Migration, Diasporas and Citizenship

RETHINKING INTERNATIONAL PROTECTION

The Sovereign, the State, the Refugee

Raffaela Puggioni

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A mio padre,
per esserci sempre stato

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Contents

1

Introduction: Rethinking Protection

The concept of refugee protection, generally referred to as international protection, tends to be evoked every time there are big influxes of forced migrants, irrespectively of the specific policies enacted. The most recent influxes along the southern and southern-eastern Mediterranean frontiers, especially since April 2015, are not an exception. International protection is evoked even if it is other issues that receive greater attention—including border controls, sea patrolling, humanitarian assistance, border death, cooperation agreements and detention (Kjaerum 2002; Bigo and Guild 2005; Klepp 2010; Guia et al. 2016)—to the point that refugee protection is often marginalised and/or left unspecified. Despite its wide use, the meaning of protection remains open to interpretation. The lack of clarity is especially due to the fact that the concept of protection is often conflated with the concept of assistance to the point that refugee protection tends to refer to any policies for refugees, irrespectively of the ultimate outcome. The aim of this book is precisely to distinguish the politics of protection from the politics of assistance by highlighting the different rationale upon which each concept is articulated. In particular, it will be highlighted the difference between the public responsibility to protect and the private desire

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to assist, between guaranteeing rights and satisfying basic needs. It will be argued that there is a need to depart from the concept of (negative) protection that entails *protection from*—that is, protection from persecution, violence and life-threatening events—and embrace a concept of (positive) protection, a *protection towards* emancipation, which requires the direct involvement of the state, and particularly of the liberal/constitutional state. Instead of looking at protection from the sovereign states' perspective—a perspective which privileges border controls and citizens' safety—this book will discuss the key role of the state in providing protection. More specifically, the book will adopt a national perspective and move away from the idea that 'without an international states system there would be no refugees' (Haddad 2008, p. 4). Because protection always already presupposes a *national protection*—that is a state that takes care of refugees as opposed to *humanitarian assistance* devolved to charities—it is here, at the national level, that our analysis will start by investigating, in particular, the specific role that the state is asked to perform as protector and guarantor of rights towards its own citizens and the aliens residing in its territory. The first step will be to separate the analysis of the state from the analysis of sovereignty. Though recognising that the state is by definition sovereign, by focusing on the state—and on the key role of the state in providing protection—this work will hopefully provide an alternative starting point from which to look at protection. While the focus on state sovereignty tends to lead us to look outward—to project the state towards the outside world by looking at borders, international obligations and state security—an inward-looking on the state privileges a perspective in which the question of protection is no longer observed from the sovereign perspective but from the effective politics of protection developed at the regional/national level. Such a focus does not disconnect the international from the local (Campbell 1996, p. 23), but it allows exploring protection also through the eyes of refugees, by scrutinising how refugees themselves react to local politics of (non-) protection. In other words, in this book, the question of protection is not limited to an analysis of the state's politics but also considers how official politics are *de facto* influenced by its key beneficiaries: refugees.

By rearticulating the distinction between protection and assistance—along the public/private divide—this book will highlight the difference between a politics of protection in which states are the sole guarantor

for allocating and respecting rights and a politics of assistance in which charities and international agencies are tasked with the delivery of goods and the satisfaction of basic needs. In this latter case, the concept of assistance no longer involves public responsibility but, on the contrary, private care. Thus, what this book will address is: what kind of protection does international protection really entail? What is the relation between protection and assistance? Does the concept of protection presuppose assistance also? And vice versa, does the concept of assistance presuppose also protection? What is the space of protection? Is it the public sphere of rights or is it the private sphere of charity? And last but not least, who is the subject upon which protection is articulated? Is s/he an active subject who participates in the process of protection or simply a passive receiver?

The need to focus on the meaning of protection is especially relevant for International Relations (IR) discipline, which has traditionally focussed not on protection *per se* but on the limits of protection, that is, on those mechanisms that states introduce in order to make access to protection extremely difficult, if not impossible. More specifically, dominant IR literature have mostly focussed on states' sovereignty and admission policies (Joppke 1999; Weiner 1995), their interpretation of international law (Hathaway 1991b; Gowland and Samson 1992; Goodwin-Gill 1996), on their security and on refugees' 'solutions' (Gordenker 1987; Adamson 2006; Newman and van Selm 2003), on their cooperation during refugee crises (Loescher 1993, 2003; Cronin 2003; Betts 2009), on globalization and humanitarianism (Chimni 2000), as well as on global governance and international refugee regime (Barnett 2002). The question of what protection is has so far received little attention. As Jef Huysmans argues, traditionally the politics of protection have been articulated around three key questions: '(a) Who can legitimately claim a need for protection?; (b) Against which dangers can they legitimately make these claims?; and (c) Who is going to do the protecting?' (2006a, p. 2). For IR scholars what matters—from the sovereign perspective—is the question of 'who' and 'why', that is, which entity should provide protection and on what grounds. What is missing from this picture is 'what'. What kind of protection does a politics of protection entail? What is the meaning of legal protection which the 1951 Geneva Convention articulated? How to distinguish between providing a safe haven and protecting refugees? How

do refugees respond to states' politics of (non-)protection? Should refugees search for an alternative state of protection if they feel unprotected in the first safe (EU) country? These questions are especially relevant when investigating the Italian politics of (non-)protection, and wider European asylum framework as the events of 2015–2016 along the EU southern frontiers have demonstrated.

Rethinking Protection

The terms 'refugee protection' or 'international protection' have never been properly clarified. As Guy Goodwin-Gill puts it, '"protection" was never defined. Sometimes it was referred to as "legal" protection, or "political and legal" protection, or, as in the UNHCR Statute, "international protection"' (2001, p. 130). However, for Goodwin-Gill, there was no need for clarification as the 'sense of protection was always clear' (p. 130), clear in light of the international setting. Because '[r]efugees no longer enjoyed the normal relationship of citizen to State', being outside their country, 'they were to be assisted by the international community through its representative agency' (p. 130). This is precisely the common starting point for IR scholars. Refugees are people of concern for the international community because it is the international community which should fulfil the protection gap opened up by the country of origin. As Alexander Betts and Gil Loescher have put it:

> Because refugees find themselves in a situation in which their own government is unable or unwilling to ensure their physical safety and most fundamental human rights, they are forced to seek protection from the international community (2011, p. 1).

The lack of national protection is coupled with another core assumption: refugees need compensation. More specifically, the idea that refugees need to be compensated for having lost the protection of their own state has been traditionally articulated upon the assumption that there exists a unique, and irreplaceable, political relation between each state and its citizens. By failing to fulfil 'their responsibilities of normal good

governance, states fail to ensure respect for the state-citizen contract' (Haddad 2008, p. 59), that is, states break a relation—a contract—that is considered unbreakable, if not the very essence of politics. The forced condition of departure excludes the refugee from what Nevzat Soguk identifies as the 'citizen/nation/state hierarchy' (1999, p. 9). Soguk's *States and Strangers* provides precisely the analytical framework for problematizing orthodox refugee discourse. Such an analysis is already articulated upon a discourse of the 'marginalized and of otherness' (1999, p. 51), an otherness who is, however, instrumental for reproducing and reaffirming citizens' agentic capacity to act. IR conventional discourse is, thus, constructed on

> the premise that the modern citizen, occupying a bounded territorial community of citizens, is the proper subject of political life: the principal agent of action, the source of all meaning of value, and the point of decision to which, ultimately, all matters of political uncertainty must recur (Soguk 1999, p. 9).

By constructing a circular relationship between the state and its citizens, the existence of the refugee is perceived as a 'scandal for politics', as a scandal for a politics premised upon the idea that its *raison d'être* is 'the realization of the sovereign identity' (Dillon 1999, p. 95).

According to the legal formula, there are two core elements that identify refugees: the condition of non-protection and a well-founded fear of being persecuted (Hathaway 2005). A refugee is thus someone who

> owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such a fear, unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as result of such events, is unable or, owing to such fear, is unwilling to return to it (article 1A[2] of the 1951 Refugee Convention[1]).

[1] The United Nations Convention Relating to the Status of Refugees was adopted by the UN Conference on the Status of Refugees and Stateless Persons at Geneva 2–25 July 1951 and entered into force on 22 April 1954.

The notion of non-protection—that is, refugees' inability or unwillingness to avail themselves of the protection of their country of nationality—has traditionally contributed to the image of refugees as aliens deprived of the protection of their country. But what exactly is the protection to which refugees have been deprived and what is the protection that should compensate such a deprivation? The answer is not straightforward as neither the concept of protection nor the concept of asylum have been defined in international documents. According to Arthur Helton, the concept of protection has traditionally meant

> maintaining physical security and providing redress under law. For refugees, protection traditionally means life-saving interventions, fair treatment upon reception, compliance with essential humanitarian standards and non-return to a place of prospective persecution (non-refoulement). Taken together, these are elements of the concept of asylum (1994, pp. 1–2).

But, if the above refers to asylum—that is, 'the act of providing territorial "protection" to refugees' (Helton 2003, p. 22), thus simply some safe haven—the question of what protection means is still an open question. It is insufficient to claim that the sense of protection has always been clear as Goodwin-Gill did, as recalled above (2001, p. 130).

The understanding of protection as legal protection is less known in IR literature. The concept of legal protection is certainly very different from the concept of providing safe haven and physical integrity. Legal protection is intimately connected with the concept of rights and of redress before the law. As articulated in Helton,

> When we speak of "protection," we mean *legal* protection. The concept must be associated with entitlements under law and, for effective redress of grievances, mechanisms to vindicate claims in respect of those entitlements. An inquiry, then, into whether a population has "protection" is an examination of the fashion in which pertinent authorities comply with entitlements of individuals under international law, and the manner in which these legal precepts are implemented and respected (1990, p. 119, emphasis in original).

In a more recent work, Helton goes further. He suggests that under international human law states have obligations, irrespective of the formal recognition of the refugee status, 'to provide legal protection and to respect fundamental individual rights' and to apply to non-citizens the very same treatments guaranteed to their own nationals (2003, p. 23). From this perspective, refugees are legally protected by the 1951 Refugee Convention and by the international human rights regime. Hence they enjoy universal protection as human beings. A more comprehensive definition of legal protection has been elaborated in Antonio Fortin's work (2001), according to which protection should be read as 'diplomatic protection' and not as 'internal protection' as suggested in James Hathaway (1991b). More specifically, for Fortin, by using the concept of internal protection, Hathaway refers to 'the protection accorded within the State's territory to victims or potential victims of persecution' (Fortin, pp. 550–551). In the case of refugees, because their states are unable or unwilling to provide for any protection, the international community will act as protector by filling the gap left open by the states of which they have nationality. From this perspective, *national* protection is transformed into *international* protection, that is, the protection offered by the international community. However, according to Fortin, the internal protection theory is not supported by an analysis of the history of the refugee definition nor is it supported by a review of the 1951 Refugee Convention's *Travaux Préparatoires*, which suggested that the concept of protection should be interpreted as meaning '"diplomatic protection", namely, the protection accorded by States to their nationals abroad' (2001, p. 501). Refugees, and especially stateless people, are considered as unprotected people because they find themselves without diplomatic protection as recognised in traditional international law. But while in the case of stateless people, they do not enjoy diplomatic protection as their states of nationality have deprived them of membership, refugees do not enjoy diplomatic protection as they are no longer willing to avail themselves of that protection. Refugees, likewise stateless people, enjoy internal (legal) protection under the international human rights regime—as a set of rights are granted to them irrespective of nationality—but they do not enjoy the diplomatic protection that states accord to their nationals when abroad. As Fortin puts it

> Had the term "protection" in the refugee definition connoted the protection accorded by States within their territory, it would certainly not have been necessary to differentiate between nationals and stateless persons, as the latter are entitled to the international protection of their country of residence. […] The very wording of the definition clearly indicates that the protection that it alludes to is that exercised outside the State's territory… It is evident that the only protection that can be made available to persons who are outside their country of nationality, or to which such persons can resort, is diplomatic protection (2001, pp. 564–565).

According to Fortin, the concept of protection as meaning legal protection and in particular to 'diplomatic protection […] accorded to nationals' is a definition which was already advocated by the first High Commissioner for Refugees, Gerrit Jan van Heuven Goedhart (1953, p. 299, cited in Fortin 2001, pp. 566–567). The common usage of 'international protection' reflects the idea that states perform their obligations under international law. Yet, strictly speaking, protection refers to national protection, a protection that is enacted inside states' jurisdiction. More specifically, *legal* protection is guaranteed

> through measures and mechanisms designed to establish the rights of the person and at setting up mechanisms to ensure that these can effectively be claimed and exercised, prevent the violation of the person's rights, and provide remedies where such violations occur. Protection […] may, thus, be promotional, preventive or remedial in nature, and implies the existence and effective functioning of administrative and judicial structures, as well as the existence and effective functioning of mechanisms and procedures for the investigation, prosecution and punishment of violations of the person's rights (Fortin 2001, p. 552).

According to the above formulation, protection is not so much defined according to specific actions that states should undertake in favour of refugees, but it is defined according to the existence of well-functioning administrative and judicial systems that a state should possess. Protection refers, therefore, to the protection that states offer to all persons residing in their territory, which is guaranteed as long as individuals' rights are protected from abuses and as long as the states' apparatus is equipped to

promote, prevent or remedy violations. From this perspective, it *seems* that refugee protection is to be guaranteed by default by Western countries, who are signatories of the 1951 Refugee Convention and possess functioning administrative and juridical systems. Refugees are thus protected like any foreign nationals, making international protection as complementary to internal protection. Fortin's work took much inspiration from that of Paul Weiss, an expert on the 1951 Refugee Convention.[2] As Weiss put it:

> Like nationals abroad, refugees are aliens in their country of residence and subject to the territorial supremacy of the state of residence. They are given the protection which states accord to aliens who reside lawfully on their territory. It is an old principle of common law that everybody who is in the territory "*per licentiam domini regis*" is also "*sub protection*" and conversely owes local allegiance to the sovereign of the territory. This right of aliens to protection also exists […] in countries with different legal systems, owing to the principle of "equality before the law" and the rule of law itself. In this sense international protection of refugees may be considered as being complementary to the protection accorded by the state of residence (1954, p. 218).

According to Weiss' elaboration, the concept of international protection aims to compensate for their lack of diplomatic protection, that is, the protection that nationals received from the country of nationality when abroad. For Weiss, when a state grants protection to a non-national—a refugee in this case—'the state does not represent the individual citizen who has suffered injury to his rights, but […] gives effect to its own rights which have been violated in the person of its subject' (1954, p. 219).

In short, what the work of Weiss (1953, 1954, 1995), Helton (1990, 1994, 2003) and Fortin (2001) all highlight is that refugee protection means first and foremost legal protection, that is, the protection that states tend to accord to non-nationals living in their territory. Is the concept of legal protection sufficient for guaranteeing effective protection? Is it sufficient that states ensure that their administrative and judicial

[2] Paul Weis was the first legal adviser of the UNHCR, who compiled the commentary to the 1951 Refugee Convention's *Travaux Préparatoires*.

system operate properly? Does protection involve some more positive action towards refugees? These are some core questions that emerge once we shift the focus from the international to the national as well as from the legal to the everyday practices. The concept of legal protection puts all the emphasis on what happens inside a sovereign state once refugees have been admitted into their territory, in contrast to most of IR literature which tends to focus on border intersections, that is, between the border of exit and the new border of entry. This has been well articulated in Emma Haddad's work, which locates refugees 'between sovereigns' (2008). For Haddad, refugees represent 'an inevitable if unintended consequence of the nation-state system; they are the result of erecting boundaries, attempting to assign all individuals to a territory' (2008, p. 59). While Haddad reads the figure of the refugee in close relation to the international society, the perspective of this book is to look at the refugee in relation to states' key role as protector, as the key player in protecting rights, and not in relation to the international system. I am certainly not suggesting that the international system is irrelevant; rather I argue that more attention should be paid to protection beyond the dominant statist approach, which sees states as rational actors on the one hand and refugees as 'speechless emissaries' (Malkki 1996) or as shadow-bodies (Nyers 2006, p. 15) on the other. What is advocated here is a close investigation of the meaning of protection in order to explore: (1) why the concept of sovereignty sits uneasily with the concept of protection; (2) why protection requires not simply a safe haven but a functioning state which is also the guarantor of rights; and (3) how to rethink the key beneficiaries of protection.

From Sovereignty to Statehood

By focusing on the role of the state as protector, attention will be given not so much to the way in which non-citizens are incorporated within the local community in terms of 'the rights of aliens' (Benhabib 2004) but rather to the role of the state as guardian of the legal system and of individuals' rights. In order to do this, it is important to maintain the distinction—albeit conceptually—between the concept of the state and

the concept of sovereignty. Although the core attribute of the state is sovereignty, at times the two terms are used as if interchangeable and at other times the two terms are given different meanings. This is especially evident in IR literature. The interest of separating the two concepts is not at all connected with the debate on post-national membership (Soysal 1994) and the possible erosion of the Westphalian system (Lyons and Mastanduno 1995); rather it aims to highlight the different trajectory that the two concepts have traditionally undertaken. I am, in particular, referring to the different evolution that the theory of state and the theory of sovereignty have undergone. While the concept of the state has greatly evolved and most emphasis is given nowadays to the liberal-democratic tradition, the concept of sovereignty has virtually remained unaltered by maintaining its traditional meaning: 'the absolute authority [that] a state holds over a territory and people' (Weber 1995, p. 5). To put it differently: a focus on Westphalian sovereignty—that is, on the authoritative power of the state to act as it pleases and to disregard any international obligations if it decides to do so—sits uneasily with the concept of protection, which presupposes a responsibility towards its own people and thus a limitation of its absolute discretion.

How is the concept of sovereignty, which presupposes *also* arbitrary power, related to the concept of protection, which on the contrary is articulated upon rights, entitlements and states' civic duty? If we start from the premise that the fundamental task of the state—perhaps the very ontology of the state—is to protect, to protect its own citizens, then the idea that states should also protect non-citizens should not be seen as problematic as often assumed. When considering the state from an inward-looking perspective, it is generally represented as *the* entity which is tasked with the role of protecting and safeguarding its own territory and the people living inside it. When considering the state from an outward-looking perspective, that is, as sovereign, we tend to focus not only on the authoritative power of states, but the sovereign seems to maintain the very same character of traditional absolute monarchies: the sovereign as *legibus solutus*, that is, the sovereign as the highest authority of the state which is not bound by the law. While political theory tends to refer to the state—to the liberal, authoritarian, pluralist, capitalist, developmental, welfare, patriarchal and religious state (Heywood 2014)—IR

scholars tend to use the word 'sovereign/sovereignty' when referring to strong and functioning states as if there is no need to specify any other attributes. States' roles are already presumed by using one single attribute: the attribute of 'sovereign'. It is the state's attribute, its being sovereign, that gives content to the state itself. The word 'sovereignty' becomes all-encompassing to the point where the word 'state' can be omitted. This is especially evident when comparing strong and weak states. When confronted with strong states, with great powers, the reference to the state is often deemed unnecessary as what is highlighted is their sovereignty. The case of weak states, of failed states, is completely different. The word 'state' is not omitted. It is actually central: failed states are not defined according to their sovereignty but according to the failure of the state structure and bureaucratic machine in providing basic services to the people (see Krasner 2001, 2009). Failed states are not thought of as 'failed sovereigns', which would sound an oxymoron. As Lorenzo Zucca put it, we are confronted with 'the conventional Hobbesian account, which presents political authority as static: once sovereignty is posited, it is absolute and exclusive. Either the state is sovereign and there is no authority beyond it, or it is not sovereign and therefore it is not a state' (2015, p. 401).

The work of two leading IR scholars, R.B.J. Walker (1993) and Cynthia Weber (1995), is especially important for having highlighted that that these two concepts are socially constructed. While Walker, in his *Inside/Outside* (1993), claims that the two are 'more or less interchangeable terms' (p. 164), it is actually the concept of sovereignty that has been taken to be an 'almost lifeless category' (p. 168). It is in particular the constant reproduction of the 'conventional story' that makes states (i.e., sovereignty) appear as if permanent and immutable, 'when in fact states are constantly maintained, defended, attacked, reproduced, undermined, and relegitimised on a daily basis' (p. 168). The 'inside' and the 'outside' to which Walker refers to are precisely the two perspectives of the state, one that looks inwards and one that is projected towards the outside world, and it is the second one which is relevant to the great majority of IR scholars. Weber's approach towards sovereignty also offers a clear indication of the centrality given to the concept of sovereignty and to the almost complete neglect of the state. Following

Jean Baudrillard's suggestion (1983), Weber explores the concept of sovereignty by exploring its opposite. But the opposite of sovereignty for Weber—and IR discipline more in general—is 'intervention' and not the internal conditions that transform a state into a failed state. What matters is not the inside conditions of the state but the outside function of the state, that is, the state's authoritative power to counter any conditions of domination and external interference. From this perspective, what matters for IR is not so much whether a state is a functioning state *inside* but whether a state is able to exert its sovereign prerogative towards the *outside*. Statehood is not tested by using the pair 'functioning vs. failed' or 'strong vs. weak' but 'sovereignty vs. intervention'. As Weber has aptly put it:

> one way to assert the existence of something (sovereignty) is to insist upon the existence of its opposite (intervention). For intervention to be a meaningful concept, sovereignty must exist because intervention implies a violation of sovereignty. To speak of intervention, then, is to suggest that sovereignty does exist. "Intervention" functions as an alibi for "sovereignty" (1995, p. 27).

As Jack Donnelly also puts it (1998, p. 3), the 'duty correlative to the right of sovereignty is non-intervention', that is, non-interference in internal matters. It is precisely non-intervention and especially states' ability and power to control and respond to the international system that has dominated IR literature. State and statehood have been traditionally marginalised, or as Fred Halliday puts it, IR debate on the state was a 'non-encounter' (1994, pp. 75–76), in the sense that there was no proper debate. The work of John Hobson (2003), *The State and International Relations*, is especially illuminating not simply for providing a critical analysis of IR scholars and their approaches towards the state but for the way in which he highlights the fact that, despite many theories and approaches, the key focus has always been not on states *per se* but on states' interactions at the international level. This is especially evident in the so-called first debate, during the 1970s, during which realists and non-realists debated the importance of social forces and non-state actors in undermining states' autonomy (p. 2). As Hobson put it

> it could be argued that the first debate is not really about the state at all, given that both sides marginalize its importance; that perhaps the real contest is between "*international socio-economic structure-centredness*" versus "*international political structure-centredness*" (2003, p. 4, emphasis in original).

The lack of a meaningful debate on statehood was already recognised in Richard Little's work of 1987, according to which the lack of progress towards a more articulated theory of the state was due to the 'restricted theory of the state' which dominated IR. More specifically,

> states are defined as sovereign institutions which possess absolute authority over their own territory. Any erosion of this authority is considered to challenge the sovereignty and, therefore, the existence of the state. There is no doubt that military intervention challenges the authority of the state and, as a consequence, the established formulation of the state can contend with existing international conventions on intervention (p. 54).

What is especially surprising is the lack of engagement with questions of statehood when considering the pair sovereignty/intervention. For instance, for Weber, what is problematic is the way in which IR scholars 'write' the state, a state whose functions and role are fixed and stabilised according to the meaning given to sovereignty. Even if the concept of sovereignty acts 'as a referent for statehood', IR literature has remained silent against 'a potentially dynamic understandings of statehood' (Weber 1995, pp. 1, 11).

The very same silence has been replicated in the recent debate on the responsibility to protect (R2P), and especially in the report of the International Commission on Intervention and State Sovereignty (ICISS) (2001a). Although the key theme is the question of responsibility, of states' responsibility to protect their own territory and people from violence, abuses and 'avoidable catastrophe' (p. viii), the emphasis is not on the fundamental role of the state as guarantor of rights and liberty but on the modalities of military intervention by the international community. The foundation to the R2P principle is articulated, among others, not upon the concept of the (liberal/constitutional) state but upon

'obligations inherent in the concept of sovereignty' (ICISS 2001a, p. xi). In other words, even if the key themes are the question of responsibility and the question of protection—a responsibility and a protection which should start at the national level—neither the first concept nor the second have been spelt out. An in-depth analysis of the kind of protection that states are supposed to be responsible for is missing. The same holds true of the ICISS' supplementary report (2001b). Chapter 1 on 'State Sovereignty' does not look at the state but at the meaning, purpose, limits and challenges to sovereignty (ICISS 2001b, pp. 5–13). So, even if the attention should be on responsibility, and especially on states' responsibility to protect, there has been no analysis that spells out what the meaning of protection is. This absence is especially surprising in light of the idea that the international community should bear a responsibility to protect whenever states fail to perform their duty. Attention has not been paid to protection, nor to the responsibility to protect but rather to sovereignty and to international intervention. As already articulated in Weber, not only do discourses on intervention always already imply discourses on sovereignty, but in the 'sovereignty/intervention pairing, it is sovereignty which serves as the foundational concept' (1992, p. 201).

What I am claiming here is that the centrality given to the concept of sovereignty—and particularly the use of this concept as if interchangeable with the concept of state—has overlooked its meaning, core functions and important historical transformations. Thus, if we wish to discuss protection, we should depart from the attribute of 'sovereign' and engage with other state's attributes: liberal and constitutional. It is the concept of the liberal and constitutional state—with its idea of protecting individuals from the sovereign arbitrary power via the introduction of positive rights—that seems more adequate for understanding refugee protection as well as for rethinking the figure of the refugee in a more positive light. This is especially the case when looking at the EU context and at the so-called 'positive obligations' that the European Convention on Human Rights is imposing on state parties (Xenos 2012). What recent influxes of migrants and would-be refugees are challenging is not whether EU states are sovereign but more importantly whether EU states are still liberal states (see Guild et al. 2009; Adamson et al. 2011).

The State of Protection

The meaning of the concept of state has never been fixed but is historically contingent. It took a few centuries of evolution, from the first conceptualisations of the philosophers of the eighteenth century, to arrive at the current idea that states are founded on so-called popular sovereignty as opposed to monarchical sovereignty. From the negative and pessimistic Hobbesian formulation of human nature, *homo homini lupus*, emerged the modern absolutism that, recognising the sanctity of life, tried to limit the *summum imperium absolutum* of the sovereign; from the Lockean optimistic formulation, *homo homini deus*, emerged modern liberalism; and from the Rousseaunian formulation emerged modern democratism that determined the development of the principles of the formal equality of citizens before the law and the recognition of a popular sovereignty (Revedin 1988, p. 301). But it was not until the end of the Second World War that the concept of popular sovereignty, 'based on the will of the people has become established as one of the conditions of political legitimacy for a government' (Sassen 1995, p. 2). The notion of popular sovereignty implies the recognition that the state is sovereign but that its sovereignty is not a *summum imperium absolutum*. Its being sovereign is founded on the state-citizen relationship, a relationship based on a mutual recognition that the activities of the state are for the benefits of its citizens, from whom its activities originate. This very understanding has been emphasised by the former UN Secretary-General Kofi A. Annan, when highlighting the specific role of the state in protecting and safeguarding its people. As he put it:

> [s]tates are now widely understood to be instruments at the service of their peoples, and not vice versa. … When we read the charter today, we are more than ever conscious that its aim is to protect individual human beings, not to protect those who abuse them (1999).

