

THE HARD RESEARCH OF A “SAFE PLACE”**

Sommario: 1. The international vocation of human rights and the right to a “safe place”: introductory notes. 2. The right to asylum within the Italian legal system: axiological and applicative profiles. 3. Right to asylum and refugee status within a multicultural society.

1. The international vocation of human rights and the right to a “safe place”: introductory notes

Within a legal system, inspired by the basic ideals of modern constitutionalism¹, we usually assist to the codification of a catalog of inviolable rights of the man² (together with the

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¹ Indeed, according to H. PATAPAN, *Towards a Cosmopolitan Constitutionalism: On Universalism and Particularism in Chinese Constitutionalism*, in *The Chinese Journal of Comparative Law*, 2015, Volume 3, Issue 1, 80 sqq., “modern constitutionalism, unlike traditional political and legal settlements that are founded on time-immemorial norms or evolving and unwritten conventions, are premised on founding moments and, therefore, constitutive enactments that bring into being the political entity, comprehensively - and legally - defining the role of sovereign governments and the rights and entitlements of the citizen subjects”. On this point see, *ex multis*: A. SWEET, *A Cosmopolitan Legal Order: Constitutional Pluralism and Rights Adjudication in Europe*, in *Global Constitutionalism*, 2012, Volume 1, Issue 1, 61 sqq.; A. WIENER, *Comment: Global Constitutionalism and the Concept of Difference*, in K. RUBE, A. SATTler (eds), *Difference and Democracy: Exploring Potentials in Europe and Beyond*, 2012, Chicago, 261 sqq.; M. KUMM, *The Cosmopolitan Turn in Constitutionalism: On the Relationship between Constitutionalism in and beyond the State*, in J. DUNOFF, J. TRACHTMAN (eds), *Ruling the World: International Law, Global Governance, Constitutionalism*, 2009, Cambridge, 255 sqq.; L. FERRAJOLI, *Costituzionalismo principialista e costituzionalismo garantista*, in *Giur. Cost.*, 2010, 03, 2771 sqq.; R. DICKMAN, *Democrazia rappresentativa e costituzionalismo per una costituzione universale dei diritti e delle libertà*, 07/10/2008, in www.federalismi.it, 1 sqq.

² *Ibid.*, 18.

constitutional duties, a necessary counterpart of the previous ones) which, although being directed to the sense of synthesizing the innate values of a community endowed with an indissoluble feeling of national identity³, seems to be aimed at allowing the protection and promotion of the fundamental freedom of the person regardless of the bond of citizenship and in the face of every possible danger of attack to their integrity.

In this direction, fundamental rights become "*the expression of an already realized free system and, at the same time, represent the condition for this system to be reconstituted continuously through the individual exercise of liberties by everyone*"⁴.

In this way, in order to guarantee the preservation of the inviolable rights of the person, it has been claimed: "*it is not enough to have them conquered once and for all, but it is necessary defending them and protecting them daily, having the soul strong enough to face the fight the day in which they were in danger*"⁵.

In this context, ensuring the effectiveness and continuity of the rights of freedom - and, at the same time, opposing the everlasting new dangers of the disgregation of society - is the main challenge that a democratic system must take on itself⁶, also in view of the participation in an international community able to guarantee peace and justice among nations⁷.

In this sense, the international vocation of human rights contributes to enriching the heritage of values of each State⁸ and, at the same time, requires the conformation of guarantee instruments that transcend national boundaries and disregard the constraint of citizenship, so as to enhance the needs of protection of the person from aggressions perpetrated within authoritarian systems of government⁹ that prevent the free development (of fundamental rights and) of the personality of each one¹⁰.

³ About the relevance of national identity to EU and domestic judicial practice and in order to a comparative overview of how Member States have construed their own national identity, see, *ex plurimis*: T. KONSTADINIDES, *Dealing with Parallel Universes: Antinomies of Sovereignty and the Protection of National Identity in European Judicial Discourse*, in *Yearbook of European Law*, 2015, Volume 34, Issue 1, 127 sqq.; F. X. MILLET, *National Identity in EU Law by Elke Cloots*, in *Yearbook of European Law*, 2015, Volume 34, Issue 1, 357 sqq.; E. CLOOTS, *National Identity in EU Law*, 2015, Oxford.

⁴ Cf. P. HABERLE, *Le libertà fondamentali nello Stato costituzionale*, 1993, Roma, 39.

⁵ Cf. C.A. JEMOLO, *Che cos'è la Costituzione*, 1946, Roma, 63.

⁶ Cf. A. RUGGERI, *Composizione delle norme in sistema e ruolo dei giudici a garanzia dei diritti fondamentali e nella costruzione di un ordinamento "intercostituzionale"*, in *www.federalismi.it*, 13/05/2009, 23.

⁷ Indeed, according to N. KRISCH, *The Pluralism of Global Administrative Law*, in *European Journal of International Law*, 2006, Volume 17, Issue 1, 247 sq., "*as more and more state functions are performed on the global level, the concepts that have guided politics and law are increasingly under pressure. International law's self-understanding as an order that organizes commonality among grossly different value systems is questioned by those who refuse to give up democracy and constitutionalism merely because the exercise of public power has now moved to the international level. Likewise, the extension of the guiding ideas of domestic law and politics to global governance faces serious problems; these ideas often lose their normative force under the different political and social circumstances that prevail in the global realm*".

⁸ Indeed, "*international human rights law purports to provide vital guarantees to all individuals within a State's jurisdiction, yet it can only provide effective legal protection when proper accountability mechanisms are in place*". Cf. P. VAN BERLO, *The Protection of Asylum Seekers in Australian-Pacific Offshore Processing: The Legal Deficit of Human Rights in a Nodal Reality*, in *Human Rights Law Review*, 2017, Volume 17, Issue 1, 33.

⁹ Cf. E. BERNARDI, *Asilo politico (ad vocem)*, in *Digesto Disc. Pubbl.*, I, Torino, 1987, 422.

¹⁰ Cf. C. HEIN, L. CAPPELLETTI, *Rifugiati politici, (ad vocem)*, in *Digesto Disc. Pubbl.*, XIII, Torino, 1997, 460 sqq.

In this regard, the complex and articulated model of juridical protection of migrants¹¹ (the result of the intersection between norms of international law, European law and single national disciplines)¹² is exemplary and it consists in recognizing the effectiveness of the right to a "safe place"¹³ from the abuse and harassment perpetrated within a State for political, religious, ethnic, cultural and social reasons¹⁴.

This refers, in particular, to the expression, of an opinion, a thought or a conviction on a question concerning potential persecutors and their policies or methods, regardless of whether the applicant the protection has expressed this opinion, thought or conviction in concrete acts¹⁵.

Then, the profession of a particular religion, related to theist beliefs, not theistic and atheistic, the participation in, or the abstention from, cult rituals celebrated in private or in pu-

¹¹ Cf. P. MATHEW, T. HARLEY, *Refugees, Regionalism and Responsibility*, New York, 2016, 23 sqq. About the forced migration and the related enormous human suffering in order to people who are extremely vulnerable to exploitation and physical harm, see O. BAKEWELL, *Research Beyond the Categories: The Importance of Policy Irrelevant Research into Forced Migration*, in *Journal of Refugee Studies*, 2008, Volume 21, Issue 4, 432 sqq.; J. C. HATHAWAY, *Forced Migration Studies: Could We Agree Just to 'Date'?*, in *Journal of Refugee Studies*, 2007, Volume 20, Issue 3, 349 sqq.

¹² Cf., *ex multis*: B. SCHOTEL, *Legal Protection as Competition for Jurisdiction: The Case of Refugee Protection through Law in the Past and at Present*, in *Leiden Journal of International Law*, 2018, Volume 31, Issue 1, 9 sqq.; J. MONEY, S. P. LOCKHART, *The Paucity of International Protections: Global Migration Governance in the Contemporary Era*, in *Global Summitry*, 2018, 1 sqq.; D. GHEZELBASH, *Legal transfers of restrictive immigration laws: a historical perspective*, in *International & Comparative Law Quarterly*, 2017, Volume 66, Issue 1, 252 sqq.; J. DAHLVIK, *Asylum as construction work: Theorizing administrative practices*, in *Migration Studies*, 2017, Volume 5, Issue 3, 369 sqq.; B. TONOLETTI, *Confini diritti migrazioni. Catastrofe e redenzione del diritto pubblico europeo*, in F. CORTESE, G. PELACANI (eds.), *Il diritto in migrazione*, Napoli, 2017, 55 sqq.; F. BIONDI DAL MONTE, *Le fonti nel diritto dell'immigrazione*, in F. CORTESE, G. PELACANI (eds.), *Il diritto in migrazione*, Napoli, 2017, 350 sqq.; V. TÜRK, M. GARLICK, *From Burdens and Responsibilities to Opportunities: The Comprehensive Refugee Response Framework and a Global Compact on Refugees*, in *International Journal of Refugee Law*, 2016, Volume 28, Issue 4, 656 sqq.; G. S. GOODWIN-GILL, *The Dynamic of International Refugee Law*, in *International Journal of Refugee Law*, 2013, Volume 25, Issue 4, 651 sqq.; F. LENZERINI, *Diritto d'asilo e esclusione dello status di rifugiato. Luci e ombre nell'approccio della Corte di giustizia dell'Unione Europea*, in *Riv. dir. internaz.*, 2011, 01, 108 sqq.; G. GILBERT, *Is Europe Living Up to Its Obligations to Refugees?*, in *European Journal of International Law*, 2004, Volume 15, Issue 5, 965 sqq.; C. HEIN, L. CAPPELLETTI, *Rifugiati politici, (ad vocem)*, in *Digesto Disc. Pubbl.*, XIII, Torino, 1997, 461 sqq.; G. BISCOTTINI, *Rifugiati, (ad vocem)*, in *Enc. Dir.*, XL, Roma, 1994, 899 sq.

¹³ Cf., *ex plurimis*: C. COSTELLO, *Safe Country? Says Who?*, in *International Journal of Refugee Law*, 2016, Volume 28, Issue 4, 601 sqq.; A. ACHERMANN, M. GATTIKER, *Safe Third Countries: European Developments*, in *International Journal of Refugee Law*, 1995, Volume 7, Issue 1, 19 sqq.; E. KJAERGAARD, *The Concept of 'Safe Third Country' in Contemporary European Refugee Law*, in *International Journal of Refugee Law*, 1994, Volume 6, Issue 4, 649 sqq.; G. S. GOODWIN-GILL, *Safe Country? Says Who?*, in *International Journal of Refugee Law*, 1992, Volume 4, Issue 2, 248 sqq.

¹⁴ Cf., *ex multis*: M. CROCK (ed.), *Refugees and Rights*, New York, 2016. Indeed, according to I. DERLUYN, C. WATTERS, C. MELS, E. BROEKAERT, *'We are All the Same, Coz Exist Only One Earth, Why the BORDER EXIST': Messages of Migrants on their Way*, in *Journal of Refugee Studies*, 2014, Volume 27, Issue 1, 2 sqq., millions of people are currently 'on the way', leaving hearth and home with the intention of building up - temporarily or permanently - a new life in another country. Contemporary migration has become very diversified, ranging from highly valued professionals who are sought after by leading companies, to the millions of people who leave their homes to escape grinding poverty, war and persecution, and who have no legal means to enter safer and wealthier countries. The latter are variously described in an ever shifting nomenclature, as 'undocumented migrants', 'illegal immigrants' or, often with scant regard to legal precision, as 'asylum seekers' or 'refugees'. A common feature of this group is that they are seeking, through crossing international borders, to ameliorate their current living conditions.

¹⁵ Cf. S. DA LOMBA, *The Right to Seek Refugee Status in the European Union*, 2004, Oxford, 57 sqq.

blic, either individually or in community, as well as forms of personal or social behavior based on a religious belief or prescribed by it, may constitute grounds for discrimination¹⁶.

The causes of persecution can also be the color of the skin, belonging to a group characterized by a specific cultural, ethnic, linguistics or cultural identity, common geographical or political origins or its affinity with the population of another State, together with the possession of citizenship, or the status of stateless person, such as to attribute an individual to a certain nationality¹⁷.

However, in a modern democracy, belonging to a particular social group presupposes a set of individuals who share an innate characteristic or a common history, which can not be changed, or share a characteristic or faith that is so fundamental to identity or consciousness with respect to which a person should not be forced to renounce to it¹⁸.

Thus, sometimes, the justifying reasons underlying the request for protection can interweave with each other; in fact, it has been observed, for example, that the "racist culture" is characterized by an offensive capacity that develops in social contexts in which, belonging to a racial group, carries with it the legacy of a past of discrimination, together with phenomena of violent persecution¹⁹. In addition to attacking certain individuals, racist policies become, moreover, a way to preserve and reiterate a hierarchical relationship between social groups²⁰.

