

THE EVOLUTION OF THE INTERNATIONAL MIGRATION SYSTEM

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ABSTRACT:

THIS PAPER INVESTIGATES THE IMPACT OF THE INTERNATIONAL MIGRATION SYSTEM AND HOW IT CHANGED IN THE LAST YEARS. THE CONCEPT OF THE MIGRATION SYSTEM, FIRST POPULARIZED IN THE 1970S, HAS REMAINED A STAPLE COMPONENT OF ANY REVIEW OF MIGRATION THEORY. AFTER A THEORETICAL BASE, THE PAPER ANALYZES ILLEGAL IMMIGRATION FIRST IN EUROPE IN GENERAL, THEN AS A SPECIFIC CASE STUDY, IN ITALY AFTER THE LAW "BOSSI-FINI" OF 2002.

THE DEBATE ON ILLEGAL IMMIGRATION IN ITALY, CHARACTERIZED BY STRONG POSITIONS, BASED MORE ON EMOTIONALITY AND IDEOLOGICAL POSITIONS THAN ON STATISTICAL DATA, WAS ALSO AMPLIFIED BY THE "SPECTACULARIZATION" OF THE LANDINGS, ALTHOUGH A CAREFUL EXAMINATION OF THE DATA LEADS TO HIGHLIGHTING WHEREAS ILLEGAL SMUGGLING BY SEA ACCOUNTS FOR AROUND 10% OF THE PHENOMENON OF ILLEGAL IMMIGRATION.

THE RESEARCH AIMS TO RETRACE THE HISTORICAL EVOLUTION OF EUROPEAN COMMUNITY AND OF NATIONAL LAWS COMPETENCES IN THE FIELD OF ILLEGAL IMMIGRATION IN GENERAL, BY LOOKING CLOSER AT THE ITALIAN CASE.

KEY WORDS: MIGRATION SYSTEM, ILLEGAL, EVOLUTION

INTRODUCTION

Migration, which can be defined as those human movements from one territory to another for subsistence or survival, is an ancient problem in human history, of which echo can be traced back to the Old Testament. Migrations have been from time to time, temporary (if not seasonal) or permanent, regular or irregular, international or within national borders, proletarian or colonial limited or in mass. From the time of Christ depended on persecutions or wars. In the more recent period they have developed a predominantly economic character, given the desire to find better living and working conditions, increasingly felt by a large part of the world's population.

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Those in recent years, on the other hand, represent a real extension in a new scenario of the migrations of the origins, characterized by slow dynamics, which are now no longer connected with individual movements or groups, manifesting themselves more and more a form of sudden and mass exodus towards welfare regions such as Europe, now considered "Promised Land" and a favorite destination for most migrants in our time.

Indeed, it seems to be ongoing, a continuous reorganization of the population of the world driven by demographic, economic and political factors. The uneven international economic development, the growing gap between welfare areas and poverty, population boom in poor countries and declining birth rates in the most industrialized ones, wars and ethnic and religious conflicts are the engine of these new waves of international migration.

Over the last fifteen years, in the European and Italian political debate, immigration has become one of the most discussed arguments and a priority urgency. Although it is well established that immigration "is a necessity, a fact and, as such, is not negotiable", the EU and national institutions have considerable difficulties in formulating and implementing policies to stabilize the permanence of migrants in their own countries.

The real problem, in fact, is not to identify the most appropriate means to limit the growing number of "mass arrivals", which are one of the modern ways of illegal immigration; it would be important, instead, to learn to live with the phenomenon, to deepen all its aspects and to understand it.

It is necessary that the difficult problems related to the phenomenon of human migration - which have always existed in human history and are intended to increase in the future, though not necessarily in Europe - should not be examined only by researchers and approached by technicians with a wide and interdisciplinary vision, but at the same time they must be proposed to European citizens so as to lead to the involvement of their minds, not just their feelings. There is a need - above all else - for a better understanding of the sector in order to gain awareness that this sector raises questions not only of humanitarian but also technical-judicial and socio-economic issues, and that all should be treated together.