What is problematic is not to recognise that the key role of the state is to protect but how to define protection. In his article 'Protection: Security, Territory and Population' (2006), Didier Bigo offers a very interesting analysis that considers, among others, the etymology of the word

'protection', by looking at three Latin words: *tegere* [tegĕre] (to protect, to shelter, to hide), *praesidēre* (to preside, to watch, to guard) and *tutore* [tūtāri] (to look after). Bigo sees protection as the intersection of the three meanings:

> first a sovereign self with the capacity to shelter, to withdraw from something or someone, to become sacred and "untouchable"; second a disciplinary technology which puts agents under a more powerful agent who will act instead of them, and who will lock them in indefinite detention for their own good; third a loving care that annihilates agency, in the sense that the protector as tutor organises the life of the protected and channels the corridor of its freedom (2006, pp. 92–93).

By looking at the ambiguities of the concept of protection, Bigo highlights the importance of keeping the distinction in mind when examining the work of the United Nations High Commissioner for Refugees (UNHCR) and any other NGO which assists refugees as the 'technologies' (2006, p. 93) used by these very organisations make an important difference in the role of the protector and of the protected. For instance, in the case of the refugee camp, the UNHCR tends to 'impose a discipline to asylum', and this is done in such a way that it transforms the camp from a place of protection into a 'locus of detention', in the sense that '*[t]egere* is forgotten in the name of *praesidere* and *tutore*' (2006, p. 95). What is especially important to highlight, following Bigo, is the difference between the concept of protection and the concept of security, at least 'the traditional definition of security as freedom from threat and survival' (2006, p. 93). For Bigo, a politics of protection—meaning the politics of the protected and not the politics of the protector—'is about the self and the relation of the self to the others. It has to do with the vulnerability of the body. It is less about life and death than about fear of persecution and torture, about the right to life' (2006, pp. 93–94).

The difficulties in articulating the concept of protection, with reference to the politics of the protected, lies especially upon the difficulties in articulating the ontology of the state. More specifically, to which theory of the state are we referring when we claim that the key role of the state is to act as the protector and the guarantor of rights and liberties? A theory

of the state should be able to define the state according to its functions and roles and not simply according to 'its *modus operandi*', as done for instance in the orthodox Weberian definition of the state (Hay and Lister 2006, p. 8). By defining the state as 'the sole source of the "right" to use violence' (Weber 2004, p. 33), and in particular as 'an institutional form of rule that has successfully fought to create a monopoly of legitimate physical force as a means of government within a particular territory' (p. 38), scholars tend to focus attention, quite exclusively, on the question of legitimacy, power and bounded territory. This is evident in IR theories, especially in the Realist and Neo-Realists approaches which focus overwhelmingly on 'war-centred state theories' and particularly on 'the military dimension of state power' (Hay and Lister 2006, p. 9). As Colin Hay and Michael Lister say

> Yet, almost without exception the state is seen […] in structural and/or institutional terms. Thus, whether the state is seen functionally or organizationally—as a set of functions necessitating […] a certain institutional ensemble […]—it provides a context within which political actors are seen to be embedded and with respect to which they must be situated analytically. The state […] provides (a significant part of) the institutional landscape which political actors must negotiate (2006, p. 10).

By looking at states from a structural and/or institutional dimension, attention is placed on the elite holding power, at their geopolitical strategies, and/or at states as 'unitary power actors enjoying "sovereignty" over their territory' (Mann 1993, p. 49) and not on the functional dimension of the state. The latter, however, concerns particularly the question what states *should* do, hence, what kind of practices are characteristic and distinctive of protection.

If we move away from dominant institutionalism and especially from 'institutional statism' (Mann 1993, pp. 52–54) we can more easily look at states as non-unitary entities and especially at the centrality of rights, including individuals' right that make EU states to comply with the European Convention of Human Rights (ECHR). It is in particular the liberal doctrine, and especially the centrality of liberties and rights to be guaranteed to individuals/citizens, that needs to be taken into account. It is this very doc-

trine, articulated upon the premise that the power of the sovereign has to be limited that has been *de facto* incorporated into the doctrine of the 'responsibility to protect'. By advocating that sovereignty is now to be understood as 'responsibility', the ICISS has, in practice, supplemented to 'the three traditional characteristics of a state in the Westphalian system (territory, authority, and population) […] a fourth [one], respect for human rights' (2001b, p. 136). Thus, the adding of human rights should not be simply interpreted as the adding of the human rights regime to the concept of sovereignty but as the *alignment* of the concept of Westphalia sovereignty to the liberal state doctrine. To acknowledge, as the former Secretary-General Boutros Boutros-Ghali has done, that '[t]he time of absolute and exclusive sovereignty […] has passed' (1992, para 17), should not be read as a move away from the concept of sovereignty. What has passed is the very concept of absolute authority attached to the Hobbesian and Schmittian tradition on which IR scholars have overwhelmingly relied.

The Sovereign of (Non-)protection

Mutually exclusive territoriality, independence, international recognition, authoritative decisions over entry/exit policies, and citizenship are considered to configure the attributes *par excellence* of modern sovereign states. Conventional IR discourse takes the state not only as a starting point but also as the principal agent of action that 'derive(s) its powers from the citizens it represents, […] the citizens for whom, in return, the state deploys law, force, and rational administrative resources in order to guarantee certain protections' (Soguk 1999, pp. 9–10). Political life is, consequently, conceptualised in terms of the participation of the citizens in the conduct of the state, a state that represents and protects its citizens and from whom its legitimate power emanates. Political life is thus articulated in the very processes of participation, representation and protection, activities that take place within, and only within, the boundaries of the sovereign territory (Soguk 1999, p. 10). However, the question of political life or, more accurately, the question of life inside the state, has been rarely considered as relevant to IR scholars. Despite the recognition that sovereignty has been used in different ways—including international

legal sovereignty, Westphalian sovereignty, domestic sovereignty and interdependence sovereignty (Krasner 1999, pp. 3–4)—the meaning that has historically dominated is the one projected towards the outside world, towards the international community. It is the Westphalian sovereignty, referring to the 'political organization based on the exclusion of external actors from authority structures within a given territory' (Krasner 1999, p. 4) that has received almost exclusive attention. Moreover, by defining domestic sovereignty as 'the formal organization of political authority within the state and the ability of public authorities to exercise effective control within the borders of their own polity' (p. 4), Krasner focusses on the sovereign capacity to exercise control within a specific territorial jurisdiction. The concept of sovereignty, whether internal or international, has a very specific meaning: authoritative control (see Jackson 2000), irrespective of the specific form of state and/or government upon which political communities are organised.

What is especially problematic with this concept of sovereignty is the lack of any historical contextualisation. The near complete absence of reflection on the historical evolution of the concept of sovereignty has led IR scholars, as put it in Cynthia Weber, to 'two embarrassments to the historicity of sovereignty' (1995, p. 2). More specifically, IR scholars have, firstly, taken the concept of sovereignty and 'universaliz[ed] this form of sovereignty to the entire history of sovereignty (or to the entire history of authority more generally)' (pp. 2–3). Secondly, by taking its meaning for granted, IR scholars have failed to investigate 'how the meaning of sovereignty is stabilized' (p. 3). And this stabilisation is but the result of 'practices of international relations theorists and practices of political intervention' (p. 3). By looking at practices of intervention, Weber has been able to articulate the meaning of sovereignty and to demonstrate that its meaning lacks any historical contextualisation. What is important to highlight, as done in Weber's work, is that this process of fixity has been accompanied by processes of justification and interpretation of sovereign practices. In other words, before

> intervention practices occur, they are accompanied by justifications on the part of an intervening state to a supposed international community of sovereign states. […] The form of a justification in effect participates in the constitution of both the state as a sovereign identity and the interpretive community to which the state's justifications are directed (Weber 1995, p. 5).

By looking at intervention, it is possible, for Weber, to define the boundaries of the concept of sovereignty and at the very same time the modalities through which the state uses its 'sovereign voice' for speaking to its community (p. 5). Sovereignty matters both when a state decides to intervene into another state's affairs as well as when a state represents its community in international politics. By looking at political representation, what Weber questioned was not simply 'what is represented?' or even 'how is representation possible?' but, more importantly, 'what happens when it is no longer possible to represent sovereign foundations', that is, what happens when a logic of representation fails and is replaced by a logic of simulation (pp. 31, 38). According to Weber, it is more appropriate to conceptualise state sovereignty in terms of simulation rather than in terms of representation. It is in situations where a state fails to represent, both politically and symbolically, the voice of the people that the state simulates a series of images and models that makes the logic of representation appears to function, allowing the state to still claim to be the representative 'agent of its people' (pp. 28, 38). This very logic of simulation seems to apply also to the refugee regime, in particular to the idea that the international community is a substitute for national protection. As Haddad nicely puts it: '*How can the refugee ever be reconciled with an international system that rests on sovereignty?* […] If the concept of asylum inherently clashes with the concept of sovereignty, what chance is there for refugee protection?' (2008, p. 11, emphasis in original). If we start from the premise, as IR scholars normally do, that priority should be given to sovereignty, then no politics of protection can be properly set up, or even envisaged. The politics of protection is doomed to represent the politics of the protector. The sovereign, in a strict sense, is never a sovereign of protection. It is a sovereign that commands, dominates, wages war and, most importantly, is located above the law. As long as the Hobbesian and Schmittian concepts of sovereignty dominate, as mostly done since the 1951 Refugee Convention, protection will continue to be looked at in terms of 'problem', 'challenge', 'limits', 'dilemma' and 'erosion' of protection (see Loescher 1992; Landgren 1998; Chimni 1998, 2000; Goodwin-Gill 2001; Zolberg and Benda 2001; Price 2009; Steiner et al. 2012). Perhaps it is time to move away from the concept of sovereignty and recognise that the dominant concept of state sovereignty should be

replaced by the concept of the liberal/constitutional state, which was elaborated, since its inception, upon the premise that state protects as long as there exist mechanisms for limiting its sovereign authority.

The Refugee of Protection

Given the dominant international system of sovereign states, how is the figure of the refugee articulated within this system? To what extent might the departure from the current understanding of sovereign/sovereignty help in articulating an image of refugee-ness that does not recall crisis and dilemmas? How are we to understand the figure of the refugee through the concept of protection? In other words, who is the 'refugee of protection'? Who is the refugee that receives protection? But also who is the refugee that actively seeks to find protection beyond dominant humanitarian logic?

To begin with, IR mainstream offers a very specific representation of the refugee figure, namely a figure constructed in stark opposition to the (imagined) political citizen. As well elaborated in Soguk's work, dominant refugee theorising is articulated on the opposition between the citizen and the non-citizen, between the 'proper subject of political life' (1999, p. 9) and its negative opposite. The refugee is pictured as the other, the alien, the non-citizen who has lost a vital connection, in terms of representation, protection and sense of belonging to his/her community of origin, a connection which is deemed *per se* irreplaceable (p. 18). The image of the refugees reproduced within the UNHCR's discourse is not much more positive. The UNHCR tends to reaffirm IR state-centric orientation. In *The State of the World's Refugees 1997–98*, the UNHCR clarifies in a few lines the refugees' drama:

> Persecuted by their governments or by other members of their society, many find themselves living in a state of constant insecurity and uncertainty. Even if they have managed to find a safe refuge, they may never know if or when it will be possible for them to go back to their homes. […] As a rule, people do not abandon their homes and flee from their own country or community unless they are confronted with serious threats to their life or liberty (pp. 1, 11).

From this perspective, becoming a refugee entails a violent rupture from a 'normal' socio-political life. Outside the homeland, there exists only emptiness and helplessness (Nyers 1999, pp. 19–20). The principal task of the UNHCR is precisely to work in order to guarantee that the loss of the *native* membership is replaced by the acquisition of a new one. As articulated at the UN General Assembly

> International protection as provided by countries of asylum in cooperation with UNHCR is an effort to compensate for the protection that refugees should have received in their own countries, and its objective is not fulfilled until refugees once again enjoy protection as full-fledged members of a national community (UN General Assembly 1993, para I.3, p. 2)

In a world of states, states are to protect their own citizens, nationally and internationally, and any deviation from this norm requires the reestablishment of the *status quo ante*, as if this were unproblematically feasible (see Warner 1994). The assumption that only the acquisition of a new membership can provide protection, and that refugees aim to achieve that very goal, represents a key assumption in much traditional IR literature (see Aleinikoff 1995).

As has been well articulated by Soguk, although refugees share a common condition of displacement, the experience of being a refugee represents a unique story, as

> there is no intrinsic paradigmatic refugee figure to be at once recognised and registered regardless of historical contingencies. Instead, … there are a thousand multifarious refugee experiences and a thousand refugee figures whose meanings and identities are negotiated in the processes of displacement in time and place (1999, p. 4).

The recognition that thousands of refugee figures exist and that the contingencies of displacement are negotiated in time and place makes any generalisation on the figure of the refugee simply arbitrary. One important lesson from Italian reception policies is precisely the need to move away from pre-established images and identities and to embrace a critical reading of the prevailing essentialist understanding of identity (see Isin and Wood 1999). The encounter between the self and the other is much

more complex than is generally assumed in IR literature and this book aims precisely to offer an alternative perspective from which to rethink international protection and the subjects involved in the process. There is clearly a need to rethink protection by elaborating an alternative perspective of the state—as it is the state that provides protection—as well as to elaborate a new (positive) image of the refugee—as it is the refugee who takes part in the process of protection. The image of the state, however, that is privileged here is not the unitary entity able to decide authoritatively whether to allow refugees in or not. The everyday reality is much more complex than that. When considering the state we need to recognise a multiplicity of subjects that, even if they are part of the same legal system, understand refugee protection differently. In other words, we need to distinguish between the state-as-institution and the state-as-society as the two do not necessarily perceive forced migration in the very same way, and thus they might act differently. Moreover, when discussing protection, it is important to articulate refugee figures within the society of arrival, in light of the conditions of protection offered *in loco* as well as the dynamic encounter—or non-encounter—between the refugees and the local community. What is especially needed is to move away from prevailing assumptions that locate citizens and refugees into two distinct and irreconcilable categories. Citizens, and the destination country more generally, are not simply *active givers*—it is they who provide assistance and offer protection—nor are refugees simply *passive receivers*—always already beneficiaries of assistance. As long as refugee analyses continue to understand the relations between the *political* citizen and the *apolitical* refugee in terms of aid and assistance—and as long as political subjectivity continues to be ascribed only to the former and not to the latter—other perspectives, stories and daily life will remain unexplored. Refugees' identity is related, and it cannot be otherwise, to their experience of displacement, an experience that needs to be assessed by considering also the space of (non-)protection, which they encounter in their journey. Refugees' stories need to be contextualised by considering their past and also their present, a present which is not simply devoid of political subjectivity because of refugees' change of legal status (see Nyers and Rygiel 2012). Refugees *continue* to remain subjects of rights, and thus political subjects, and their condition of displacement cannot simply delete this (legal) status.

The Mediterranean 'Crisis'

More than one million migrants crossed the EU frontiers in 2015 and some 332,046 entered the EU via the sea route during the first ten months of the following year (IOM 2016a). The number of entries via the 'South-Mediterranean Fence' (Balibar 2006, p. 1) was especially high—nearly 97 % of the overall flows—and equally high was the number of people reported dead or missing, up to 3760 (IOM 2016c; UNHCR 2015b) in 2015 and some 3,930 out of 5,238 deaths worldwide, in 2016 as reported in the IOM's Missing Migrants website on 27 October. The many news reports, testimonies, death counts, and NGO reports all referred to 'the Mediterranean Migration Crisis' (Human Rights Watch 2015a, c; IOM 2014; UNHCR 2015a, 2016a). It is a political crisis as the EU border agencies have been unable to perform their given task: to prevent unwanted vessels from reaching the southern coastlines (see Neal 2009; Léonard 2010). It is also a humanitarian crisis in light of the high toll of border deaths and of the at best limited protection after the crossing. Forced conditions of encampment are increasing, conditions which are far from guaranteeing dignified living conditions to people waiting for asylum applications. It is above all a political crisis because of the failure of EU policy-makers to elaborate a coherent politics of protection and an effective burden-sharing plan. The agreement on 18 March 2016 between the EU and Turkey (European Commission 2016)[3] has clearly externalised EU protection responsibilities by shifting all the protection obligations to Turkey and applied the key criteria of the Dublin Regulation,[4] which restrict asylum claims to the first country of entry,

[3] In particular, it was agreed, among others, that (1) all new migrants, who crossed the Turkish borders and entered into Greek after the 20 March 2016, are to be sent back to Turkey; (2) for every Syrian returned to Turkey from Greece, another Syrian is to be settled in a EU country; (3) Turkey is to work towards a sealing of its borders against irregular migration; (4) in exchange of Turkey's border politics, the visa liberalisation roadmap is to be accelerated; (5) some 3 billion euros are to be allocated to Turkey; (6) The EU and Turkey are to work together towards an improvement of humanitarian conditions inside Syria.

[4] The Convention determining the 'State Responsible for Examining Applications for Asylum Lodged in one of the Member States of the European Communities' was signed in Dublin on 15 June 1990, entered into force on 1 September 1997 in 12 countries, while in Sweden and Austria on 1 October 1997 and, finally, in Finland on 1 January 1998. Currently the Dublin III Regulation applies, no. 604/2013.

mostly Italy and Greece. The reallocation plan, according to which up to some 160,000 asylum-seekers are to be distributed to EU countries, has proved to be ineffective.

At first sight, the plight of refugees in the Mediterranean context does not seem different from former experiences of massive refugee flows. More specifically, it is not new to discuss migratory flows in terms of crises (Nyers 2006), to report border crossing (dell'Orto and Birchfield 2014) or to acknowledge the limits of international protection (Loescher 1993; Weiner 1995; Spijkerboer 2007; Gibney 2010; Steiner et al. 2012). There is also nothing new about reporting forced migrants' flows in the Mediterranean as well as their transit towards northern European countries. But the approach of some EU states to this problem certainly is new. While in the past these constant flows from the southern to the northern regions were made invisible (Puggioni 2005, 2006), today it is no longer possible to do so. It is no longer possible to close our eyes and pretend not to see the conditions of non-protection for many would-be refugees in Italy, in the Greek islands as well as in the so-called 'jungle', at the French borders at Calais. Watching hundreds of thousands of migrants walking for kilometres, crossing European borders and compelling member states to allow them in is also a new phenomenon. There is also something new about the change of attitudes towards migrants at sea. If in the past years a politics of blockade and turning back tended to dominate (Monzini 2007; Wolff 2008; Klepp 2010; Jansen et al. 2015), more attention has been given to rescue operations after many thousands have lost their lives in the crossing as well as after the many protests against border deaths (Rygiel 2014; Puggioni 2015).

The constant entry along the southern borders and the transit towards other EU destinations clearly demonstrate the way in which forced migrants are looking for alternative, and multiple, solutions. These secondary movements—which the Dublin Convention aimed at discouraging—are prolonging refugees' conditions of uncertainty and of non-protection. As the recent massive movements are demonstrating, refugees, or at least many of them, are no longer waiting in distant refugee camps for some international agency to find durable solutions for

them.[5] They are 'doing it for themselves' (Crisp 2013) by selecting the country of destination, arranging their (irregular) transportation as well as claiming asylum in selected countries. Contrary to dominant image of refugees as 'recipients of aid' (Harrell-Bond 1999), 'refugees are pursuing their own strategies' (Crisp 2013). But these strategies, as Jeff Crisp argues, are not strategies leading to durable solutions but to 'inconclusive outcomes', that is, outcomes that are mostly temporary and/or irregular (Crisp 2013). Because of this condition of irregularity, Crisp refers to strategies of '*de facto* integration' or 'silent integration' (Crisp 2013), that is, on strategies not dependent on official recognition of the refugee status nor on official policies of reception. These are self-help strategies, similar to those we had already observed in the case of Italian politics of (non-)protection in the late 1990s (Puggioni 2005). The desperation with which solutions to this multiple crisis are sought is palpable in news reporting and in the politics of (non-)protection enacted since 2015 in most EU countries. Refugees' desperate search for solutions is encouraging many to use highly risky routes, as for instance the irregular crossing through the Mediterranean Sea (Pastore et al. 2006; Spijkerboer 2007; IOM 2014). By using local and transnational networks, they are finding a way of getting in, and once in, they make their presence known which is also different to former migration waves.

The migratory dynamics, and in particular the activism of many migrants and refugees looking for a better future, makes us reflect on dominant images of sovereign states as well as at dominant images of refugees. Although states authoritatively control their borders and carefully select whom to admit (see Cohen 1995; Weiner 1995; Guiraudon and Joppke 2001), borders are much more porous than often assumed, and it is this very porosity that migrants and refugees are exploiting (see Papadopoulos and Tsianos 2013; Mezzadra 2004, 2011; Mitropoulos 2006). Moreover, refugees are demonstrating a great sense of political activism when organising protests against unliveable conditions and when developing migratory strategies, including selecting the desired destination. Refugees' flight is not simply a flight *from* violence but also a flight

[5] Durable solutions include: local integration, voluntary repatriation, and resettlement in a third country.

towards a space of rights. Those entering the EU are not simply looking for a better economic life, but they are looking for a life that also guarantees the respect of rights and human dignity, those values and principles that the West has consistently advocated over the past 60 years. The many migrants entering the EU are looking for protection but not exclusively a protection *from* threats but, perhaps most importantly, a protection *towards* a new life, a dignified life which embraces emancipation.

Protection in Italy

To discuss protection in Italy is not an easy task especially at the time of writing, 2016, a time in which the country is struggling to provide responses—not necessarily protection—to would-be refugees arriving at its southern frontiers: some 170,100 in 2014, 153,842 in 2015 and some 158,062 up to 26 October 2016 (UNHCR 2016b). Given the historical approach of the country towards asylum, it is extremely difficult to talk of protection. The key problems in the country are not so much related to entry and access to the asylum procedure but to the lack of attention and assistance upon arrival and/or after the refugee status has been granted. The question of protection is not as clear-cut as is often assumed. Refugees' conditions are not simply one of protection or one of non-protection. The stages of protection are multiple and a variety of actors are involved in all the different stages, including refugees themselves who are far from being passive receivers. What will emerge, in Chap. 4, is that the protection pattern is not as linear as is often assumed by IR scholars. The distinction between protection, assistance and asylum is not so clear-cut nor are the competences between the local/national and public/private well-established. It will be argued that the lack of a clear definition of what protection is and especially a clear distinction between the role of the state in protecting—by offering the guarantee of a dignified life in respect to basic rights—and the role of charity organisations in providing basic services, which are not conducive to any condition of emancipation but, on the contrary, to a perpetuation of assistance, has ultimately led to a system of non-protection. A system of non-protection in which the vast majority of asylum-seekers and refugees are left out to the point that

self-help survival strategies continue to be the norm. This state of affairs, which can no longer be considered temporary while Italy adjusts to EU procedures, has important consequences for both refugees—whose conditions of non-protection is prolonged—as well as for other EU member states where 'Italian' asylum-seekers and refugees are living, and not necessarily with the right documents. Italy is still widely used as a land of transit even by those who have been recognised as refugees. The dominant politics of protection in Italy is far from representing a genuine politics of the protected. Italy is adhering to its legal responsibility by respecting the 1951 Refugee Convention, but it is not enough. A shift from a politics of assistance to a politics of *legal* protection is needed, a legal protection able to translate core basic rights into effective rights. What is especially problematic is the lack of possibilities for integration and protection, which continues to persist since the 1990s. International protection is mostly translated into a politics of humanitarian assistance, an assistance which is overwhelmingly managed by charities and the private sector. But such politics leave refugees without *protection*, and even the humanitarian assistance does not reach all. Up to 100,000 have no access to help as *Médecins Sans Frontières*' recently reported (MSF 2016a). By understanding protection in terms of first assistance and reception policies, and not in terms of rights and entitlements, dominant politics towards refugees is *de facto* a politics of charity which does not lead to any process of integration, let alone emancipation.

Chapter Overviews

Rethinking International Protection aims to elicit reflections on the concept of protection by rethinking three core concepts, all related to it, namely, the sovereign, the state and the refugee. The first chapter focuses attention on the concept of sovereignty, by highlighting that the concept of sovereignty does not sit well with the concept of protection. As long as the sovereign is perceived in terms of absolute authority—absolute authority in establishing entry/exit conditions as well as in upholding human rights—protection is doomed to be transformed into non-protection or simply into limited programmes of temporary

assistance. It is thus argued that in order to discuss protection we need to move away from a traditional articulation of the concept of sovereignty and engage more deeply with the concept of the state, of the states of protection. This is done in Chap. 2 which, by analysing the historical changes of the concept of statehood, highlights the important role of the liberal/constitutional state in upholding rights and the important shift from a negative concept of states' obligations towards a positive one. This requires to move away from the classical liberal view of the state—which sees the state in terms of non-interference—and to embrace a positive concept of the state in which its active role in providing protection is recognised. And positive actions are especially needed since protection is not understood exclusively as protection *from* persecution, threats, physical assaults and sustained violence but protection *towards* a dignified life and self-reliant conditions. It is in Chap. 3 that attention will shift towards refugees, by looking in particular at the refugee as the subject of protection. What will be highlighted are instances of refugees' participation in the protection process, with special attention to the way in which conditions of encampment are resisted. The concept of encampment is used in reference to a wide range of spaces of marginalisation and exclusion, conditions in which many asylum-seekers and refugees find themselves—and not only in developing countries but also in the EU (liberal-democratic) countries (see Johnson 2015).

The theoretical analysis will be followed, in Chap. 4, by a close look at protection in Italy. Special attention will be given to refugees' (forced condition of) encampment, due to a general lack of opportunities for receiving socio-economic support and/or housing facilities even under conditions of homelessness and destitution. Even if, in compliance with the 1951 Refugee Convention, Italy grants to refugees the very same socio-economic rights guaranteed to its own nationals, a simple recognition is insufficient if these rights are not translated into practice. The implementation of the legal norms into everyday reality is crucial in making the difference between destitution and dignified living conditions, between receiving some assistance from charity organisations and receiving protection from the state's authorities.