In this context, it follows that the Government of a country can force a man to become a refugee, either directly or indirectly, expelling the individual, or preventing his return home, usually for "political reasons" or "<< national security reasons>> not better identified, or be-

¹⁶ Persecution for reasons of religion is one of the five grounds enumerated in the 1951 Convention relating to the Status of Refugees. The travaux préparatoires do not include any discussion of religion as a Convention ground for protection. The Handbook on Procedures and Criteria for Determining Refugee Status contains three paragraphs (71–73) addressing religious persecution, which demonstrate the intent that the Convention ground be interpreted by reference to international norms on freedom of thought, conscience and religion. To date there has been very little interpretive guidance on religion-based claims. The approach to determining the key elements in a refugee adjudication — what is a religion, what constitutes persecution in the context of religious practice, when is the persecution 'for reasons of' the individual's religious beliefs — are less clear today than they were when the 1951 Refugee Convention was drafted. On this point, see

K. MUSALO, *Claims for Protection Based on Religion or Belief*, in *International Journal of Refugee Law*, 2004, Volume 16, Issue 2, 165 sqq. In general, see A. APOSTOLI, *La Corte di Giustizia si pronuncia su richieste di riconoscimento dello status di rifugiato per motivi religiosi*, in *Giur. cost.*, 2012, 05, 3772 sqq.; B. J. GRIM, R. FINKE, *The Price of Freedom Denied: Religious Persecution and Conflict in the 21st century*, 2011, New York, Cambridge University Press, 1 sqq. For an historical overview, see S. LACHENICHT, *Refugees and Refugee Protection in the Early Modern Period*, in *Journal of Refugee Studies*, 2017, Volume 30, Issue 2, 261 sqq.

¹⁷ The regulation of nationality remains a prerogative of States despite recent developments in international law, which have created limitations in the attribution and deprivation of nationality. Lately, this evolution is addressed in E. FRIPP, *Nationality and Statelessness in the International Law of Refugee Status*, Oxford and Portland, Oregon, Hart Publishing, 2016; G. R. DE GROOT, O. WILLEM VONK, *International Standards on Nationality Law: Texts, cases and materials*, Oisterwijk, Wolf Legal Publishers, 2016.

¹⁸ About the question of internally displaced persons see K. LONG, *In Search of Sanctuary: Border Closures, 'Safe' Zones and Refugee Protection*, in *Journal of Refugee Studies*, 2013, Volume 26, Issue 3, 458 sqq.

¹⁹ Cf. E. PITTAWAY, L. A. BARTOLOMEI, E. E. PITTAWAY, G. DONEY, *Freedom from Persecution or Continued Abuse? An Analysis of the Meaning of Rights in Refugee Communities*, in *Journal of Human Rights Practice*, 2018, 1 sqq.

²⁰ Cf. G. PINO, *Discorso razzista e libertà di manifestazione del pensiero*, in *Pol. Dir.*, 2009, 2, 290 sqq.

cause man, wanting to escape the most various forms of persecution²¹, abandons his land or, finding himself outside his country, does not intend to return²².

It remains to be established, in such hypotheses, what are the tools of legal protection to be activated to guarantee to an individual the achievement of a "safe place"²³.

2. The right to asylum within the Italian legal system: essential and applicative profiles

The need to proclaim man's "immunity" from the danger of persecution has certainly ancient origins²⁴ and has been historically conditioned by the particular political/social context within which, with difficulty and not in a uniform way, it has progressively been asserted²⁵.

²¹ Cf. H. STOREY, *What Constitutes Persecution? Towards a Working Definition*, in *International Journal of Refugee Law*, 2014, Volume 26, Issue 2, 272 sqq.; J. M. LEHMANN, *Persecution, Concealment and the Limits of a Human Rights Approach in (European) Asylum Law – The Case of Germany v Y and Z in the Court of Justice of the European Union*, in *International Journal of Refugee Law*, 2014, Volume 26, Issue 1, 65 sqq.; J. MCADAM, *Rethinking the Origins of 'Persecution' in Refugee Law*, in *International Journal of Refugee Law*, 2013, Volume 25, Issue 4, 667 sqq.; S. KAPFERER, [Article 14\(2\) of the Universal Declaration of Human Rights and Exclusion from International Refugee Protection](#), in *Refugee Survey Quarterly*, 2008, Volume 27, Issue 3, 53 sqq.

²² Cf. E. LA PENNA, *Rifugiati (ad vocem)*, in *Enc. Giur.*, XXXI, Roma, 1994, 1.

²³ Identifying the exact scope of States' obligations in relation to refugees who have not reached the State's territory has become an issue of fundamental relevance and one of the most controversial areas in refugee studies nowadays. Cf., *ex plurimis*: M. Tazzioli, *Border displacements. Challenging the politics of rescue between Mare Nostrum and Triton*, in *Migration Studies*, 2016, Volume 4, Issue 1, 4 sqq.; D. J. CANTOR, *Reframing Relationships: Revisiting the Procedural Standards for Refugee Status Determination in Light of Recent Human Rights Treaty Body Jurisprudence*, in *Refugee Survey Quarterly*, 2015, Volume 34, Issue 1, 79 sqq.; C. HARVEY, *Time for Reform? Refugees, Asylum-seekers, and Protection Under International Human Rights Law*, in *Refugee Survey Quarterly*, 2015, Volume 34, Issue 1, 43 sqq.; J. C. HATHAWAY, M. FOSTER, *The Law of Refugee Status*. 2nd edn, Cambridge, 2014; J. MILNER, *Introduction: Understanding Global Refugee Policy*, in *Journal of Refugee Studies*, 2014, Volume 27, Issue 4, 477 sqq.; M.T. Gil-Bazo, *The Practice of Mediterranean States in the context of the European Union's Justice and Home Affairs External Dimension. The Safe Third Country Concept Revisited*, in *International Journal of Refugee Law*, 2006, 571 sqq.; M. J. GIBNEY, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees*, Cambridge, 2004, 2 sqq. Indeed, civil society movements can play an important political role in advocating for human rights, including the rights of migrants and migrant children. But successfully asserting their rights is difficult in the domain of migration, even in democracies, and any victories that are achieved can be short-lived. Cf. R. BARBULESCU, J. GRUGEL, *Unaccompanied minors, migration control and human rights at the EU's southern border: The role and limits of civil society activism*, in *Migration Studies*, 2016, Volume 4, Issue 2, 1 July 2016, 253 sqq.

²⁴ Cf., *ex multis*: E. ISAYEV, *Between hospitality and asylum: A historical perspective on displaced agency*, in *International Review of the Red Cross*, 2017, Volume 99, Issue 904, 77 sqq.; J. O. KLEIST, *The History of Refugee Protection: Conceptual and Methodological Challenges*, in *Journal of Refugee Studies*, 2017, Volume 30, Issue 2, 161 sqq.; P. ORCHARD, *The Dawn of International Refugee Protection: States, Tacit Cooperation and Non-Extradition*, in *Journal of Refugee Studies*, 2017, Volume 30, Issue 2, 282 sqq.; S. LACHENICHT, *Refugees and Refugee Protection in the Early Modern Period*, in *Journal of Refugee Studies*, 2017, Volume 30, Issue 2, 261 sqq.; B. GRAY, *Exile, Refuge and the Greek Polis: Between Justice and Humanity*, in *Journal of Refugee Studies*, 2017, Volume 30, Issue 2, 190 sqq.; A. EDWARDS, *Human Rights, Refugees, and The Right 'To Enjoy' Asylum*, in *International Journal of Refugee Law*, 2005, Volume 17, Issue 2, 299 sqq.; S. PRAKASH SINHA, *Asylum And International Law*, Leiden, 1971, 5 sqq.

²⁵ Cf., *ex multis*: F. RICCIARDI CELSI, *Asilo (diritto di)*, III *Diritto canonico (ad vocem)*, in *Enc. Giur.*, III, Roma, 2008, 1 sqq.; G. CRIFÒ, *Asilo (diritto di)*, *Diritti antichi (ad vocem)*, in *Enc. Dir.*, III, Milano, 1958, 191 sqq.; G. VISMARA, *Asilo (diritto di)*, *Diritto intermedio (ad vocem)*, in *Enc. Dir.*, III, Milano, 1958, 198 sqq.; P. CIPRIOTTI, *Asilo (diritto di)*, *Diritto canonico ed ecclesiastico (ad vocem)*, in *Enc. Dir.*, III, Milano, 1958, 203 sqq.

"Thus, in origin, the Institute found its ethical justification in the imperative need to protect the foreigner, as a defenseless being, "isolated from his compatriots and his relatives"²⁶.

The movements of large-scale populations presuppose a diachronic phenomenon in the history of humanity²⁷, which, in all times and due to the most diverse circumstances, has been forced to propose a legal response to the demand for assistance and international protection of people exposed to the most disparate dangers²⁸.

The right to asylum owes its birth to the earliest forms of hospitality characteristic of the nomadic tradition and was later developed as a "Holy Place" in the Greco-Roman civilization²⁹. In fact, the word "àsilon" has Greek origins³⁰: it means "without capture"³¹.

Indeed, according to a particular opinion, historically, the figure of the refugee, although very old³², has not assumed international importance until the relative phenomenon has remained in modest proportions and the movement of men between states has been free, without, scilicet, completely or almost, of specific formalities³³.

²⁶ Cf. A.D. TROVÒ, *Status di rifugiato: poteri istruttori officiosi del giudice ai sensi della direttiva (Ce) n. 83/2004*, in *Giur. Merito*, 01, 2012, 100 sqq.

²⁷ Indeed, <<to write the history of refugees is to engage critically with a category of concern which has to be problematized and historicized, to understand how refugees have become 'moving targets'>>. Cf. P. GATRELL, *Refugees—What's Wrong with History?*, in *Journal of Refugee Studies*, 2017, Volume 30, Issue 2, 185.

²⁸ Cf. N. ARENAS, *Il sistema di protezione temporanea in caso di afflusso massiccio di sfollati. La direttiva 2001/55/CE*, in *Riv. it. dir. pubbl. comunit.*, 05, 1275 sqq. Indeed, according to M.T. GIL-BAZO, *Asylum as a General Principle of International Law*, in *International Journal of Refugee Law*, 2015, Volume 27, Issue 1, 17 sq., "asylum is an ancient institution, known and practised historically. However, the relevance of asylum as a legal institution goes well beyond its actual recognition in law and practice for centuries. What this recognition reflects is the normative character of asylum, which finds its roots in the most ancient bodies of norms for human conduct both in relation to individuals as well as to societies. Indeed, evidence of the normative character of asylum can be found in its nature as a religious command, a call for divine protection against human in/justice. All three monotheistic religions impose a duty of hospitality and protection to strangers, which constitutes the anthropological and historical background to the law and practice of asylum over time. Asylum therefore constitutes an ancient rule, together with the prohibitions to kill or to steal. In its primitive form, asylum was not concerned with the politically persecuted, but rather with the broader category of those in distress, who could be innocent or guilty".

²⁹ According to A. Edwards, *Human Rights, Refugees, and The Right 'To Enjoy' Asylum*, in *International Journal of Refugee Law*, 2005, Volume 17, Issue 2, 299 "the origins of the 'right to seek and to enjoy asylum from persecution in other countries' can be traced back to the 'right of sanctuary' in ancient Greece, imperial Rome and early Christian civilisation". On this point, see R.K. GOLDMAN, S.M. MARTIN, *International Legal Standards Relating to the Rights of Aliens and Refugees and United States Immigration Law*, in [Human Rights Quarterly](#), 1983, vol. 5, n° 3, 309.

³⁰ Indeed, according to M.T. GIL-BAZO, *Asylum as a General Principle of International Law*, in *International Journal of Refugee Law*, 2015, Volume 27, Issue 1, 20, "asylum - a word of Greek origin that means 'what cannot be seized' - refers to what is inviolable, and as such it invokes a higher power that offers protection".

³¹ Cf., *ex multis*: Cf. A.D. TROVÒ, *Status di rifugiato: poteri istruttori officiosi del giudice ai sensi della direttiva (Ce) n. 83/2004*, in *Giur. Merito*, 01, 2012, 102 sqq.; D.U. GALETTA, *Il diritto di asilo in Italia e nell'Unione europea oggi: fra impegno a sviluppare una politica comune europea, tendenza all'"esternalizzazione" e politiche nazionali di gestione della c.d. "emergenza immigrazione"*, in *Riv. it. dir. pubbl. comunit.*, 2010, 06, 1449; L. MANCA, *Asilo (diritto di)*, I) *Diritto internazionale*, (ad vocem), in *Enc. Giur.*, III, Roma, 2006, 1; M. UDINA, *Asilo (diritto di)*, I) *Diritto internazionale* (ad vocem), in *Enc. Giur.*, III, Roma, 1988, 1 sq.

³² Cf. B. SCHOTTEL, *Legal Protection as Competition for Jurisdiction: The Case of Refugee Protection through Law in the Past and at Present*, in *Leiden Journal of International Law*, 2018, Volume 31, Issue 1, 12 sqq.

³³ Cf., *ex plurimis*: G. BISCOTTINI, *Rifugiati (ad vocem)*, in *Enc. Dir.*, XL, Milano, 1989, 895; E. BERNARDI, *Asilo politico (ad vocem)*, in *Digesto Disc. Pubbl.*, I, Torino, 1987, 422.

Differently, at present, there is the right of every State to control the entry and stay of foreign individuals within its territory³⁴ and to legitimately provide for possible expulsions³⁵.

