delle popolazioni provenienti dalle zone di guerra dell'area balcanica"; 26.03.1999 Ordinanza n.2967 della Presidenza del Consiglio dei Ministri "Disposizioni urgenti per fronteggiare un eventuale eccezionale esodo delle popolazioni provenienti dalle zone di guerra dell'area balcanica"; 01.04.1999 Ordinanza n. 2968 della Presidenza del Consiglio dei Ministri "Ulteriori disposizioni urgenti per assicurare l'assistenza alle popolazioni coinvolte nella crisi in atto nelle zone di guerra dell'area balcanica"; 07.04.1999 Circolare di attuazione del Ministero dell'Interno, Dipartimento della Pubblica Sicurezza "Emergenza Kosovo - Disposizioni concernenti i cittadini appartenenti alla Repubblica Federale di Jugoslavia già presenti sul territorio nazionale"; 20.04.1999 Circolare del Ministero degli Affari Esteri "Rilascio visti ai cittadini kosovari carenti di documentazione"; 12.05.1999 Decreto del Presidente del

Although refugees leave their country for various reasons such as the attempt to escape poverty and the need to support their families in the country of origin, other, much more tragic reasons exist: the lack of fundamental freedoms, the desire to live under the rule of law, the horror of armed conflicts (internal or international), as well as the existence of widespread human rights abuses.

For those who flee only from misery, the hope of improving their condition - legally or illegally -exists abroad. But those who flee human rights abuses are less likely to be easily satisfied elsewhere if they are not given refugee status, and thus are consigned to the effective existence of an illegal immigrant.

4. The Italian Immigration policy

On March 6, 1998, after almost eight years of waiting, the new law on immigration, entitled «*Disciplina dell'immigrazione e norme sulla condizione dello straniero*», otherwise known as law 40/98, came into effect. The new law completely substituted the previous «*Martelli Law*» (n. 30/1990), which was introduced during a period of great emergency, due to the intense migratory flows coming from Eastern Europe. Consequently, the law inadequately addressed the complexity of immigration in a definitive manner.⁹ The new law, 40/98, on the contrary attempts to discipline all areas relative to immigration with a certain degree of elasticity.¹⁰ In fact, for the

Consiglio dei Ministri "Misure di protezione temporanea, a fini umanitari, da assicurarsi nel territorio dello Stato a favore delle persone provenienti dalle zone di guerra dell'area balcanica"; 27.05.1999 Circolare di attuazione del Ministero dell'Interno, Dipartimento della Pubblica Sicurezza "Emergenza Kosovo - Decreto del Presidente del Consiglio dei Ministri concernente l'adozione di misure di protezione temporanea"; 05.08.1999 Telex ministeriale n.300/c/226995/9/28 sott.28/1 Adiv. "Emergenza Kosovo. Disposizioni concernenti i cittadini appartenenti alla Repubblica Federale di Jugoslavia. Revoca delle disposizioni impartite con la circolare del 7 aprile 1999. Applicazione del D.P.C.M. del 12 maggio 1999.

⁹ The law 30/1990, known as the 'Martelli Law,' was completely repealed by the new law on immigration (40/98), with the exception of the first article about asylum.

¹⁰ Title I-General Principles; Title II-Norms on entrance, residence, and expulsion from state territory: Paragraph I-Norms on entrance and residence, Paragraph

first time, it represents a serious attempt to not leave to chance such a socially relevant issue as immigration. Nevertheless, this new law on immigration was stalled for over a year because of the lack of enforcement rules (*regolamento di attuazione*), which conditioned many of its essential aspects. This impasse had a very negative effect at the political and social levels. The chaotic Italian political context did not allow adequate attention for the objectives of integration and inter-ethnic cohesion, leaving open those questions regarding citizenship and voting rights for foreign immigrants. These conditions, along with the lack of a law on the right of asylum, and the risk of expulsion, could eventually harm those immigrants who are refugees and therefore could potentially apply for asylum.