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2

The Sovereign of (Non)protection

IR literature on sovereignty, both orthodox and critical, is extremely rich (Hinsley 1986; Kratochwil 1986; Jackson 1990; Onuf 1991; Bartelson 1995). Despite the abundance of scholarly materials, the concept of sovereignty remains a highly contested concept (Biersteker and Weber 1996). Traditionally, academic attention focussed mainly on 'how the concept functions in International Relations […] [rather than] what sovereignty means' (Weber 1995, p. 1). While some see sovereignty as a 'powerful instrument of human progress' by recognising that 'human progress has occurred while sovereign states have been the dominant mode of political organization' (Krasner 2009, p. 89); others are not so optimistic as the international system is still anarchical, and thus unavoidably dominated by violent conflicts, human rights abuse and self-interest (Knutsen 1997; Gray 2012; Burchil et al. 2013). It is in particular the concept of Westphalia sovereignty that has dominated IR literature in virtually all the different schools. As Krasner puts it:

> Westphalian sovereignty has been a central concept for the most well developed contemporary theories of IR with the exception of Marxism. For neorealism and neoliberal institutionalism, Westphalian sovereignty is an

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> analytic assumption. For the English school, Westphalian sovereignty is an internalized norm that has guided, although not determined, the behavior of political leaders. Recent constructivist theories have […] emphasized the extent to which norms associated with sovereignty have been problematic and subject to challenge (1999, pp. 44–45).

What matters for this work is not so much to recognise the centrality—or even the 'perverse perseverance' (Burke 2002)—of the concept of sovereignty, but to highlight the tension between the concept of sovereignty and the concept of protection, that is, the tension between a concept that presupposes total control, supremacy and power and a concept that presupposes safeguards, rights and care. This tension clearly emerges in IR refugee literature, in which it is the concept of sovereignty that dominates, leading to non-protection. The dominant discourse is articulated upon the premise that states tend to protect themselves from refugees (Weiner 1995; Haddad 2008; Marin 2013); that the international refugee regime has been designed as exceptional and temporary (Hathaway 1997); that refugee protection is translated into mere assistance carrying a strong paternalist approach (Barnett 2011); and that the refugee figure is merely negative and abnormal (Soguk 1999). In other words, what dominates is a discourse in which refugee protection is irreconcilable with a world of sovereign states. As already articulated by Haddad, how 'can refugee protection be reconciled with state sovereignty if the two are logically in opposition?' (2008, p. 70) For Haddad, as long as we live in a system of territorially separated states, refugee protection cannot be ultimately solved as it is this very system that creates the refugee (p. 3). For Haddad the existence of refugees cannot be solved not because of states' inability to prevent and stop abuses—an issue never seriously considered in IR as sovereign power is by default always already arbitrary—but because refugees need a state that protects them. And this state that protects needs to be found beyond the state of nationality. In other words, what complicates refugee protection is the fact that national states are tasked with the role of protecting their own citizens. But once states fail to undertake their duty—transforming a (presumably) domestic issue into an international issue—refugees find themselves 'between sovereigns' (Haddad 2008), between states' borders, between a condition

of exit but not yet in a condition of entry. For Haddad, it is the international system, founded on sovereign entities, that creates the refugee (2008, p. 3). This very understanding is clearly inspired by an international starting point which sees the state system as the main cause of displacement even if, strictly speaking, the refugee originates nationally and its condition is perpetuated internationally.

What matters for the present work is not why refugees exist; how to conceptualise them within dominant order; and whether they pose a threat to the concept of sovereignty, as has already been discussed in much refugee literature (Betts and Loescher 2011). What matters for this book is to look at protection from a different perspective, a perspective that articulates protection by focusing on the very location where protection is enacted, created, received and also contested. However, before turning our attention to the state, as an agent of protection, we need to (re)focus on sovereignty. This (re)focus is especially needed because of the dominance of a specific conceptualisation of sovereignty which has led to a state-centric construction of the international refugee regime, to a statist articulation of the figure of the refugee and to a distinctively humanitarian approach towards protection, especially evident in the UNHCR's activities. Despite the many critical analyses on sovereignty—conceptualised as organised hypocrisy (Krasner 1999), as a myth (Osiander 2001) as an outdated concept (Jackson 2003), and as a social construct (Biersteker and Weber 1996)—sovereignty continues to constrain our political imagination. Or as Walker puts it, 'modern political identity is already taken for granted in the claims of state sovereignty' (1993, p. 12). What is perhaps needed is to free us from the sovereign category and from analyses that (simply) acknowledge that refugee discourse is articulated upon a statist logic (see Soguk 1999; Nyers 1999; Aleinikoff 1995; Warner 1994). The pressing question is not simply to acknowledge the limits to protection: limits to open the borders, limits to access protection, limits to the UNHCR's mandate, limits to seeing the refugee in a positive light, limits to transforming the refugee into a new citizen. The pressing question is how to overcome these limits. In other words, having recognised what constrains our theories—or as Walker puts it: how 'to think otherwise about political possibilities' (1993, p. 5)—how are we to overcome these very constraints? If theory, any theory, is 'always

for someone and *for* some purpose' (Cox 1981, p. 128), will a theory of the state, of the liberal conception of the state—away from the sovereign power to decide over life and death (Foucault 2003), offer a new articulation of protection *for* refugees?

Before exploring new venues, attention will be devoted to the questions of sovereignty and protection. In particular, in this chapter, we shall highlight why the concept of sovereignty, with its connotations of dominance, authority, power and absolute control, sits uneasily with the question of protection. IR narrative on R2P, on international protection and on the figure of the refugee makes this 'ill-fit' very evident. In short, what I am trying to highlight in this book, and especially in this chapter, is that the question of protection—and refugees are precisely the result of states' failure to protect—tends to remain always in the background, always there, but rarely spelt out properly. What is privileged, and constantly reaffirmed, is the sovereign's capacity to act as it pleases. This process is especially evident when discussing questions related to protection. No matter whether it is citizens' protection, aliens' protection and/or the sovereign's responsibility to protect. We are, so to speak, unable to properly discuss the question of protection, as what dominates is always already the concept of sovereignty, that is, always already a concept that has maintained connotations of abuse, domination and arbitrary decisions. These connotations have been partially challenged by the human rights regime. As articulated in Jack Donnelly's recent article, 'states are *differently* sovereign, not *less* sovereign, both in general and with respect to internationally recognized human rights in particular' (2014, p. 236). For Donnelly, it is crucial to recognise the important shift from an 'absolutist conception of exclusive territorial jurisdiction that was fundamentally antagonistic to international human rights' to one which includes human rights as 'fundamental norms of international society' (p. 225). Donnelly is not at all interested in discussing whether 'international human rights norms and practices have weakened, assaulted, challenged, eroded, undermined, or violated state sovereignty', but in demonstrating that sovereignty 'has never been such an absolute general right' in the way that is often assumed (2014, p. 235). More specifically for him, by conceiving sovereignty as the power to do what one pleases without impunity is misleading as it would not represent the sovereign founda-

tion. As Donnelly put it: 'such a Hobbesian right of every one to everything would be a foundation not for sovereignty but a war of all against all' (p. 235).

Sovereignty and the Question of Protection

Since their emergence, theories of International Relations have taken the concept of sovereignty as 'the most important fact of life in a world of more or less autonomous authorities' (Walker 1993, p. 13). Sovereignty is the beginning and the end of orthodox IR theory, if not the 'basic element of the grammar of politics' (Jackson 1999, p. 431). Political concepts—including 'culture, state, class, gender, race or individual subjectivity'—have not only been marginalised but their meaning has been derived from the concept of sovereignty (Walker 1993, pp. 11–12). Despite the recognition that 'sovereignty remains an ambiguous concept' (Biersteker and Weber 1996, p. 2) and that any attempt to provide a definition will amount to its freezing in a particular space and time (Bartelson 1995, p. 13), there exists a surprising resistance to challenging the traditional conceptualisation of sovereignty. What has dominated is precisely the freezing of this concept. The constant reference to the Westphalian state system, Westphalia sovereignty as well as at the principle of *cuius regio, eius religio*—often attributed wrongly to the Peace of Westphalia (see Krasner 1999)—suggests that sovereignty still refers to the (nearly) absolute power that prevailed since the seventeenth century in Europe. Though recognising that, despite 'all appearances, sovereignty is not a permanent principle of political order', Walker is very sceptical about the possibility that sovereignty might be successfully challenged (1993, p. 163). For him, even if new challenges have been opened up, 'in the name of nations, humanities, classes, races, cultures, genders or movements, they remain largely constrained by ontological and discursive options' (p. 162) which take sovereignty always already for granted. What is especially taken for granted are its meaning and functions, which IR scholars have fixed and stabilised in relation to a specific historical moment (Weber 1995). Sovereignty does not simply evoke the state's power to control its borders and decide its national politics, but it pre-

supposes 'absolute authority', and any erosion of this absoluteness is perceived as a challenge to sovereignty itself (Little 1987, p. 54).

The international refugee regime has been precisely articulated upon the dominant concept of sovereignty and the concept of protection has been articulated upon a statist imagination of the world. This statist perspective is especially evident in Haddad's work (2008), which takes the international state system as the starting point and the existence of refugees as 'a permanent feature of the international landscape' (p. 3). For Haddad, refugees exist not because of the failure of states to provide protection but because we live in a world of states. Or as Haddad articulated it: 'without an international states system there would be no refugees' (p. 4), as it is the international setting that, by constructing borders, divides citizens along territorial lines (p. 7). Whereas Haddad takes the international system as a natural and uncontested condition, Alexander Aleinikoff finds this system highly problematic. As he put it

> The concept of "refugee" both reflects and problematizes the modern construction of an international system of states. That system is premised on an understanding of the world as divided into legally equal, sovereign states, where sovereignty is taken to mean the legal right to govern demarcated portions of the globe (1995, p. 257).

By assuming the natural-ness of the international system as made up of sovereign territories, refugee law is unable to find a solution to the plight of refugees. For Aleinikoff, the only way to find a solution would be to problematise the international system itself, which understands the refugee problem in terms of membership, and proposes solutions also in terms of membership. As he put it:

> the "problem" to be solved is the *de jure* or *de facto* loss of membership. […] Although refugee status is grounded in the idea of loss of membership, refugee law does not guarantee attainment of membership elsewhere. Recognizing the fundamental international law norm that states have complete control over the entrance of aliens into their territory, the convention carefully fails to establish any duty on states to admit refugees. […] In a deep way, therefore, the convention fails to solve the problem that refugee status poses for the state system (Aleinikoff 1995, pp. 259–260).

The identity of the refugee has been precisely constructed upon a very specific understanding of the international system. It is, in particular, in the work of Soguk (1999) that this construction is articulated clearly. In his work, he not only looked at refugees as 'objects of the citizen/nation/state hierarchy' (1999, p. 9), but investigated also the modalities through which the figure of the refugee has been incorporated 'into the field of state practices in the form of a problematic body with peculiar characteristics, attributes, and experiences' (p. 17). For Soguk, conventional discourse offers specific refugee representations—including 'meanings, images and identities'—that have been articulated upon 'practices of statecraft in international, national, and global relations' (p. 23). These practices are but the result of the way in which the sovereignty of states is (and continues to be) written and reproduced in space and time. Perhaps what needs to be done is to start unpacking the very category of sovereignty by demonstrating that, despite being the core attribute of the state, its meaning has not evolved in tandem with its core referent. What is contended here is that, whereas theories of the state—discussed in the next chapter—have greatly expanded their terrain of enquiry by incorporating new political actors, by questioning the role of human rights, by questioning the 'private' and by (re)examining the nature of the state (Heywood 2014), the concept of sovereignty (at least of Westphalia sovereignty), has remained virtually immune from new articulations. It has maintained its traditional meaning: absolute authority. This applies despite the fact that sovereignty refers to a variety of political systems. This was already highlighted in Weber, when she claimed:

> Sovereignty refers to democratic, authoritarian, and totalitarian regimes, to socialist and capitalist domestic political/economic system, and to First, Second, Third and now Fourth and Fifth World government. What international relations theorists must not see is that what counts and/or functions as sovereign is not the same in all times and places. Adding to this confusion is the observation that the range of state power—what a state can do […] has profoundly changed historically (1995, p. 2).

What matters for this work is to recognise the fixity given to the concept of sovereignty as well as the taken-for-granted connotation of absolute-

ness, which sits uneasily with the concept of protection. Sovereignty's connotation of absoluteness becomes evident when tested against human rights and humanitarian interventions, both of which presuppose a limit to sovereignty (Shawki and Cox 2009). Most importantly, the very recognition that the two pose a limit is itself a recognition that sovereignty evokes absoluteness. However, the question whether we are moving beyond Westphalia has not yet met with consensus (Lyons and Mastanduno 1995) and the recent debate on the responsibility to protect is a clear manifestation of the difficulties of moving away from the dominant conceptualisation of sovereignty (Thakur 2006; Bellamy 2006; Evans 2008; Bellamy and Williams 2011).

By looking at the literal meaning of the concept of sovereignty, Jack Donnelly has highlighted the connection of sovereignty with questions of supremacy, power, domination and obedience. As he put it:

> Supremacy—especially supreme authority—is at the root of sovereignty. The Oxford English Dictionary defines "sovereignty" as "supremacy or pre-eminence in respect of excellence or efficacy" and "supremacy in respect of power, domination, or rank; supreme dominion, authority, or rule." Similarly, "sovereign" is defined as "of power, authority, etc.: supreme." International law replicates this understanding: "Sovereignty is supreme authority," write Robert Jennings and Arthur Watts; Black's Law Dictionary defines the term as "(1) Supreme dominion, authority, or rule. (2) The supreme political authority of an independent state. […] Supremacy, the right to demand obedience" (2014, p. 225).

The above quotation delineates precisely a concept that expresses absolute domination; but also a domination that requires absolute obedience. As already elaborated in F.H. Hinsley's *Sovereignty*, originally published in 1966, 'the term sovereignty originally and for a long time expressed the idea that there is a final and absolute authority in the political community' (1986, p. 1). Not only was Hinsley's interest focused on the internal dimension of sovereignty but his interest made him investigate 'why men have thought of power in terms of sovereignty' (p. 1), that is, as a final and absolute authority. For Hinsley, the answer lies in the history of the state, that is, 'the origin and history of the concept of sovereignty are

closely linked with the nature, the origin and the history of the state' (p. 2). By highlighting the historical emergence of the state, Hinsley demonstrated that states were successfully established only as a result of struggles 'between the principle of community and the principle of dominance, between the persistence of the old methods and customs of a society and the claims of the kind of governments which only a power outside the society can provide' (pp. 16–17). And this outside power is represented by the power of state's authority, which holds the 'final and absolute political authority in the community' (p. 17). Thus, Hinsley maintains a clear distinction between political authority and community, between the power exercised by the government and the responses of the community. As he put it: 'It is only when the community responds to the state and the state responds to the community in which it rules that the discussion of political power can take place in terms of sovereignty' (pp. 21–22).

However, by discussing sovereignty in terms of political power, more recent analyses have shifted attention from the question of 'what' sovereignty is towards the question of 'who' the sovereign is. This historical shift has led to greater attention to questions of power and legitimacy and to the political relation between 'the sovereign and its subjects, between the rulers and the ruled, between those who command and those who have no choice but to obey' (Bobbio 1989, p. 54). The distinction between rulers and ruled has been an enduring distinction in political theory, with only one exception: radical democratic theory (see Laclau and Mouffe 2001). The issue is not so much to recognise that there has been a shift in who the sovereign is: as Michael Reinsman puts it, it is now 'the people's sovereignty rather than the sovereign's sovereignty' (1990, p. 869). Rather, what matters is whether this shift has also been accompanied by an equal shift in the 'what'. When today we ask the question 'what is sovereignty?', does it really matter whether the sovereign is a new Louis XIV or an elected minority? In other words, when investigating questions of protection and especially the role of the state in taking care of this protection, what is it that ultimately matters: the *who* or the *what* of sovereignty?

Protection-Obedience Axiom

The claim that sovereignty is absolute, and that it should not be otherwise, as any limits to sovereignty will amount to a change of the power of the sovereign, is still highly contested (Krasner 2001). The notion of absolute power, which requires absolute obedience, has traditionally been traced back to Thomas Hobbes' *Leviathan* ([1651] 1998). Perhaps, the most recurrent theme in IR from Hobbes is his notion of the state of nature as an endless war of all against all, overwhelmingly used in the so-called rationalist approaches (Smith 2007). Much has been written on Hobbes and as much has been incorporated into IR literature, even if Hobbes did not elaborate any specific theory of international systems (Williams 2006). The Hobbesian theory has been applied by analogy, that is, by extending his theory of the state of nature, articulated in the formula *homo homini lupus*, to the international system. What is relevant for this work is not so much to discuss the different interpretation of Hobbes in IR (see Jahn 2006) but to highlight his impact in IR and especially his idea of state authority and protection. In a fairly recent work, Stevie Martin (2011, p. 154) has discussed how the concept of R2P—and especially the idea that sovereign countries have 'positive responsibilities for their own citizens' welfare (see Deng et al. 1996)—is not so revolutionary as has often been assumed but stems from the theories of Thomas Hobbes, John Locke and Jean-Jacques Rousseau, upon whom the notion of sovereignty was originally formulated and later articulated by eighteenth century Western theorists. The interest here is not to discuss all three philosophers but to focus on Hobbes and his notion of the power of the sovereign, which is closely related to the question of protection.

To begin with, for Hobbes, it is the 'laws of nature' and the consequent condition of insecurity that make men limit their liberty and establish the 'commonwealth',[1] that is, a political community that preserves life against the misery of wars and keeps its people under the 'terror' of punishment in cases of disregard of norms and covenants. As Hobbes put it

[1] As Norberto Bobbio argues, the concept of the state had not been elaborated at the times of neither Hobbes nor Bodin, who used, respectively, the concept of 'civitas/commonwealth' and the concept of the 'republique'. It was Niccoló Machiavelli's 'Prince' which introduced the word 'state', with a clear reference to the highest form of political community (Bobbio 1989, pp. 85–86).

> The final cause, end, or design of men, (who naturally love liberty, and dominion over others,) in the introduction of that restraint upon themselves […] is the foresight of their own preservation, and of a more contented life thereby; that is to say, of getting themselves out from that miserable condition of war, which is necessarily consequent […] to the natural passions of men, when there is no visible power to keep them in awe, and tie them by fear of punishment to the performance of their covenants, and observation of those laws of nature […]. For the laws of nature […] without the terror of some power, to cause them to be observed, are contrary to our natural passions, that carry us to partiality, pride, revenge, and the like. And covenants, without the sword, are but words, and of no strength to secure a man at all (1998, p. 85).

Only the establishment of the commonwealth, through a social contract, will guarantee individuals' self-preservation, rules for individuals' interactions, and respect for the laws of nature. However, this requires individuals to renounce their freedom and to cede their power to the sovereign/Leviathan. This sacrifice would guarantee to individuals more enjoyment and freedom, and would also protect them against perpetual fear and above all against a constant 'war of all against all', as spelt out in *De Cive* ([1679] 2015). However, this (new) condition of protection against the endless condition of war has a cost: strict obedience of the subjects to the sovereign. Hobbes' theory is articulated upon a very specific relation: between the sovereign who protects and the "men" who obey the sovereign's rules. The 'protection-obedience axiom' is made explicit in Carl Schmitt's *The Concept of the Political* ([1932] 2007). For Schmitt, not only does the state have a role to protect, and thus to demand obedience, but this represents the very essence of the state, that is, the *cogito ergo sum* of the state. As Schmitt has formulated it:

> No form of order, no reasonable legitimacy or legality can exist without protection and obedience. The *protego ergo obligo* is the *cogito ergo sum* of the state. A political theory which does not systematically become aware of this sentence remains an inadequate fragment. Hobbes designated this (at the end of his English edition of 1651, p. 396) as the true purpose of his *Leviathan,* to instill in man once again "the mutual relation between Protection and Obedience"; human nature as well as divine right demands its inviolable observation (2007, p. 52).

However, the protection that the state guarantees to its citizens is merely physical existence, that is, protection from external threats that might endanger order, peace and security (p. 31). It is, however, the need for a condition of security—or insecurity if framed in the light of Critical Security Studies (see Krause and Williams 1997; Peoples and Vaughan-Williams 2010)—which demands a high cost: absolute obedience. There exists no freedom for the individuals to oppose the decisions of the sovereign, let alone to contest its truths:

> Hobbes' leviathan, […] demands unconditional obedience. There exists no right of resistance to him, neither by invoking a higher nor a different right, nor by invoking religious reasons and arguments. He alone punishes and rewards. Based on his sovereign power, he alone determines by law, in questions of justice, what is right and proper and, in matters pertaining to religious beliefs, what is truth and error. *Mesura Boni et Mali in omni Civitate est Lex* [The measure of good and evil in all states is the law (Leviathan, chapter 46)] (Schmitt 2007, p. 53).

Hobbes' Leviathan not only demands unconditional obedience, but whatever emanated from the sovereign is an act of power and not an act of truth. The truth is always the sovereign's truth, that is, whatever he transforms into truth and imposes as a truth. By affirming '*Auctoritas, non Veritas*. Nothing here is true: everything here is command', Schmitt highlights that in the *Leviathan*, not only does sovereign power achieve 'its zenith', but the sovereign becomes 'God's highest representative on earth' (2007, p. 55). Picturing the sovereign as an earthly god does not, however, mean that Hobbes attributed any divine character to the sovereign. On the contrary, the sovereign derives its power from the people, from the social contract through which the people have given him the power to be the sovereign. However, by constructing the protection-obedience axiom, Hobbes founded the existence of the state upon state's role as protector. In other words, the state is recognised as sovereign only in so far as the state is able to protect its citizens. As soon as the sovereign ceases to protect, any obligation to obey equally ceases. The break of the *protego-obligo* axiom leads in theory to the *status-quo-ante*, a condition which in practice is not achieved. In other words, there is no return to the state of nature, to the '*bellum omnium contra omnes*', as for "men" what

matters is the protection of their life, a protection which only the sovereign is able to guarantee.

What Hobbes delineates is the establishment of a political community in which what matters is the sovereign command, articulated upon the formula A*uctoritas, non veritas facit legem* (Authority, not truth, makes law). The Hobbesian state is a state 'conceived both as a rational necessity and as a set of causal conclusions arising from empirical realities', that is, the maintenance of order and the promotion of the common good (Loughlin 2010, p. 78). In Hobbes, no lines between right and wrong, between moral values and the sovereign can be drawn. What matters is what the sovereign commands. It is this act of commanding which transforms any action into a 'just action' (*azione giusta*), that is, into an action that is considered just and right as long as it conforms to the law (Bobbio 1965, p. 13). In other words, the only criterion used to distinguish between right and wrong, between just and unjust, is reference to the law and to the entity holding the power to make the law and to give the command, that is, the Leviathan. People's ultimate aim is to preserve their life, and to avoid a condition of endless wars, which only a political community can guarantee and only natural law can prescribe. What Norberto Bobbio (1965) highlights is that Hobbes' justification for the creation of the state is both based upon positive and natural law. People establish the state by invoking the natural law of preserving their own life but at the very same time recognise that the positive law—articulated on the command of the sovereign—originates from natural law. In other words, it is natural law that prescribes that the only way for people to preserve themselves is by following legal norms, the very same legal norms enacted and enforced by sovereign power (Bobbio 1965, pp. 17–19). By founding the existence of the legal law upon the natural law, Hobbes justifies absolute obedience to the sovereign, an obedience that ultimately represents obedience to natural law, which excludes any moral evaluations (Bobbio 1965, p. 19).

So, how are we to reconcile the question of protection—which entails rights, assistance and entitlements—with the question of sovereignty? It is not possible. It is not possible as long as the meaning given to the concept of sovereignty relates to the idea of the sovereign as *legibus solutus*, or as the sovereign of the exception, to use a much quoted concept elaborated in the

work of the Italian philosopher Giorgio Agamben (1998). As Agamben reminds us, the state of nature in Hobbes 'survives in the person of the sovereign, who is the only one to incorporate its natural *ius contra omnes*' (p. 35). And this very incorporation of the state of nature determines 'a state of indistinction between nature and culture, between violence and law', an indistinction which constitutes sovereign violence (p. 35). What is thus contended here is that in order to talk of protection—protection of the citizens, of the aliens, of the refugees, of the marginalised and of the oppressed—we need to move away from this connotation of absoluteness that we tend to attribute to the constituted power. By focusing on sovereign power and its power of discretion—in accepting international norms, in respecting those norms and in providing protection—what emerges is a state of abuse, a state of dominance and a state of violence, in other words a state of non-protection. And dominant refugee literature, starting from the sovereign premises, is deemed to perpetuate this narrative of non-protection, as discussed in the rest of the chapter.

The International System of (Non)protection: An Overview

Although forced expulsion and displacement have always existed, I am not so much interested in discussing whether the figure of the refugee is 'a truly modern figure divorced from earlier exiles' (Haddad 2008, p. 47). I am more interested in considering, very briefly, the history of international protection as traditionally articulated in IR. Given our key focus on protection, attention will be mostly given to (non)protection, which has been a key theme in IR refugee literature. Refugee protection is consistently narrated as non-protection. Priority is given to the protection of the state and of its sovereignty. As long as sovereignty is the key focal point, no proper system of protection can possibly be envisaged, let alone set up, because the authoritative decision of the sovereign power not to conform to rules will always be an option.

To begin with, the first and only High Commissioner's office responsible for all the League of the Nations' work on refugees was set up in

1938, a decision that was the direct result of the non-protection of the previous decade. The work of the High Commissioner on behalf of the League in Connection with the Problems of Russian Refugees in Europe (1921) and of the High Commissioner for Refugees Coming Out of Germany (1933) proved ineffective. Equally ineffective was the new High Commission, unable to respond to the refugee 'crisis' due to the non-cooperation of members of the League of Nations (Zolberg et al. 1989, pp. 19–53). Notwithstanding the uncertainties and confusion surrounding the rights to be guaranteed to refugees, according to W.R. Smyser (1987, p. 7), some significant progress was achieved during the inter-war period. Firstly, a general agreement was reached that stipulated not only that refugees' status was legitimate—since it was the direct result of events beyond refugees' control—but also that refugees were entitled to some forms of legal recognition and protection, no longer guaranteed by the state of origin. Secondly, it was agreed, although not in a well-articulated form, that states were to respect the so-called principle of *non-refoulement* that protected refugees against any forced repatriations to areas where they would have suffered further persecution. Thirdly, there was widespread international awareness that, once refugees were admitted into the receiving countries, states had to guarantee some basic needs in order to ensure an acceptable standard of living. Finally, it was generally, though not universally, recognised that a common or at least well-co-ordinated system of protection was necessary in order to guarantee a more effective response (Smyser 1987).