In effect, for a long time, the right to asylum has been historically configured - rather than as an individual right relevant to the person invoking protection - as the tendentially unconditional right of the State³⁶, where protection is sought, to grant or not that benefit³⁷.

With reference to the Italian legal system, the unequivocal constitutional importance of asylum rights emerges, first of all, from the *sedes* chosen to regulate it. Furthermore, it is linked to the more general commitment to promote, in an international field, a system that ensures peace and justice between nations and, on the other hand, to the need to recognize and guarantee the fundamental rights of the individual towards not only the citizen but of man as such³⁸.

In this sense, with reference to the essential and applicative latitude of the art. 10, paragraph 3 of the Italian Constitution, it has been observed that as regards the recipients of the subjective right of asylum, they are not only foreign citizens, but also stateless persons³⁹; indeed, it would be contrary to fundamental principles of a democracy inspired by values of

³⁴ "Asylum is a well-known institution in international law and its historical roots in State practice are well established. Asylum thus conceived, however, refers to the right of States to grant asylum if they so wish in the exercise of their sovereignty, without it being considered a hostile act towards other States, who have a correlative duty to respect it. Accordingly, asylum as an exercise of State sovereignty is under no limitation in international law, with the exception of extradition or other obligations acquired by treaty, and hence, the corresponding duty on other States to respect it". Cf. M.T. GIL-BAZO, *The Charter of Fundamental Rights of the European Union and the Right to be Granted Asylum in the Union's Law*, in *Refugee Survey Quarterly*, 2008, Volume 27, Issue 3, 38. In general, cf., *ex plurimis*: M. TAKLE, *Migration and asylum statistics as a basis for European border control*, in *Migration Studies*, 2017, Volume 5, Issue 2, 267 sqq.; N. MARKARD, *The Right to Leave by Sea: Legal Limits on EU Migration Control by Third Countries*, in *European Journal of International Law*, 2016, Volume 27, Issue 3, 591 sqq.; C. HARVEY, *Time for Reform? Refugees, Asylum-seekers, and Protection Under International Human Rights Law*, in *Refugee Survey Quarterly*, 2015, Volume 34, Issue 1, 59 sq.

³⁵ Cf., *ex multis*: F. L. GATTA, *Le espulsioni collettive di stranieri alla luce della giurisprudenza della Corte europea dei diritti dell'uomo*, F. CORTESE, G. PELACANI (eds.), *Il diritto in migrazione*, Napoli, 2017, 219 sqq.; S. MIRATE, *Gestione dei flussi migratori e principio di non refoulement: la Corte EDU condanna l'Italia per i respingimenti forzosi di migranti in alto mare*, in *Resp. civ. e prev.*, 2013, 02, 456 sqq. Indeed, according to C. KAUNERT, S. LÉONARD, *The European Union Asylum Policy after the Treaty of Lisbon and the Stockholm Programme: Towards Supranational Governance in a Common Area of Protection?*, in *Refugee Survey Quarterly*, 2012, Volume 31, Issue 4, 2, "in order to prevent or dissuade people from migrating, States have taken a wide array of legislative measures to reduce access to their territory, such as visa policies and carrier sanctions. They have also generally sought to reduce the entitlements of the migrants and asylum-seekers who are on their territories with regard to access to the labour market or social benefits, for example. Moreover, such legislative changes have been accompanied by an increase in the budgets devoted to migration controls in several Member States".

³⁶ In general, about "the morality of refugee law", see C. GREY, *Refugee Law and Its Corruptions*, in *Canadian Journal of Law & Jurisprudence*, 2017, Volume 30, Issue 2, 339 sqq.

³⁷ Cf. F. LANZERINI, *Diritto d'asilo e esclusione dello status di rifugiato. Luci e ombre nell'approccio della Corte di giustizia dell'Unione Europea*, in *Riv. dir. internaz.*, 2011, 01, 105 sqq. Indeed, "today, constitutions worldwide recognise the right to asylum in their bill of rights and in doing so they represent a continuation in the ancient normative character of the institution to inform conceptions of society for the wellbeing of individuals". Cf. M.T. GIL-BAZO, *Asylum as a General Principle of International Law*, in *International Journal of Refugee Law*, 2015, Volume 27, Issue 1, 23.

³⁸ Cf., *ex multis*: M. BENVENUTI, *Asilo (diritto di)*, II) *Diritto costituzionale (ad vocem)*, in *Enc. Giur.*, III, Roma, 2007, 1 sqq.; C. ESPOSITO, *Asilo (diritto di)*, *Diritto costituzionale" (ad vocem)*, in *Enc. Dir.*, III, Milano, 1958, 222 sqq.

³⁹ Cf. S. W. ALLARD, *Who am i? Who are you? Who are we? Law, religion, and approaches to an ethic of migration*, in *Journal of Law and Religion*, 2015, Volume 30, Issue 2, 321 sqq.

modern constitutionalism⁴⁰, to exclude stateless persons, who can not exercise the rights of liberty in the country of habitual residence, from the benefit of the norm⁴¹.

The purpose of the law is to allow non-citizens to stay in Italy who can not enjoy the same freedom guaranteed in Italy in the foreign country with which they are permanently linked, i.e. with the State of which they are citizens or with the one in which, although they do not have the nationality because they are stateless, they reside permanently⁴².

Historically, however, it is noted that, with regard to the formulation of the text of art. 10, paragraph 3, of the Italian constitution, originally it was not possible to see unanimous convergence of opinions in the Constituent Assembly⁴³.

On this point, they developed essentially three different ideological positions.

According to a first approach, of a communist matrix, the idea of giving particular importance to the condition of persecuted was valued, to circumscribe the recognition of the protection granted by the Italian State only to those who were the object of persecution, so as to avoid including the simple denial of the fundamental rights of the person.

In accordance with a different approach, essentially socialist, it developed, differently, the idea according to which, in order to benefit from the right of asylum, it was necessary that the rights for whose defense a persecuted foreigner should have struggled for, should be those guaranteed by the Italian Constitution.

Finally, according to a third reconstruction option, of liberal and Christian Democrat extraction, ultimately, prevailed the opportunity to extend as far as possible the scope of possible asylum seekers, requiring, essentially, the existence of an objective element: that the state of the exile repudiates the fundamental liberal-democratic rights that are guaranteed by Italian Constitution⁴⁴.

⁴⁰ Indeed, according to B. FASSBENDER, *International Constitutional Law: Written or Unwritten?*, in *Chinese Journal of International Law*, 2016, Volume 15, Issue 3, 489 sqq., “today, concepts of constitutionalism are widely used...both to describe and to promote changes in the international legal order in support of the rule of law, the protection of human rights and other common values of the international community”.

⁴¹ Indeed, the protection of stateless persons has long been understood as a challenge for the international community. However, for many of the past 60 years, a prioritized focus on refugees has dominated, or even eclipsed, the plight and protection needs of stateless persons. On this point, see M. FOSTER, H. LAMBERT, *Statelessness as a Human Rights Issue: A Concept Whose Time Has Come*, in *International Journal of Refugee Law*, 2016, Volume 28, Issue 4, 564 sqq.

⁴² Cf. A. CASSESE, *Art. 10*, in G. BRANCA (ed.), *Commentario della Costituzione, Artt. 1/12*, Bologna, 1975, 534.

⁴³ Indeed, in the summer of 1938, a year before the outbreak of the Second World War, the Hague Academy of International Law held its annual course on public international law. For the first time, the Academy devoted a whole series of lectures to the right of asylum, and chose an Italian, Egidio Reale, to teach on the subject. He was a refugee himself and his account was a passionate, learned, and rigorous survey of the meaning of asylum from its early historical developments to its legal and practical implications. At the time, many Italian intellectuals and politicians indeed were experiencing the value of international protection. A number of them were later elected to draft the Italian Constitution of 1948, the first to be democratically adopted since Italy was unified in 1861. On this point, see H. LAMBERT, F. MESSINEO, P. TIEDEMANN, *Comparative Perspectives of Constitutional Asylum in France, Italy, and Germany: Requiescat in Pace ?*, in *Refugee Survey Quarterly*, 2008, Volume 27, Issue 3, 21 sq.

⁴⁴ *Ibid.*, 526 sqq.

The recognition within the judicial courts of the right to asylum as a perfect subjective constitutional right⁴⁵, however, was complex and tormented⁴⁶.

For a long time, then, it was possible to detect a clear contradiction between the amplitude of the notion of asylum law contained in art. 10, paragraph 3, of the Constitution and the difficulties encountered in its implementation until a specific, particularly stringent and punctual discipline, with an international and European matrix⁴⁷, has taken shape⁴⁸.

This, in particular, with regard to the European Union⁴⁹, when the right to asylum, understood as the right to a "safe place"⁵⁰, to an international protection for citizens of third Sta-

⁴⁵ Cf. B. KOTSCHY, *Austria: Asylum law in conflict with the Constitution*, in *International Journal of Constitutional Law*, 2006, Volume 4, Issue 4, 689 sqq.

⁴⁶ Cf. M. BENVENUTI, *Asilo (diritto di)*, in *Il Diritto costituzionale (ad vocem)*, in *Enc. Giur.*, III, Roma, 2007, 3 sqq.

⁴⁷ Indeed, according to J. P. BREKKE, G. BROCHMANN, *Stuck in Transit: Secondary Migration of Asylum Seekers in Europe, National Differences, and the Dublin Regulation*, in *Journal of Refugee Studies*, 2015, Volume 28, Issue 2, 145 sqq., there is a discrepancy between the European Union's ambitions to create a harmonized reception system for asylum seekers and the realities on the ground. National differences in reception conditions, access to integration measures and social rights undermine the supranational efforts to coordinate policies across the region. In this context, because of its own very nature as a process, the policies of border control and their subsequent translation in legislation constitute an uneven body of bilateral and multilateral relations between States that develops over time, outside and within the EU's legislative and institutional framework. On this point, see M.T. GIL-BAZO, *The Practice of Mediterranean States in the context of the European Union's Justice and Home Affairs External Dimension. The Safe Third Country Concept Revisited*, in *International Journal of Refugee Law*, 2006, Volume 18, Issue 3-4, 573 sq.

⁴⁸ Cf. R. FINOCCHI GHERSI, *Il diritto di asilo in Italia e in Europa*, in *Riv. trim. dir. pubbl.*, 2011, 04, 919 sqq.

⁴⁹ Indeed, according to J.P. BREKKE, G. BROCHMANN, *Stuck in Transit: Secondary Migration of Asylum Seekers in Europe, National Differences, and the Dublin Regulation*, in *Journal of Refugee Studies*, 2015, Volume 28, Issue 2, 145 sq., "there is a discrepancy between the European Union's ambitions to create a harmonized reception system for asylum seekers and the realities on the ground. National differences in reception conditions, access to integration measures and social rights undermine the supranational efforts to coordinate policies across the region. These differences encourage secondary movement by migrants, movement that the Common European Asylum System (CEAS) was intended to prevent. The current economic crisis heightens these differences, creating tension between countries and increasing the importance of reconsidering the common knowledge on harmonization efforts in Europe". In general, cf., ex multis: F. CASOLARI *L'assistenza umanitaria agli Stati membri dell'Unione e la questione migratoria. Osservazioni critiche a margine del Regolamento 2016/369*, in F. CORTESE, G. PELACANI (eds.), *Il diritto in migrazione*, Napoli, 2017, 33 sqq.; C. COSTELLO, *The Human Rights of Migrants and Refugees in European Law*, Oxford, 2015; S. PEERS, V. MORENO-LAX, M. GARLICK, E. GUILD, *EU Immigration Law (Text and Commentary)*, II ed., vol. 3, Leiden-Boston, 2015; J.P. BREKKE, G. BROCHMANN, *Stuck in Transit: Secondary Migration of Asylum Seekers in Europe, National Differences, and the Dublin Regulation*, in *Journal of Refugee Studies*, Volume 28, Issue 2, 145 sqq.; P. BOELES, M. DEN HEIJER, G. LODDER, K. WOUTERS (eds.), *European Migration Law*, Antwerpen, 2014; L. AZOULAI, K. DE VRIES, *EU Migration Law: Legal Complexities and Political Rationales*, Oxford, 2014; S. BERTOZZI, *European Pact on Migration and Asylum: a stepping stone towards common European migration policies*, in *Riv. it. dir. pubbl. comunit.*, 2009, 01, 79 sqq.; J. VAN SELM, *The Europeanization of refugee policy*, in S. KNEEBONE, F. RAWLINGS-SANAEI (ed.), *New Regionalism and Asylum Seekers: Challenges Ahead*, New York, 2007, 79 sqq.