Along with the practice of *rejection* (*respingimento*) for those who do not satisfy the demands for entering Italy (*art. 10, paragraph 1*), there is the «expulsion with accompaniment to the border», that various Police Offices use when dealing with foreigners who attempt to enter national territory illegally, or who have been rescued and therefore are temporarily hosted (*art. 10, paragraph 2*). Regarding the expulsion procedures, the new law foresees a forced expulsion with accompaniment to the border when: a) the foreigner has stayed in national territory notwithstanding the injunction to leave the country within 15 days (*decreto di espulsione*); b) is expelled for reasons of public order or state security; c) he is without documentation that testifies his identity or nationality and there are good reasons to assume that the person will try to escape expulsion; d) the person seems dangerous and able to escape expulsion.

The procedure ultimately foresees expulsion as a security measure and an alternative to detention (*art. 15 and 16*).

II-Borders control, rejection and expulsion, Paragraph III-Norms on humanitarian issues; Title III-Rules and regulations on work; Title IV-Norms on family reunification and protection of minors; Title V-Norms on health assistance, education, housing, social integration: Paragraph I national health System, Paragraph II-Norms on education and higher studies, Paragraph III-Norms on housing and social services, Article IV-Provisions on social integration, discrimination, and institution of funds for migratory politics; Title VI-Provisions concerning citizens of EU member states; Title VII-Final norms.

The increased severity of the new law with reference to expulsion procedures risks provoking many serious consequences, especially to those migrants who could be entitled to apply for asylum. This part of the law, in fact, does not seem to sufficiently recognize the fact that potential refugees and asylum seekers (if such a distinction is indeed admissible) enter the country in exactly the same way as do the 'illegal' immigrants. And this becomes even more obvious if we consider that: neither those fleeing from internal or international conflicts, nor victims of persecution in their own countries, can tread the official path to enter Italy legally. Consequently, potential refugees, at the moment of their arrival in Italy, often follow the same *iter* as those illegal immigrants who are simply fleeing poverty or other such reasons. Lack of knowledge regarding the immigration law and of how to apply for asylum, together with obvious communication problems, often prompts the immigrants to try to meet up with relatives and acquaintances in other European countries, particularly France and Germany, where their status of undocumented migrants will not change. In the worst case scenario, *de facto* refugees risk placement in one of the ill-famed Italian 'detention centers', where they will await repatriation or expulsion to the country from which they arrived (*art. 14 T.U. art 12 L. 40/98*).¹¹

5. Problems related to documented flow of migrants

The unexpected government crisis on October 9, 1998, aroused fear that proceedings concerning the enforcement rules of the law 40/98, the legislative decree fixing the ceiling of legal immigration and the act of indemnity ('*sanatoria*' or *regolarizzazione*) for undocumented immigrants who could prove they entered the country before March 27, 1998, could stall for a long period. Fortunately, the resigning government of Mr. Romano Prodi

¹¹ Repatriation follows from specific readmission agreements that Italy has with various countries (currently, with Albania, Bulgaria, Yugoslavia, Latvia, Morocco, Romania, Slovakia, Slovenia, Tunisia. They have also signed agreements that have not gone into effect with: Croatia, Estonia, Lithuania, Poland, Switzerland, Hungary. They are in the process of developing agreements with: Algeria, Belarus, Egypt, Greece, Malta, Moldavia, Russia, Spain, Ukraine).

responded to the appeals and pressures of NGOs dealing with immigration, and passed the decree regulating the legal entrances of migrants for 1999. The process for approving the enforcement rules of the law 40/98, strongly affected by the political events in Italy, was completed only at the end of October 1999. At the moment, the legislative *corpus* on immigration is basically complete and composed as follows:

- 1) Consolidation act on immigration.¹²
- 2) Enforcement rules of the Consolidation Act on immigration.¹³
- 3) Law 40/98.¹⁴
- 4) Article 1 of the law 39/90 (The "Martelli law", which remains in force only with reference to the norms concerning the asylum procedure).
- 5) Law on citizenship acquisition and its enforcement clauses (Law 91/1992).
- 6) Norms on EU citizens.¹⁵
- 7) Annual governmental plan on the immigration policy.

The decree for determining the ceiling of immigrants who could be admitted into Italian territory, signed by the government of Mr. Prodi as an ordinary administrative act, in execution of the dictate of article 3, paragraph 4 of the Consolidation Act no. 286, has often been considered imperfect and excessively restrictive.