By the end of the Second World War, the number of refugees had increased to 27 million, a population whose legal status was still uncertain as they were often described as 'temporarily displaced persons' rather than as refugees. It was indeed certain that most of them could not, nor wanted to, go back to their unsafe homes and that they were certainly not temporarily displaced but desperately in need of permanent refuge and protection (Smyser 1987, pp. 7–8). In December 1950, a new office of United Nations High Commissioner for Refugees (UNHCR) was established both to serve as the principal agency to provide 'international protection' and to seek 'permanent solutions' to the plight of refugees. As clarified in the Annex to the UNHCR Statute

> The United Nations High Commissioner for Refugees, acting under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees by assisting Governments and, subject to the approval of the Governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities (chapter 1, para. 1).

The following year, July 1951, the Refugee Convention was signed, even if it did not enter into force before April 1954. As celebrated by most scholars, the big achievement of the Convention was the legal definition according to which a refugee is someone who 'as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted […] is outside the country of his nationality and is unable or […] unwilling to avail himself of the protection of that country' (article 1 A[2]). The geographical and temporal limitations of the Convention were eliminated by the entry into force of the 1967 Protocol Relating to the Status of Refugees.[2] Prior to 1967 the UNHCR's activities were limited exclusively to within European territory and were designed to take care only of those refugees who had fled before 1 January 1951. Non-European refugees, as well as those who escaped after 1 January 1951, were either ignored or protected via *ad hoc* institutional arrangements (Zolberg et al. 1989, p. 23). Although the 1967 Protocol represented a step forward, because it lifted the geographical and temporal limitations, thereby expanding the UNHCR mandate, it reflected the desire of the international community to make the status of the refugee exceptional in light of the political climate of the Cold-War period in which it was formulated (pp. 21–29). The UN Convention failed to guarantee, *de facto*, a right of asylum, although it established a body of general principles that were to promote and safeguard the sphere of social and economic rights,

[2] The so-called 'Convention Relating to the Status of Refugees' was adopted by the UN Conference on the Status of Refugees and Stateless Persons at Geneva 2–25 July 1951, and entered into force on 22 April 1954. The 'Protocol Relating to the Status of Refugees' was adopted by the United Nations General Assembly on 16th December 1966 and came into force on 4 October 1967.

as well as the principle of *non-refoulement*. The legal formula had now to be translated into practice.

According to James Hathaway, given the high number of displaced persons after World War II, it should not be surprising that much of the debate during the drafting of the Convention was 'devoted to how best to protect the national self-interest of receiving States' (1997, p. xviii). States not obliged to admit permanently all refugees arriving at their borders, nor obliged to go beyond 'a theory of temporary protection' (p. xviii). Not only has the UN definition been formulated in such a way that it is applicable exclusively to individuals and not to groups but it is also tied to a highly restrictive and subjective idea of persecution (Hathaway 1997). Persecution, in the sense of a deliberate act of violence perpetrated by the government against individuals, is the key criterion for deciding who deserves, and who does not deserve, the status, a criterion that leaves outside all the victims of systematic violence and economic deprivation that do not cross borders to seek asylum (Loescher 1993, p. 6).

Since its formulation, the inner logic incorporated within the international refugee regime has been strongly shaped by the (European) East-West confrontation, a logic clearly visible not only in the legal formula but in the very perception and attitude towards all refugees who successfully escaped from Communist regimes. Based on the implicit assumption of a well-founded fear of persecution, everyone coming from countries that barred exit was welcome (Weiner 1995, p. 35). Everyone deserved to be welcome because they were assumed to be heroes in search of a life free from terror, abuses and deprivation. Western liberal democracies not only welcomed but also encouraged such outflows from the East. The higher the number of those escaping, the more effective were Western policies of stigmatising Eastern countries as awful perpetrators of human rights abuses (Loescher 1993, p. 59). This open-arm attitude was deemed to persist as long as the Cold-War was in place; as long as the number of people who actually succeeded in fleeing was reasonably manageable; and as long as refugees were coming as a result of (European) East-West opposition. But, as discussed in Gil Loescher's work (1993), starting from the late 1950s, refugee movements were not exclusively the result of East-West political conflict but also originated in the so-called developing countries, mostly Western colonies. This situation clearly put the UNHCR in a very

delicate position. On the one hand, mass displacement was clearly connected not only to civil conflicts but also to anti-colonial armed opposition, which directly attacked Western colonial powers. On the other, the UNHCR was not in a position to exercise politico-economic pressure on the colonisers, who happened to be the very same Western countries that founded the refugee regime (Loescher 1993, p. 71). Thanks to the introduction, in 1973, of the concept of 'good offices', the UNHCR was able to assist large groups of internally displaced people who were not considered as 'statutory refugees' because they lacked a well-founded fear of persecution. This political formula extended the UNHCR's mandate and, at the very same time, guaranteed friendly relations with its Western financial supporters (p. 73). Between the 1960s and 1970s, most refugees from Africa and Asia found refuge within their regions of origin, and in most cases, either returned home after the proclamation of independence or received asylum in neighbouring communities (p. 75).

The 1980s witnessed a new phase of refugee outflows fleeing internal conflicts where external powers, particularly the super-powers, were mostly involved (Weiner 1995, p. 5). During this decade the limited scope of the asylum regime became evident, particularly when considering all the 'non-statutory' refugees that were making their way to Western industrialised countries (Loescher 1993, p. 81). Moreover, during this decade a new category of refugees emerged, formed by single individuals who took the initiative of finding their way to the West either alone or through immigrant-trafficking organisations (p. 93). This phenomenon increased enormously from the end of the 1980s, especially once the asylum and immigrations channels started to be subjected to more selective scrutiny. At this point, refugees started to resort to any available instruments for escaping and protecting their lives. Today, governments of the so-called developed world, having little reasons to accept the compromises inherent in the 1951 Refugee Convention, have introduced new mechanisms for preventing new entry. In particular, government after government, particularly in Europe, has started to apply the strictest interpretation of the Convention (Joly 1996; Neumayer 2005). Considering that most refugees were, and are, coming from economically poor countries and that the number of rejected applications was, and is, rather high, the introduction of restrictive measures could be easily justified

on the grounds that the new comers were, *de facto*, economic migrants. Ironically, the very definition of 'economic refugees' was first used in the 1930s to refer to Jews escaping Nazi persecution (*Wirtschaftsemigranten*) (Loescher 1993, p. 17). The closing of the immigration doors resulted in an increase of asylum applications, an increase in the number of rejected claims, and a generalised attitude of indifference (see Collinson 1994, 1996; Guiraudon and Joppke 2001; Helton 2002; Castles et al. 2014). Apparently the rejection was based on the grounds that applicants were falling outside the refugee definition specified in the 1951 Refugee Convention, a position which the UNHCR has often criticised. Many are those who claim that the Convention needs to be revised in light of recent changes, including

> the changing nature of asylum, the mixing of asylum seekers and economic migrants, the range of security concerns associated with refugee movements, the costs to states associated with granting asylum, and the growing scale and globalization of the problem of forced migrants (Loescher et al. 2008, p. 98)

This position is counter-balanced by those who believe, including the UNHCR, that despite its limitations, the 1951 Refugee Convention is still a valuable legal instrument for providing international protection (Feller et al. 2003). If we wish to offer a general picture of the devastating consequences of the Cold-War rivalry upon refugees and internally displaced people, the speech by the then High Commissioner for Refugees, Sadako Ogata, held in Switzerland in 1992, is highly illustrative:

> For forty years, refugee policies and practices were determined by the predominant power struggle for global dominance, that was the Cold War. It was international support for victims of communist persecution and repression, which led to the creation of UNHCR in 1951 to protect and assist individuals who sought refuge in the free and democratic countries of the west. Even in the 1960s and 1970s, when struggles for national liberation and decolonisation produced massive population displacement in Africa and Asia, the Super power rivalry was a decisive variable in shaping international refugee policies. In short, during the last forty years it was the coincidence of political interest and humanitarian concern that helped

> some 28 million refugees to become integrated in their countries of asylum, repatriate to newly independent countries or find resettlement in a third country. […] The refugee population which was around eight million at the end of the 1970s had surpassed 17 million by 1991. The paralysis of international relations which marked the Cold War, impeded any resolution of these conflicts. […] As for the international community, with little scope for pursuing either repatriation or integration of refugees, the best that could be done in most cases was to provide humanitarian assistance to meet basic needs. Unfortunately, the end of the Cold War has not automatically translated into solutions for refugee problems (Ogata 1992).

The most recent UNHCR initiative, namely the Global Consultations on International Protection and the Convention plus (Feller et al. 2003), has not achieved what was hoped for: it has not managed to re-engage the European donor states nor to increase burden sharing (Loescher et al. 2008, p. 63). Overall the increase of so-called protracted refugee situations—'in which refugees find themselves in a long-lasting and intractable state of limbo' (UNHCR 2004, para. II.3)—illustrates the limits of the UNHCR in finding durable solutions to refugees (see Loescher and Milner 2005), as well as the dominance of the concept of sovereignty which privileges states' own well-being.

Protection in IR

IR scholars have not generally reflected upon the meaning of refugee protection. The question of protection tends to remain in the background, either taken for granted or left unspecified, but never fully developed. Despite the rich literature on refugees, which has always raised the question of protection, attention has generally converged towards other directions as, for instance, refugees after World War II (Vernant 1953); refugee crises in the developing world (Zolberg et al. 1989); the need to move beyond charity (Loescher 1993) and security (Suhrke 2003); the challenges of migration for states (Weiner 1995); the dramatic consequences of a state-centric understanding of protection (Aleinikoff 1995); the inscription of refugees 'into the gaps *between* nation-states' (Haddad

2003a, p. 297); the need to reconcile state and individual sovereignty (Troeller 2003); refugee protection and new approaches towards security (van Selm 2003); and the transformation of the irregular migrant into *homo sacer* (Rajaram and Grundy-Warr 2004). Although all the works just mentioned—which is not exhaustive of all the research done—engage with questions of international protection, the modalities through which states are effectively providing protection tend to be marginalised. What does emerge is a regime of non-protection, that is, a regime preoccupied with questions of sovereignty, borders control, crisis management, challenges in the global south, and interpretation of legal definition. What often seems to matters is how to maintain and justify the current world order rather than to guarantee protection to refugees. However, the question is not simply that the 1951 Refugee Convention has failed to protect refugees, and thus is outdated, but that states' sovereignty is prioritised over protection. As long as what matters is state sovereignty, and the current literature tends to reaffirm its centrality, the protection rationale is inverted. It is non-protection that is seen as the norm—given states' sovereign prerogatives—and the politics of protection the exception. The attention given to non-protection, or more accurately to the limits of protection, is especially evident in the many works published soon after the 50th anniversary of the 1951 Refugee Convention. What emerges is not protection but the many limits to protection, that is, what states are doing in order to shift their protection responsibilities to others, including the UNHCR or neighbouring countries, as well as what states are doing to prevent refugees from reaching their territory. The case of the EU is exemplary: starting from the definition of the EU as a 'fortress' (Geddes 2000) and finishing with forced detention upon arrival. As critical Security scholars have discussed, the EU has slowly introduced a series of measures for protecting their border from unwanted inflows by externalising immigration policies and by introducing a long series of (violent) technologies including carrier sanctions, cooperation and re-admission agreements, joint border patrolling, forced detention and removal (See Bigo and Guild 2005*;* de Genova and Peutz 2010; di Pascale 2010; Neal 2009; Wolff 2008). The 2016 agreement between the EU and Turkey follows precisely this rationale: shifting the burden of migration/asylum to neighbouring countries.

What is especially peculiar in refugee literature is a sharp legal distinction between the protection of human rights and the protection and safeguard of refugees, even if refugee protection is also articulated as a human right issue (Loescher 1999, p. 245). Although the causes that force people to flee their country are numerous—war, internal conflicts, poverty, natural disasters, political persecution, 'ethnic cleansing' etc.—the recognition of human rights abuses is not a necessary and sufficient condition for being granted the legal status of refugee. From an international law perspective (Hathaway 1991), a refugee is exclusively one who is outside his/her country of origin and the motives that have forced him/her to flee have to be of political nature. The image that comes out of the international law definition is the image of an individual who is

> of necessity an alien for the State where he resides. He is always defined in terms of a particular nationality or lack of nationality, and … *(t)he events which are the root-cause of a man's becoming a refugee derive from the relations between the State and its nationals* (Vernant 1953, pp. 4–5, emphasis in original).

The prevailing legal definition of refugee, as specified in article 1 of the 1951 Refugee Convention, is restricted to all those who fear being persecuted because of their 'race, religion, nationality, membership of a particular social group or political opinion'. And it is because of this restrictive understanding of who a refugee is that the vast majority of refugee legal studies concentrate attention on the inadequacies of the UN definition and on the discretionary power retained by sovereign states—and thus to the limits to protection. As argued in Guy Goodwin-Gill's 'International Law and Human Rights', refugees are often located 'on the periphery of effective protection' because, on the one hand, states are taken as the 'guardians or protectors of human rights' and, on the other hand, because these very rights are protected only within the 'context of community or citizenship' (1989, p. 526). Within a state-centric discourse where what dominates is the concept of 'sovereignty, considered in its high positivist sense, as an absolute assertion of right and power in a society of competing nation-states' (p. 529), the very possession of membership becomes a 'fundamental question' (p. 528) as it guarantees the respect of human rights. It is precisely because of the dominance of state sovereignty, and

thus of states' discretionary power in deciding to whom to grant protection, that the UN definition is understood to be an unbalanced compromise between the self-interest of sovereign states and their intention to offer some protection to those who have been forced to flee from their country of origin. As Hathaway has put it: 'refugee law has been a means of reconciling the commitment of states to discretionary control over immigration to the reality of coerced international movements of persons between states' (1991, p. 114). If the historical circumstances that led to this compromise, as well as the lack of any 'effective form of international supervision' (p. 114) are considered, it becomes apparent why sovereign states continue to manipulate the international refugee definition both 'substantively and procedurally' (p. 114). Given states' power to interpret the refugee definition contained in the 1951 Refugee Convention according to political, economic and diplomatic determinants, it becomes clear, as well argued by Hathaway, why the present regime does not offer adequate guarantees of protection to refugees. As Hathaway has put it:

> contemporary international refugee law is marginal to the protection of most persons coerced to migrate, who must rather accept whatever emergency assistance or limited resettlement opportunities are voluntarily made available to them. […] The notion of refugee law as a rights-based regime is largely illusory (1991, pp. 114–115).

The above statement contains at least two important aspects that need to be highlighted, aspects that recur in the vast majority of refugee legal studies. Firstly, the present international refugee regime is based on a 'marginal' system that, as result of the predominance of state sovereignty, is unable to respond effectively to forced mass migration and, hence, the number of those assisted represents only a minority. Secondly, contemporary refugee law clearly reproduces the image of refugees as passive beneficiaries of humanitarian assistance and aid, and hence, refugees are left exclusively with one option: to accept, without any possibility of speaking out, whatever emergency solutions are made available for them. Within the current refugee framework, refugees are treated, and portrayed, as passive 'recipients of aid' (Harrell-Bond 1999) and as 'speechless emissaries' (Malkki 1996).

Some refugee scholars have challenged such a negative, and state-centric, perspective of refugee-ness. For instance, Aleinikoff, in his article 'State-Centred Refugee Law' (1995), is very critical of legal scholars and lawyers who tend to reproduce uncritically the dominant state-centric approach, which privileges 'the language of sovereignty and membership', a language in which refugees are portrayed as 'helpless objects of pity who must be assigned to some political community in order to have an identity at all' (1995, pp. 266–268). It is this very narrative that reproduces a 'paternalistic relationship between the powerful protector and the needy protected' (p. 267), a relation that nonetheless presupposes power and domination, as well articulated in Michael Barnett's work, 'Humanitarianism, Paternalism and the UNHCR' (2011).

Refugees in IR

IR mainstream theories offer a very specific representation of the refugee figure, a figure constructed in stark opposition to the (imagined) political citizen. As discussed in Soguk's work, prevailing refugee theorising is articulated upon the opposition of two figures: the political citizen and the apolitical refugee, between the 'proper subject of political life' (1999, p. 9) and its negative opposite. More specifically, within the current sovereign order, refugees are not represented for being themselves but for what they are not, a situation not dissimilar to women's representation within dominant patriarchal society (see de Beauvoir 1949). Refugees become subjects lacking a long series of (political) qualities ascribed only to members. Their image can only be negative, 'a lack or an aberrance' (Soguk 1999, p. 18) of what is deemed not only to be the norm but also essential in order to enter and share, with the members their identity and inner way of life. Moreover, the break of the political (unbreakable) state-citizen relation causes not only the transformation of the citizen into the refugee, but it also leads to a double exclusion: (1) the exclusion of the citizens from their community of origin and belonging, which transforms the citizen into the refugee; (2) the exclusion of the ex-citizen (the 'new' refugee) within *an*-other community. The conceptual impossibility for the refugee to be included within another community is reaf-

firmed thanks to a discourse constructed on the political divide 'citizen/non-citizen', a divide based on processes of comparison, via negation, between the citizen and the refugee. It is at this very moment, once the state-citizen relationship is broken, that the existence of the refugee is perceived as 'a scandal for politics', as a 'constitutive outsider', and as an '(inter)national political production of its age' (Dillon 1999, pp. 95, 103, 106). Refugees are a scandal for politics because of their lack of identification within a specific political order, an order based on the premise that the intrinsic aim of politics is the realisation of sovereign identity; they are constitutive outsiders because they can be defined neither as 'co-national nor another national'; and they are the inter because they are located in the 'strange territory of estrangement that is located between the two' (pp. 95, 101).

The UN agency for refugees, the UNHCR, has so far replicated this very IR state-centric perspective: refugees are helpless victims, whose lives have been transformed into an empty and meaningless existence (see Nyers 1999). This very conceptualisation has resulted in the dominance of a discourse of emergency which perceives refugee movements as 'a "problem" to world order' (Nyers 2006, p. 1). Being perceived as a problem—as a problem of order and security entailing a problem-solving approach—refugees are perceived as 'representing a crisis' which warrants 'immediate political concern' but also as a '"humanitarian emergency" and thus as an object of ethical concern' (p. 1). In other words, the figure of the refugee evokes both the protection of current world order, articulated upon the concept of 'peace, security and stability', and also evokes a commitment to humanitarian action in the name of a shared human community (p. 2). For Nyers, the refugee represents a 'limit-concept', which is precisely located in between two competing commitments—commitments to humans and commitments to citizens—which are ultimately irreconcilable (pp. 2–3).

The picture that humanitarian organisations reproduce is no more positive than that which dominates IR. Refugees are generally described in compassionate terms, both as victims of events for which they are not responsible, and as 'recipients of aid' (Harrell-Bound 1999). The difficulty, if not impossibility, for humanitarian organisations to move beyond an understanding of refugees as helpless objects of assistance

has been well elaborated in Prem K. Rajaram's 'Humanitarianism and Representations of the Refugee' (2002). Moving from an evaluation of an Oxfam GB project, Rajaram demonstrates why a 'particular bureaucratised knowledge about refugees and the methodology for "listening" to them' do not properly allow refugees' voice to emerge (p. 248). Being an aid and development agency, it cannot be disentangled from its main objective i.e. fund raising (pp. 249–250). This very limitation has led, quite inevitably, to the emergence of a 'depoliticised, dehistoricized and universalised figuration of the refugee as mute victim' (p. 248). Refugees are thus seen merely in terms of their 'biological corporeality', in complete disregard of their subjectivity, aspirations, and of the local historical context from which their condition of displacement first originated (pp. 252–253), as well as the context of the society of (temporary) arrival. To recognise, as Soguk already has, that apart from a condition of displacement, 'there is no intrinsic paradigmatic refugee figure', but there are indeed 'a thousand multifarious refugee experiences and a thousand refugee figures whose meanings and identities are negotiated in the processes of displacement in time and place' (1999, p. 4), means to recognise the importance of looking at refugees' lived experience as well as at the specific locations in which displacement takes place. The recognition that thousands of refugee figures exist and that the contingencies of displacement are negotiated in time and space makes any generalisation about the figure of the refugee arbitrary. This implies that we should refrain from discussing refugee-hood in abstract ways as their subjectivities—likewise the subjectivities of the citizens—are not only the results of a specific articulation in time and space but also of refugees' understanding of their condition of displacement, which they might accept, contest, and/or try to change to their own advantage. Refugees might be mute victims, as a great part of the literature argues, but they might also play that (expected) role by transforming such a dominant image to their own advantage (see Fassin and Rechtman 2009). As Michael Barnett (2011) skilfully articulates, refugees are knowledgeable actors who use the label of refugee to their own advantage. As he put it:

> Refugees themselves are knowledgeable actors who might not only understand the socially situated signification and meaning of "refugees" but use

> that label to their advantage—to engage in performative practices, for instance, that convey weakness and vulnerability in order to generate more resources from aid agencies (Barnett 2011, p. 111).

The question is not exclusively how to move away from negative articulations of refugee-hood, but also how to move away from the current discourse of humanitarianism, guilty of reproducing two groups of actors: the protectors and the protected, the subjects of humanitarianism—the good guys 'who are expected to prevent human suffering'—and the objects of humanitarianism—'whose humanity is to be secured or restored' as they are unable to help themselves (Barnett 2011, p. 112. See also Verdirame and Harrell-Bond 2005).

Beyond Sovereign Identity

One way of breaking from the dominant discourse of humanitarianism—which has been especially influential in reproducing two distinct categories of active givers versus passive receivers—might be by contesting the prevalent construction of identity, strongly articulated upon a 'sedentarist metaphysics', which 'reaffirms the segmentation of the world into prismatic, mutually exclusive units' (Malkki 1992, p. 31). More specifically, the territorial space which has traditionally interested and dominated the IR discipline was the international level, clearly distinct from the national and the local (Walker 1993; Albert et al. 2001). Although IR theory has rarely, if at all, taken into due consideration the question of space and spatial identity—even if by evoking territorially bound sovereign entities, scholars invoke a specific conceptualisation of space—the literature of forced migration is articulated upon territorial groundings. The displaced, the uprooted, the homeless, refugees and nomads are all definitions which recall the absence of (national) roots—hence they recall abnormality and deviance (Warner 1994; Soguk 1999; Nyers 2006)—roots that need to be re-established by re-territorialising the displaced. Refugees are pictured as people who are protected once their condition of displacement is over, that is, once they are re-territorialised within a new community and/or by returning to their own territorial space. The ques-

tion of space is especially relevant not only because of the dominance of sovereign identity, but most importantly because each space presupposes different modalities of protection. The protection that refugee camps can offer is very different from the protection that urban settings can offer. Life in urban areas in wealthy countries also differ from urban areas in poorly developed areas. Protection, in other words, changes according to space. Protection cannot be considered in isolation from the very space where protection is enacted, provided, resisted, and lived. But to look at protection in terms of spatial practice also involves looking at the subject of protection—the refugee of protection—along spatial lines. Subjectivity changes according to space and to spatial relations, and refugee subjectivity is no an exception.

A very interesting analysis—which distinguishes precisely two different ways of looking at space in Refugee Studies—has been articulated by Cathrine Brun, who highlights the difference between traditional approaches and critical ones. As she puts it:

> In the first approach space is conceptualized as stasis, as a flat, immobilized surface, and place is defined as a singular, fixed and unchanging location […] suggesting that all people have a natural place in the world, and therefore refugees have been regarded as being torn loose from their place and thus from their culture and identity. Contesting this view […] separates identity from place to show that though refugees have to move from their places of origin, they do not lose their identity and ability to exercise power (2001, p. 15).

The relationship between place and agency is especially important, a relation that traditionally has quite exclusively focussed on the space of the political as well as on the political agent (see Isin 2002), as if the political capacity to act is related only to the place of nationality and to the legal status (see Puggioni 2014a, b). The more we tend to connect people with a specific place—as for instance done by Edward Relph, according to whom to 'have roots in a place is to have a secure point from which to look out on the world' (1976, p. 38)—the more we look at mobility as something deviant, abnormal and disruptive. By privileging an essentialist understanding of the relationship between people and place, and thus

by connecting identity with the culture of origin, we end up articulating displacement and flight as an essentially negative process. As articulated by Brun, for dominant refugee analyses, 'to be territorially uprooted means to be torn loose from culture, to become powerless and to lose one's identity', all elements upon which refugees' durable solutions have been elaborated (2001, p. 18). By looking at refugees from this sedentarist perspective, *re*integration, *re*location and *re*patriation are viewed as 'natural' responses to refugees' condition of displacement. The greater attention given to refugees' repatriation, either forced or voluntary, is precisely connected with the general assumption that a 'return to the place of origin […] be regarded as unproblematic because people return to their native places, like putting people back into place' (p. 18) as if we are dealing with a simple mathematic calculus and not with living individuals (Warner 1994).

What many critical analyses have suggested is that we break with our way of connecting place of origin with identity, both because people are more mobile than often assumed and because grounding identity to place results in freezing one's identity (see Gupta and Ferguson 1997; Morley 2000). The forced condition of displacement that refugees experience should not necessarily be translated into a loss: a loss of identity, of subjectivity, or the ability to take decisions. As put it in Brun, despite forced displacement, refugees

> are not torn loose from their culture, they do not lose their identity, and they do not become powerless. Refugees are not passive victims in an abnormal state of being, rather they are active agents who are able to develop strategies and thus still function socially (2001, p. 18).

What critical human geographers are ultimately contesting is the idea that space shapes one single and fixed identity. Identity—and thus our very sense of identity—changes through space, and most importantly through the social relations that unfold in each locality. As Doreen Massey rightly argues, each space is unique as is the 'specificity of the interactions which occur at that location' (1994, p. 168). It is these very social interactions that shape and transform the very identity of each place, an identity which is unfixed, dynamic and non-essentialist. As Massey has put it:

> [f]irst, what is specific about a place, its identity, is always formed by the juxtaposition and co-presence there of particular sets of social interrelations, […] Second, the identities of places are inevitably unfixed. They are unfixed in part precisely because the social relations out of which they are constructed are themselves by their very nature dynamic and changing (1994, pp. 168–169).