I do not think that so far has happened. In fact, in recent years - especially since the ongoing economic and financial crisis - the elections of European governments in this area have been characterized by the assumption of populist positions over a "short period". But no one explained that such choices could be a boomerang and, over time, show an increasingly evident fragility on their own - in financial terms - in a continent where the birth rate is on average less than the birth rate found in the other continents, and the total output is lower than that of the others.

In his Berlin speech in December 2011, Helmut Schmidt (German political scientist, former Federal Chancellor of Germany) - speaking of the role of the EU - while confirming that he is conscious and proud of Europe's historical role, nevertheless called "our little continent," reminding everyone of the harsh reality of a continent that begins to count: a) just for 7 percent of the world's population, compared to over 20 percent in 1950; b) just about 10 percent of world production, compared to 30 percent in 1950. Consequently, Schmidt's conclusion can be summarized as follows: if we want to prove that "Europeans are important to the world," we must work in close union, and it may be added that we need to be able to manage immigration in a different way because, in addition to being in line with the founding values of the European Union, it can have beneficial repercussions for the economy and can reverse the trend towards the sense of indignation, resignation and, essentially, a decline that for some time dominates the continent.

In other words, if the extent of the migration phenomenon is not understood and it is not understood why immigration has been and is needed in Europe, it simply means that it is not known how to look at the reality and at the future and that, for example, we ignore the cultural and economic contribution of immigrants living permanently in the European Union. Of course, especially at this time when the Union is in crisis, the the road ahead is not easy or secure, but it must be found or rediscovered.

MAIN TEXT

Just as at the beginning of the European project - and, of course, with all the diversity of the case - we need to respond to the need to go back on track, to reject this Europe for "another and for better European unity" as it is written in the Ventotene Manifesto by Altiero Spinelli and Ernesto Rossi².

Since so far the EU's immigration policy - introduced into the Common European Asylum System (CEAS) - beyond the declarations of principle, is highly unbalanced in terms of law enforcement and border control, with the result that for all immigrants , policies and practices are dominated by what was actually defined as hostile "detention-expulsion" in the reception centers³.

Expulsion is more related to border control, which is the key element of the system. The route leading to increasing EU external borders control began in 1999 when the Schengen acquis was integrated into the legal and institutional framework of the European Union under a Protocol annexed to the Treaty of Amsterdam . Over time, with the gradual expansion of the Schengen area, the need to strengthen border controls has been increasingly felt by EU countries. Over the years, individual states - by sacrificing part of national sovereignty - have made their demands for compliance with EU rules, more and more demanding. So, with the Treaty of Lisbon, it has been established that the balance between the interests of public order and humanitarian operations that has previously been carried out as a priority by national legislators is made within the EU. This is due to the fact that, as a result of the Treaty and the Stockholm Program, policies on border protection, migration (legal and illegal) and asylum migration have been devised as "common policies" of the EU. So most governments have focused on implementing "administrative-police" cooperation that has led to the adoption or expansion of operational tools to support these laws, where they have invested considerable resources.

These common policies have managed over time the migration phenomenon since the establishment of: 1) EURODAC (for comparing fingerprints); 2) FRONTEX (European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union), gradually improved; 3) C.D. Schengen Borders Code; 4) IT (Information Technology) systems, the area of freedom, security and justice, as well as support in addition to EURODAC, with the European Agency for Operational Management of IT.

This institutional device, certainly more advanced than the one previously existed, has implied a similar evolution in the regulations and practices of the individual EU states.

The tough nature of EU immigration policy has been further aggravated by the outbreak of the ongoing financial and economic crisis and the EU's "common asylum policy" is still "blocked"

²Available at the address: www.altierospinelli.org/manifesto/it/manifesto_it.html.