In its substance, the decree consented to the release «*of residence*

¹² The legislative decree 25 July, 1998, n. 286 «*Testo Unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*», (Consolidation Act on the disposals concerning the discipline of immigration and norms on the condition of the foreigner, as modified by the legislative decrees no. 380/98 and no. 133/99).

¹³ The Presidential decree 31 August 1999, n. 394, «*Regolamento recante norme di attuazione del Testo Unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*», (Rules for the enforcement of the Consolidation Act on immigration accordingly to article 1, paragraph 6, of the legislative decree of 25 July, 1998, n. 286)

¹⁴ The law on immigration of March 6, 1998, n. 40, «*Disciplina dell'immigrazione e norme sulla condizione dello straniero*». (Law on immigration and norms on the condition of the foreigner,» in its original text).

¹⁵ The norms concerning EU citizens: decree of the President of the Republic on December 30, 1965. N. 1656 and successive modification norms.

permits for work purposes, also of seasonal or atypical character, and of autonomous work, to non-EU citizens who are residents abroad (...) and to those already present in Italy, within a maximum total of 38,000.» Of these, 3,000 permits were reserved for Albanian citizens (*«of whom up to 1,500 accepted repatriation after having been in Italy, on the basis of the bilateral agreements between Italy and Albania»*), 1,500 for Tunisians and 1,500 for Moroccans (on the basis of bilateral agreements between Italy and Tunisia and Italy and Morocco signed in the summer of 1998). In practice, such a decree has had little effect on the current opening of the regularizing process to illegal immigrants with the Indemnity Act¹⁶. Those who had illegally entered the country before March 27 could ask for regularization until 15 December 1998, according to the new Indemnity Act.¹⁷ The applicants, as predicted, had far surpassed the ceiling fixed by the decree for regulating the legal entrances.

In the year 2000, the Italian Prime Minister, Massimo D'Alema, signed a decree that was more detailed and attentive to the demands of immigration and Italy's economy. Moreover, much of the merit for the new decree, that allows the entrance of 63,000 immigrants, and that may be expanded with further decrees in the course of the year, must be attributed to the intense lobbying by NGOs.¹⁸

¹⁶ The legislative decree of April 9, 1999, was added to the law 40/98 as a provisional norm to the article 49bis to regularize immigrants (who had entered Italy before March 27, 1998) under certain conditions: proof of employment, housing, and a clear police record.

¹⁷ On 25/01/2000, of the 250,272 applications that had been presented by 27/03/1998, 91,000 applications were still undecided, 145,759 were accepted, and 13,931 were rejected.

¹⁸ Decree of the Council of Ministers published in the *Gazzetta Ufficiale* of March 15, 2000: «...Considering that the annual programming of migratory flows must take into account labor needs, provided by the Ministry of work and social security program for the three-year period from 1998-2000 and of work at national and regional levels, as well as the number of non-EU citizens on lists of employment, according to article 21, paragraph 4, of the Consolidation Act; Taking into account that some national sectors, such as tourism, agriculture, construction and services demand foreign labor for specific times, often of a seasonal nature; also taking into account that other national sectors, such as the iron and steel industry, mechanics and crafts demand foreign work for temporary work; etc; art. 1 declared that: «for the year 2000, 63,000 foreigners will be admitted for both subordinate and autonomous work. Of these 63,000,

The law 40/98, furthermore, delegates to local institutions and voluntary associations the task of providing for the needs of those desperate immigrants who still disembark illegally on the Southern and Eastern coasts of Italy, (*art. 38 ss. Cap.III*).

To such an end, the government should have allocated the necessary funds (art. 45 of the Consolidation Act n.286 «National fund for migration issues»), but the lack of such funds, along with the bureaucracy, resulted in the impossibility of such provisions being realized. Immigrants, both documented and undocumented, continue to live in poor conditions for a long time after their arrival in Italy.

For many years, Italy has been a country of transit; for many immigrants it still is, especially when they realize what awaits them if they try to remain in the country. Another problem is the lack of preparation or simply, the incompetence of some voluntary associations, particularly with regard to legal assistance for refugees, a situation which leaves the asylum-seekers with little point of reference.