What emerges from a close reading of critical human geographers' literature is a notion of identity which reverses our traditional understanding: our (national) identity is not simply the result of our grounding in a specific place, but it results from unique social and spatial interactions. The uniqueness of each space is determined precisely by the unique social interactions that unfold in each spatiality as well as by the outcomes and responses that those very interactions produce. The work done by many human geographers (Keith and Pile 1993; Massey 1994; Gregory et al. 1994; Minca 2001; Dear and Flusty 2002) is extremely useful in this context, and especially their conceptualisation of 'spatiality in a highly active and politically enabling manner' (Massey 1994, p. 250). Space is not taken as a given, nor as merely the geographical setting of action, nor are 'social relationship […] seen as something exterior to and distinct from the setting where they take "place"' (Jiménez 2003, p. 140). Accordingly, space is read not as a 'merely passive, abstract arena on which things happen' (Keith and Pile 1993, p. 2), but as an enabling site where a multiplicity of (human) bodies, practices, norms and relations mutually interact, shaping everyday life. While, on the one hand, space shapes, influences and constitutes people's sociality, on the other, the identity of each space depends on the specific human interactions which unfold spatially. Moreover, as suggested in Barbara Bender's work (2002), human action is closely related to the way in which people engage with the surrounding world, and it is their subjective articulation of space and of spatial relations that provokes and/or impedes a specific action/reaction. As Bender has put it: '[l]andscapes are created out of people's understanding and engagement with the world around them. […] Landscapes provoke memory, facilitate (or impede) action' (2002, p. 103). By recognising the existence of a subjective perception of space and landscape, Bender recognises that human action is shaped together with the surrounding space. As she puts it: '[h]uman interventions are

done not so much *to* the landscape as *with* the landscape, and what is done affects what can be done' (2002, p. 104).

The notion that action is a spatial action—in the sense that human interactions need to be investigated together with the unique spatial settings in which they take place—challenges not only orthodox notions of sovereignty, narrated as if fixed and immutable and not subjected to local dynamics and interaction, but also our analyses of refugee integration and protection. As discussed in Brun, by neglecting to focus on 'the local perspective of refugees', we also neglect to focus on the host communities, that is, 'those groups of people already present at a place, and who in most cases become part of the networks constituting the places of refugees and migrants' (2001, p. 20). This suggests the importance of maintaining a focus also at the local level where interactions unfold and the lived experience of refugees and local communities meet, a lived experience which is not necessarily peaceful and non-conflictual.

One final element that is important to highlight within the general debate on place, identity and displacement is the spatial 'technologies of power' (Foucault 1994) that states display against refugees and unwanted migrants more in general. As discussed in Gaim Kibreab's article, 'Revisiting the Debate on People, Place, Identity and Displacement',

> It is not only by closing their borders that states shield their territories and their nationals against refugees or "others", but also by adopting reception and settlement strategies which prevent those who have already entered from being incorporated into host societies. These reception strategies include herding of refugees in spatially segregated sites (territorialized spaces) with minimum or no opportunities for social and economic interaction with nationals, and pursuance of policies and practices which discriminate against self-settled refugees and prevent incorporation of refugees or "others" into host societies (1999, p. 388).

To conclude, to move away from dominant conceptualisation of (the sovereign/territorial) identity suggests first and foremost to question the process of identity formation, the very same process which is used to ground our imagined community (Anderson 1991), to construct a specific figure of the refugee as well as to shape a sedentarist approach to displacement, upon which the politics of (non)protection tends to be articulated.

Concluding Remarks

What the above pages have proposed is that there is a need to (re)think the concept of sovereignty if we are to discuss protection not simply as a protection from physical threats but protection as rights and emancipation. We have argued that the tension between the concept of sovereignty and the concept of protection cannot be reduced as long as the concept of sovereignty keeps maintaining its traditional Hobbesian attributes. The formula *protego ergo obligo* (I protect, therefore I oblige) is a formula, which sees the sovereign as the supreme authority of command and power and the entities subjected to it as non-agents, who simply obey orders. This picture of the Leviathan fits badly with the conception of protection as well as with the practice of protection. The entities involved in the process of protection are much more dynamic—and here I refer both to refugees who display a great capacity to decide and contest protection options made available to them as well as to civil society organisations, which do not simply obey the sovereign rules of non-protection. As long as we filter protection through the concept of sovereignty, we are doomed to devote attention not to protection but to the many practices that limits access to protection. This does not necessarily suggest that the limits to protection are irrelevant—on the contrary, they are extremely relevant as they *de facto* protect states from refugees (Marin 2013)—but it suggests that we should also attempt to distance ourselves from sovereign constraints. If, as already highlighted, theories are 'always for someone and for some purpose' (Cox 1981, p. 129), isn't the purpose of a theory of protection articulated upon sovereignty to protect sovereign states? Are we to move away from sovereign constraints, or are we to perpetuate these very constraints, theoretically and in everyday practices? What is contended here is that if we are to prioritise protection—protection of the citizens, of the aliens, of the refugee, of the marginalised and of the oppressed—we need to move away from the sovereign connotation of absoluteness that we tend to attribute to the constituted power. By focusing at the discretionary power of the sovereign—to close its borders, to externalise its legal obligations, to fail to provide information on asylum, to prioritise border-controls against rescue operations, and to provide no

assistance to refugees upon entry—what emerges is not protection but its very opposite: non-protection.

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3

The State of Protection

The conceptual premise from which this chapter, and the book in general, departs is that in order to articulate protection, and to rethink protection, we need to change some of the tools of analysis so far applied in most of the IR literature. What is proposed here is to shift from an overwhelming focus on the concept of sovereignty and of its (quasi-)absolute connotation to the concept of the state of protection: a state that protects its citizens and the aliens residing in its territory. The concept of the liberal state, '*par excellence* limited' (Bobbio 1965, p. 26), is articulated upon the premise that its very ontology is to protect its citizens, first and foremost from any arbitrary abuse perpetrated by the state's actors. The German concept of the *Rechtsstaat* encapsulates the notion of protection. In the original German formulation—variously translated as the legal state, the state of rights, *l'État de droit* or *stato di diritto* (Loughlin 2010, p. 313)—is not simply articulated upon the notion that sovereign power is limited by the rule of law. The notion of '*Recht*' does not simply refer to the law, to positive law, but it refers to a law inspired by moral rightness. In other words, it is not the law founded in Hobbes' *Leviathan*, which needs to be respected simply because it is commanded, but it is the law that is

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respected because it is formulated upon the concept of moral rightness and subjective rights. A few aspects are especially important from the concept of *Rechtsstaat*—on which the Italian public law has also been articulated: (1) the fundamental role of the state of right is to control and limit sovereign power through abstract and general legal norms (see Stone 1964); (2) the legislative power is subordinated to respecting subjective rights constitutionally defined (see Douzinas and Gearty 2014); (3) the state is the guarantor of citizens' rights; (4) sovereignty belongs to the state, that is, the state-as-apparatus and the state-as-society, each of which has specific tasks to fulfil (*Treccani Encyclopaedia*).

By claiming that the state is the core actor of protection, a clear distinction between protection and assistance is maintained, that is, between the state's obligation to protect rights against abuses—as well as to respond positively to its obligations—and private practices of assistance in response to refugees' specific needs. In other words, it is important to make clear the difference between the public responsibility to protect and the private desire to assist, between respecting rights and satisfying needs, between treating refugees as right-holders and treating refugees as needy aliens. Current refugee literature does not seem to be helpful in clarifying what exactly protection entails, as attention tends to focus on the limits of protection. In other words, attention is mostly on the difficulties experienced by genuine asylum-seekers in accessing the asylum procedure, on the inadequacies of article 1 of the 1951 Convention and on the discretionary power retained by sovereign states in granting protection and/or in resorting to a variety of technologies for keeping asylum-seekers away from their borders (see Feller et al. 2003; Phuong 2005). In relation to the EU context, attention has mostly been on carriers' sanctions, notion of a safe third country, border patrolling, detention centres, readmission agreements, partnerships and cooperation with neighbouring countries, which have all become key instruments for preventing, expelling and/or forcibly returning (irregular) migrants, regardless of their reasons for fleeing and/or of the principle of *non-refoulement* (see Geddes 2000; Guild 2006a, b; Buckel and Wissel 2010; Carling 2007; Léonard 2010). All these aspects are certainly related to *access* to international protection, but the question is, once inside a safe country and once an asylum claim has been submitted and/or once refugee status has been recognised, what

kind of protection are they entitled to? Does protection also involve assistance? And if it does involve assistance, who are the entities best equipped to provide such assistance? The public or the private sector? Is it state institutions or is it the charity network which should assist refugees? My claim is that the role of the state is fundamental for articulating protection: protection in terms of rights but also protection in terms of emancipation. And it is on the crucial role of the state that this chapter will focus.

As already noted, the concept of the state has not attracted great attention in IR literature and when it has attracted attention this has mostly been done by looking at the state as part of the international system, with the exception of constructivism and post-modernism (Hobson 2003, pp. 145–173). The recognition that 'the state awaits adequate analysis' is not simply a question related to the level of analysis nor a question of the constitution of boundaries within the IR discipline (Linklater and MacMillan 1995, p. 12). In IR theory there is a clear vacuum, a clear 'failure to consider the ontology of the state—what the state *is*' (Hay and Lister 2006, p. 4). In other words, states are not approached by looking at their role as protector but mostly in structural and/or institutional terms (Hay and Lister 2006, p. 10). Perhaps, a way of articulating what the state is, and particularly what its key functions are, might be to look at the state's (negative) opposite: that is, failed states. In other words, instead of articulating the state, and the liberal state in particular, by looking at its defining elements, attention will be given also to what (some) states fail to do. This is especially needed in light of a glaring 'silence' on statehood in the IR discipline (Weber 1995).

Another way of articulating the state—which is also briefly considered here—is to look at the changes that the concept of human rights has introduced to states' policies and practices. According to Mark Gibney, it was the devastation of the Second World War that led to the 'human rights revolution' (2010, p. 8). What was revolutionary, for Gibney, was the idea that individuals were recognised as human rights-holders and, equally important, that the international community were no longer going to ignore human rights violations on the grounds that those violations pertained to states' domestic sphere (pp. 8–9). While the post-war revolution was mostly a formality, as the post-war refugee crisis amply

demonstrates, it is undeniable that great progress has been achieved since 1950s in terms of human rights. For some the biggest achievement is the shift from a negative conception of states' obligations towards a positive one. According to Dimitris Xenos, we should abandon the classical liberal view of the state according to which the state guarantees human rights by limiting its activity and thus non-interfering in individuals' life—negative obligations of the state—towards a more active role of the state in which the state has positive obligations towards its citizens and aliens residing in its territory (2012, p. 2). It is in particular the European Convention of Human Rights that has encouraged this important change by making states the 'principal protector and guarantor' of human rights (p. 1).

Theories of the State: An Overview

It is not an easy task to discuss the state and the theories of the state, due to the difficulties in drawing boundaries between the state and its society, a boundary which 'appears elusive, porous, and mobile' (Mitchell 1991, p. 84). Because of the difficulties in differentiating between the state's structure and civil society after the Second World War, the concept of the state has been mostly abandoned. As clarified in Timothy Mitchell's work (1991), two approaches to the states started to dominate: one which abandoned the concept altogether and replaced it with the 'concept of political system' (p. 84); and a second which aimed at 'bringing the state back in', especially starting from the late 1970s (see Evans et al. 1985). The same applied to the discipline of IR. Following the general trend in social and political sciences, between the end of the 1950s up to the mid-1970s, the concept of the state was mostly removed from major academic works. As Stephen Krasner put it, political scientists tended to engage with everything but the state, including government, political changes, interest groups, political behaviour, voting procedure and leadership (2009, p. 66). By recognising that states and states systems cannot be conceived as closed units, many scholars were concerned less about discussing the state as a totality and more about uncovering the many actors, institutions and dynamics happening inside them. For many IR scholars, the concept of the state was simply 'dead' (Hobson 2003, p. 1). The

state reappeared again from the mid-1970s, even if this renewed interest did not necessarily bring new perspectives from which to look at states, despite their declared intention to do so. This is, for instance, the case of the following works: Charles Tilly's edited volume *The Formation of National States in Western Europe* (1975), Theda Skocpol's *States and Social Revolutions* (1979), Eric Nordlinger's *On the Autonomy of the Democratic State* (1981), which, according to Krasner, moved mostly in two directions: either they investigated the level of autonomy that states enjoyed or they assessed changes to states' institutional structures according to changes in the national/international environment (2009, pp. 66–67). However, for Krasner, what tended to prevail in the IR discipline were those analyses which looked at the question of definition, as, for instance, the work of Roger Benjamin and Raymond Duvall (1985), according to whom theories of the state have centred around four core definitions of statehood: (1) the state as government, (2) the state as bureaucracy and administrative apparatus, (3) the state as ruling class and (4) the state as normative order (quoted in Krasner 2009, p. 67). All the above definitions clearly adopt a state-centric perspective in which what matters are states as unitary actors and most importantly as unitary sources of power. To those definitions, we can certainly add the most notorious: Weber's classic definition, that is, the monopoly of the legitimate use of physical force within a given territory, to which IR literature has overwhelmingly referred.

Looking back in history, according to the Italian philosopher Norberto Bobbio, the work of three key figures in political philosophy—namely, Thomas More (1516), Thomas Hobbes (1651) and Niccolò Machiavelli (1513)—has left an indelible mark on political thought which has been further developed along three lines: '(a) the best form of government or the best republic; (b) the foundation of the state or political power […]; (c) the essence of the political ("politicalness") and the important dispute on the distinction between ethics and politics' (1989, p. 46). According to Bobbio, the main historical trajectory of the concept of the state is the one that goes from the legal to the sociological approach, which was first elaborated in Georg Jellinek's work, *General Doctrine of the State* (1911). More specifically, the distinction lies between those who conceptualise the state as a legal structure—as, for instance, the concept of *Rechtsstaat*,

which conceived the state 'primarily as a legally-produced entity'—and those who recognise that the state, even if organised through law, 'is also a form of social organization', which cannot be dissociated from society and social relations (Bobbio 1989, 47). It was in particular Max Weber who recognised the need to maintain a clear distinction between the legal perspective and the sociological one ([1922] 1978), a distinction later rejected in Kelsen's work, *General Theory of Law and State* (1949). More specifically, the difference was between those who believed that the state was the result of a complex form of social organisation and those who, like Kelsen, reduced the state to its legal structure. Among sociological approaches, two have been especially dominant: the Marxist theory of the state and the functionalist one, each of which has moved in opposite directions:

> Whereas functionalist theory […] is obsessed with the Hobbesian theme of order, Marxist theory is obsessed with that of the collapse of order. […] Whereas the first is concerned with the idea of social continuity, the second is essentially concerned with social change. […] [Whereas] the changes that interest functionalist theory are those which occur within the system and which the system has the capacity to absorb […] Marx, and his followers, have always believed in the big change, which with a qualitative leap throws a system into crisis and creates a new one out of it (Bobbio 1989, p. 50).

What has certainly changed through the centuries is the relation between the state and society as well as the very definition of the political. Since Aristotle, and for many centuries up to Hegel, the notion of the 'political' (*politikon*) included both the political and the social. In other words, theories of state that have been historically elaborated were not restricted to states *per se* but incorporated analyses that today would be considered as sociological (Bobbio 1989, pp. 52–53). Another important change that occurred in theories of statehood is connected with the relation between rulers and ruled, between those who hold power and those who are subjected to it. It was in particular starting from the beginning of the modern era that more attention was given to people, starting from the well-known debate on natural rights and on the limits of sovereign power. This shift in perspective consisted mostly in giving more attention to 'the liberty of citizens (in fact or in law, civil or political, negative or positive)

rather than the powers of government' (p. 56), which was accompanied by a shift in the way in which the ruled were perceived. The recognition that there was a personal sphere upon which the sovereign should not intervene as well as that sovereign was not *legibus solutus* led to important shifts in the articulation of power and strict obedience. Not only did the idea that there existed a right of resistance against unjust laws start to be affirmed but also that governments were going to be judged according to 'the quantity of rights enjoyed by the individual rather than the degree of power of the rulers' (p. 56). Although there was no agreement in the set of rights to be recognised—for Locke, for instance, the most important was the right to property, while for Spinoza and Rousseau it was individuals' liberty that was valued most—18 centuries philosophers tended to acknowledge a limit to absolute power (pp. 56–57). As articulated in Bobbio

> The highest and most concrete expressions of this turnabout are the American and French Declarations of Rights, solemnly announcing the principle that government is for the individual and not the individual for the government: a principle which has influenced not just all later constitutions, but also thinking about the state. […] Generally considered an evil (the logical conclusion of a political doctrine which for centuries esteemed and exalted stability and considered civil war the worst of evils), this passage came to acquire a positive value for the revolutionary movements which saw in change the beginning of a new era. […] civil war represented the crisis of the state seen *ex parte principis,* whereas revolution […] represented the crisis of the state seen *ex parte populi* (p. 57).

The change of perspective—from that of the prince (*ex parte principis*) to the one of the people (*ex parte populi*)—was certainly a crucial change even if, originally, the change was mostly on the philosophical and legal doctrine level. We need to wait for the American and French Revolutions and the first declarations of rights—a 'genuine Copernican revolution' (Bobbio, p. 115)—before we can properly talk of a radical change and not simply on the theoretical level. The shift from theory to practice was certainly not easy and took a few more centuries. To claim that sovereign power should be limited required the elaboration of a new foundation, a foundation able to define the relation between the state and the

law. Whereas with Hobbes the law was founded upon the command of the sovereign, the new approach to law, in legal positivism, was founded upon completely different premises. Starting from the late nineteenth century, jurists, for instance, Hans Kelsen (1949), not only made the law devoid of any moral connotations by creating a clear distinction between law and justice (p. 5) but also reduced the state to a 'legal phenomenon' by looking at it as 'the personification of the national legal order' (p. 181). More specifically, Kelsen formulated a legalist account of the state in the sense that everything originated in the law, a law which justified, as the *ultima ratio*, even the use of force, which was both legitimate and effective, within the bounded territory of the state and of its people. The state, for Kelsen, was ultimately 'a community created by a national (as opposed to an international) legal order' (p. 181), a legal order that coincided with the state itself. What is problematic in Kelsen's account of the state is that he represented it exclusively as a legal entity, in clear opposition to those inspired by a more sociological account of the state, who saw it not as 'natural and inevitable but [as] unique and historically contingent' (Hobson 2003, p. 194), as a well-known classic aphorism puts it: *ubi societas, ibi ius* (where there is a society, there is law). In other words, while for Kelsen, and for normativists more generally, any source of law is perceived as 'nothing more than a description of norms' to the point where the existence of norms precedes their very interpretation (see Guastini 1999), for the so-called institutionalists—as, for instance, Santi Romano—the legal system cannot be conceived outside the society which has produced it, that is to say that norms also have a social character (see Pintore 1998). For institutionalists, legal norms are not conceived as something abstract but as part of the legal and institutional systems that guarantee that the law is effectively applied and worked out through the different state institutions (see Romano 1918).

The State and the Question of Security

While there is a general agreement that the key role of the state is to protect there is no agreement on how to interpret protection and in particular what exactly the role of the state in providing protection is. Traditionally,

IR scholars have not directly engaged with the question of protection save in terms of security, a security that meant first and foremost the security of the state against external threats (Collins 2013). The focus on threats, military capability and the monopoly of the use of legitimate force makes the state the core unit of analysis as well as the primary object to be secured, leaving aside the security of non-state actors as well as the question of insecurity triggered precisely by an international system organised around competition, conflicts and self-preservation. As ably discussed by Bill McSweeney, traditionally the meaning of security was 'determined by a prior theoretical assumption of the primacy of the state, the irrelevance of sub-units within it, and the choice of a quantitative method of inquiry appropriate to the state as the irreducible and material unit' (1999, pp. 15–16). Throughout the 1980s and early 1990s, in response to the changing period both before and after the Cold War, new studies moved away from the dominant realist and neo-realist paradigms by broadening, deepening and extending the traditional concept of security (Wyn Jones 1999). A new security debate, away from realism dogmatism and from the concept of anarchy, was trigged by Barry Buzan's book (1991), *People, States and Fear*, which first developed a broader concept of security but ultimately failed to challenge traditional analyses. Despite the articulation of security into five core sectors—including military, environmental, economic, societal and political, each of which are subject to distinctive characteristics—Buzan's work remained anchored to traditional understanding of security, which is 'primarily about the fate of human collectivities, and only secondarily about the personal security of individual human beings' (1991, p. 19). As also articulated by Paul Roe (2013, p. 177), 'all the dimensions remained as sectors of national—that is, state—security', and most importantly threats in the military sector continued to be taken as the most urgent and compelling. However, despite the centrality attributed to states, the question of how to make individuals more secure remained a key issue that needed to be tackled and could not simply be put aside. As McSweeney argued (1999), the traditional conceptualisation of security has presupposed a double process: one of exclusion and one of inclusion. While individuals were not considered at the conceptual level—as security meant exclusively state security—their presence and centrality were however reinstated in policy

practices, as they could be elaborated only upon the individual as the ultimate referent of security (p. 16).

An important theoretical evolution in security studies was introduced by redefining the concept of security away from a militaristic understanding of enemies, threats and risks (Ullman 1983; Booth 1991; Rothschild 1995) and by replacing it with one which made human beings the ultimate grounding of security. As highlighted in *Critical Security Studies*, by ignoring other sources of insecurity and actors other than the state, traditional approaches have disregarded not simply questions related to the security of people but have failed to ask 'whose security' and 'what needs to be secured' (Krause and Williams 1997). Moreover, the idea that it is states who provide security has been also challenged: states are not always already protectors of their people, but also 'abusers', that is, the sources of insecurity as the existence of refugees and internally displaced people clearly testifies.

For forced migration studies, two concepts elaborated within security studies are especially relevant: societal security and human security. In their book, *Identity, Migration and the New Security Agenda in Europe*, Wæver et al. (1993), in an attempt to move away from state-centrism, reelaborated the relationship between state and societal security, by focusing on the notion of survival. By focusing on the threats to identity from which a society needs to protect itself—against any possible conditions that jeopardise the identity (and thus the existence) of the society itself—the authors saw migration as a source of societal threats. It was not long before the securitisation approach was applied to migration and forced migration (Bigo 2002; Huysmans 2006b; Neal 2009), as well as the idea of survival and threat to identity applied to countries in the south. This was, for instance, discussed in Astri Suhrke's work who does recognise the 'severe impacts' that refugees might have on a host society, even if in the cases she considered, identity and societal security were not the most critical aspects. As she put it:

> Contemporary migration and refugee movements have infrequently been of a magnitude, speed, or nature to constitute a security threat in this sense. […] By their numbers, they can severely distort the local economy and destroy the environment (the sudden movement of a quarter of a million Rwandan refugees into Tanzania after the genocide in 1994). Their ethnic

> or political characteristics may disturb delicate internal balances (Kosovo-Albanians in Macedonia in 1999). When they arrive with armed contingents that continue to fight on the host territory ("refugee warriors"), they invite retaliation and thus export the conflict from where they came (Rwandan refugees in Zaire/Democratic Republic of the Congo from 1994) (2003, p. 97).

Given the historical connotation of the word 'security' and its origin in state practice (p. 94), Suhrke is very critical in adopting the concept of societal security, given the traditional attachment of security to notions of threats, enemies and us/them opposition (p. 96). She proposed, instead, the adoption of the concept of 'vulnerability', which is believed to facilitate a discourse of protection and assistance as well as guarantee the adoption of a beneficiary-oriented model (pp. 104–105). For Suhrke, a focus on vulnerability is also preferable to the concept of human security which has proved to be too broad and too vague to be meaningfully adopted in concrete situations (see Paris 2001). Suhrke also acknowledged that the UNHCR widely adopts the concept of vulnerability with special reference to very specific groups of people who need special care and assistance, as, for instance, unaccompanied children, the elderly, the handicapped, the chronically ill and women at risk (Suhrke p. 100). Even if the concept of vulnerability does not evoke exactly the same negative connotations as that of security, as Suhrke rightly notes (p. 107), it does not however help in conceptualising forced migrants in a more positive way.

The second important concept that has challenged and altered the prominence given to sovereign states as the primary units of reference and replaced it with that of human beings is the concept of human security (Thakur 2004). The definition proposed by the former UN Secretary-General Kofi Annan pictures precisely the new approach to security:

> Human security, in its broadest sense, embraces far more than the absence of violent conflict. It encompasses human rights, good governance, access to education and health care and ensuring that each individual has opportunities and choices to fulfill his or her potential. […] Freedom from want, freedom from fear, and the freedom of future generations to inherit a healthy natural environment—these are the interrelated building blocks of human—and therefore national—security (2000).

By articulating security as 'freedom from'—as inspired by the work of Amartya Sen, *Development as Freedom* (2000)—there was a clear attempt to engage with those political, economic and social conditions that posed a threat to human security as well as to offer new and more positive definitions of security. Whereas Sen proposed ways of expanding the meaning of development beyond economic growth and, most importantly, by removing 'major sources of unfreedom: poverty as well as tyranny, poor economic opportunities as well as systematic deprivation, neglect of public facilities as well as intolerance or overactivity of repressive states' (2000, p. 3), *Critical Security Studies* did the same with the concept of security. Security was no longer taken as meaning the territorial integrity of the state, absence of conflicts and/or military threats. What is especially interesting in the work of *Critical Security Studies* is the notion of 'security as emancipation' as developed in Ken Booth (1991). As he puts it:

> The trouble with privileging power and order is that they are at somebody else's expense (and are therefore potentially unstable). […] True (stable) security can only be achieved by people and groups if they do not deprive others of it. […] Emancipation is the freeing of people (as individuals and groups) from those physical and human constraints which stop them carrying out what they would freely choose to do. War and the threat of war is one of those constraints, together with poverty, poor education, political oppression and so on. Security and emancipation are two sides of the same coin. Emancipation, not power or order, produces true security. Emancipation, theoretically, is security (1991, p. 319)

When elaborating the concept of emancipation, Booth attached it to two further conditions: economic independence and reciprocity of rights. In other words, to claim that emancipation is the freeing of people is also to realise that freedom by itself is meaningless. Not only do people need to enjoy the very same liberties, but most importantly 'liberty without economic status is propaganda' (p. 321) And this is especially evident when considering refugees' conditions of economic dependence on donor states and/or charities, which tend to perpetuate a condition of subordination and powerlessness as donors rarely, if at all, engage with empowerment and self-reliant strategies (Kennedy 2004; Barnett & Weiss 2008; Barnett 2009).