³G. Bascherini. „A proposito delle piu recenti riforme in materia di trattenimento dello straniero nei centri di indetificazione ed espulsione” in *Associazione italiana dei costituzionalisti, Revista nr. 1 din 2012*, available also at the address: www.constituzionalistitaliani.it.

in two ways - ie between states and migrants - that the fact that most governments do not actually want to change the current situation and, on the other hand, the governments of states such as Italy or France do not strive to persuade other states to approve a substantial change in the law in this respect, - art. 80 TFEU (Article on the principle of solidarity and fair sharing of responsibility, including financially, between Member States in the field of border controls, asylum and immigration).

Despite the difficulties, managing migration policy and revising or adding to current European legislation are among the priorities of the European Commission, as outlined in President Jean Claude Juncker's political guidelines "A New Beginning for Europe"⁴.

Objectives identified as priorities are:

- the development of the common asylum policy
- promoting a new European legal migration policy aimed at attracting qualified migrants;
- combating illegal migration;
- ensuring border security and combating trafficking of human beings.

The continued increase in migratory flows linked to instability in the southern Mediterranean countries and the worsening humanitarian situation linked to this increase accelerated the process already launched by the EU institutions, bringing to light the need for effective intervention measures to provide help and support for the countries hardest hit by the impact of the crisis.

And linked to this trend change, it can be said that Italy, unlike other European countries, has only recently undertaken to develop immigration policies; in the 1970s and in the first half of the 1980s, the state preferred "not to decide" on immigration, leaving the free market forces to play, the task of regulating migratory flows and local authorities and social assistance organizations how to approach emergency rooms with reception centers, canteens, bedrooms.

These are policies that did not take into account the needs, and in particular the rights of those who came from another country and in the absence of a specific law, the only solution was found in expulsion with immediate return to the country of origin .

Only at the end of 1986, in states like Italy, we have the first immigration law, a period in which there is a need for state intervention to express the will to regulate migration flows, taking into account the rights of foreigners. This law (number 943) sets out some important news: recognizes the fundamental right of family reunification for workers living in Italy on a regular basis, and at least, in principle, declares equality of rights between Italian workers and foreign workers. Law 943 implements the first form of regulation of foreign workers' amnesty: in the face of a migratory flow, which in those years still has modest proportions, still does not think about how to act later on a schedule of flows with the labor market, nor does the expulsion, which is generically left to the "public security principles", is adjusted⁵.

In 1990, the Martelli Law (Law 39/90) was approved, resulting from a legislative cycle triggered mainly by the domestic political system. This law, acknowledged by the amnesty that accompanied it, was characterized by the establishment of major restrictive conditions for entry into the country and in order to meet the demands of other European countries, worried that foreigners in Italy , have reached their territory illegally. The Martelli Act, in addition to regulating a large mass of autonomous and dependent workers, abolishes the "geographical limitation" for

⁴Cit. „Un nou început pentru Europa – Programul pentru ocuparea forței de muncă, creștere economică, echitate și schimbare democratică”, Strasbourg, 15 iulie 2014.

⁵M. Rovelli. *Lager italiani*, (Bur Biblioteca Universita Rizzoli, 2006), 111.

asylum seekers (Italy has until now reserved its right to recognize political asylum only to citizens mainly from the Soviet bloc) . Since the beginning of the 1990s, Italy has begun the great streams of foreigners fleeing the political turmoil that is happening in their countries.

The Martelli Law introduces the visa requirement for almost all the countries from which migratory flows originate, reforming border controls and attaching great importance to expulsions, seen as not only a tool for containing foreigners behaviors as individuals, but also as a tool to combat illegal immigration as such. One year after the adoption of the law, the rules contained in it allow to send back within hours, thousands of Albanian refugees, a repressive operation that is unparalleled throughout the post-belligerent history of European migration policies⁶. The expulsion procedure for foreigners, both for the illegal ones and those who have criminal convictions for a number of specific offenses, has become a widespread practice.