Some of the main problems regarding asylum are as follows:

1. Confused and non-functioning procedures of assistance for asylum seekers; it takes between five and six months for the Central Commission to examine asylum applications, but the applicant receives financial assistance from the State for just 45 days. What makes this situation even more dramatic is the extreme bureaucratic slowness asylum seekers have to face in order to draw this financial aid: in many cases it exceeds 9-12 months.
2. Many Police officers, unaccustomed to dealing with asylum applications, or unaware of the importance of the asylum procedure, illegitimately refuse to deal with the applications, and they interpret the existing law only with an eye towards maintaining public order.
3. The organization of temporary detention centers for immigrants (*centri di assistenza temporanea per imigrati in*

article 3 of the decree reserves the entrance of 6,000 Albanians, 3,000 Tunisians, 3,000 Moroccans, and 6,000 to citizens of other non-EU countries that have signed specific cooperation agreements on migration matters».

attesa di rimpatrio) makes it difficult to distinguish between asylum-seekers and other 'illegal' immigrants. Consequently, the risk of violating the principle of '*non refoulement*' (art. 32 Geneva Convention) is high, as the peril of not respecting the provisions of art. 17 of the immigration law, «*Divieti di espulsione e di respingimento*» (Prohibitions for expulsion and rejection) is always present.

The lack of provisions concerning the so-called «humanitarian asylum,» which is currently being discussed in Parliament, makes it impossible to uniformly extend humanitarian protection. There are many situations in which the asylum seeker is simply tolerated without having any concrete protection from the State, in which case he has the status of an illegal immigrant who must be expelled.

On the basis of what we have discussed so far, we can conclude that the issue of immigration corresponds to a situation of extreme confusion and grave emergency, attributable to the scarce regularization of particular situations and confusion over legislative mechanisms.

In such a situation, the work of most voluntary associations becomes even more meritorious: with very little means, they attempt to realize the objectives of the new immigration law – integration, planning and transparency.

The strategy that the Italian government has recently adopted with regard to immigration, particularly illegal immigration, is not based so much on humanitarian issues as on issues of politics, international economic cooperation, and institutionalized cultural relations.

6. Italy's international obligations with reference to immigration

Italy finds itself in a difficult situation, divided between European and Mediterranean aspirations. In short, it is experiencing an identity crisis, battling between the demands and advantages that go along with being one of the founding members of European Union, and those that go along with being one of the preferential partners of the extra-European Mediterranean countries. Italy actually failed in its aspiration to become a stepping-stone for the expansion of European Union policies toward the

Eastern and Southern Mediterranean countries, and transformed itself inevitably into a solid bridge, more useful as an outlet for problems affecting Mediterranean developing countries rather than for helping the Mediterranean economy to develop. The Italian authorities are less worried with internal problems than with their international commitments, that is: a) the creation of the Schengen area (that is currently under scrutiny in the attempt to re-dimension it by adopting so-called 'compensatory measures' of free circulation in order to mitigate the growth of illegal immigration and criminality) b) the application of the Amsterdam Treaty, c) the Euro-Mediterranean Agreements d) the Barcelona Declaration of 1995, instituted by the Euro-Mediterranean Partnership.¹⁹

In the Preamble of the Barcelona Declaration, the sixth paragraph clearly affirms that: *«the general objective of turning the Mediterranean basin into an area of dialogue, exchange and cooperation guaranteeing peace, stability and prosperity, requires a strengthening of democracy and respect for human rights, sustainable and balanced economic and social development, measures to combat poverty and promotion of greater understanding between cultures, which are all essential aspects of partnership.»* When the signatory nations will be able to pursue such an objective, most problems tied to migration phenomenon will almost certainly be resolved. The first chapter of the Declaration, entitled *«Political and Security Partnership: establishing a common area of peace and stability»*, urges the member states to conform to the principles established by the United Nations Universal Human Rights Declaration and to develop the principles of legality and democracy in their political systems, obviously under the banner of the domestic jurisdiction principle.