⁵⁰ About the analysis of two different contexts in which the concept of 'safe country' is used, namely, in the sense of a third country in which an asylum seeker was safe or could have found protection from persecution and the relatively new idea of "safe country of origin", see K. HAILBRONNER, *The Concept of 'Safe Country' and Expeditious Asylum Procedures: A Western European Perspective*, in *International Journal of Refugee Law*, 1993, Volume 5, Issue 1, Pages 31 sqq. About the evolution of the safe country of origin concept within the European legal framework, see M. HUNT, *The Safe Country of Origin Concept in European Asylum Law: Past, Present and Future*, in *International Journal of Refugee Law*, 2014, Volume 26, Issue 4, 500 sqq. About the legal considerations based on international and European refugee and human rights law relevant for the return and readmission of persons in need of international protection from Greece to Turkey under the (proposed) EU-Turkey coo-

tes persecuted⁵¹, or otherwise in danger, for reasons connected to their country of origin⁵², begins to become the goal for a common policy⁵³ within the European Community⁵⁴ with the Tampere Council statements of October 1999⁵⁵.

peration, as discussed during European Council meetings with Turkey on 7 and 17–18 March 2016, see *Legal Considerations on the Return of Asylum Seekers and Refugees from Greece to Turkey as Part of the EU–Turkey Cooperation in Tackling the Migration Crisis under the Safe Third Country and First Country of Asylum Concept - UNHCR*, in *International Journal of Refugee Law*, 2017, Volume 29, Issue 3, 498 sqq.

⁵¹ Indeed, refugees, while en route from their countries of origin to their ultimate destinations, typically pass through one or more ‘third countries’. When they reach their intended final destinations and apply for asylum, they are often returned to one of the third countries without substantive determinations of their claims. The destination country might reason either that the third country was a ‘safe third country’ from which the claimant should have requested protection, or that the third country was a ‘first country of asylum’, having already granted adequate protection. Either way, the returns have caused serious problems for the refugees, for the third countries, and for regional stability. Cf. S. H. LEGOMSKY, *Secondary Refugee Movements and the Return of Asylum Seekers to Third Countries: The Meaning of Effective Protection*, in *International Journal of Refugee Law*, 2003, Volume 15, Issue 4, 567 sqq.

⁵² According to H. MARTENSON, J. MCCARTHY, ‘*In General, No Serious Risk of Persecution*’: *Safe Country of Origin Practices in Nine European States*, in *Journal of Refugee Studies*, 1998, Volume 11, Issue 3, 304 sqq., comparisons of new procedures in different European countries need to be made to ensure that the restriction of rights does not result in the loss of individual freedoms or lives.

⁵³ Cf. C. INDER, *The Origins of ‘Burden Sharing’ in the Contemporary Refugee Protection Regime*, in *International Journal of Refugee Law*, 2017, Volume 29, Issue 4, 523 sqq.; H. STOREY, *Consistency in Refugee Decision-Making: A Judicial Perspective*, in *Refugee Survey Quarterly*, 2013, Volume 32, Issue 4, 112 sqq.

⁵⁴ According to R. STERN, *At a Crossroads? Reflections on the Right to Asylum for European Union Citizens*, in *Refugee Survey Quarterly*, 2014, Volume 33, Issue 2, Pages 54 sqq., the presumption that all EU Member States are safe countries of origin constitutes a vital part of the self-image of the European Union. Consequently, the possibilities open to an EU citizen seeking asylum in another EU country are limited. The human rights record of certain Member States, however, reveals that for some of their citizens this image is not a true representation. Perhaps the most obvious example, though not the only one, is the plight of the Roma minority

⁵⁵ Indeed, according to C. KAUNERT, S. LÉONARD, *The European Union Asylum Policy after the Treaty of Lisbon and the Stockholm Programme: Towards Supranational Governance in a Common Area of Protection?*, in *Refugee Survey Quarterly*, 2012, Volume 31, Issue 4, 7, “the EU asylum policy finds its origins outside the European Community’s setting. European cooperation on asylum initially developed within the framework of the Ad Hoc Group on Migration, which was established in 1986”. In general, cf., *ex plurimis*: F. SCUTO, *La gestione dell’“emergenza” tra interventi dell’Unione europea e ordinamento nazionale: l’impatto sulle fonti del diritto dell’immigrazione*, in F. CORTESE, G. PELACANI (eds.), *Il diritto in migrazione*, Napoli, 2017, 373 sqq.; G. SCACCIA, D. DE LUNGO, *Il diritto di asilo*, in F. RIMOLI (ed.), *Immigrazione e integrazione*, Napoli, 2014, 605 sqq.; S. MIRATE, *Diritto di asilo e condizioni minime di accoglienza: la Corte Ue chiarisce obblighi e responsabilità degli stati membri*, in *Resp. civ. e prev.*, 2013, 03, 809 sqq.; E. BENEDETTI, *Il diritto d’asilo e la protezione dei rifugiati nell’ordinamento comunitario dopo l’entrata in vigore del Trattato di Lisbona*, Milano, 2010, 101 sqq.; P. BONETTI, *Il diritto di asilo in Italia dopo l’attuazione della direttiva comunitaria sulle qualifiche e sugli status di rifugiato e di protezione temporanea*, in *Diritto, immigrazione e cittadinanza*, n. 1, 2008, 93 sqq.; D.U. GALETTA, *Il diritto di asilo in Italia e nell’Unione europea oggi: fra impegno a sviluppare una politica comune europea, tendenza all’“esternalizzazione” e politiche nazionali di gestione della c.d. “emergenza immigrazione”*, in *Riv. it. dir. pubbl. comunit.*, 2010, 06, 1450 sqq.; B. NASCIBENE, *Asilo e statuto di rifugiato*, in AA.Vv., *Lo statuto costituzionale del non cittadino. Atti del XXIV Convegno annuale dell’Associazione italiana dei costituzionalisti*, Napoli, 2010, 304 sqq.; A. ADINOLFI, *Riconoscimento dello status di rifugiato e della protezione sussidiaria: verso un sistema comune europeo?*, in *Riv. dir. internaz.*, 2009, 03, 669 sqq.; L. MANCA, *Asilo (ad vocem)*, in S. PATTI (ed.), *Il Diritto. Enciclopedia giuridica del Sole 24 ore*, I, Milano, 2007, 675 sq.; ID, *Rifugiati (ad vocem)*, in S. PATTI (ed.), *Il Diritto. Enciclopedia giuridica del Sole 24 ore*, I, Milano, 2007, 556 sq.; ID, *Asilo (diritto di)*, I) *Diritto internazionale*, (ad vocem), in *Enc. Giur.*, III, Roma, 2006, 1 sqq.; B. CORTESE, *L’esternalizzazione delle procedure di riconoscimento dello status di rifugiato tra competenze comunitarie e nazionali*, in *Dir. Un. Eur.*, 2006, 63 sqq.; M.R. SAULLE, *L’immigrazione e l’asilo nell’Europa allargata*, in M.R. SAULLE (ed.), *L’Europa tra Costituzione, asilo e migrazione*, Napoli, 2004, 101 sqq.; D. DUBOLINO, *L’identificazione dello Stato competente all’esame di una domanda di asilo: dalla Convenzione di Dublino al nuovo Regolamento 1*, in *Dir. Un. Eur.*, 2004, 04, 811 sq.

In this sense, then, the administrative procedures⁵⁶ and the jurisprudence of the European Court of Human Rights have certainly contributed to shaping the Italian refugee protection system⁵⁷.

In particular, according to European jurisprudence, in order to postulate the integration of the constituent elements of the persecutory act, such as to justify the request for protection, the conduct perpetrated must be "sufficiently serious", by its nature or its reiteration, to represent a "serious violation of the fundamental rights or of the human rights", in particular of absolute rights for which, under Article 15 (2) of the ECHR, exemption is not permitted.

According to the guidelines developed within the Italian legal system⁵⁸, in order to access the protection system, it is considered that it must be demonstrated, with sufficient reliability, at least the well-founded fear of the applicant about persecution and it is required that he expose the personal story without contradictions, which is compatible with the general situation of the country of origin and, above all, that all possible efforts are made to substantiate the application formulated⁵⁹.

In this direction, the limited probative burden, linked to the reduced degree of availability of evidence, can not constitute a right to the beneficial of the doubt, nor an obligation of the administration to deny the reasons given by the petition with arguments contrary to it. This is to say that the applicant must prove, at least on a presumptive basis, the concrete danger which he would meet with repatriation with precise reference to the effectiveness and topicality of the risk⁶⁰.

In this context, however, the examining administrative authority and the judge must play an active role in carrying out of the application for protection, undocked by the typical

⁵⁶ Cf. S. HORII, *Accountability, Dependency, and EU Agencies: The Hotspot Approach in the Refugee Crisis*, in *Refugee Survey Quarterly*, 2018, Volume 37, Issue 2, 204 sqq.

⁵⁷ Cf. J. I. GOLDENZIEL, *Khlaifia and Others v. Italy*, in *American Journal of International Law*, 2018, Volume 112, Issue 2, 274 sqq.; M. SAVINO, *La gestione italiana della crisi migratoria: un primo bilancio*, in F. CORTESE, G. PELACANI (eds.), *Il diritto in migrazione*, Napoli, 2017, 43 sqq.; D. J. CANTOR, *Reframing Relationships: Revisiting the Procedural Standards for Refugee Status Determination in Light of Recent Human Rights Treaty Body Jurisprudence*, in *Refugee Survey Quarterly*, 2015, Volume 34, Issue 1, 89 sqq.; E. CORCIONE, *L'Italia e il trattamento dei richiedenti asilo: sistema di accoglienza e valutazione del rischio*, in *Giur. Merito*, 2013, 11, 2419 sqq.; E. REBASTI, *Corte europea dei diritti umani e sistema comune europeo in materia d'asilo*, in *Diritti umani e dir. internaz.*, 2011, 343 sqq.; M.T. GIL-BAZO, *The Charter of Fundamental Rights of the European Union and the Right to be Granted Asylum in the Union's Law*, in *Refugee Survey Quarterly*, 2008, Volume 27, Issue 3, 40 sq.

⁵⁸ Cf., *ex multis*: F. BIONDI DAL MONTE, *Le fonti nel diritto dell'immigrazione*, in F. CORTESE, G. PELACANI (eds.), *Il diritto in migrazione*, Napoli, 2017, 343 sqq.

⁵⁹ About the legal aid scheme for asylum seekers in Italy and, in particular, in order to the actual availability of high-quality legal representation in the context of asylum procedures and in as much as they affect the right to claim asylum, expulsions and rejections at the border, see K. BIANCHINI, *Legal Aid for Asylum Seekers: Progress and Challenges in Italy*, in *Journal of Refugee Studies*, 2011, Volume 24, Issue 2, 390 sqq.

⁶⁰ Indeed, according to R. HANSEN, *The Comprehensive Refugee Response Framework: A Commentary*, in *Journal of Refugee Studies*, 2018, Volume 31, Issue 2, 133, "for refugees, repatriation is the ideal solution, as most want to return home...Returning home signifies both a personal and a political triumph: refugees are home and, if they are safe there, then the original causes of their flight have been resolved". On this point, see M. BRADLEY, *Back to Basics: The Conditions of Just Refugee Returns*, in *Journal of Refugee Studies*, 2008, Volume 21, Issue 3, 286, according to which "the norms developed by UNHCR and the UN Member States on voluntary repatriation and return in 'safety and dignity' provide the legal and political framework within which just return is pursued. However, the notions of voluntary, safe and dignified return have typically been discussed in principally legal and operational terms; their moral dimensions have been neglected or interpreted inconsistently".

principles of ordinary civil judgment and free from preclusions or procedural impediments, as well as based on the possibility of acquiring information and acquire all the necessary documentation *aliunde*⁶¹.

As a consequence, it is noted that, on the subject of immigration and protection of the safety of the non-EU citizen and, therefore, of subsidiary international protection, the legal system prescribes *ad hoc* regulatory parameters, to be interpreted in an alternative and non cumulative sense, for the judicial assessment of the credibility of the applicant for political refugee status⁶².

The refusal to recognize the international protection measure on the basis of a single element deemed to be divergent is, therefore, contrary to European law⁶³.

In the current state, however, there are specific essential limits to the recognition of the right to asylum, as, in the past, authoritatively underlined, since among the fundamental freedoms recognized by the Italian Constitution, there is no one that authorizes to act and operate against the same Constitution (with respect to which, differently, one is bound to obey and be faithful)⁶⁴; as a consequence, the art. 10, paragraph 3 of the Italian Fundamental Chart can not be applied to those who have committed acts contrary to the values consecrated within it and are consequently prosecuted in compliance with the legal forms typical of a democratic state⁶⁵.

On the other hand, it does not have any importance, in order to recognize international protection or asylum, that the alien requesting protection, may have committed criminal acts against its legal system and is, for this reason, legally indicted there, considering, also in

⁶¹ Cf. A.D. TROVÒ, *Status di rifugiato: poteri istruttori officiosi del giudice ai sensi della direttiva (Ce) n. 83/2004*, in *Giur. Merito*, 01, 2012, 102 sqq.

⁶² Indeed, according to H. LAMBERT, F. MESSINEO, P. TIEDEMANN, *Comparative Perspectives of Constitutional Asylum in France, Italy, and Germany: Requiescat in Pace ?*, in *Refugee Survey Quarterly*, 2008, Volume 27, Issue 3, 24 sq., constitutional asylum in Italy is applied only very marginally. In fact, <<despite the (relative) wealth of academic literature on the matter, the endless jurisdictional differences on issues such as the "legitimate interest" versus "subjective right" dichotomy, and the repeated failure of Parliament to adopt implementing legislation, article 10(3) is still lingering in the world of betrayed constitutional provisions, only occasionally being brought to ephemeral life by random enlightened judges across the country>>.