The question of security is especially relevant for IR refugee literature as it highlights how traditionally the role of states in protecting their citizens was framed. Citizens' protection was exclusively articulated in terms of security, by taking the concept of security and protection as more or less interchangeable. Having failed to develop a theory of the state focussed on the very ontology of the state, the question of protection—including citizens' protection—was not developed because the frame of reference was state sovereignty. While IR scholars agree that states have to protect their peoples, protection tends to be interpreted along the security discourse. This very lacuna has been clearly reproduced in IR refugee literature, which makes ample use of the concept of protection but leaves its meaning unspecified and/or refers to protection also for mere assistance programmes, especially programmes that provide safe haven—that is, physical security—and respond to basic needs.

As skilfully discussed in Hakan Sicakkan's 'The Rights of Refugees' (2011) two approaches have mainly dominated refugee literature: the 'citizen-alien paradigm' versus the 'human-rights based notion of refugee' (pp. 369–370). What Sicakkan points out is the different perspective through which protection is discussed. While the first is not at all concerned with the protection of refugees but rather with the protection of the country of destination, the second approach is, on the contrary, articulated upon respect for human rights as well as on the notion of suffering. More specifically, in the first case, states tend to respond to refugee outflows by introducing some of the following instruments: individual or collective protection schemes (either temporary or permanent), safe zones in close proximity to the conflict in order to facilitate return, as well as 'unilateral or multilateral preventive state actions, or diplomatic or military interventions in the conflict areas or countries that generate refugees' (p. 369). What prevails in this case is the communitarian perspective along established notions of citizenship. The human rights-based notion of the refugee is articulated both on the need to respect rights and also on the understanding that without a state that protects refugees will not have a life at all. To use Sicakkan's own words:

> The question is not about states' having to choose between their citizens' and foreigners' claims; it is about choosing between *citizens' claims for a*

> *better life* and *refugees' claims for a life at all*. […] When the question is put forth as a choice between *a better life* and *a life at all*, we are in the domain of human frailty (Buttle 2003; Elliott and Turner 2003), individuals' inalienable rights, and the human sufferings that are caused by human rights violations. […] A notion of refugee that is entrenched in the idea of human rights makes *human suffering that cannot be avoided without another state's protection* the centre of the refugee definition (2011, p. 370).

In short, the first perspective—which is clearly the one that has been overwhelmingly dominant in traditional IR discourse—refers to refugee protection only in theory, as in practice it is oriented towards a notion of protection clearly inspired by the Latin concepts of *praesideo* and *tutor*, as articulated in Didier Bigo (2006) which was discussed in the introduction. In other words, it understands protection as the politics of the protector, and thus in terms of security, and whenever protection is considered it results in providing shelter and/or looking after refugees from a purely humanitarian perspective. The second approach, by contrast, is articulated upon a politics of the protected and, most importantly, upon a concept of protection articulated upon rights and human dignity, to which we will now turn our attention.

The State and the Question of Protection

Although there is a general assumption that the fundamental task of the state is to protect, the question of protection tends to remain in the background, always there but never properly discussed. The case of refugee protection is certainly one example, accompanied by another important example: the notion of the 'responsibility to protect' (R2P). Despite the many declarations that states' fundamental task is to protect their own citizens, it is rarely, if at all, spelt out what protection is all about. The unanimous declaration on the occasion of the 2005 UN World Summit is exemplary, as it recognised that states are responsible for protecting their citizens from genocide, war crimes, crimes against humanity, and ethnic cleansing—and that, in case of a manifest failure to do so, the international community would take action (2005, para 138)—all crimes that, ideally should not occur in the

first place. In other words, the idea of states' responsibility to protect their citizens was precisely formulated with the intention of preventing massive abuses and not simply to react against them. States' responsibility, as articulated in the R2P notion, rests mostly on a conception of protection which is substantially negative, that is, a protection *from*. Overall the discussion on the occasion of the 2005 World Summit was articulated more around questions of intervention, international responsibility, the role of powerful states and of the Security Council rather than around questions of protection and prevention. According to Alex Bellamy (2006), not only did the 2005 World Summit document do very little towards the prevention of future Rwandas and Kosovos, but it also moved away from the ICISS's core questions. As Bellamy put it:

> To what extent, then, will the outcome document help prevent future Rwandas and Kosovos? […] the answer is "very little." […] It is imperative that states now return to some of the fundamental questions the ICISS raised: Who, precisely, has a responsibility to protect? When is that responsibility acquired? What does the responsibility to protect entail? And how do we know when the responsibility to protect has been divested? (2006, p. 169).

When Bellamy asks 'what does the responsibility to protect entail?' he is certainly looking at the responsibility to protect from the perspective of the international community and not from the internal one, even if the two are logically connected. International responsibility is triggered only once domestic responsibility is not working or non-existent. The ICISS's document simply specifies that 'state authorities are responsible for the functions of protecting the safety and lives of citizens and promotion of their welfare' (2001a, para 2.15). Nothing more is specified in terms of states' domestic responsibility to protect, except to recognise that 'the ever-increasing impact of international human rights norms, and […] of the concept of human security' (para 2.15), both of which are considered in relation to international intervention and not, for instance, in relation to the domestic setting.

A very interesting way of looking at the question of protection and especially what we expect states to do in favour of their own people is to

examine an alternative literature, that is, the literature about failed states. To begin with, quite a number of authors have looked at failed states by focusing in particular on their consequences for the international system. For instance, Gerald Helman and Steven Ratner define the failed state as 'utterly incapable of sustaining itself as a member of the international community', as their territories are dominated by violence, anarchy and human rights abuses, which all threaten neighbouring countries (1992–1993, p. 3). Others, like Simon Chesterman, Michael Ignatieff and Ramesh Thakur, see the state along orthodox IR theory, that is, as 'an abstract yet powerful notion that embraces a network of authoritative institutions that make and enforce top-level decisions throughout a territorially defined political entity' (2005, p. 2). At the same time, they recognised that, ideally, a state 'embodies the political mission of a society', a mission that is carried out by its officials and institutions. It is 'a continuum of circumstances afflicting states with weak institutions' that leads to state failure (p. 2).

So, what is the state supposed to do for its citizens? A rather long list of what failed state are unable to deliver to their citizens—and conversely what well-functioning liberal democracies are capable of providing—is offered in Robert Rotberg's article, 'The New Nature of Nation-State Failure' (2002). To quote Rotberg extensively, states fail when

> Their government lose legitimacy and, in the eyes and hearts of […] its citizens, […] becomes illegitimate. […] failed states cannot control their borders. They lose authority over chunks of territory. […] Nation-states exist to deliver political goods—security, education, health service, economic opportunity, environmental surveillance, a legal framework of order and a judicial system to administer it, and fundamental infrastructural requirements such as roads and communications facilities […]. Failed states honor these obligations in the breach. […] a failed state is no longer able or willing to perform the job of a nation-state in the modern world. […] Failed states contain weak or flawed institutions—that is, only the executive institution functions. If legislatures exist at all, they are rubber-stamp machines. Democratic debate is noticeably absent. The judiciary is derivative of the executive […], and citizens know that they cannot rely on the court system for significant redress or remedy, especially against the state. The bureaucracy has long ago lost its sense of professional responsibility and exists solely to carry out the orders of the executive and, in petty ways, to oppress citizens (pp. 85–87).

Rotberg's list continues by further taking into consideration educational and health systems, political corruption and economic chaos as well as the 'endless cycle of migration and displacement' (p. 89), as, for instance, the cases of Afghanistan, Angola, Sierra Leone, Burundi, Liberia and Sudan (p. 90).

What is relevant for this work is not so much to make a list of what the state does or should do but to have an overall understanding of what protection is and most importantly how to draw a line between protection and assistance. If we use Rotberg's analysis, it is clear that protection is an all-encompassing word including political, economic, social and juridical protection that we normally attached to liberal democracies. Rotberg makes a clear reference to the state as the only entity able to provide protection and specific services attached to it. And refugee protection should not be conceived differently. Refugee protection is a specific task that only states can perform. This had already been clearly articulated in 2000, in a public speech by an erstwhile delegate at the UNHCR in Italy, Ana Liria-Franch, on the occasion of the presentation of the *Caritas*'[1] 2000 Immigration Report (Dossier Immigrazione). In her speech, she highlighted that refugee protection should not be simply limited to respect for the principle of *non-refoulement*, but it should also include some basic mechanisms of reception. As she put it:

> when we talk of "admission into the territory" we talk […] of a duty of the state. Thus, of a specific responsibility, which the state has undertaken as result of an international convention (1951). If, it is the case that the duty of admission derives from the principle of non-refoulement, it is not the case that admission might be simply limited to the respect of the non-refoulement. […] Admission might not simply mean toward the asylum seeker: 'I do not expel you'. Admission, at least, should also mean: 'I welcome you'. I offer you the possibility of submitting the asylum claim, of submitting it correctly, and if necessarily with the help of an interpreter, a cultural mediator, a lawyer, etc. Moreover: reception means also: I offer you a minimum level of reception and of assistance in order for you to live with dignity up to the decision of your request of asylum! […] (A)ll of this is—in primis—the responsibility of the state (2000, p. 2).[2]

[1] Caritas is one the biggest Catholic organisation in Italy taking care of the homeless and the destitute. It was also the first to provide assistance to migrants in 1970s and to compile yearly reports on migration.

[2] All translations from Italian into English are mine.

What Liria-Franch was referring to was the state's responsibility to protect, a protection that should not be understood as mere admission into the territory nor merely a negative obligation for the state—a protection from persecution, threats, physical assaults and sustained violence—but it should also entail a positive obligation for the state—protection towards better living and self-reliant conditions, a protection articulated upon rights and not simply upon assistance. That is protection as emancipation—not dissimilar from the concept of emancipation elaborated by Ken Booth (1991) recalled earlier—an emancipation that can only be achieved within the state and, most importantly, a state that actively produces and maintains an environment conducive to protection. To talk of protection in terms of emancipation means to talk of protection in legal terms, not simply recognising that refugees have rights—as enshrined in the 1951 Refugee Convention and in the human rights regime more in general—but also that these rights should be effectively guaranteed by a functioning juridical system. It also entails the recognition of the social system that protects the welfare of people residing in its territory. This is precisely what a state of rights (*stato di diritto*)—originally articulated in the concept of *Rechtsstaat* during mid-eighteenth century—is all about.

As well-articulated in Chantal Mouffe, *The Return of the Political* (1993, p. 93), it was in particular Norberto Bobbio, whose most concern was to 'make democracy compatible with liberalism', that highlighted the importance of the *Rechtstaat*. For Bobbio what mattered was not simply the liberal state, in which basic rights are respected, but the liberal doctrine which gave rise to the '*Rechtstaat*, or judicial state, [...] that is, the state which not only exercises power *sub lege*, but exercise it within the limits derived from the constitutional recognition of the so-called "inviolable" rights of the individual' (Mouffe 1993, p. 93). A clear articulation of what the *Rechtstaat*, or the state of rights is comes from the work of Anna Pintore (2011). According to Pintore, the concept of the state of rights is founded upon the premise that all the state's power—including the legislative power—are subject to the law (*sub legem*) (p. 878). By limiting sovereign power, the legal order is protected against any abuses and/or arbitrary decisions. The biggest challenge for the state of right when it was originally formulated was how to create the conditions by which the very sovereign who creates and enacts the law could be subjected to its own law. In other words,

how could sovereignty possibly be limited if sovereignty itself was defined as *potestas superiorem non recognoscens*,[3] as articulated both in Bodin and in Hobbes? (p. 979). Only the introduction of the Constitution—and thus constitutionalism—instituted a limit to sovereign power by creating a set of norms hierarchically located at a higher level than ordinary laws as well as by recognising a set of rights—of positive rights—not dissimilar to those already elaborated by John Locke in the seventeenth century (p. 881). The end result was a model of a Constitutional State of rights which guaranteed the principle of legality together with the democratic principle (by guaranteeing political rights as well as an elected Parliament); the liberal principle (by protecting civil rights and liberties) and the principle of social justice (thanks to the recognition of social rights) (pp. 881–882).

In short, what is suggested here is that there is a need to look at international protection first of all as meaning legal protection, but a legal protection that does not simply refer to a formal recognition of rights but protection in a more substantive form. This requires a state that is able to guarantee (legal) rights, including socio-economic rights upon which to articulate a life free from threats and a life that moves towards emancipation, an emancipation that certainly cannot be organised only around charity and assistance. The concept of the *stato di diritto* (*Rechsstaat*) is precisely articulated upon the notion that the state is central to providing protection, a protection which starts first and foremost by establishing core rights and liberties and in recognising the positive obligation of the state in making those rights effective. And it is to protection as meaning legal protection that attention will now turn.

Protection as Legal Protection

The concept of refugee protection as meaning legal protection has received little attention in comparison to questions related to states' sovereignty, to the principle of *non-refoulement*, to safe havens and to refugees' physical integrity. To discuss protection in terms of legal protection means to connect protection to the concepts of entitlements, rights and of redress

[3] Literally: not recognising higher power (authority).

before the law, rather than to the idea of providing shelter to refugees inside camps. As discussed in the introduction, a few refugee scholars have articulated protection in terms of legal protection, namely, Weiss (1954, 1953, 1995), Helton (1990, 1994, 2003) and Fortin (2001). In contrast to most IR literature which tends to focus on the limits to protection—by focusing in particular at border intersections, that is, at the way in which would-be refugees are trapped in between the border of exit and the new border of entry—this work focuses on legal protection, by highlighting the importance of looking at refugees in terms of rights and not in terms of charity, as well as by looking at the tension between sovereignty and protection. Attention to legal protection is also one of the key tasks of the UNHCR. As articulated by Erika Feller (2001, p. 131), since its inception the task of the UNHCR has been 'mainly of a legal nature, to ensure entry and ease integration in accordance with the 1951 Convention' (p. 131), even if in practice attention has mostly been given to states' responsibility in guaranteeing a series of general principles, including the following:

> Refugees should not be returned to face persecution or the threat of persecution-the principle of *nonrefoulement*; protection must be extended to all refugees without discrimination; the problem of refugees is social and humanitarian in nature, and therefore should not become a cause of tension between states; since the grant of asylum may place unduly heavy burdens on certain countries, a satisfactory solution to the problems of refugees can only be achieved through international cooperation; persons escaping persecution cannot be expected to leave their country and enter another country in a regular manner, and accordingly should not be penalized for having entered into, or for being illegally in, the country where they seek asylum; given the very serious consequences the expulsion of refugees may have, such a measure should only be adopted in exceptional circumstances directly impacting national security or public order; and cooperation of states with the UNHCR is essential to ensure the effective coordination of measures taken to deal with the problem of refugees (pp. 131–132).

What in particular the 1951 Refugee Convention established was a series of safeguard mechanisms that guaranteed that would-be refugees

had access to protection, that is, first of all, access to a state willing to provide protection. Looking at the *Travaux Préparatoires* two key objectives characterised the new regime: first, to safeguard the international (European) order by reintegrating refugees within states and, second, to create a regime that would promote human rights within the context of the emerging United Nations system (Betts and Loescher 2011, p. 8). What still emerges from an analysis of the Convention's *Travaux Préparatoires*, is that the concept of protection is related to legal protection. More specifically, as Antonio Fortin argues, legal protection is not simply related to a set of rights to be guaranteed to refugees but is effectively guaranteed by setting up mechanisms which establish rights as well as their effective exercise and protection against violation (p. 552). For Fortin, the Convention did not simply intend to write a set of rights but to guarantee protection to refugees, a protection that requires, first and foremost, well-functioning administrative and judicial systems, capable of safeguarding and protecting rights against abuses as well as of finding remedies to violations. By understanding refugee protection as legal protection, protection can be seen as clearly distinct from any politics of humanitarian assistance whose primary role is to provide temporary relief in response to specific needs. What is claimed here is that a clear line should be drawn between rights and needs—though recognising that needs have historically been translated into legal norms—since to provide assistance is very different from safeguarding rights, which requires a functioning state as well a functioning juridical system within it. To highlight that protection should be articulated upon the notion of legal protection means recognising that there is an important distinction to be made between protecting rights and satisfying needs, between protection and assistance, between urban refugees in the EU who have access to legal protection and camp-based refugees whose needs are satisfied by humanitarian agencies, including the UNHCR.

When Ruud Lubbers—the then UN High Commissioner for Refugees—recognised already in 2003 that refugees need 'both protection *and* solutions' and that the aim of the Agenda for Protection was precisely

'to enable refugees to start a new life with dignity and to bring an end to their need for international protection' (p. 5), the protection he was referring to went well beyond mere assistance. The lack of solutions, of durable solutions, signals precisely the lack of protection. Life in camps is not considered—and it should not be considered—as protection, precisely because it is based upon assistance, charity and on safe havens in which to safeguard, that is, make secure and not to protect, individuals inside.

The generalised lack of protection, especially in so-called protracted refugee situations (Loescher et al. 2009), has triggered new debates on the concept of 'effective protection'. However, the definition itself is a bit odd, since 'the word "effective" should be redundant to the extent that protection should always be effective'; otherwise it would not be protection, as rightly highlighted by Catherine Phuong (2005, p. 3). For Erika Feller, by recalling the outcome of the Agenda for Protection, refugee protection should not be limited to the promotion of legal regimes (Feller 2006, p. 527). The concept of 'effective protection'—which paradoxically is applied mostly in reference to the so-called irregular secondary movement (see Legomsky 2003; Phuong 2004; Betts 2006; van der Klaauw 2009)—should be interpreted according to the *quality* of protection effectively guaranteed, including 'at a minimum' the following conditions:

> there is no likelihood of persecution, of refoulement, or of torture or other cruel, inhuman or degrading treatment or punishment; there is no other real risk to the life of the person(s) concerned; there is a genuine prospect of an accessible durable solution in or from the asylum country, within a reasonable timeframe; pending a durable solution, stay is permitted under conditions which protect against arbitrary expulsion and deprivation of liberty and which provide for an adequate and dignified means of existence; the unity and integrity of the family is ensured; and the specific protection needs of the affected persons, including those deriving from age and gender, can be identified and respected (Feller 2006, p. 529).

Here Feller is clearly identifying all the major steps through which refugees tend to go and the related conditions that need to be satisfied, conditions which are framed more in terms of refugee needs rather than in terms of rights. The point that we are trying to make here is not simply related to questions of priority—whether to look at needs or whether to look at rights—but to the way in which we frame (or should frame)

protection. By framing protection in terms of rights, and not in terms of needs, we already acknowledge the key role that state's institutions should play in guaranteeing rights, against the private role of humanitarian organisation in satisfying basic needs.

A more recent, and perhaps more comprehensive, definition of protection was proposed by Erika Feller at the Sixtieth Session of the Executive Committee of the UNHCR. For Feller protection should be read as 'a responsibility, a need, a deliverable and a legal framework' (2004, p. 2). This definition seems, at first sight, to be an all-encompassing definition which puts together 'the needs of the forcibly displaced and […] core responsibilities of governments' (Feller 2009, p. 2). The question of states' responsibility in satisfying refugees' specific needs was raised in Feller's speech, for instance, in reference to the EU framework by noting a general

> lack of procedural guarantees in the accelerated procedure, remote and isolated location of reception centres for asylum-seekers, limited access to and low quality of state legal aid and interpretation services, absence of time limits for detention and insufficient number of procedural guarantees for vulnerable groups; no special integration programme for refugees and others of concern; and lack of legal and other provisions for family reunification of refugees (Feller 2009, pp. 1–2)

While spelling out clearly the limits to protection, what Feller was suggesting was to reconsider the very concept of protection by highlighting the key role of the state in delivering it. While, on the one hand, Feller recognised that '[p]rotection is primarily the responsibility of States for which the UNHCR can never be an effective substitute', on the other hand, she connected protection to the needs of refugees and in particular to 'humanitarian objectives […] in a manner consistent as much with the spirit as the letter of refugee protection regime' (2009, p. 2). By discussing refugee protection in terms of needs, and not in terms of rights, the discourse shifts from the legal to the humanitarian. A discourse of need connects protection to a humanitarian approach, which clearly departs from the core logic of legal protection on which the 1951 Refugee Convention was formulated. To refer to needs and not to rights misses out the concept of legal protection. A focus on rights does not minimise the importance of satisfying core needs. But to satisfy needs

out of a sense of charity is very different for satisfying needs which are connected with rights as enshrined in legal documents. Moreover, by articulating the concept of protection as 'a need', Feller did so by looking at needs in negative terms—that is, as *protection from*. The threats from which refugees should be protected include 'the threat of arrest and detention, refoulement, harassment, exploitation, discrimination, inadequate and overcrowded shelter and access to medical assistance as well as vulnerability to SGBV, human smuggling and trafficking' (2009, p. 4).[4] The framing of protection as *protection from* reaffirms past practices of defining refugee protection not so much in terms of positive actions that states should undertake but rather in terms of threats and risk for which states should provide some forms of safeguard. By discussing protection as ultimately negative protection, that is as the absence of threats and risks, Feller formulated protection following the very same rationale adopted in IR orthodox understanding of security (Collins 2013). I am certainly not disputing that refugees, like any other human beings, have needs to be fulfilled as well as specific needs relating to their condition of displacement; nonetheless, the key question is to define protection in a clearer manner and, possibly, to distinguish it from asylum and from other forms of humanitarian assistance. To distinguish rights from needs, entitlement from charity, protection from assistance is also central to finding solutions, durable solutions that privilege a politics of the protected against a politics of the protectors. The rights enshrined in the 1951 Refugee Convention—including non-discrimination (art. 3), access to courts (art. 16), the right to engage in wage-earning employment (art. 17), access to the welfare system including enjoyment of favourable conditions for housing (art. 21), and social security (art. 24) as well as freedom of movement within the national territory (art. 26)—are clearly rights articulated upon the idea that it is the state which provides protection and not the UNHCR, which can only assist in finding and proposing solutions towards protection. If we are to consider protection in terms of access to and enjoyment of rights, and not simply as a safeguard from threats, we should not consider as protection those solutions in which refugees are unable to emancipate themselves from a condition

[4] SGBV stands for sexual and gender-based violence.

of assistance, charity and exclusion. This is certainly the case for refugees in camps but is also the case for many refugees in urban areas in wealthy Western countries currently living in conditions of *de facto* encampment. Although living in a secure environment, we cannot certainly talk of protection in the same way that we would talk of protection of citizens in liberal-democratic countries. The claim that there is a glaring legal difference between the protection that a state guarantees to its citizens and to the non-citizens living in its territory is problematic, especially inside the European Union, whose members are committed to respecting the 1951 Refugee Convention, and most importantly the European Convention of Human Rights. What is ultimately claimed here is that what matters is the (public) space of protection, and thus the entities who are in charge with the task of protecting. Is it the space of the camp or is it the space of the legal state? Is it a protection leading to conditions of emancipation or is it mere assistance leading to disempowerment and unfreedom? While it is clear that resettlement in a state is certainly a better option than accommodation inside a camp, it is also important to recognise conditions of *de facto* encampment, in which *urban* refugees find themselves trapped within conditions of marginalisation, exclusion and even destitutions, not dissimilar to camp refugees. And this also (unfortunately) applies to some wealthy EU countries.

The UNHCR and the Question of Protection

Much has been written on the work of the UNHCR and especially on its role of protecting refugees (see UNHCR 2000; Hammerstad 2000; Barnett 2001; Loescher 2001; Helton 2002; Loescher, Betts and Milner 2008). From the preceding argument it is clear that what is advocated here is that the role of the UNHCR is one of assistance and not one of protection—if we are to accept that protection refers to legal protection. The distinction between protection and assistance becomes especially evident when considering that the UNHCR is a humanitarian organisation, and like any humanitarian organisation, charity and assistance are its two key functions. The UNHCR has not been immune to criticism (Chimni 2000; Vayrynen 2001; Steiner et al. 2012), and probably one

of the sharpest examples was articulated in Jacob Stevens' article, 'Prisons of the Stateless: The Derelictions of UNHCR' (2006), which, by looking at the overall situation of refugees in camps, highlights that the limits to protection are precisely part and parcel of the UNHCR's humanitarian structure. To use Stevens own words:

> As a brutal testament to its contemporary failure, at least 3.5 million of those refugees currently struggle for survival in sprawling camps in Africa and Asia. Fleeing from genocide, imperial aggression and civil war, only to be herded into camps or sent back to the country they were escaping, these asylum-seekers and returnees are part of a seemingly endless human tragedy. If it was originally a guarantor of refugee rights, UNHCR has since mutated into a patron of these prisons of the stateless: a network of huge camps that can never meet any plausible 'humanitarian' standard, and yet somehow justify international funding for the agency. […] Financed by donations and periodic appeals, rather than as a structural part of the United Nations, it has always been constrained by the interests of the rich 'donor nations', and its level of funding largely depends on how it sells emergency relief operations to the West. […] Dependent on its donors, UNHCR also lacks the political determination it would need to enforce the Convention's provisions upon its signatories. As with the Declaration on Human Rights, the lofty sentiments of an international treaty […] remain crippled by the lack of an independent and effective agency capable of enforcing them. The US and Europe are doing everything possible to keep it that way (2006, pp. 53, 67).

The dependence of the UNHCR on donor states—the very same Western countries that close their doors and create refugees in military operations—the privileging of containment and repatriation rather than resettlement, the militarisation of the UNHCR as well as the question of modernising the UN agency are all issues that have been raised at different stages by different authors (see Shacknove 1993; Black and Koser 1999; Vayrynen 2001; Song 2012). A very similar message was conveyed in Arafat Jamal's article (2009) with the claim that 'States create refugees by failing to protect citizens, while asylum countries, donors and UNHCR perpetuate protracted refugee situations by failing to offer adequate responses' (p. 141). Another important work certainly very criti-

cal of the UNHCR is Gil Loescher's book, *Beyond Charity: International Cooperation and the Global Refugee Crisis*, which highlighted as early as 1993 that the UNHCR suffers some major problems in terms of its structure and organisation, including: 'resources […] and planning, the ambiguity of international law and norms, the restricted base of its state membership, and the chronic tension between the humanitarian tasks of UNHCR and the political context in which it has to work' (p. 131).

What seem missing are analyses which provide more a specific definition of protection in the attempt to make clear how to distinguish between protection and assistance. The distinction is especially complicated given the wording of the UNHCR's Statute and 1951 Refugee Convention. What is argued here is that the protection that the UNHCR has so far provided, and can possibly provide—even if created precisely 'to protect refugees and find a solution to their plight' (Loescher et al. 2008)—is extremely limited. However, it is limited not simply because of the lack of financial independence, of a strong humanitarian orientation and because of the compelling need to operate with states' consent. The UNHCR's action is limited above all in the sense that what it can possibly deliver is not protection *sensu stricto* but assistance to protection. And this cannot be otherwise, once we recognise that protection, meaning legal protection, requires a functioning state and most importantly a legal context in which rights are protected and respected. The intention here is not to criticise or challenge the work of the UNHCR but rather to try to clarify the boundaries between protection and assistance, between the political competences of the state in providing protection and private initiatives in offering assistance, as in the case of the UNHCR. So even if the UNHCR's Statute (1950, Chap 1.1) gives a clear mandate to the agency to ensure that refugees have access to permanent solutions, to facilitate voluntary repatriation or assimilation into new communities, this can only be a mandate in *assisting* refugees in achieving these goals by cooperating with the international community and governments. And this is especially clear when we have a close look at the wording used when referring to the work and mandate of the UNHCR.