It is the collapse of the regimes in Eastern Europe (symbolized by the arrival of ships from Albania, in the Italian case), when there is a significant change in the perception of migration processes. The mass of immigrants arriving on Italian shores is increasingly seen as a "fleeing from their country" rather than as an expression of demand for unskilled labor in the Italian economy. During the nineties, the following changes to the decrees (Dini Decree, 1995) altered the general line of Italian immigration policy, increasingly seen as a matter of public order and border defense. Then, at a few years away, a new law on migration, the Turco-Napolitano Law, emerges. In 1998, the first center government approved the first organic law on immigration, the so-called Turco-Napolitano (40/98), which decides to make a comprehensive reform of Italian immigration law.

Law 40/98, as far as monitoring tools are concerned, reformulates in depth the rules for border control and the expulsion of foreigners staying illegally, making possible both the immediate removal of intercepted foreigners during an illegal entry and the detention in special centers for foreigners that will be expelled. Detention in Permanent and Temporary Assistance Centers (CPT) is one of the news included in this law and will be maintained by subsequent laws. The CPT is not only an Italian phenomenon, it is a widespread tool across Europe after the adoption of a common migration policy with the Schengen agreements in 1995. These agreements have built a stable way for Europe's walls: on the one hand, blocking against migratory flows on the other hand, zero tolerance for illegal migrants, which means de facto exclusion of such persons from universally recognized rights and a growing discretion by the police for what is primarily considered a matter of public policy (stronger restrictions on asylum law, traditionally recognized by any constitution)⁷.

The next important law in the Italian case is the Bossi-Fini Law. In 2002, the center-right government adopted an Immigration Law, 189/2002, which implements a substantial change to the crucial components of the previous law, completely removing certain parts. A large amnesty also accompanies this law, where employers are directly involved for the first time. By paying a standard fee and a fair value for the transcript of documents, registered employers are forced to take action to declare the ongoing work relationship by concluding a pre-occupancy agreement, thereby regulating workers from the point of view of their legal residence on the territory⁸.

⁶A. Colombo, G. Sciortino. *Gli immigrati in Italia*, (Bologna, il Mulino, 2004), 28-35.

⁷M. Rovelli. *Lager italiani*

⁸C. Artoni, P. Baiocchi. „L'Affare CPT sulla pelle dei migranti: dossier” in *Associazione ESSPER periodici italiani di economia, scienze sociali e storia*, (Vol. 6, Fascicol 36, 2006), 16-25.

Law 198/2002 is a law that is fundamentally based on the fight against illegal immigration (which is closely associated with crime), where it replaces the importance of integration policies under the previous Turco-Napolitano law. The new law drastically reduces the possibility of legal entry (in the case of granting entry visas and family reunification); It also further emphasizes the precarious state of the migrant by reducing the length of residence permits, and in particular the rigid linking of the work permit⁹. Only a foreigner who already has a work contract in his pocket enters into Italy, according to an older requirement that has not changed over time, for which an explicit call is made to the foreign worker for employment (it is clear here the problems resulting from taking over a worker who has never seen it, or several bureaucratic complications that stem from this process).

In order to give an idea of how this law was practically designed to provide a strong signal of rejection of migrants as such, mandatory border affiliation under Law 40/98 becomes a common form of execution of administrative expulsion, then introduced in a particular process of ordinary legal and methodological procedures¹⁰.

In order to close the descriptive framework of the law, I can only emphasize the lack of a real organic law on asylum: while international standards of refugee law provide for the detention of an asylum seeker as an exceptional measure, Law 198/2002 makes detention a rule ; in this way, people fleeing conflicts, political persecution, or societies in which rights are ignored or trampled are bound to prolonged detention when they land in the "land of liberty."

Following the presentation of the legislative framework and its evolution over the years, the description of the illegal or clandestine migration phenomenon and the difficulty of European countries such as Italy in the present case, will be much clearer.