⁶³ Indeed, identifying the exact scope of States' obligations towards refugees has become an issue of fundamental relevance and one of the most controversial areas in refugee studies nowadays. In particular, there is disagreement among legal scholars, governments, policy-makers, and international organizations as to how far States' obligations go beyond their borders in relation to refugees who have not reached the State's territory. One of the reasons for this divergence may be the fact that much of the current analysis on the lawfulness of practices and proposals is often based on unstated premises regarding the status of individuals under International Law, the way international treaties are to be interpreted, the way States' obligations vis à vis individuals are engaged, and other elements of the conceptual framework where the analysis takes place. Cf. M.T. GIL-BAZO, *The Practice of Mediterranean States in the context of the European Union's Justice and Home Affairs External Dimension. The Safe Third Country Concept Revisited*, in *International Journal of Refugee Law*, 2006, Volume 18, Issue 3-4, 571 sqq.

⁶⁴ Cf., *ex plurimis*: G. GALANTE (02/07/2010), *La fedeltà nei rapporti di diritto pubblico tra morale, politica e diritto*, in <http://archivio.rivistaaic.it/rivista/2010/00/Galante01.pdf>; A. RUGGERI, *Composizione delle norme in sistema e ruolo dei giudici a garanzia dei diritti fondamentali e nella costruzione di un ordinamento "intercostituzionale"*, in www.federalismi.it, 13/05/2009, 16.

⁶⁵ Cf., *ex multis*: A. CASSESE, *Art. 10*, in G. BRANCA (ed.), *Commentario della Costituzione, Artt. 1/12*, Bologna, 1975, 535; C. ESPOSITO, *Asilo (diritto di), Diritto costituzionale* (ad vocem), in *Enc. Dir.*, III, Milano, 1958, 223.

this case, as a basis for comparison, the fundamental principles contained in the Italian Constitution⁶⁶.

It is also true, however, that the particular importance conferred by international law on the need to prepare adequate instruments for the protection of fundamental human rights against any form of physical and / or moral abjection⁶⁷, is such as to allow the protection for people, even if there is the existence of of penal prejudices on the applicant, even for particularly serious crimes, to the purpose of balancing the need for internal security with the safeguarding the fundamental rights of the person; in this cases, this can not in itself preclude the recognition of international, subsidiary or humanitarian protection⁶⁸. The reference is, for example, to the institute of the administrative expulsion of the foreigner, responsible for offenses attributable to the list of behaviors connoted and / or supported by terrorist purposes⁶⁹, which, in case of repatriation, could be subjected to torture⁷⁰.

⁶⁶ Cf. M. BENVENUTI, *Asilo (diritto di), Il Diritto costituzionale (ad vocem)*, in *Enc. Giur.*, III, Roma, 2007, 5.

⁶⁷ Cf. C. PRETTO, *Victims of trafficking and refugees: the nexus between asylum and anti-trafficking*, in F. CORTESE, G. PELACANI (eds.), *Il diritto in migrazione*, Napoli, 2017, 193 sqq.; J. FREEDMAN, *Engendering Security at the Borders of Europe: Women Migrants and the Mediterranean 'Crisis'*, in *Journal of Refugee Studies*, 2016, Volume 29, Issue 4, 568 sqq.; A. L. PURKEY, *A Dignified Approach: Legal Empowerment and Justice for Human Rights Violations in Protracted Refugee Situations*, in *Journal of Refugee Studies*, 2014, Volume 27, Issue 2, 260 sqq.; A. GERARD, S. PICKERING, *Gender, Securitization and Transit: Refugee Women and the Journey to the EU*, in *Journal of Refugee Studies*, 2014, Volume 27, Issue 3, 338 sqq.; J. GENDER, L.E. FELLER, *Left out in the Cold: Trafficking Victims, Gender, and Misinterpretations of the Refugee Convention's Nexus Requirement. Asylum, Migration and Refugee Protection: Realities, Myths and the Promise of Things to Come*, in *Int J Refugee Law*, 3-4, 2006, 509 sqq.

⁶⁸ Indeed, the refugee protection regime has its origins in general principles of human rights. Cf., *ex multis*: A. EDWARDS, *Human Rights, Refugees, and The Right 'To Enjoy' Asylum*, in *International Journal of Refugee Law*, 2005, Volume 17, Issue 2, 297; E. FELLER, *International refugee protection 50 years on: The protection challenges of the past, present and future*, in *Int'l Rev. Red Cross*, 2001, 83, n°843, 582.

⁶⁹ Cf., *ex multis*: A. ALI, *Divieto di ingresso ed espulsione dello straniero dal territorio dello Stato per motivi di terrorismo: la sicurezza nazionale nella recente giurisprudenza della Corte di giustizia dell'Unione europea*, in F. CORTESE, G. PELACANI (eds.), *Il diritto in migrazione*, Napoli, 2017, 519 sqq.

⁷⁰ Cf., *ex plurimis*: D. GHEZELBASH, V. MORENO-LAX, N. KLEIN, B. OPESKIN, *Securitization of search and rescue at sea: the response to boat migration in the mediterranean and offshore Australia*, in *International & Comparative Law Quarterly*, 2018, Volume 67, Issue 2, 315 sqq.; S. KIM, *Non-Refoulement and Extraterritorial Jurisdiction: State Sovereignty and Migration Controls at Sea in the European Context*, in *Leiden Journal of International Law*, 2017, Volume 30, Issue 1, 49 sqq.; S. SINGER, *Expulsion to Face Torture? Non-refoulement in International Law. Exclusion Clauses of the Refugee Convention in Relation to National Immigration Legislations, European Policy and Human Rights Instruments: Article 1F versus the Non-Refoulement Principle*, in *International Journal of Refugee Law*, 2017, Volume 29, Issue 1, 198 sqq.; M.P. RIZZO, *Immigrazione irregolare via mare tra obblighi di soccorso e principio di non-refoulement*, in G. MOSCHELLA, L. BUSCEMA (eds.), *Immigrazione e condizione giuridica dello straniero*, Roma, 2016, 190 sqq.; K. GREENMAN, *A Castle Built on Sand? Article 3 ECHR and the Source of Risk in Non-Refoulement Obligations in International Law*, in *International Journal of Refugee Law*, 2015, Volume 27, Issue 2, 264 sqq.; M. SY, *UNHCR and Preventing Indirect Refoulement in Europe*, in *International Journal of Refugee Law*, 2015, Volume 27, Issue 3, 457 sqq.; M. D. HEIJER, *Reflections on Refoulement and Collective Expulsion in the Hirsi Case*, in *International Journal of Refugee Law*, 2013, Volume 25, Issue 2, 265 sqq.; F. DE VITTOR, *Respingimenti in mare ed 'esternalizzazione' della protezione: il confine territoriale come limite agli obblighi di tutela*, in M. MECCARELLI, P. PALCHETTI, C. SOTIS (eds.), *Ius peregrinandi. Il fenomeno migratorio tra diritti fondamentali, esercizio della sovranità e dinamiche di esclusione*, Macerata, 2012, 183 sqq.; R. BARBERINI, *L'espulsione dello straniero a rischio tortura: una sentenza della Cassazione riletta alla luce degli sviluppi giurisprudenziali - nazionali ed internazionali - successivi (nota a Cass., sez. VI pen., 28 aprile 2010 (ud.); 28 maggio 2010 (dep.) n. 20514)*, in *Cass. pen.*, 2012, 06, 2227 sqq.; M. SAVINO, *"Enemy Aliens" in Italy? The Conflation between Terrorism and Immigration*, in *Italian Journal of Public Law*, 2011, vol. 2, 231 sqq.; G. GENTILI, *European Court of Human Rights: An absolute ban on deportation of foreign citizens to countries where torture or ill-*

In the same hypothesis, the reconciliation between opposing interests must be sought in the adoption of measures to repudiate and prevent the violation of human rights⁷¹ while not renouncing the ineradicable levels of guarantee of the State security and of the protection of public order⁷², so as to strengthen, definitely, the solidity of the values of a democratic system even against the danger of attack on free Institutions⁷³.

3. Right to asylum and refugee status within a multicultural society

The word asylum does not find any definition in the norms and principles of international law, except for the reference contained in art. 10, paragraph 3, of the Italian Constitution, although, in doctrine, depending on the case, there are different types of asylum: "temporary asylum", or the right of refugees to enter the territory of a state⁷⁴ and stay there, at least temporarily⁷⁵; "diplomatic or extraterritorial asylum", that is, the asylum required in a di-

treatment is a genuine risk, in *International Journal of Constitutional Law*, 2010, Volume 8, Issue 2, 311 sqq.; P. PALERMO, *Dal terrorismo alla tortura attraverso le procedure di espulsione. Una sentenza della Suprema Corte di Cassazione (nota a Cass., sez. VI pen., 28 aprile 2010 (ud.); 28 maggio 2010 (dep.) n. 20514)*, in *Riv. pen.*, 2010, 12, 1277 sqq.; A. FISCHER-LESCANO, T. LÖHR, T. TOHIDIPUR, *Border Controls at Sea: Requirements under International Human Rights and Refugee Law*, in *International Journal of Refugee Law*, 2009, Volume 21, Issue 2, 256 sqq.; A. CONZ, *L'espulsione dello straniero. L'art. 16 d.lg. n. 286 del 25 luglio 1998 (nota a Cass., sez. I pen., 5 febbraio 2008 (ud.); 12 febbraio 2008 (dep.) n. 6648)*, in *Cass. pen.*, 2009, 01, 316 sqq.; N. PLASTINA, *Lotta al terrorismo: la Corte di Strasburgo conferma la natura assoluta dell'obbligo di "non refoulement" in relazione all'art. 3 Cedu (nota a Corte europea diritti uomo, sez. II, 24 febbraio 2009)*, in *Cass. pen.*, 2009, 7-8, 3205 sqq.

⁷¹ "European primary and secondary law oblige European border control bodies to uphold the non-refoulement principle and related procedural rights... Interception, turning back, escorting back, preventing the continuation of a journey, towing back or transferring to non-European coastal regions all involve an exercise of jurisdiction requiring international human and refugee rights to be observed". Cf. A. FISCHER-LESCANO, T. LÖHR, T. TOHIDIPUR, *Border Controls at Sea: Requirements under International Human Rights and Refugee Law*, in *International Journal of Refugee Law*, 2009, Volume 21, Issue 2, 283 sqq.

⁷² Cf. D. STRAZZARI, *Ripudio islamico, ordine pubblico e diritti fondamentali*, in F. CORTESE, G. PELACANI (eds), *Il diritto in migrazione*, Napoli, 2017, 678 sqq.

⁷³ Cf. D. MOFFETTE, N. AKSIN, *Fighting Human Smuggling or Criminalizing Refugees? Regimes of Justification in and around R v Appulonappa*, in *Canadian Journal of Law & Society*, 2018, Volume 33, Issue 1, 32 sqq.

⁷⁴ According to M.T. GIL-BAZO, *The Practice of Mediterranean States in the context of the European Union's Justice and Home Affairs External Dimension. The Safe Third Country Concept Revisited*, in *International Journal of Refugee Law*, 2006, Volume 18, Issue 3-4, 574 sqq. it is argued that an attempt to identify the obligations of States towards refugees requires first clarification as to which rights a refugee can claim vis à vis a State. It is also argued that the status of refugees under international law is defined not solely by International Refugee Law, but rather by the interaction of the different legal orders that may be applicable to any given refugee in any given circumstances, both of universal and regional scope

⁷⁵ Indeed, the rule of temporary refuge forms the corner stone of the response of States to large-scale influx of refugees. In the context of civilians fleeing armed conflict, this legal rule imposes a positive obligation on all States to admit and not to return anyone to a situation where there is a risk to life, and to provide basic rights commensurate with human dignity. Also implicit in the rule is the expectation of shared responsibility for large numbers of refugees and of international cooperation towards finding durable solutions. On this point, see H. LAMBERT, *Temporary refuge from war: customary international law and the syrian conflict*, in *International & Comparative Law Quarterly*, 2017, Volume 66, Issue 3, 723 sqq.

plomatic representation; "territorial asylum", to enter and remain in the territory of another State⁷⁶.

According to a part of the doctrine, it seems, thus, that the right to asylum is an improper expression, with which, generically, it is indicated the faculty of the State to allow foreigners sought by their national states to remain undisturbed in its territory⁷⁷.

Differently, based on the Convention on the Status of Refugees, signed in Geneva on 28 July 1951, entered into force on 22 April 1954, as supplemented by the Protocol on the Status of Refugees, signed in New York on 31 January 1967 and entered into force on October 4, 1967⁷⁸, the term "refugee"⁷⁹ specifically applies to anyone which is reasonably afraid of being persecuted for reasons of race, religion, nationality, belonging to a particular social group or for its political opinions, and is located outside the country, whom is a citizen and can not or does not want, because of this fear, to make use of the protection of this country, or to anyone, not having citizenship, and being outside the country in which he habitually resides as a result of such events, can not or does not want to come back for the same reasons⁸⁰.