To begin with, as clarified in Gil Loescher, Alexander Betts and James Milner's book, the UNHCR was created in 1950 with a mandate 'to protect refugees and find a solution to their plight', by covering in particular

two main areas: (1) the UNHCR 'work with states to ensure refugees' access to protection'; and (2) that 'refugees would have access to durable solutions and would be either reintegrated within their country or permanently integrated with a new country' (2008, pp. 1–2). In both cases, protection should be interpreted as assistance to protection, that is, to maintain close collaboration with local states in order to find solutions on behalf of refugees. Another important task of the organisation is to act as 'the guardian of the wider global refugee regime' (p. 2), and again here, it is not clear how a humanitarian organisation might in practice carry out such a legal task, apart from by providing legal advice both to refugees and local governments. If one is to look at the UNHCR's publications, it becomes apparent that protection and assistance are often used interchangeably. The following (long) quotations are rather indicative:

> UNHCR's *raison d'être* is to uphold the fundamental rights of refugees and others of concern and, wherever necessary, to ensure that those rights are protected and respected. […] A key priority is ensuring that those of concern are able to access asylum, and that the principle of *non-refoulement* is respected. It also involves preventing and responding to violence, abuse and exploitation—including sexual and gender-based violence—against the displaced and others of concern; strengthening the protection of refugees within broader migration movements; and maintaining the civilian character of refugee camps. The Office's second strategic objective is to develop an international protection regime. To do so, it promotes compliance with the 1951 Refugee Convention and helps states fulfil their commitments to adhere to international protection standards (UNHCR 2009b, p. 1).

Even if the UNHCR's key function is to 'provide for the protection of refugees', as specified in its Statute, the UN agency acts as a mediator, as a secondary actor, who facilitates refugee protection, a protection ultimately provided by states at their own discretion. In some UNHCR documents, this is made clear while in others, it is not so apparent. In particular, the UNHCR

> shall provide for the protection of refugees […] by: (a) Promoting the conclusion and ratification of international conventions […]; (b) Promoting […] the execution of any measures calculated to improve the situation of

> refugees […]; (c) Assisting governmental and private efforts to promote voluntary repatriation or assimilation […]; (d) Promoting the admission of refugees […] to the territories of States; (e) Endeavouring to obtain permission for refugees to transfer their assets […]; (f) Obtaining from Governments information concerning the number and conditions of refugees […]; (g) Keeping in close touch with the Governments and intergovernmental organizations concerned; (h) Establishing contact […] with private organizations dealing with refugee questions; (i) Facilitating the co-ordination of the efforts of private organizations concerned with the welfare of refugees (Statute 1950, article 8).

If one looks at UNHCR field activities, they clearly relate to programmes of assistance, including the construction of refugee camps, the delivery of food, processes of screening, the delivery of information, and collaboration with states. A look at the instructions to NGOs makes it clear that the UNHCR is referring to assistance despite the constant use of the word 'protection'. In *Protecting Refugees: A Field Guide for NGOs*, jointly produced by the UNHCR and its NGO partners (1999), it is very interesting how 'international protection' is defined: the 'phrase "international protection" covers the gamut of activities through which refugees' rights are secured' (p. 10). The document clearly recognises that 'protecting refugees is primarily the responsibility of States' and that the UNHCR, being a 'humanitarian agency', fulfils its mandate 'by working with Governments and, subject to the approval of the Governments concerned, with private organizations' (p. 13). However, it stresses that the task of the UNHCR is to protect and not to assist refugees by stating that:

> [p]roviding assistance often enables States to accept refugees, since it relieves the States of some of the financial burden of hosting refugees. While assistance, in many cases, has helped ensure protection, it must be remembered that UNHCR's mandate is for protection: to make sure the basic rights of refugees are respected and to find durable solutions to the problems of refugees (p. 13).

In the same document, the UNHCR clarifies those protection activities that the UN agency carries out, including:

> Promoting accession to and implementation of refugee conventions and law; ensuring that refugees are treated in accordance with recognised international standards of law; ensuring that refugees are granted asylum and are not forcibly returned to the countries from which they fled; promoting appropriate procedures to determine whether or not a person is a refugee according to the 1951 Convention definition and to definitions found in regional conventions; assisting refugees in finding solutions to their problems, such as voluntary repatriation, local integration, or resettlement to a third country; and helping reintegrate returnees when they go home; and providing protection and assistance, when asked to do so, to internally displaced persons (pp. 13–14).

One final example to demonstrate that the task of the UNHCR is not one related to protection but assistance can be drawn from Amy Slaughter and Jeff Crisp's article, 'A Surrogate State? The Role of UNHCR in Protracted Refugee Situation' (2009), which surprisingly claims that the work that the UNHCR is undertaking resembles the protection activities of the state, and thus that the UNHCR is acting as a 'surrogate state'.

To begin with, Slaughter and Crisp recognise that since the 1960s the UNHCR's activities have slowly expanded to the point where the host country simply respected the principle of *non-refoulement* as well as admission and recognition of refugee status. More specifically the UNHCR had 'assumed a primary role in delivery and coordination of support to refugees, initially by means of emergency relief operations and subsequently through long-term "care and maintenance" programme' (p. 124). In particular, the UNHCR has taken care of

> registering refugees and providing them personal documentation; ensuring that they have access to shelter, food, water, health care and education; administering and managing the camps where they are usually accommodated; and establishing policing and justice mechanisms that enable refugees to benefit from some approximation to the rule of law. In these respects, it can be argued, UNHCR has been transformed from a humanitarian organization to one that shares certain features of a state (pp. 124–125).

Reading through the text, it seems that the key point of reference for Slaughter and Crisp was not so much the active role of the UNHCR, but the minimal role played by the host state to the point where the services offered inside the camps were definitively of a higher standard compared to the little that states were offering to their own citizens (pp. 131–132). The UNHCR is thus perceived as a surrogate state as it possessed 'its own territory (refugee camps), citizens (refugees), public services (education, health care, water, sanitation, etc.) and even ideology (community participation, gender equality)' (p. 132). What is surprising is that after having recognised the central role played by the UNHCR, the authors also recognised that the organisation has been unable to solve a number of protracted refugee situations, in which refugees have been confined for too long without any possibilities of moving freely and of finding acceptable livelihoods (p. 133). These (unliveable) conditions have encouraged many of them to leave the camp and look for alternative solutions, solutions which in many cases were not better at all. Some found themselves under conditions of exploitation and/or resorted to 'negative survival strategies such as theft and other forms of criminality, the manipulation of assistance programmes, and […] victims of sexual exploitation' (p. 133). Slaughter and Crisp do recognise the benefit of the camp as an emergency response but not as a long-term answer to displacement to the point of affirming that 'the negative aspects of separation often begin to outweigh the advantages as time goes on' (p. 135). This latter statement seems clearly to suggest that we can hardly consider the UNHCR as a surrogate state as it certainly does not replace the state and whatever activities it might offer, they are organised upon assistance. Protection meaning legal protection is something that only functioning states with effective administrative and juridical systems are able to guarantee. Thus, the camp is not a surrogate of a political space as Slaughter and Crisp suggested. As ably discussed in Arafat Jamal's work:

> The tragedy is that the camp that once ensured the life of a refugee becomes, over time, the prime vehicle for denying that same refugee the rights to liberty, security of person and other rights enshrined both in the Universal Declaration of Human Rights and in the refugee instruments. […] Most

> humanitarian workers dealing with protracted refugee populations feel that, whatever the drawbacks of the care and maintenance approach, at least the refugee are protected. By this, they mean protected from re-conduction: from being forced back to the countries in which they may have been hounded, tormented, tortured and raped (2009, p. 146).

To conclude, what the previous pages have attempted to demonstrate is the importance of defining protection and of distinguishing it from mere assistance and charity. The very definition of protection is especially relevant in order to assess whether the solutions for refugees are solutions that protect—with the clear intention of emancipating refugees from their condition of assistance and dependence—or simply temporary or protracted situations that make refugees' lives secure from life-threatening events but do not provide situations conducive to a dignified life. What I am ultimately trying to convey here is to think of refugee protection in the very same way that we think of citizens' protection: protection as legal protection, protection as human rights protection, protection as welfare protection, protection as a condition of emancipation from life-threatening events and emancipation towards a self-reliant condition. If we start from the premise that individuals are rights-holders—any individuals and not exclusively citizens—then it will be easier to move away from the idea that refugees might be approached as disposable bodies under sovereign command.

Concluding Remarks

By looking at the state as the core actor of protection, this chapter has suggested articulating the concept of protection in terms of emancipation. To discuss protection in terms of emancipation is to discuss the key role that the state plays in terms of legal protection by representing the core guarantor of rights and of their effective implementation. By claiming that the state has a central role to play—and here I am certainly not claiming anything new—I am referring not so much to authorising entry into its territory and to applying the 1951 Refugee Convention, but more importantly to taking positive actions to pro-

tect refugees once inside their territory. The line between protection and assistance is especially important here, as well as the language that we tend to use to define what protection is. The tendency to refer simply to 'international protection' is rather misleading as it does not clarify which actions are actions that protect as distinct from actions that merely assist. To elaborate a concept of protection as meaning emancipation—and not simply protection from life-threatening events—aims to suggest that protection is not an activity that can be devolved to the private sector but needs to remain public. While protection includes assistance, assistance does not imply protection, not as long as protection is taken to mean mechanisms that aim to move towards refugees' empowerment and self-reliance strategies.

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4

The Refugee of Protection

The question of defining who the refugee of protection is—or paraphrasing Rancière (2004), who is the subject of protection—is crucial if we are to rethink protection not only by looking at the entities who provide it but also at its beneficiaries. Much has been written on refugees and on their subjectivities, or more precisely on their lack of (political) subjectivities. As Peter Nyers puts it, 'all notions of political agency are, in a word, emptied from refugee subjectivity […] refugee are silent—or rather, silenced—because they do not possess the "proper" political subjectivity (i.e., state citizenship) through which they can be heard' (2006, p. 16). It is the lack of the 'right' citizenship, articulated upon a 'sedentarist metaphysics' (Malkki 1992, p. 31), which has resulted in the construction of the subjects of displacement in negative terms, that is, as deviant and abnormal (Soguk 1999). The lack of refugee subjectivity also becomes apparent when we focus on the three durable solutions envisaged and developed at the UNHCR, namely, voluntary repatriation, local integration or resettlement to a third country. All three solutions have been elaborated upon the understanding that it is for the UNHCR to find solutions for refugees and that the participation of the key beneficiaries is

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minimal. It is the UNHCR in agreement with governments that decide whether the moment is right for refugees to return to their home country, whether to look for resettlement or whether the conditions for local integration exist (see Steiner et al. 2003). With the end of the Cold War and especially with the phenomenon of globalisation, many of the migratory dynamics have changed. Major changes have also been introduced into the UNHCR's responses to refugees: from the resettlement and local integration policies of the 1960s and 1970s to the repatriation responses of the 1990s. During those years, some nine million refugees returned 'home' in Central Africa despite conditions of unsafety, followed in the early 2000s by 'premature repatriations to the former Yugoslav republics and Afghanistan' (UNHCR 2012, p. 130). Over the years, refugees' attitudes have also changed. Refugees are demonstrating a much more pro-active attitude towards finding alternatives. Many of them—and probably all those who make their way to the European Union—are not waiting for someone to find a solution for them; they themselves try to find one, even if not always successfully. Some have suggested that we should define forced migrants' self-initiatives as amounting to the fourth durable solution (see Smith 2004; Crisp 2013).

There is certainly a need to look at forced migrants through different prisms, and possibly in a more positive light by recognising the level of agentic capabilities that refugees are able to exert. Some critical analyses are doing precisely this by devoting great attention to (forced) migrants' modalities of mobility and to their acts of protest (Krause 2008; Nyers 2008a; de Genova 2010; Rygiel 2014; Johnson 2015). Along with this new emerging literature, this chapter will also privilege a focus on political agency under conditions of encampment (see also Puggioni 2014a, b). While this chapter will focus mostly on the theoretical debate, the analysis is closely related to the many conditions of encampment existing in Italy, considered in the next chapter. The concept of encampment used here is very broad, encompassing all those spaces of confinement—including holding centres for the undocumented in which many asylum-seekers have found themselves as well as many forms of unliveable spaces—in which conditions of exclusion, marginalisation, degradation and, at best, only partial respect for legal norms tend to prevail. In other words, attention is given to those unliveable and abject spaces in which it is the language of exclusion, and certainly not the language of rights,

which dominates. The camp is, no doubt, a space of paradox in which conflicting norms and practices coexist in between legality and illegality, control and subjugation, domination and resistance. While some scholars look at the camp as a space of exception whose ultimate aim is to control, subjugate and discipline its forced inhabitants (Hyndman 2000; Diken 2004; Rajaram and Grundy-Warr 2004; Gregory 2006; Minca 2006), other scholars see it as a space in which subjugation and exclusion are resisted (Bailey 2009; Bosworth 2011; McGregor 2011; Rygiel 2011; Puggioni 2014b). This book too follows that trend.

To discuss forced migrants' subjectivities inside camps is certainly a very difficult task as the camp is, by definition, not a place of emancipation but its very opposite: a place of confinement, deprivation, disempowerment and non-future. For instance, Caroline Moorehead, in her book *Human Cargo: A Journey Among Refugees*, looks specifically at the way in which the camp makes refugees 'destitute in possibilities' by not offering any way out. As she put it: 'The poverty of camp refugees is about more than just not having things; it is about having no way in which to get them, and no means of altering or controlling one's own life. Their poverty curbs and crushes all hope and expectation' (2005, p. 156). The question of hope and expectation is certainly a key point as it is precisely the lack of hope for a better life that transforms life inside the camp into bare existence. But at the very same time, it is precisely this lack of hope that drives many to find new possibilities for hoping again for a better future.

A look at the politics of the camp is extremely important in light of the many who, after having crossed the Southern European borders, have experienced not the freedom of Europe but the camps of Europe (see www.migreurop.org). Detention centres for those seeking asylum and/or better living conditions have slowly become an integral part of the new 'biopolitics of otherness' (Fassin 2001, p. 4), whose only concern is to control, contain and punish unauthorised migrants at all costs (Walters 2002; Bigo 2007; Bosworth and Guild 2008; Wacquant 2009; Bosworth and Kaufman 2011). However, prevalent exclusive policies have not remained unchallenged. Public protests, building occupations, hunger strikes and body mutilations are some of the modalities through which asylum-seekers and non-status migrants are contesting and resisting the dominant politics of mobility which sees them as aliens (see Nyers 2008a; Bailey 2009; McNevin 2011; McGregor 2011; Puggioni 2014a).

This chapter looks at the way in which the 'non-life' of camps is resisted, and this is done by providing a critical analysis of Giorgio Agamben's theorisation of the sovereign-power/camps/*homo-sacer* triad (1998), which in the past has triggered an animated academic debate. However, before engaging with the camp, attention will be given to the question of political subjectivity and the space of the political in general. What will be advocated here is that there is a need to move away from the association of the concept of the political with the holding of citizenship, as critical citizenship literature also suggests.

Public Life and the Space(s) of Politics

Since its early formulation in Greek philosophy, political life, and political participation in general, were inscribed in exclusivist processes in which clear lines between members and non-members were drawn. More specifically, the institution of citizenship was to '*draw the outline of the political community*, by defining who belongs to and who is excluded from the civic body' (Magnette 2005, p. 7, emphasis in original). Only the citizens were accorded the political capacity to participate and determine the fate of the polity (Shafir 1998). In his genealogical investigations, Engin Isin (2002) clearly illustrates how the concept of citizenship was constructed on alterity—that is, by constructing a particular groups of people as immanent outsiders. By constructing identity upon a logic of exclusion, non-citizens were portrayed as the negative opposite of the citizens, whose identity was built on the logic of exclusion. As Isin has put it:

> The logic of exclusion presupposes that the excluding and the excluded are conceived as irreconcilable; that the excluded is perceived in purely negative terms, having no property of its own, but merely expressing the absence of the properties of the other; that these properties are essential; that the properties of the excluded are experienced as strange, hidden, frightful, or menacing; that the properties of the excluding are a mere negation of the properties of the other (2002, p. 3).

It was especially with the establishment of the modern world-system that the logic of exclusion on which citizenship was founded became apparent (Wallerstein 1995). Although historically the possession of citizenship was taken to be universally applicable, as representing the 'quintessence of the modern individual's political emancipation and equality in the eyes of the law' (Stolcke 1997, p. 61), such equality had a limited applicability. It referred not to equality among individuals but to equality among citizens who belonged to the very same sovereign state, and among these citizens some were recognised as more equal than others (Cole 2000). What made citizenship especially exclusivist was the idea that membership of the political community was granted only to those belonging to it, a belonging which could not be acquired merely according to the will of individuals but required some primordial sense of (national) attachment and identification (Rutherford 1990; Mouffe 1992; Benhabib 1996). It was precisely from this sense of identification and belonging that the idea of citizens' political engagement emanated. In particular, it was the possession of citizenship that guaranteed not simply access to the public space but transformed life into meaningful life—that is, into political life. As articulated by Giorgio Agamben, the Aristotelian definition of the *πόλις* (*polis*) was founded not only upon the distinction between life (*zēn*) and good life (*eu zēn*) but more importantly upon the distinction between *zoē* and *bíos*—that is, between the biological life and the politically qualified life (1998, p. 7). Following the Aristotelian philosophical tradition, Hannah Arendt understood the political community not simply as the space in common but as the only space in which the citizen's identity could properly flourish. For Arendt (1958), the citizen's primary source of identity was located within the political and public sphere. It was here where the citizens could actively participate in the conduct of the(ir) political community, in which political ties between members were based on 'relations of civility and solidarity' (Passerin d'Entrèves 1992, p. 151). For Arendt, what held people together as a political community was 'not some set of common values, but the world they set up in common, the spaces they inhabit together, the institutions and practices which they share as citizens' (p. 153). Public space, for Arendt, was not simply *a* public space, but *the* public space established by the citizens, whose defining attribute was their being

political. It was the engagement in the public space that transformed individuals into citizens, into political actors whose primary source of identity was precisely located in the common and 'shared world' (1967a, p. 310)—a shared world constructed through citizens' direct participation in politics, in the sense that to be engaged in politics meant also to be physically present in the public space (Canovan 1985, p. 635). 'To act', for Arendt, was to act politically and, most importantly, to share the acting with fellow citizens, in the sense that 'political action is always a matter of interaction: the meeting and crossing of different opinions and initiatives that precisely concern a "shared world"' (Williams 2015, p. 38). And by acting together, citizens 'disclose unique identities and so realize the uniquely human capacity for individuality' (Cane 2015, p. 55), that is, a unique capacity as citizens.

The idea that citizens freely gathered together in the public arena and engaged in politics has many elements in common with the analysis elaborated in *The Structural Transformation of the Public Sphere*, originally published in 1962, in which Jürgen Habermas investigated 'the structure and function of the *liberal* model of the bourgeois public sphere' (1989, p. xviii), which emerged in early modern Europe. The public sphere, for Habermas, was the arena in which 'private persons' gathered together and 'sought agreement and enlightenment through a rational-critical public debate' (p. 43). The public space was conceived as 'an institutionalized arena of discursive interaction' (p. 57) in which private persons were free to discuss and deliberate common problems, express criticism against the sovereign authority—no longer perceived as *legibus solutus* (not bound by the laws), as in the *Ancien Régime*—and willing to be bound by the principle of truth (and not absolute power) according to the formula: '*veritas non auctoritas facit legem* (truth not authority makes law)' (p. 53). For Habermas, the public sphere constituted a space of equality and reason to which *any* private individuals had access, and by entering it, individuals were to be recognised as legitimate speaking subjects. To quote Habermas extensively:

> by communicating with each other in the public sphere […], confirmed each other's subjectivity […]. For as a public they were already under the *implicit law of the parity of all cultivated persons*, whose *abstract universality*

> afforded the sole guarantee that the individuals subsumed under it in an equally abstract fashion, as "common human beings". […] The bourgeois public's critical debate took place in principle without regard to all pre-existing social and political rank and in accord with universal rules. […] At the same time, the results that under these conditions issued from the public process of critical debate lay claim to being in accord with reason; intrinsic to the idea of a public opinion born of the power of the better argument (p. 54, emphasis added).

Habermas' account of the public sphere—as rational, equal and free—certainly represents a highly idealised account, which he himself recognised when referring to 'the implicit law of the parity' and of an 'abstract universality'. What is problematic is not so much that Habermas did not acknowledge that the bourgeois public sphere was one of the many alternative public spheres that existed in modern Europe (p. xviii), but, as articulated by Nancy Fraser, that 'he assume[d] that it [was] possible to understand the character of the bourgeois public by looking at it alone, in isolation from its relations to other, competing publics' (1990, p. 78, note 9). Building on the historiographical works of Joan Landes (1988), Mary Ryan (1990, 1992) and Geoff Eley (1992), Fraser highlights the way in which Habermas' concept of the public sphere is articulated upon 'a number of significant exclusions' (Fraser 1990, p. 59), in the sense that various groups—excluded on the basis of gender, ethnicity and class—created their own alternative and non-official public spheres. Not only was the public sphere discussed by Habermas never represented by one single public, but this public was 'always constituted by conflict' (Eley 1992, quoted in Fraser 1990, p. 61)—by conflict between the bourgeois public and 'a host of competing counterpublics, including nationalist publics, popular peasant publics, elite women's publics, and working class publics' (Fraser 1990, p. 61). Habermas' idea of the public sphere, as put by Harold Mah, is clearly articulated upon 'a double fiction': the fiction that one single public sphere was 'genuinely universal', as well as the fiction that individuals, by entering the public sphere, put aside their identity, their history and their sense of belonging (2000, p. 168).

In short, the question of what constitutes the political space as well which subjects are to be considered as political was traditionally resolved

by looking at the public sphere as one single and common space shared by an homogeneous group of (political) citizens. Against this homogenising narrative lays a different historical reality made of a multiplicity of counterpublics articulated by a variety of (marginalised) groups, and forced migrants are one of these groups.

Enacting Citizenship

Despite the rich literature on migration studies, the traditional equation of the political subject to the citizen has long determined the marginalisation of many instances of political engagement in which the key actors were migrants rather than citizens. In the attempt to make non-citizens' acts visible, part of the current literature has shifted its attention to Engin Isin's concept of 'acts of citizenship' by looking, in particular, at the way in which 'subjects transformed themselves into citizens' (2008, p. 18). Within this literature, what matters is not so much the transformation of subjects into legal actors but the processes through which the (acting) subjects are constituted through the process of acting. By focusing attention on the many acts through which citizenship is effectively enacted, what is asked is not 'who *is* the citizen?', but indeed 'what *makes* the citizen?' (Isin 2009, p. 383). By asking questions related to the process of 'making', Isin is especially interested in the transformative modalities through which subjects constitute themselves as political actors. And this process takes place through struggles which disrupt current perceptions of the political by transforming, at the same time, marginalised groups into new actors. As articulated by Andrijasevic:

> suggesting that we start the investigation of citizenship from struggles of marginalized groups, […] "acts of citizenship" suggests that it is precisely acts that produce subjects as citizens. The key issue is, then, not to think of the "doer" prior to the "deed" but rather to examine the process and the acts through which new actors emerge (2013, p. 57).

This shift of focus entails, for Andrijasevic, a 'form of methodological intervention into how citizenship should be studied', as it encourages a

'move from citizenship as a status—and hence institutionally granted—to citizenship as a process through which subjects, by claiming rights, and regardless of their citizenship status, constitute themselves as citizens' (p. 50). In particular, it is through acting that 'actors actualize acts and themselves through action' (Isin 2008, pp. 36–37). In other words, individuals are not recognised as acting subjects until they act as such, that is, until they break with 'already written scripts' and create new and disruptive scripts (p. 38). In this respect, acts of citizenship represent a new framework through which to explore 'the ways in which citizenship is created anew—not necessarily in an institutionalized legal form but in a political form that contests the existing institutional order' (Aradau et al. 2010, p. 957). However, if acts of citizenship are those acts which 'rupture social-historical patterns' (Isin and Nielsen 2008, p. 2), how are we to define more ordinary acts enacted by non-citizens? Isin's distinction between 'active citizens' who engage with ordinary acts of citizenship and 'activist citizens' who engage 'in writing scripts and creating the scene' (Isin 2008, p. 38) does not really break with the traditional citizen/migrant opposition. The citizen continues to be seen as an acting subject, whether active or activist, while the non-citizen's enactment is worth considering only at the point at which it creates a rupture, it creates something revolutionary and unpredictable.

While reading the rich literature on acts of citizenship, there is a strong sense that (a) what matters is more the acts than the acting subjects and (b) that the key question, whether non-citizens are also political subjects, is left somehow undetermined as if it is sufficient to define the acts in order to solve the question of political subjectivity. What is contended here is that the question of agency might not be solved simply by separating acts of citizenship from the subjects of citizenship, as this separation does not seem to help in breaking the historical opposition of citizen/migrant, active/passive, political/apolitical. What is advocated here is that perhaps we need to rethink the concept of the political and start looking at migrants not from the perspective of the country of destination but from the perspective of the country of legal membership, or from the country of former membership as in the case of refugees. By conceptualising migrants, including forced migrants, as always already political subjects, we will be in a better position to recognise their political engage-

ment with the many public spheres that political communities are made of, in the very same way as we do with (active/activist) citizens (see Isin 2009) as well as with marginalised counterpublics. Perhaps what many (forced) migrants are challenging with their many acts of contestation and resistance is not so much they too are political subjects but the very idea that the crossing of international frontiers radically alters their way of being political. Even if (forced) migrants, by entering a new territory, acquire a new legal status—the status of (regular/irregular) migrant to which an apolitical behaviour has traditionally been attached—this new status should not prevent them from *continuing* to think and act as political actors, as citizens, as they previously did in their own country.