ILLEGAL IMMIGRATION: A DIFFICULT PHENOMENON TO RECOGNIZE

Illegal immigration is a difficult phenomenon to quantify because of the many variables that come into play and because of the different conditions of those who feed this category of foreigners:

- persons who have escaped border controls;
- persons staying in the territory without the necessary documents for entry;
- persons affected by expulsion;
- persons staying over eight days of legal entry without requesting the issue of residence permits;
- those staying in the territory with a residence permit which expired after the deadline for the renewal application; undetectable persons, those who for various reasons can not be found and registered by the authorities.

In these situations, the status of "illegal immigration", as mentioned, refers only to foreigners who have entered Italy by escaping border controls or who remain in the territory without residence documents after entry. This particular part of illegal migration is not at all easy to quantify.

The problem of quantifying this component is the difficulty of knowing the true identity of the intercepted persons, difficulties that reverberate on the expulsion procedures: „È praticamente impossibile espellere i maghrebini...È impossibile espellerli perché non vogliono essere espulsi. La norma che prevede il possesso di un valido documento è una norma che noi non possiamo

⁹M. Rovelli. *Lager italiani*

¹⁰I M. Rovelli. *Lager italiani*

pensare di cancellare: nessun Paese si riprende un suo cittadino della cui identità non è certo...È rarissimo il caso in cui il detenuto abbia il passaporto o un qualunque visto consolare, un qualunque documento valido e, in special modo, voglia tornare nel suo Paese (It is virtually impossible to expel the Maghrebs ... It is impossible to expel them because they do not want to be expelled. The provision requiring possession of a valid identity document is a standard that we can not think of as an eliminable one: no country recovers a cognate whose identity is not certain ... It is rarely the case where the foreign prisoner has a passport or any other type of consular visa, any valid document and, in particular, wants to return to its country)”¹¹.

The reality is that no state is willing to allow a person to enter without the certainty that this is indeed one of its citizens. The result, in most cases, is that sometimes it pass several months before they can get, through the control procedures, the realities of the intercepted individuals. On the other hand, other factors outside the Italian system come into play. In fact, there may be countries where fingerprinting is a procedure only for those who have already had problems with the law, and others¹², where fingerprints are an action that concerns all citizens. However, in these cases, the problem may arise for children and for women, based on the age at which fingerprints were deemed necessary. In general, we can say that if fingerprints in migrants' home countries are likely to be available, hiding personal data or declaring a fake citizenship, determines in each case an objective difficulty that is difficult to overcome short term.

The main result is that most of the people who escape expulsion end up staying on Italian territory, in order to increase the illegal presence. The evaluations in this direction are based on the fact that the illegal presence is mainly fueled by all those foreigners who, from developing countries¹³, are bound to the compulsory visa system (for tourism) and remain in Italy after the expiry of the allowed time limit, without then regulating their situation. Indeed, it is reasonable to believe that these people coming from very low-income countries do not go to Italy exclusively for tourism, but to exploit such an opportunity to stay, who can then look for accommodation or remain in wait going to other countries.

Based on these indicators, the Permanent Crime Observatory attempted an approximate quantification of the illegal presence and evolution of immigrants' origins over the years. Based on this estimate, illegal presence on April 15, 1998 can be quantified in approximately 235,000 people. Its evolution is more specific in the following chart, which indicates in tens of thousands, people who have illegally arrived in Italy¹⁴.