Indeed, the aforementioned definition of refugee is characterized by both the presence of the subjective elements, the fear of persecution⁸¹, and of objective elements, a grounded fear⁸².

⁷⁶ Cf., *ex multis*: M. UDINA, *Asilo (diritto di), I) Diritto internazionale (ad vocem)*, in *Enc. Giur.*, III, Roma, 1988, 1 sqq.; M. GIULIANO, *Asilo (diritto di), Diritto internazionale" (ad vocem)*, in *Enc. Dir.*, III, Milano, 1958, 204 sqq.

⁷⁷ Cf. V. SANTARSIERE, *Stato di rifugiato e diritto di asilo politico. Tra rilevanza dei presupposti e prove ardue*, in *Giur. Merito*, 2007, 12, 3323. Indeed, according to M.T. GIL-BAZO, *Asylum as a General Principle of International Law*, in *International Journal of Refugee Law*, 2015, Volume 27, Issue 1, 7, "asylum constitutes the protection that a state grants to an individual in its territory (territorial asylum) or in some other place under the control of certain of its organs (such as diplomatic premises and warships). As such, asylum is an expression of state sovereignty".

⁷⁸ Indeed, most countries provide asylum through domestic legislation, for example, a statute incorporating the 1951 Convention Relating to the Status of Refugees (hereinafter the Refugee Convention). In Europe, France, Italy, and Germany stand out as three of very few European countries specifically to guarantee a right of asylum in their national Constitutions. The origin and wording of these constitutional provisions vary, to take account of historical factors specific to each country. France was the first country in Europe to recognize a constitutional right of asylum in the aftermath of the 1789 Revolution (article 120 of the Constitution of 1793). This right is now enshrined in the Constitution of 1946, to which the Preamble of the 1958 Constitution directly refers. In contrast, the recognition of a right of asylum in the Constitutions of Italy and Germany is more recently rooted in the aftermath of the Second World War. On this point, see H. LAMBERT, F. MESSINEO, P. TIEDEMANN, *Comparative Perspectives of Constitutional Asylum in France, Italy, and Germany: Requiescat in Pace ?*, in *Refugee Survey Quarterly*, 2008, Volume 27, Issue 3, 16 sq.

⁷⁹ Cf. R. HANSEN, *The Comprehensive Refugee Response Framework: A Commentary*, in *Journal of Refugee Studies*, 2018, 1 sqq.

⁸⁰ Cf. S. W. ALLARD, *Global and Local Challenges to Refugee Protection*, in *International Journal of Legal Information*, 2018, Volume 46, Issue 1, 47 sqq.; A. EDWARDS, *Human Rights, Refugees, and The Right 'To Enjoy' Asylum*, in *International Journal of Refugee Law*, 2005, Volume 17, Issue 2, 293 sqq.; E. ANDERSEN, *The Role of Asylum States in Promoting Safe and Peaceful Repatriation under the Dayton Agreements*, in *European Journal of International Law*, 1996, Volume 7, Issue 2, 194.

⁸¹ Lack of national protection is one of the constituent elements of the refugee definition embodied in the 1951 Refugee Convention and in the Statute of UNHCR. To be recognized as a refugee under these instruments, a person who is outside their country of nationality must establish, among other matters, that he or she is unable or, owing to well-founded fear of being persecuted for any of the relevant reasons, unwilling to avail themselves of the protection of that country. Indeed, the meaning of this requirement is often misunderstood in current discus-

According to a particular opinion, instead, this definition of refugee has become insufficient, because, at present, people forced to leave the country of origin are also moved by causes other than persecutory reasons⁸³: civil wars⁸⁴, foreign occupation, natural disasters, violation of the fundamental values of the human person⁸⁵.

In particular, it has been observed that refugees (normally, according to a certain re-constructive option, even asylum seekers)⁸⁶ are people who, being outside the borders of the country in which they are habitually resident⁸⁷, can not or do not want to return there, due to the fear of being persecuted for reasons of race, religion, nationality, belonging to a specific social group or for their political opinions⁸⁸.

sions on international refugee law. According to one view, the protection to which the refugee definition alludes is 'internal protection', that is, the protection that the State must provide within its territory to victims or potential victims of persecution. On this point, according to A. FORTIN, *The Meaning of 'Protection' in the Refugee Definition*, in *International Journal of Refugee Law*, 2000, Volume 12, Issue 4, 548 sqq., this view is not supported by the drafting history of the refugee definition, and is not consistent with the wording of the relevant texts. On the contrary, the term 'protection' in this context means 'diplomatic protection', that is, the protection accorded by States to their nationals abroad.

⁸² Cf. C. HEIN, L. CAPPELLETTI, *Rifugiati politici, (ad vocem)*, in *Digesto Disc. Pubbl.*, XIII, Torino, 1997, 462.

⁸³ "The refugee journey is the defining feature of the exilic process: it is a profoundly formative and transformative experience and a 'lens' on the newcomers' social condition". Cf. G. BENEZER, R. ZETTER, *Searching for Directions: Conceptual and Methodological Challenges in Researching Refugee Journeys*, in *Journal of Refugee Studies*, 2015, Volume 28, Issue 3, 297 sqq.

⁸⁴ Indeed, according to H. STOREY, *Armed Conflict in Asylum Law: The "War-Flaw"*, in *Refugee Survey Quarterly*, 2012, Volume 31, Issue 2, 2, <<refugee law – and more widely the legal regime governing international protection – has always struggled to deal coherently with claims for international protection by persons fleeing armed conflict; there has always been a "war-flaw">>.

⁸⁵ Cf. V. SANTARSIERE, *Stato di rifugiato e diritto di asilo politico. Tra rilevanza dei presupposti e prove ardue*, in *Giur. Merito*, 2007, 12, 3322. Indeed, according to C. HARVEY, *Time for Reform? Refugees, Asylum-seekers, and Protection Under International Human Rights Law*, in *Refugee Survey Quarterly*, 2015, Volume 34, Issue 1, 43 sq., <<international refugee law is a regime of protection connected to a legally constructed status with specified guarantees...Refugee law's anchorage in a particular (and evolving) understanding of a created category co-exists with an international legal order that tends to emphasise "all human beings", "every human being", "everyone", "anyone", "all persons", or "no one". The "everyone" of international human rights law (underpinned by the principles of equality and non-discrimination) suggests that what matters, as a starting point, is the fact of being "human">>.

⁸⁶ Indeed, according to M.T. GIL-BAZO, *Asylum as a General Principle of International Law*, in *International Journal of Refugee Law*, 2015, Volume 27, Issue 1, 7, "historically, the practice of asylum pre-dates the existence of the international regime for the protection of refugees (which was born in the inter-war period in the twentieth century) and the international regime for the protection of human rights (born in the UN era)". On this point, see M.T. GIL-BAZO, *The Charter of Fundamental Rights of the European Union and the Right to be Granted Asylum in the Union's Law*, in *Refugee Survey Quarterly*, 2008, Volume 27, Issue 3, 38.

⁸⁷ Indeed, according to K. LONG, *In Search of Sanctuary: Border Closures, 'Safe' Zones and Refugee Protection*, in *Journal of Refugee Studies*, 2013, Volume 26, Issue 3, 472, "the story of border closure and the construction of new safe zones is one of competing rights and unequal powers. On the one hand, ensuring the relief of the internally displaced and other civilians within conflict zones is an important humanitarian task. Yet on the other hand, the right to be a refugee moves beyond the immediate securing of 'safety' in the emergency to offer much wider protections that speak to broader liberal aspirations to protect freedom and human dignity, not just 'bare life'. It is important that asylum does not simply become reduced to the provision of humanitarian relief".

⁸⁸ Cf. A.D. TROVÒ, *Status di rifugiato: poteri istruttori officiosi del giudice ai sensi della direttiva (Ce) n. 83/2004*, in *Giur. Merito*, 01, 2012, 101 sqq. Indeed, according to M.T. GIL-BAZO, *The Charter of Fundamental Rights of the European Union and the Right to be Granted Asylum in the Union's Law*, in *Refugee Survey Quarterly*, 2008, Volume 27, Issue 3, 45 sq., "once it is established that the right to asylum in the Charter is to be construed as a right of individuals, the question arises as to the precise content of that right. Is it a right to seek (and eventually enjoy) asylum, as enshrined in the Universal Declaration of Human Rights? Or does it go beyond that

Peculiar is then the hypothesis, in which the system of international protection translates into the granted protection, in the event of a conflict within the country of origin, if the degree of indiscriminate violence that characterizes the armed struggle, reaches a such a high level that there are serious grounds for considering the actual risk of suffering a serious and individual threat to the life and / or psychophysical integrity of the individual perpetrated through subjection to inhuman and / or degrading treatments.

Nowadays, within the Italian legal system, established firmly the right to benefit from (international) protection tools in favor of those who are prevented from exercising their democratic freedoms in their country, according to the conditions established within each legal system, it is possible to see the construction of a gradual international protection system focused on the otherness (in terms of assumptions and contents)⁸⁹ between the right to asylum and the right of refuge⁹⁰.

The quality of a "refugee" is different from that of a person entitled to asylum because it postulates, as seen, as a determining factor, the well-founded fear of being persecuted in his own country⁹¹.

In this sense, in order to obtain the recognition of refugee status⁹², a condition is required that is not required for ascertaining the right to asylum and, that is, (at least) the existence of well-founded reasons to believe that the foreigner would suffer in his country a persecution, whereas, for the right to asylum, the objective and effective repression (*rectius*: suppression) of the fundamental civil and political rights within the State of origin is sufficient⁹³.

to guarantee a right to be granted asylum in line with other regional human rights instruments? And does it apply only to individuals who meet the criteria in the Refugee Convention, or does it apply broadly to other categories of protected persons as well?"

⁸⁹ Cf. L. MANCA, *Asilo (diritto di)*, I) *Diritto internazionale*, (ad vocem), in *Enc. Giur.*, III, Roma, 2006, 2 sq.

⁹⁰ Cf. T. LUKER, *Performance Anxieties: Interpellation of the Refugee Subject in Law*, in *Canadian Journal of Law & Society*, 2015, Volume 30, Issue 1, 103 sq.; M.T. GIL-BAZO, *Asylum as a General Principle of International Law*, in *International Journal of Refugee Law*, 2015, Volume 27, Issue 1, 3 sqq.

⁹¹ According to M.T. GIL-BAZO, *Asylum as a General Principle of International Law*, in *International Journal of Refugee Law*, 2015, Volume 27, Issue 1, 4, "asylum is different from refugee status, as the former constitutes the institution for protection while the latter refers to one of the categories of individuals –among others- who benefit from such protection. Aware of this distinction and of its historical, international, and constitutional significance, an emerging trend developing among European states has been to blur it by restricting the use of the term asylum to refugees within the meaning of the Convention Relating to the Status of Refugees (the Refugee Convention) while developing alternative institutions for protection (such as temporary protection and subsidiary/complementary protection)".

⁹² According to D. J. CANTOR, *Reframing Relationships: Revisiting the Procedural Standards for Refugee Status Determination in Light of Recent Human Rights Treaty Body Jurisprudence*, in *Refugee Survey Quarterly*, 2015, Volume 34, Issue 1, 81 "the determination of refugee status is a "technical requirement" that gives the impression of being governed only marginally by international refugee law *stricto sensu*. Emphasis on state discretion in this regard is hardly surprising as the obligation on States to take domestic measures to determine who is a refugee is owed directly to other States Parties rather than to the individual refugee".

⁹³ Cf. A. APOSTOLI, *La Corte di Giustizia si pronuncia su richieste di riconoscimento dello status di rifugiato per motivi religiosi*, in *Giur. cost.*, 2012, 05, 3772 sqq.; C. MORTATI, *Istituzioni di diritto pubblico*, II vol., Padova 1976, 1157.

According to a part of the doctrine, then, it is possible to distinguish different "categories" of exiles and refugees⁹⁴, since that, while the word "refugee" underlines the final phase of the story of the individual forced to abandon his habitual residence, differently, the term << exile >>, while referring to the person who is in the refugee's condition, describes the initial phase, that is, the abandonment of the habitual residence⁹⁵.

Indeed, over time, in the judicial courts a demarcation line of an ideological nature has been drawn, which has produced a differentiated discipline between asylum and refugee⁹⁶.

In Italy it is considered that the rules of domestic law in force until today have only partially implemented the constitutional provisions on the right to asylum⁹⁷.

The fact is that today all refugees have certainly been asylum seekers, but not all asylum seekers are necessarily recognized as refugees⁹⁸.

In an inverse perspective, however, according to part of the doctrine, there is no asylum without shelter, while there can be shelter, more or less temporary, not followed by asylum⁹⁹.

In fact, as seen, the request for recognition of refugee status implies the well-founded fear of being a victim of persecution (for political, ethnic, social or religious reasons); the right to asylum, differently, presupposes the concrete impairment in the country of origin of the effective exercise of democratic freedom regardless of the reason of the limitation¹⁰⁰.

In jurisprudence, it has been observed that the category of political refugees is less extensive than that of those entitled to asylum, considering that the Geneva Convention of July 28, 1951, ratified by law. 24 July 1954, n. 722, contemplates, as a determining factor for the identification of the refugee, if not the actual persecution, a well-founded fear of being persecuted, i.e. a requirement that is not considered necessary by art. 10 paragraph 3, of the Italian constitution.