Until the signing of the Barcelona Declaration, human rights in the Mediterranean have not really improved: in some countries, for example, governments limit the freedom of the press, and in others,

¹⁹ Considering the particular Mediterranean dimension in the course of the last fifteen years and the impossibility of treating all of the aspects relative to the harmonization of Italian politics according to the dictates of the EU, we limit ourselves to briefly analyzing and drawing some conclusions only with regard to Euro-Mediterranean aspects.

torture and extra-judiciary executions are systematically practiced. In some countries, fundamental freedoms are gravely threatened, defenders of human rights persecuted, corruption of government functionaries is widespread, and judicial power often suffers a pathological lack of independence. This situation shows a profound lack of democracy and respect for human rights in the entire region, causing the most recent migration flows from the Mediterranean to EU countries. We know well that the situation regarding the respect of fundamental rights in the Southern Mediterranean area, is strictly connected to the human rights situation in Northern Mediterranean countries, and is particularly highlighted in the treatment of refugees and migrants.

In order to fulfill inter-European obligations, the Mediterranean EU states have adopted severe and restrictive laws regarding immigration policies, not realizing that the closure of external borders encourages immigrants, who, once inside the Schengen area, prefer a stable and permanent solution rather than a temporary or seasonal one. It is easy to hypothesize that with the guarantee of a greater number of brief visas, many immigrants would choose to move more frequently from their country of origin to the country of immigration, favoring an expansion of business trade in the Mediterranean area, in the true spirit of the «Barcelona process.»

The recent readmission agreements between Italy and Tunisia and Italy and Morocco,²⁰ have had embarrassing consequences on a humanitarian level. Tunisian legislation, for example, foresees very severe sanctions against its citizens who are guilty of unauthorized expatriation. In many Mediterranean countries, a number of representatives from the political world and of the 'civil society' have criticized these agreements. Nevertheless, in certain circles many support the contents of the readmission agreements.²¹

²⁰ This last one was implemented in October of 1999. The complete document was published in «La Nuova Frontiera-International Human Rights and Security Review» n. 12/13, Antonio Stango Editore, Roma, 1998.

²¹ M. Augusto Sinagra, *L'accord de Réadmission Italie-Maroc du 27 Juillet 1998 et les Droits de l'Homme*, intervention at the international conference: Droits de l'homme et communauté marocaine à l'étranger; organized by the Ministry for human rights of the Kingdom of Morocco, Tangier, 23-36 November 1998.

The main objective of the «Barcelona process» is to guarantee stability in the Mediterranean basin. However, this stability is not founded upon the solution of regional conflicts or on the broader and more complex Middle-East conflict, as much as on the intensification of the Euro-Mediterranean trade and financial co-operation, and on closer bilateral relations among the 27 partners of the Barcelona Declaration. The readmission agreements signed by the Italian Government with the Kingdom of Morocco and with Tunisia are to be viewed from this point of view. At stake are not just the future relationships between countries on the Southern edge of the Mediterranean and the European Union, but also, and in a much more relevant measure, the enormous economic profits that the Southern and Eastern Mediterranean countries gain from the emigrants' remittances (this is, for example, the main economic resource of Morocco). In conclusion, it is therefore possible to note how governments treat the issue of migration in relation more to economic, trade and financial co-operation matters, rather than to the enormous problems of democratic and social development which affect almost the entire Euro-Mediterranean region. With the readmission agreements, Italy, under the umbrella of EU institutions, has initiated an embarrassing and unworthy barter, which will soon become common practice among the rich and developed countries.²²

Among the countries of the Euro-Mediterranean Partnership economic issues are still considered more important than those relative to the protection of human rights, more incisive than the rule of law, more remunerative than democracy. We thus stand as impotent witnesses before one of the greatest paradoxes of the Barcelona process: the attempt to build an area of peace and stability in the Mediterranean region through the violation of fundamental human rights, through the weakening of democracy, and renouncing the rule of law.

²² During the sessions of the summit at Stuttgart between the Foreign Ministers of 27 countries of the Euro-Mediterranean Partnership April 15-16, 1999, one of the few points of agreement resulted in the greater diffusion at the Euro-Mediterranean level of bilateral readmission agreements between the partner states.