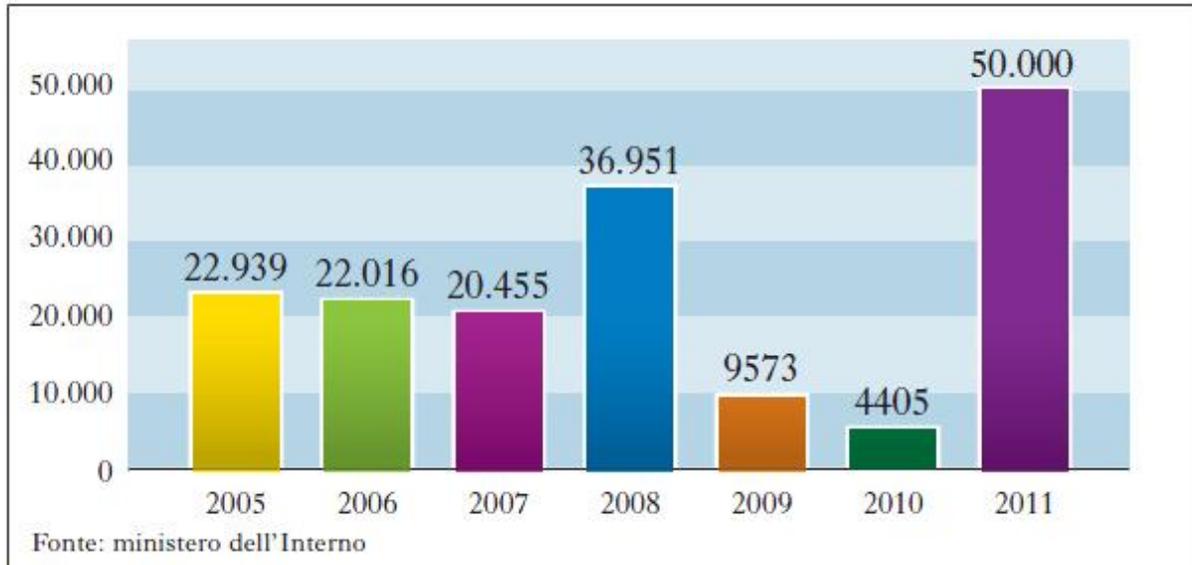
¹¹G. De Cataldo. *Gli stranieri in carcere*, (Editrice Sinnos, Roma, 1994), 71.

¹²Precum Algeria, Maroc și Tunisia.

¹³There talks about developing countries, because irregularities mainly concern immigrants coming from geographical areas with strong economic and demographic imbalances. Irrelevant, however, is the incidence of illegal aliens from EU and highly developed countries.

¹⁴Source: *Estimările datelor Ministerului de interne*.

Figura 1.0



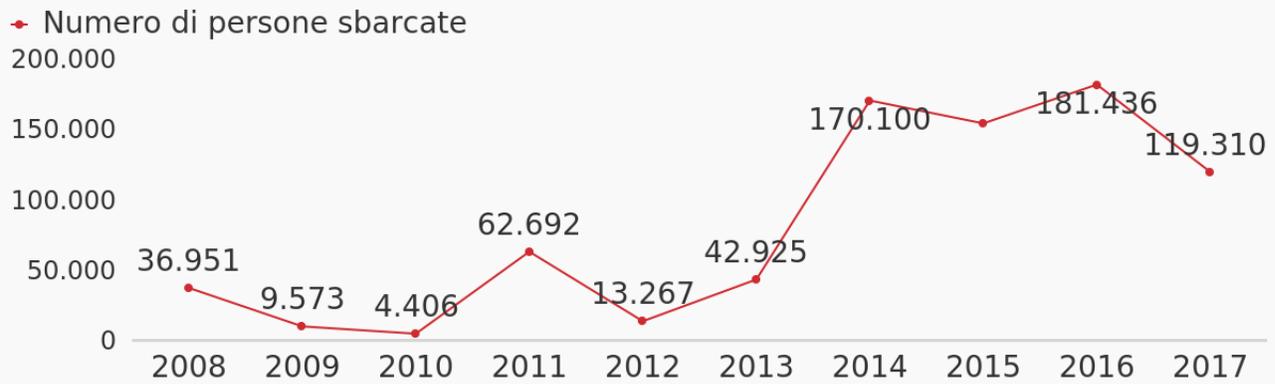
Finally, from a last point of view, ethnic groups, Albanians and Romanians are the ones who have the most calls for regularization. Eastern Europe is therefore the first area for a series of regularization applications. The countries of North Africa were fewer, although the portion related to Morocco remained significant, and Nigeria, Senegal, Ghana and the West African countries grew. Of the Asian countries, only Sri Lanka and the Philippines are in demand, even if the last country recorded in 1995, the highest share of demand among the countries in this area.