Indeed, the aforementioned International Convention does not postulate a real right of asylum in favor of political refugees¹⁰¹; the diversity of the requirements to which the two sub-

⁹⁴ Cf., *ex plurimis*: M. BENVENUTI, *Asilo (diritto di), II Diritto costituzionale (ad vocem)*, in *Enc. Giur.*, III, Roma, 2007, 2 sqq.; A. CASSESE, *Art. 10*, in G. BRANCA (ed.), *Commentario della Costituzione, Artt. 1/12*, Bologna, 1975, 539 sqq.

⁹⁵ Cf. E. LA PENNA, *Rifugiati (ad vocem)*, in *Enc. Giur.*, XXXI, Roma, 1994, 2.

⁹⁶ About the so-called "mixed flows" of asylum-seekers and migrants, see C. KAUNERT, S. LÉONARD, *The European Union Asylum Policy after the Treaty of Lisbon and the Stockholm Programme: Towards Supranational Governance in a Common Area of Protection?*, in *Refugee Survey Quarterly*, 2012, Volume 31, Issue 4, 4.

⁹⁷ Cf. S. DEL CORE, *Diritto d'asilo e status di rifugiato nella giurisprudenza di legittimità*, in *Giust. civ.*, 04, 2007, 152 sq.

⁹⁸ Cf. E. Benedetti, *Il diritto d'asilo e la protezione dei rifugiati nell'ordinamento comunitario dopo l'entrata in vigore del Trattato di Lisbona*, Milano, 2010, 6.

⁹⁹ Cf. M. UDINA, *Asilo (diritto di), I Diritto internazionale (ad vocem)*, in *Enc. Giur.*, III, Roma, 1988, 1.

¹⁰⁰ Cf. D. TROJA, *Il d.lg. 28 gennaio 2008, n. 25: la normativa in materia di riconoscimento dello status di rifugiato e della protezione sussidiaria*, in *Giur. merito*, 2009, 02, 320 sq.

¹⁰¹ Indeed, according to R. BYRNE, *James C. Hathaway and Michelle Foster. The Law of Refugee Status*, in *European Journal of International Law*, 2015, Volume 26, Issue 2, 567, "the Refugee Convention remains the primary international legal mechanism for millions seeking protection from persecution, and the testing of the souls of members of the international community will continue amid calls for its good faith implementation".

jective situations are subordinated, also corresponds to a difference in treatment, in the sense that to the foreigner, who asks for the right to asylum, nothing else is guaranteed except to enter the State, while the political refugee, if recognized as such, comes to enjoy, under the Geneva Convention, a status of particular favor¹⁰².

In both cases, however, it remains to be established the degree of intensity of the forms of protection to be recognized in favor of a foreign citizen, or a stateless person¹⁰³, asylum seeker or refugee¹⁰⁴, within a (real) civil society¹⁰⁵.

In Italy, the wide debate has developed around the recognition of the ownership of the fundamental rights of the person, codified within the Constitution of 1948, in favor of the foreigner, not so much, in truth, regarding if it is by now well-established (the Constituent has expressly wanted to recognize and guarantee the inviolable rights of man regardless of citizenship), but in relation to the identification, in concrete terms, of the individual active subjective legal positions related to the individual as such, citizen, or stateless or foreign¹⁰⁶.

At the same time, respect for (*rectius*: spontaneous adhesion to) constitutional duties (of solidarity) implies a specific reference not only to citizens, but to all those who, foreigners or stateless persons¹⁰⁷, decide to root their existence within the national boundaries so as to

¹⁰² Cf. S. DEL CORE, *Diritto d'asilo e status di rifugiato nella giurisprudenza di legittimità*, in *Giust. civ.*, 04, 2007, 135 sqq.

¹⁰³ Indeed, the 1954 Convention relating to the Status of Stateless Persons defines a stateless person as 'a person who is not considered as a national by any state under the operation of its law'. Although meeting this definition is key to accessing the rights and freedoms of the 1954 Convention, there is no international binding guidance on how to identify and recognize its beneficiaries. There is also considerable uncertainty regarding several aspects of the identification of statelessness, such as whether specific status determination procedures are necessary and what their constituent elements should be, and little is known about the national systems that are in place in this regard. On this point, about the legislation, case law, and practices concerning the identification and recognition of statelessness in 10 European Union States, see K. BIANCHINI, *A Comparative Analysis of Statelessness Determination Procedures in 10 EU States*, in *International Journal of Refugee Law*, 2017, Volume 29, Issue 1, 42 sqq.; ID, *The "Stateless Person" Definition in Selected EU Member States: Variations of Interpretation and Application*, in *Refugee Survey Quarterly*, 2017, Volume 36, Issue 3, 81 sqq. About the role of the United Nations High Commissioner for Refugees (UNHCR) in order to address statelessness, see M. SEET, *The Origins of UNHCR's Global Mandate on Statelessness*, in *International Journal of Refugee Law*, 2016, Volume 28, Issue 1, 7 sqq.; *UNHCR Action to Address Statelessness: a Strategy Note: UNHCR, Division of International Protection, March 2010*, in *International Journal of Refugee Law*, 2010, Volume 22, Issue 2, 297 sqq.

¹⁰⁴ Cf. S. H. LEGOMSKY, *Secondary Refugee Movements and the Return of Asylum Seekers to Third Countries: The Meaning of Effective Protection*, in *International Journal of Refugee Law*, 2003, Volume 15, Issue 4, 567 sqq.

¹⁰⁵ Indeed, according to a particular opinion, while countries that receive refugees have certain legal obligations to assist and protect them, the legal duties of other States to step in and help relieve this burden is less clear. Despite multiple proposals, a mechanism to systematically, equitably and predictably allocate responsibilities between States at a global level has still not been agreed. On this point, cf. R. DOWD, J. MCADAM, *International cooperation and responsibility-sharing to protect refugees: what, why and how?*, in *International & Comparative Law Quarterly*, 2017, Volume 66, Issue 4, 863 sqq.

¹⁰⁶ Cf. L. CIAURRO (17/05/2013), *I diritti fondamentali dello straniero*, in <http://www.federalismi.it/nv14/articolo-documento.cfm?artid=11223>, 31 sqq.; A. PACE, (02/07/2010), *Dai diritti del cittadino ai diritti fondamentali dell'uomo*, in <http://www.rivistaaic.it/dai-diritti-del-cittadino-ai-diritti-fondamentali-dell-uomo.html>, 12 sqq.

¹⁰⁷ Cf. W. HANLEY, *Statelessness: An Invisible Theme in the History of International Law*, in *European Journal of International Law*, 2014, Volume 25, Issue 1, 321sqq.

demonstrate a clear desire for integration¹⁰⁸, prodromal, to resort to the requisites required by law, to the achievement of citizenship and, even before, to the recognition of the effective ownership of the fundamental rights of the person¹⁰⁹.

In this context, it is observed, a society that aspires to become multicultural¹¹⁰, even in the sense of expanding (within, however, certain limits), its essential horizons regardless of the reference to the nationality of the individual, irremediably pays the price of comparison between customs among them different, usually appreciated as factors of disaggregation of the legal and social order in which they claim not only to creep, but also to impose themselves¹¹¹.

In this prospective, it is rooted the fear of suffering the irremediable dispersion of the social, cultural and historical traditions that characterize a population¹¹² facing the threat of the invasion of the (dis)values of the foreigner¹¹³.

This often results in the emergence of guidelines which, to varying degrees, hinder the promotion of reception policies in favor of foreign citizens, whether they are asylum seekers or refugees, be they "economic migrants"¹¹⁴.

¹⁰⁸ Indeed, integration has become both a key policy objective related to the resettlement of refugees and other migrants, and a matter of significant public discussion. Coherent policy development and productive public debate are, however, both threatened by the fact that the concept of integration is used with widely differing meanings. On this point, see A. AGER, A. STRANG, *Understanding Integration: A Conceptual Framework*, in *Journal of Refugee Studies*, 2008, Volume 21, Issue 2, 166 sqq. Despite the importance of refugee resettlement being frequently emphasised, there is only a limited amount of empirical research on why an increasing number and variety of States admit refugees through resettlement, when it is not an obligation under international law. On this point, see N. HASHIMOTO, *Refugee Resettlement as an Alternative to Asylum*, in *Refugee Survey Quarterly*, 2018, Volume 37, Issue 2, 162 sqq.

¹⁰⁹ Cf. G. COLETTA, *Il diritto di voto dei non cittadini*, in A. D'ALOIA (ed.), *Diritti e Costituzione. Profili evolutivi e dimensioni inedite*, Milano, 2003, 352 sqq.

¹¹⁰ Cfr. F. ROTA, *Diseguaglianze e prospettive di cittadinanza. Multiculturalismo e integrazione fra principi costituzionali e misure amministrative*, in F. CORTESE, G. PELACANI (eds), *Il diritto in migrazione*, Napoli, 2017, 181 sqq.

¹¹¹ Cf., *ex plurimis*: B. LOTT, *Multiculturalism and Diversity: A Social Psychological Perspective*, Singapore, Wiley-Blackwell, 2010, 10 sqq.; S.R. STEIMBERG, *Diversity and Multiculturalism: A Reader*, New York, Peter Lang Publishing, 2009, 3 sqq.; A. PHILLIPS, *Multiculturalism without Culture*, Princeton, Princeton University Press, 2007, 11 sqq.; R.J.F. DAY, *Multiculturalism and the History of Canadian Diversity*, Toronto, University of Toronto Press, 2002, 3 sqq.; B.C. PAREKH, *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, Cambridge, Harvard University Press, 2000, 11 sqq.; T.J. LA BELLE, C.R. WARD, *Ethnic Studies and Multiculturalism*, New York, Suny Press, 1996, 51 ss.

¹¹² About the school's involvement in positive ethnic identity development for refugee students, strategies to combat injustices, and self-efficacy promotion, see O. C. NWOSU, S. L. BARNES, *Where 'Difference is the Norm': Exploring Refugee Student Ethnic Identity Development, Acculturation, and Agency at Shaw Academy*, in *Journal of Refugee Studies*, 2014, Volume 27, Issue 3, 434 sqq.

¹¹³ Cf. F. LANCHESTER, *Gli studi sul diritto islamico in Italia*, in *Riv. trim. dir. pubbl.*, 2002: 3 sq.

¹¹⁴ Indeed, most classifications of migration depend on the circumstances of departure. This is certainly the case for the classic binary of forced versus voluntary migration, as well as for legal distinctions between refugees and others. Even though from a sociological perspective it is now widely accepted that such binaries are more accurately reflected by a continuum, it is still the circumstances governing an individual's decision to leave their place of citizenship or at least long term residence, that dictate the ways in which that migration will be subsequently classified. This is obviously never entirely appropriate; the characteristics of fragmented journeys highlight the drawbacks of viewing migration as a relatively rapid transition between defined points of origin and destination. Fragmented journeys are continually prolonged and migrants may be far removed in both time and space from their experiences of departure so that their reasons for leaving no longer have the relevance that they once did. On this point, see M. COLLYER, *Stranded Migrants and the Fragmented Journey*, in *Journal of Refugee*

Within Western societies, however, such fears constitute the fertile ground within which the prejudice of a Eurocentric view of the world can take root¹¹⁵; in this perspective, a feeling of latent disquiet is grafted in front of the perception of a profound (and radical) alterity - such as to make the comparison on the socio-institutional and cultural level in general very problematic - between the West and the rest of the world and therefore, on the asymmetrical relationship of the first model of life (the rule) with respect to the second (the exception)¹¹⁶.

By promoting the basic values that animates modern constitutionalism from an inclusive point of view¹¹⁷, an evolved social system, which proves to be permeable to traditions of differentiated cultural and ideological structures, faces a as fascinating as complex challenge¹¹⁸.

In this sense, the openness to intercultural dialogue, the circulation, exchange and interactions between the various communities rise to a factor of civil growth without annihilating the characteristic features of each political community and without requiring the marginalization of the values of unity that contribute to build and reinforce the *idem sentire* of the members of a nation, even if composed of multiple nationalities¹¹⁹.

Studies, 2010, Volume 23, Issue 3, 279 sqq. In general, cf., *ex plurimis*: M. BENSON, K. O'REILLY, *From lifestyle migration to lifestyle in migration: Categories, concepts and ways of thinking*, in *Migration Studies*, 2016, Volume 4, Issue 1, 20 sqq.; C. SENKER, *Migration and Refugees*, London, 2008, 28 sqq. Indeed, about the role of the global business in the experience of migrants and refugees such as a generator of migration flows, an employer, and a provider of goods and services, see S. GOETHALS, J. BARDWELL, M. BHACKER, B. EZZELARAB, *Business Human Rights Responsibility for Refugees and Migrant Workers: Turning Policies into Practice in the Middle East*, in *Business and Human Rights Journal*, 2017, Volume 2, Issue 2, 335 sqq.; G. PELACANI, *Ripensare il sistema europeo comune d'asilo: alternative per far fronte alla "crisi"*, in F. CORTESE, G. PELACANI (eds.), *Il diritto in migrazione*, Napoli, 2017, 308 sqq.

¹¹⁵ Cf., *ex plurimis*: C. R. BUTCHER, R. D. GRIFFITHS, *Between Eurocentrism and Babel: A Framework for the Analysis of States, State Systems, and International Orders*, in *International Studies Quarterly*, 2017, Volume 61, Issue 2, 328 sqq.; J. MOKYR, *Eurocentricity Triumphant*, in *The American Historical Review*, 1999, Volume 104, Issue 4, 1241 sqq.; J. THUO GATHII, *International Law and Eurocentricity*, in *European Journal of International Law*, 1998, Volume 9, Issue 1, 184 sqq.; B. S. SAYYID, *A Fundamental Fear: Eurocentrism and the Emergence of Islamism*, London & New York, 1997.

¹¹⁶ Cf. L. MOCCIA, *Comparazione giuridica, diritto e giurista europeo: un punto di vista globale*, in *Riv. trim. dir. proc. civ.*, 2011, 03, 769 sqq.

¹¹⁷ Indeed, according to H. PATAPAN, *Towards a Cosmopolitan Constitutionalism: On Universalism and Particularism in Chinese Constitutionalism*, in *The Chinese Journal of Comparative Law*, 2015, Volume 3, Issue 1, 78 sq., the modern state lies at the intersection of powerful international and domestic forces. It is being challenged by globalization (economic, social, and technological), the rise of international institutions and international law, and the increasingly powerful moral claim of the equal dignity of all human beings. At the same time, however, there is the suspicion that these international forces are fragmentary rather than cohesive, that the virtues of the unique and the individual must be asserted against such global impulses, and that domestic regimes hold the greatest hope for democratic accountability, legitimacy, and justice. For some, these tensions are the birth pangs for global constitutionalism in the form of world government or the increasing importance of an international constitutionalism and an international society.¹ For others, these movements manifest a modern form of colonialism that must be resisted by the reassertion of the traditional, the communal, and the historically unique that can only flourish in the protection afforded by the State

¹¹⁸ Cf. C. McMICHAEL, C. NUNN, S. M. GIFFORD, I. CORREA-VELEZ, *Studying Refugee Settlement through Longitudinal Research: Methodological and Ethical Insights from the Good Starts Study*, in *Journal of Refugee Studies*, 2015, Volume 28, Issue 2, 238 sqq.

¹¹⁹ Cf. S.P. HUNTINGTON, *Ordine politico e cambiamento sociale*, Soveria Mannelli, 2012: 12 sqq.

Spreading the culture of human rights¹²⁰, as well as the notion of freedom, in communities "stifled" by extremism¹²¹, however, means filling a huge cultural / ideological gap¹²².

The only way forward, therefore, becomes that of enhancing the integration of different cultures¹²³, respecting mutual differences, through the promotion of the formation of a conscience free from prejudices and directed towards the implementation of the dignity of the person in his ethical, moral and religious values that contribute to characterize the most intimate essence of each one¹²⁴.

The dignity of the person - declined, at least in a minimal sense, in terms of the supreme principle of the legal order¹²⁵, presupposition of all fundamental rights¹²⁶, right to have

¹²⁰ On the practical and theoretical nature of the concept of multiculturalism and in order to the role played by multiculturalism in human rights discourse, see D. MCGOLDRICK, *Multiculturalism and its Discontents*, in *Human Rights Law Review*, 2005, Volume 5, Issue 1, 27 sqq.

¹²¹ Cf. P. RYAN, *The multicultural state and the religiously neutral state: A reply to Paul Cliteur*, in *International Journal of Constitutional Law*, 2014, Volume 12, Issue 2, 457 sqq.; P. CLITEUR, *State and Religion Against the Backdrop of Religious Radicalism*, in *International Journal of Constitutional Law*, 2012, Volume 10, Issue 1, 127 sqq.; M. ROSENFELD, *Is Global Constitutionalism Meaningful or Desirable?*, in *European Journal of International Law*, 2014, Volume 25, Issue 1, 177 sqq.

¹²² Cf. S. ANDÒ, *Terrorismo e fondamentalismo islamico*, in *Quad. Cost.*, I, 74 sqq. Indeed, according to E. PITTAWAY, L. A. BARTOLOMEI, E. E. PITTAWAY, G. DONEY, *Freedom from Persecution or Continued Abuse? An Analysis of the Meaning of Rights in Refugee Communities*, in *Journal of Human Rights Practice*, 2018, 14, "the perception that the cultural beliefs and values of refugee communities conflict with human rights principles is partly due to the reification of idealized cultural models during settlement. Because our sense of self, identity and worth is strongly rooted in our cultural beliefs and practices, it is natural that refugee communities cling to these when confronted by cultural difference, especially when that difference is associated with experiences of exclusion and discrimination and when they are stripped of other aspects of identity such as their jobs, homes and citizenship".

¹²³ According to A. AGER, A. STRANG, *Understanding Integration: A Conceptual Framework*, in *Journal of Refugee Studies*, 2008, Volume 21, Issue 2, 166 sqq., integration has become both a key policy objective related to the resettlement of refugees and other migrants, and a matter of significant public discussion. Coherent policy development and productive public debate are, however, both threatened by the fact that the concept of integration is used with widely differing meanings. Based on review of attempted definitions of the term, related literature and primary fieldwork in settings of refugee settlement, key domains of integration are proposed related to four overall themes: achievement and access across the sectors of employment, housing, education and health; assumptions and practice regarding citizenship and rights; processes of social connection within and between groups within the community; and structural barriers to such connection related to language, culture and the local environment. Indeed, the resettlement of refugees from a place of danger to a safe country brings an assumption of security, peace and access to human rights. It should herald the beginning of a fulfilling life in a new homeland. However, research over the past decade into settlement experience has highlighted the fact that not all newly arrived refugees have a positive settlement experience, and many put the blame for the problems they experience on 'human rights'. On this point, see E. PITTAWAY, L. A. BARTOLOMEI, E. E. PITTAWAY, G. DONEY, *Freedom from Persecution or Continued Abuse? An Analysis of the Meaning of Rights in Refugee Communities*, in *Journal of Human Rights Practice*, 2018, 1 sqq.

¹²⁴ Indeed, according to A. PIN, *Religions, National Identities, and the Universality of Human Rights*, in *Oxford Journal of Law and Religion*, 2014, Volume 3, Issue 3, 419 sqq., largely due to the increasing religious and cultural pluralism caused by immigration, several European countries have attempted to address the relationship between national identity and integration of immigrants in similar ways, highlighting the human rights they enforce as the core of their own national identity. This trend is problematic, however, because it fails to describe the specificities of each state.

¹²⁵ Cf. F. SACCO, *Il consenso del beneficiario dell'amministrazione di sostegno e il conflitto tra dignità e libertà*, in *Giur. cost.* 2007, 03, 2280 sqq.

¹²⁶ Cf. V. TIGANO, *Tutela della dignità umana e illecita produzione di embrioni per fini di ricerca*, in *Riv. it. dir. e proc. pen.*, 2010, 04, 1749.

rights¹²⁷, unconditional respect for the most intimate essence of the individual, corresponding to the quality of man in as such¹²⁸, beyond any form of abjection, debasement and physical and moral degradation - constitutes, in this sense, a fundamental value not so much because it is formalized in a Constitutional Charter¹²⁹, but because it is felt by the community, becoming a characterizing element of a revolted society to the promotion and protection of human rights¹³⁰.

Dignity becomes the concrete foundation of the new meaning of citizenship, understood as the patrimony of rights that belong to the individual whatever his personal or social condition¹³¹.

The era of multiculturalism means that we are witnessing a rethinking of the classical notion of citizenship¹³², based on the concept of belonging and identity¹³³, in view of the maturation of a new idea of community¹³⁴ that welcomes anyone who receives rights, but also returns duties¹³⁵.

The civil world, therefore, if it really wants to continue to consider itself as such, must ensure respect and attention to every people, whatever race or religion it is, hoping to make forget, in a new, more ethical, system of social equilibrium, war and genocide, deaths, mourning and the dark clash of arms¹³⁶.

¹²⁷ Cf. F. RESTA, *Neoschiavismo e dignità della persona*, in *Giur. merito*, 2008, 06, 1673.

¹²⁸ Cf. F. SACCO, *Il consenso del beneficiario dell'amministrazione di sostegno e il conflitto tra dignità e libertà*, in *Giur. cost.* 2007, 03, 2280.

¹²⁹ Indeed, according to M. ROSENFELD, *Is Global Constitutionalism Meaningful or Desirable?*, in *European Journal of International Law*, 2014, Volume 25, Issue 1, 188, "in the context of nation-states with a liberal constitution there is generally sufficient congruity and continuity between the constitution's law and the constitution as law to provide a solid constitutional grounding to adherence to the rule of law. Ordinarily, the constitution's law, whether written or unwritten, provides for a sufficient body of (constitutional) law subject to judicial interpretation and application and to executive enforcement to guarantee limitation of powers, adherence to the rule of law, protection of fundamental rights, and to maintain some acceptable level of democratic self-government". About a clear comparative turn in the study of constitutional law in the last ten years, see M. W. DOWDLE, M. A. WILKINSON (eds.), *Constitutionalism Beyond Liberalism*, 2017, Cambridge.

¹³⁰ About the "perplexing persistence of rightlessness in an age of rights", see A. GÜNDOĞDU, *Rightlessness in an Age of Rights. Hannah Arendt and the Contemporary Struggles of Migrants*, 2015, Oxford University Press, 11 sqq.

¹³¹ Cf. N. BRUZZI, *La discriminazione fondata sulla disabilità: il principio di dignità come lente trifocale*, in *Resp. civ. e prev.*, 2013, 03, 933 sq.

¹³² Cf., *ex plurimis*: N. YUVAL-DAVIS, *Citizenship, Autochthony, and the Question of Forced Migration*, in *Refugee Survey Quarterly*, 2013, Volume 32, Issue 2, 53 sqq.

¹³³ Cf., *ex multis*: D. ABRAHAM, *Constitutional patriotism, citizenship, and belonging*, in *International Journal of Constitutional Law*, 2008, Volume 6, Issue 1, 137 sqq.; F. DELL'OLIO, *The Europeanization of Citizenship: Between the Ideology of Nationality, Immigration and European Identity*, Ashgate, 2005; D. D. SEARING, P. JOHNSTON CONOVER, I. CREWE, *Citizenship in the Age of Liberalism*, in *Parliamentary Affairs*, 2003, Volume 56, Issue 4, 634 sqq.

¹³⁴ Sometimes, the notion of 'multiculturalism' has been blamed for the alleged atomization of society. On this point see A. MCCOLGAN, *Equality and Multiculturalism*, in *Current Legal Problems*, 2011, Volume 64, Issue 1, 1 January 2011, 151 sqq.

¹³⁵ Cf. M. IMMORDINO, *Pubbliche amministrazioni e tutela dei diritti fondamentali degli immigrati*, in *Human rights*, 3, 2014, in <http://www.federalismi.it/nv14/articolo-documento.cfm?Artid=27707>, 15.

¹³⁶ Cf. M. FERRERI, M. MINEO, *Il terrore viene dall'Islam. Il terrorismo islamico ieri e oggi*, Palermo, 2001, 153.

In the presence of the variety and complexity of the differences between legal, cultural and linguistic traditions, then, the main challenge posed to the interpreter's eyes, therefore, is translated into the search for elements of synthesis and unity that can constitute the universal glue between populations in the name of human dignity, especially in the face of (perhaps too often recklessly invoked) danger of "clash between civilizations"¹³⁷.

Welcoming within their borders individuals in need of protection, constitutes, in this direction, an important step in the construction of a new world order in which individual States unconditionally assume the responsibility of guaranteeing to anyone who is persecuted the landing in a "safe place"¹³⁸.

¹³⁷ Cf. S.P. HUNTINGTON, *The Clash of Civilizations and the Remaking of World Order*, 2016, New York. Beyond the clash of civilization, see J. P. HOGAN (ed.), *Cultural Identity, Pluralism, and Globalization*, Volume 1, 2005, Washington.

¹³⁸ Indeed, "we are in an era of increasing intolerance of forced migration, with the movement of people framed as an unprecedented crisis and their needs as an impossible burden. States are adopting ever more inventive ways to avoid accepting refugees—and this practice includes historical defenders of human rights and international law, such as the United States and the European Union". Cf. K. MCCONNACHIE, R. CARVER, M. JONES, *The End of Refugee Protection?*, in *Journal of Human Rights Practice*, 2017, Volume 9, Issue 2, 175. On this point, see M. PAZ, *The Law of Walls*, in *European Journal of International Law*, 2017, Volume 28, Issue 2, 601 sqq.; J.P. BREKKE, M. RØED, P. SCHØNE, *Reduction or deflection? The effect of asylum policy on interconnected asylum flows*, in *Migration Studies*, 2017, Volume 6, Issue 1, 65 sqq.; A. KLUG, *Strengthening the Protection of Migrants and Refugees in Distress at Sea through International Cooperation and Burden-Sharing*, in *International Journal of Refugee Law*, 2014, Volume 26, Issue 1, 48 sqq.