At the moment, however, the situation may seem a little changed as the number of clandestine immigrants arriving on Italian soil has grown enormously, most of them being native to the African continent.

The first peak of arrivals was in 2011, the year of the Arab springs and the military intervention in Libya. Then in 2014 the flow was at current levels. In 2017 there has been a noticeable reduction in arrivals but we will have to see this year if the trend is confirmed.

In the following graphic, the situation of landings on the Italian coasts, in recent years, is more explicit.

Figural.1



With regard to this international emergency related to the new migratory landings in southern Italy, all the views of the researchers and the views of the population gathered and analyzed can be summarized by the fact that, in order to stop the migration flows, tragedies at sea and smugglers' funding there is a solution that is effective because it directly affects the portfolio: assisted rejections. Not the naval blockade of the Lega Nord party, it should not interest Italy the fact that a commercial ship comes in or out of the port of Tripoli. They should only be interested in how to stop the boats of migrants. In this way, bringing them back to shore immediately with an army escort gives more good results: there is no risk of drowning in the sea, the smugglers in this trade are not enriched because the flow will cease. Who would pay thousands of euros to be brought back to Africa? If Italy continues to convey the message that nobody will be rejected, flows will continue indefinitely, because it lives much better in welfare in Europe than it can live in Africa. If Italy were to carry out assisted reject, it would have another advantage: it would ultimately force the United Nations into a humanitarian intervention to assist these refugees and repatriate them.

Based on these ideas and opinions on what should be done in relation to the current situation in Italy, many parties argue that Italy should not seek the help and consent of Europe. When Libya left groups of Quaid terrorists who had made incursions into Algeria, Algeria carried out military sieges against the foundations of these terrorists in the Libyan desert without requesting permission from anyone. In February 2015, when the Isis group killed twenty Egyptian children, Egypt rushed a week of air attacks and special forces raids in Derna, killing hundreds of terrorists, capturing 55 others that they took in Egypt¹⁵.

Stable countries protect and defend national interests against threats. For years, Italy has been threatened by illegal immigration led by criminal organizations linked to terrorist groups. The only thing Italy is capable of doing is operations that lead many people here without any necessary document for entry. And this is quite a desperate case of Europe in general. The presentation of

¹⁵ http://tg24.sky.it/tg24/mondo/2015/02/16/egitto_raid_libia_isis_terrorismo.html.

the Italian situation as a case study describes to a fairly precise extent the migratory flows and their evolution in Europe.

CONCLUSION

Summarizing the arguments put forward, I might suggest the following:

- Illegal immigration should be considered a global phenomenon rather than incidental and transitory;
- consequently, the management of clandestine migratory flows should be planned to be evaluated over a long period of time and should not be addressed through emergency and ex-post interventions which could contain the short-term phenomenon but do not solve the root causes, with the result paradoxically that the phenomenon could reappear in the longer term with a higher intensity (as we have seen between 2011 and 2016);
- The national and European immigration policy should be based on the right balance between integration and repression;
- Firstly, it is necessary to promote accurate information at national level, avoiding alarmism by focusing on the invasion of illegal immigrants that would affect the different countries;
- Secondly, the objective of combating illegal immigration at sea should be directed not just against migrants themselves, but against criminal organizations handling trafficking in human beings. It is positive to introduce rules to protect victims of trafficking;
- At European level, we must continue to involve the other EU countries, based on the principle that illegal immigration is a European phenomenon and not just Italian or Greek, as these two countries are not just the countries of destination of migration flows illegal, but also transit countries.

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