A very interesting example of migrants bringing their politics with them has been articulated in Richard Bailey's analysis when looking at the many acts of contestation inside Australian detention centres. To quote Bailey extensively:

> Despite the harshness of the treatment they faced, detainees in Australian Immigration Detention Centres showed no respect for the Government's attempts to contain them. On the decks of leaky boats they resisted attempts by the Australian Navy to turn them back. In serious danger at sea they engaged in hunger strikes and sabotage (Marr and Wilkinson 2004). They brought their politics across the threshold of the camp with them. Iranian trade union activists used their skills and experience to form committees and implement strike action. Iraqi leftists produced analyses of the camp and their prospects for freedom and African journalists translated them and turned them into bulletins. In the desert, behind barbed wire, under constant surveillance and subjected to brutal and unpredictable violence, their politics flourished. Secret networks planned escapes. Elections were conducted to facilitate representation. Mass meetings were held to decide action with translators relaying discussion across language and cultural barriers. As a result of this flourishing, their politics, their language and at times their bodies overwhelmed the fences and spilled into Australian cities (2009, p. 114).

The idea that detainees have brought their politics with them is extremely interesting as it causes us to reflect on the political agency of migrants, a political agency that does not simply start anew in the (foreign) country of arrival but continues, perhaps with different modalities, in the country

of destination. If the very act of migrating should be read as an act of agency—as, for instance, discussed in Sandro Mezzadra (2006, 2011)—should we not expect to see some agentic continuity also in the country of arrival? To put it differently, what is going to happen to our political imagination if we start looking at (forced) migrants through their eyes as (if still legally) citizens? Does the act of migration erase their perception of being political? Wouldn't it be logical to expect that (forced) migrants would still engage politically, if they have done so also in their country of nationality? Shouldn't we also expect that (forced) migrants would exert political agency within a political context that presumably respects rights and liberties? Seen through these lenses, political engagement—including acts of citizenship—does not necessarily transform (forced) migrants into political subjects; (forced) migrants do not *become* political, as perhaps they have never stopped being political. The problem is that, traditionally, the citizen and the migrant have been considered as two distinct and irreconcilable legal figures to which some constitutive attributes have been attached to them. The citizen was, and continue to be, seen as political while the migrant was not, as if citizenhood and migranthood could not coexist in the very same (legal) person. And here I am referring at the possibility for a migrant to act, live and think as a citizen, that is, in the very same way as s/he used to act, live and think in his/her society of origin and/or act, live and think according to new principles, modalities and discourses appropriated in the society of destination. To conclude, the question of who is political, and especially the extent to which (forced) migrants are to be recognised as subjects of the political is highly relevant for any analysis which aims at discussing who the subject of protection is. The question is thus not simply to recognise which acts are political but how to break from traditional assumptions which see the citizens as always already political simply because of their formal legal status.

Camps and Bare Life

The idea that (forced) migrants display political subjectivity is generally contested, and it is more so when considering political subjectivity under conditions of encampment. This perspective is certainly rather anomalous, especially given the dominance of a biopolitical literature on camps

as well as a literature which sees non-citizens as non-political subjects. As already articulated in Joe Rigby and Raphael Schlembach's work '[i]mmigrant protest is per definition impossible' (2013, p. 158), and even more so any protests inside holding centres and refugee camps. Before engaging in an in-depth analysis on acts of protests and contestation, it is worth recalling the key argument articulated in Agamben's *Homo Sacer* (1998), and especially his main points on camps and bare life.

To begin with, Agamben defines the camp by looking not so much at the technologies of power displaced in the so-called *Konzentrationslager* but by focusing on the politico-juridical mechanisms that created the legal preconditions that made the camp possible (p. 166). What he has investigated was not the rationale behind those atrocities but rather the legal procedures that permitted the deployment of such a totalising power that could *legitimately* transform individuals into living dead (p. 171). For Agamben, only the introduction of the state of exception and of martial law could have made such atrocities possible. It was the proclamation of a state of siege—and the consequent suspension of some fundamental rights—that provided the juridical foundation of the camp (pp. 166–169). Agamben reads the camp as the state of exception *par excellence*, in which political life coincides with bare life, that is, a life stripped of its political attributes. What makes a camp a camp is not necessarily the violence perpetrated inside it but rather its politico-juridical framework. The camp thus becomes not only the space where the exception becomes the norm but the space where sovereign power may dictate *arbitrarily* which politics of life to apply and hence a space where the distinction between human and inhuman no longer seems to make sense. It is at this point that the sovereign-power/camps/*homo-sacer* triad becomes clear. The sovereign has the power to proclaim the state of exception, the most extreme example of which is represented in the politico-juridical structure of the camp. It is here, in the camp, that the sovereign deploys its power to transform political life into bare life, into a life that Agamben identifies in the figure of the *homo sacer*.

Drawing on Pompeius Festus' *De verborum significatione*, Agamben reviews the archaic figure of *homo sacer* in order to assess his 'essential function in modern politics' (1998, p. 71). The notion of *homo sacer* is drawn from Roman tribunitian law, according to which '[t]he sacred

man is the one whom the people have *judged on account of a crime*. It is not permitted to sacrifice this man, yet he who kills him will not be condemned for homicide' (p. 71, emphasis added). In light of Festus' definition, Agamben reads this figure as someone whose life is not worth living because of his double exclusion: exclusion from the *ius divinum* and exclusion from the *ius humanum* (p. 73). However, it is the sovereign power—whose original and fundamental activity is the production of bare life—that can decree, at will, which life is worthy of preservation and which is not. For Agamben, there is no difference between those who have been sentenced to death and those who have been interned inside camps, 'as for both their life may be eliminated at any time without any crime' (p. 159). However, while the life of *homo sacer* is considered not worth preserving only after a judgement has been made, those interned in current camps are treated *as if* they were *homines sacri* irrespective of the crime committed, if any. Here again Agamben's attention is on the sovereign authority and not on the juridical status of the two groups. Though recognising the implications of the immunity granted to anyone who might kill *homo sacer*, according to the Roman tribunitian law, the juridical transformation into *homo sacer* takes place because of some possibly serious crimes for which he has been condemned.

If this is the case, it is not the *arbitrary* power of the sovereign that transforms a man into a sacred man—as discussed in a great part of the literature—but, in a sense, he himself who transforms his own life into bare life by committing a serious crime. In other words, following Agamber's own words, the figure of the *homo sacer* is taken from Roman tribunitian law, that is, it has a legal grounding and is not simply articulated upon the sovereign decision. From this perspective, the figure of the *homo sacer* seems best represented not so much by refugees, irregular migrants or Guantánamo Bay detainees—as some scholars argue (Edkins 2000; Perera 2002; Rajaram and Grundy-Warr 2004; Gregory 2006; Nair 2010; Tagma 2010)—but by those criminals condemned to the death penalty because they have been found guilty of a serious crime. As with *homo sacer*, it is their unspeakable and unbearable crimes that have transformed their political life into a *juridical* worthless life; as with *homo sacer* again, the executioners will not face prosecution for having terminated their life. Thus, the issue of arbitrariness—on which most of

the literature on exceptionalism and bare life has been based—should be given more critical attention. From my reading of *Homo Sacer*, the issue is not simply, as argued in Fitzpatrick, that

> *Bare life is […] definitely apart from the law*. It can, and indeed can only be, taken away without the law's authority or mediation. […] Killing him does not involve the law. His life and its loss entail, or no longer entail, the mediations of the law (2005, pp. 49, 54, emphasis added).

The issue is not so much whether the killing is mediated by the law—which was the case with *homo sacer*, as the judgement represents precisely such a mediation—but that the sovereign power has the authoritative ability to decree the state of exception. It is through the state of exception—which is 'definitely apart from the law'—that any life might be transformed into bare life and treated *as if* that of a *homo sacer*. The arbitrariness of the political act follows the state of exception: whatever happens under the exception is arbitrary. It is thus not the camp *per se* that transforms political life into bare life, but it is the politico-juridical condition of the camp that makes it possible. What matters for our discussion is not so much the politico-juridical structure of the camp and the way in which bodies are transformed into naked bodies but more importantly the reaction to that (forced) transformation.

What are the relations inside camps? What kind of life becomes possible under detention? And more importantly, is it possible to resist the state of exception that dominates current detention centres? From my reading of Agamben's *Homo Sacer*, resistance inside camps is ruled out. The exclusive focus on sovereign power's ability to produce bare life makes *homo sacer*'s potential resistance against subjugation impossible. As skilfully articulated by Kalyvas, in 'assimilating political relations to a single master concept, that of sovereignty, Agamben can no longer localize the contingency of political and social struggles. […] His approach […] assumes an almost totalistic, agentless history' (Kalyvas 2005, p. 122). Thus the centrality given to sovereign power helps us neither in understanding and evaluating possibilities of dissent from within, nor in looking at micro-forms of resistance. And the case of the internment of some 17,000 Albanians in August 1991 in the stadium of Bari (Italy), as recalled

in Agamben's work (1998, p. 174), might be used as an example of this. Some 1900 Albanians—not mentioned in his book—vigorously refused forced repatriation and fought violently against the police to the point of compelling Italian authorities to respect the principle of *non-refoulement* (*La Repubblica* 1991). The Albanian case, as well as the many (global) protests that are becoming a daily occurrence within detention centres, seems to suggest that the transformation of political life into bare life is not an instantaneous and unproblematic process (Nyers 2008b; Owens 2009, 2011; Bailey 2009; McGregor 2011; Ramadan 2013). Even in the Nazi camps, where 'the most absolute *conditio inhumana* that has ever existed on earth was realized' (Agamben 1998, p. 166), acts of dissent and insubordination did take place, and the camps' spatiality was crucial in encouraging actions, reactions or inactions in each camp (see Stadtler 1975; Crome 1988; Langbein 1994; Marrus 1995; Fenélon 2008). As well illustrated in Kertész's *Essere Senza Destino* (*Sorstalanság*, literally *Fateless*) (2002)—a semi-autobiographical story of Gyurka, a 15-year-old Hungarian Jew, who experienced the camps of Auschwitz, Buchenwald and Zeitz—each camp was different. As he himself acknowledged, 'quite naturally' life is 'easy' only in the working camp, whose ultimate aim is completely different from that of the others (p. 98). Gyurka's detailed description of the three types of camp—and especially his slow journey from life to a living death—offers a glimpse of these differences in terms of human/inhuman relations, local practices, internees' resignation and even medical attention. The narrative of Kertész's novel changes completely in the final part, which describes Gyurka's entry into a hospital facility inside the camp, a space that seems an 'other' space, a space of colours and humane relations, a space where doctors and medical attendants demonstrated special care and even a humane approach (pp. 161–198). This example can be read not simply as an illustration that life in the camp depends on 'the civility and ethical sense of the police' (Agamben 1998, p. 174) but more importantly that neither a camp's forced inhabitants nor administrators are 'always willing instruments in the production of the repressive space' (Papastergiadis 2006, p. 438).

This is precisely what is also happening in relation to Italian conditions of encampment. Acts of protest are not simply coming from insiders—although they have been the most active—but also from *some* police

forces, doctors and lawyers who have been involved in detention centres, either as insiders or as outsiders, from NGOs, migrants' networks, as well as trade unions. Their works have proved, at times, crucial in denouncing abuses, assisting asylum-seekers and the undocumented and ensuring their rights were respected (see Melting Pot Europa, ASGI, and LasciateCIEntrare portals).

Resisting the Impossible?

Given the violent spatiality of the camp, does resisting its violence amount to resisting the impossible? The work of Edkins and Pin-Fat represents a good starting point for our analysis, as they themselves asked a similar question: can 'sovereign power […] be challenged at all'? (2005, p. 2). To begin with, Edkins and Pin-Fat developed their analysis by focusing on a very specific event: the protest, including hunger strikes and some instances of bodily mutilation, that Abbas Amini initiated in May 2003 in opposition to British asylum politics (pp. 1–2). The protest lasted only a few days. As Amini explained during an interview, he gave up his actions, because 'the pressure on me was so huge that […] I thought there was no hope' (p. 2). According to the authors, the relevant event was not so much the courage of contesting and challenging UK asylum politics—albeit for a very short period of time—but Mr Amini's decision to desist from his dissenting (re)action. Edkins and Pin-Fat's focus was not on resistance *per se* but on the effectiveness of resistance. The key question they looked at was not whether sovereign power could have been challenged but whether it could have been *successfully* challenged, and whether such a challenge could have impacted on national politics. As they put it, 'To what extent are actions of the type we have elaborated likely to be effective? Are they anything more than individual acts of protest that can have little impact on collective politics?' (p. 22). The focus on outcome has led Edkins and Pin-Fat to understand the relations inside detention centres as dominated not by relations of power but by relations of violence. However, the way in which they adopted the Foucauldian distinction between relations exerting power and relations founded on violence (Foucault 1994, p. 342) seems somewhat problem-

atic. The claim that camps—including today's detention centres—are dominated not by relations of power but exclusively by relations of violence against which no contestation is possible seems to disregard many (successful) protests. To use their own words,

> Certain, albeit limited, parallels can be drawn between detention camps and the concentration camps, if only in the sense that both can be identified as examples of modes of being *where there are no power relations* and *resistance is impossible*: sites that mark a state of exception (Edkins and Pin-Fat 2005, p. 17, emphasis added).

Resistance, for Edkins and Pin-Fat, is impossible, because the necessary precondition for any resistance—freedom—is missing. But what is the freedom to which the authors might be referring? Should confinement be evaluated only by considering the physical condition of constraint? Or should we look at confinement by way of evaluating also the conditions of evasion? According to Michel Foucault, individuals are free as long as they are able to act otherwise. Slavery itself is founded on relations of violence *unless* there exists 'some possible mobility, even a chance of escape' (Foucault 1994, p. 342). Thus, Foucault's distinction between power exercised on free subjects and power (i.e. violence) exercised on men in chains seems founded not so much on the technologies of violence as on the possibilities of resisting those very technologies. The abolition of slavery, or at least old forms of slavery, was achieved precisely because of 'some possible mobility', some way of escape, which originated even in daily and apparently insignificant acts, which were not necessarily connected to successful political outcomes.

Despite Edkins and Pin-Fat's argument that 'resistance is impossible' (2005, p. 17), because relations of violence always already predominate inside camps, the authors discuss two modalities of resistance (see also Zevnik's critical account, 2009), which consist

> first, in a refusal to "draw the line" or make distinctions between forms of life of the type upon which sovereign power relies; and, second, in what we call *the assumption of bare life*, that is, the taking on of the very form of life that sovereign power seeks to impose (p. 3, emphasis in original).

Edkins and Pin-Fat read lip, mouth and ear sewing as 'examples of challenges that assume bare life', in the sense that these acts are read as representing simply 'a re-enactment of sovereign power's production of bare life' (p. 20). Mr Amini's act of sewing his mouth, causing others to speak, is not seen as an act of dissent in a proper sense because, by resorting to such a gesture, he ultimately accepted 'the very bare life that sovereign power impose[d] on him' (ibid.).

My reading of detainees' acts departs from this understanding. The act of sewing lips, ears and eyes, as well as going on hunger strikes and/or remaining silent during the period of detention are interpreted differently. Making oneself voiceless and agentless—or more generally embracing sovereign power logic—might *also* be read as a strategy of apparent conformity and/or as a modality which denounces the very same violence enacted by the sovereign. The appeal to principles of human rights, equality and justice, which are some of the key demands of people in detention, might be read not only as an acceptance and reaffirmation of the dominant order—and thus of the sovereign logic—but also as a strong claim against the inconsistency, illegitimacy and even illegality of some of sovereign acts (see Swyngedouw 2011; McNevin 2011; Puggioni 2014a, b). As articulated by some protesting voices against the Italian Centres for Identification and Expulsion (CIE), what is resisted is the logic of the state of exception, and thus the arbitrariness (also in drawing lines) of the sovereign acts. For instance, the historical success of anti-slavery, anti-colonialism and women's movements was also due to the use of the dominant language and principles, which were instrumental in demonstrating their arbitrary application according to different groups, ethnicities and/or territories. What is suggested here is that acts of dissent and resistance might not take the form of an open and declared dissent that is easily recognised and also that these acts should not be judged according to immediate outcomes. As rightly articulated in Amoore (2005), while some forms of resistance are clearly identifiable as such, others are not. As she put it,

> We tend now to clearly identify street demonstrations, protests and internet activities' websites, for example, with a form of trans-border 'anti-globalization'. Yet, resistance may not be quite so easily classified in this

> way. Much less visible have been the ordinary and commonplace acts of resistance that blend into people's everyday lives so that they become almost indistinguishable from coping strategies, compliance, co-option or acceptance (Amoore 2005, p. 1).

Perhaps a look at the quotidian as already proposed in the work of de Certeau (1984), Scott (1990) and Bleiker (2000) might help us to read acts inside detention differently.

Dissent and Coping Strategies

The work of de Certeau (1984) offers a very interesting analysis of the way in which subalterns and the excluded attempt to subvert dominant systems from within, a subversion that does not always, and necessarily, presuppose its rejection or radical transformation. The important contribution that de Certeau's work provides is its focus on less visible anti-disciplinary practices whose modes of operation aim to conform to rules 'only in order to evade them' (p. xiv). More specifically, de Certeau investigated the way in which 'users—commonly assumed to be passive and guided by established rules—operate' and particularly the way in which 'users who are not its makers' manipulate a given system (pp. xi, xii). The focus on the concept of users might provide a new perspective from which to understand the politics of the camp and its counter-practices. The concept of 'users', in particular, refers to everyone who is inscribed within a specific socio-economic order, irrespective of his or her political status. If we focus attention on the concept of users—and not so much on the political ascribed capacity of the users—we will be able to uncover a plurality of subjectivities that should no longer be seen in negative terms as 'wasted' or 'liquid lives' (Bauman 2004, 2005). Moreover, the concept of users facilitates the investigation of specifically those people who have experienced subjugation, exclusion and/or invisibility but who nonetheless engage with dissenting practices. What interests me here is uncovering the way in which camps force users to resist processes of invisibilisation and to denounce serious abuses. This is done through a variety of modalities enacted according to the way in which the spatiality

of each camp is perceived and lived. A look at everyday practice inside camps enables an uncovering of the way in which the so-called 'public transcripts' and 'hidden transcripts' (Scott 1990, pp. 1–17) are lived and the way in which detainees resort to both. Given the violent spatiality of current holding centres, there is a need to focus on open and visible acts against the constituted power and its representatives, as well as to uncover what happens in 'private' away from official control. Those who do not hold power are not necessarily powerless, though they might perform their assigned (passive) role for strategic reasons, and not simply because they have accepted their condition of subjugation. Such is certainly the case with many detainees who have remained silent throughout their period of detention until they believed it was time to react. The stories of Carlos and Lilia are good examples of precisely this strategy. The brief stories recalled here are stories from the Centres for Identification and Expulsion, in which the undocumented—or perhaps better the differently documented—are held before forced removal. The stories selected represent, so to speak, examples of resistance against the impossible, that is, against the most unliveable and extreme cases known. It was documented by the Commissione de Mistura (2007)—the first official commission that assessed living conditions inside Italian camps, including the reception centres of asylum-seekers—up to recently, some one-third of CIE's population was made of asylum-seekers.

Carlos spent 60 long days in the Bologna centre, and at the end of his last compulsory day of detention, he was taken to Milan airport, together with two Ecuadorians. He waited until he was in the aircraft to start shouting and expressing all the anger that he had kept inside during the previous two months. He shouted loudly for 30 minutes, with the result that he was removed from the aircraft, while his two silent companions were sent back. As he puts it:

> I do not want to go away. […] I have family here. I do not want to go to my país. […] I have shouted […] because it is unfair to be locked for two months in a prison […] and afterwards they take you away. […] If they were to take me away, they should have done it after five days. […] it is unfair. […] About us, they think that we are thieves, we are criminals. But we have not come here for killing anyone, […] I have done nothing! I have not robbed anyone, I have not killed anyone (Rovelli 2006, pp. 38–39).

Right until the end of his detention Carlos refrained from reacting or participating in the many protests that occurred inside the centre. His anger, frustration and desperation, as well as his determination to resist unjustifiable treatment—being detained without having committed a crime—came out only at the very end. His reaction emerged once he finally believed that it was time to do something. This is precisely what he learned inside the centre: one might protest inside the camps, go on hunger strike, shout inside the aircraft, claim a different nationality and/or inflict injuries on one's own body in order to be taken to hospital.

Lilia's story is very similar to Carlos', in that she also remained silent during the whole period of detention and started reacting just before being forcibly expatriated. Lilia initially refused to take the flight ticket. A second attempt was made to force Lilia to board the aircraft the following day, and on this occasion she kept screaming: 'I do not go away'. What was unacceptable to Lilia was the way in which she was treated:

> I couldn't understand why they took me away like a criminal. […] Early one morning, they came and took me to the airport. […] I screamed, 'I do not go to Moldavia, I am Russian; my passport is a fake, I am Russian.' […] I am Russian and I would not go even if I were Moldavian (Rovelli 2006, pp. 88–89).

These two examples indicate that this lived and violent experience create possibilities of acting otherwise and establish a 'network of an antidiscipline', as suggested in de Certeau (1984, p. xiv). The camp is, thus, read as a site which forces users to learn, share and exchange modalities of operating for resisting camp violence. Success is not evaluated here according to immediate outcomes and thus according to policy changes. The recognition that acts of dissent contest a dominant politics of aliens should already be considered as a success. As Bleiker puts it in his work (2000), in which he discusses the way in which in Prenzlauer Berg poetic dissent contributed to the disintegration of the East German regime, what matters is the way in which

> forms of dissent have the potential to transgress boundaries and engender human agency, not by directly causing particular events, but by creating a language that provides us with different eyes, with the opportunity to reassess anew the spatial and political dimensions of global life (2000, p. 45).

Dissent against detention might therefore provide a different perspective from which to reconceptualise a dominant politics of aliens and thus a dominant politics of citizenship. A look at camps, not from a sovereign power perspective but through the lens of migrants' lived experience of detention, might offer new insights from which to read the politics of the camp. A politics of the camp articulated upon the premises that citizens and (forced) migrants can (and even should) be treated differently: that the rights granted to citizens are different from the rights granted to migrants, that the respect of human dignity due to the citizens is different from the respect due to the migrants. And it is this very approach, articulated upon the principle of equality of citizens and inequality of the migrants, that is strongly contested, a contestation that is enacted through a variety of modalities. Hunger strikes, the sewing of lips, mouths and ears, the writing and dissemination of poems (see al Assad 2002; Boujbiha 2002), shouting at airports, the forging of identity documents, as well as the courage to denounce camps' violations, abuses and injustice, are seen here as important acts of contestation and defiance—and not simply 'individual acts of desperation' (Ellermann 2010, p. 409)—which attempt to make use of all available gaps in the system for protesting, resisting and uncovering the camps' violent spatiality.

Testimony as an Act of Resistance

A recurrent claim that emerges from a close reading of detainees' stories is a strong desire to defend and reaffirm their human rights and their belonging to a common humanity. Why have we been treated like criminals? What recourse is left to people who are made voiceless? Who can defend us here? Shouldn't human rights be respected in Europe? These represent some of the questions which the Others (together with a few nationals) have the courage to ask (see www.meltingpot.org). Their voices and actions denounce the many abuses, acts of violence and unlawful treatments that have not gone unchallenged, though not always successfully. The many written protests articulated in official letters and addressed to local authorities offer a picture of the climate of violence under detention as well as the determination not to remain silent in the

face of abuses. The following excerpt of the letter written in May 1999 by Stefka Stefanova, and subscribed to by many detainees from Eastern Europe, held in Milan, is a good example:

> I and all those who have subscribed with me to this article have witnessed an awful drama […] a man climbed up to the roof, he wanted to hitch up because they wanted to take him back to his country. His wife and his child, born in Italy, were watching him and crying on the other side of the barbed wire. An act which cannot be forgiven to those in charge of this camp. […] the people who arrive at such a point of desperation are not suicidal people but have been encouraged to commit suicide. Foreigners come to Italy looking for a better life, for a job, to be able to take care of his/her family, […] where are all these possibilities? I wish that all those who read this will understand that it is hell here. In all my life I have committed no crime for me to deserve being jailed and treated as a thief or killer, to be beaten inside these police headquarters. Where can I denounce this? Who might protect me? Who am I here? An animal, like all foreigners who are here in Italy without documents because they do not have the money to buy them. Who are those legal tutors who might jail unprotected people who […] do not harm anyone? […] We are human beings, like all of you, and we ought to have the very same rights. We live in the very same world, but then why? For being treated from you and being locked up in a camp as was once done by Hitler with the Jews! […] The difference between his camps and these centres in Italy is that there they were killed, and we are sent back to our countries. And the close resemblance is the hate against people who are different from you (Stefanova 1999).

What often tends to remain concealed in current analyses of detention is that many of the actions and verbal protests inside detention centres are conscious acts of political dissent against unjust and unacceptable illiberal politics (see also McGregor 2011; Rygiel 2011). This is especially the case for those who have found themselves in possession of irregular status because of the flexible economic market that encourages illegal procedures, such as the absence of regular employment contracts (see Reyneri 1998, 2004; Quassoli 1999; Schuster 2005). The testimonies provided below offer us a quite different story of what happens under detention and the courage that foreigners have in denouncing those

abuses, which are either removed from public scrutiny or are not seen by public eyes for what they are: unjustified and unjustifiable violence. The stories of Said and Sajjad are exemplary. Both of them were determined to speak up after having assisted with the violence of the Italian police, which was confronted on many occasions with strong resistance. While Said refused to be silent and to leave his children, born in the country, and the city of Bologna after 15 years (Rovelli 2006, pp. 44–49), Sajjad could not remain mute after the terror, violence, body mutilations and brutality that he and many others suffered in the Regina Pacis CPT in Lecce (Southern Italy) (pp. 74–82). Both Said and Sajjad used the same 'weapon' against abuses: their voice, a voice that was articulated through legal procedures, which is precisely what the abusers found intolerable. As Said has put it:

> those who are voiceless are left with one option: scream louder and this is unacceptable for those in command positions. […] One guy did not want to stop screaming, he could no longer remain silent: he has been living in Italy for years, he is Moroccan but his children were born in Italy, they are Italian afterwards, and now he is expected to remain silent and let them deport him […], it was not possible without any resistance. […] As for the screams, it is the only way of affirming our existence: to resist, even if resistance is doomed to fail. […] I believe that it was a well-prepared action [the police's violent repression] […] to give an example to the guests held in the CPT […] that in that place only the police establish the rules. We, clandestini, […] ought only to suffer, because, as the police affirm, we do not possess any right to incriminate them (Rovelli 2006, pp. 45–48).

While Said denounced the many abuses perpetrated by the police to the Italian Court, Sajjad did not stop there. His understanding of human rights and his sense that he had a duty to inform Italian people of what was happening in the country was compelling. Although both of them were well aware that they were fighting against a system that was trying to silence them, the strength of their action was precisely the use of their voice against intolerable abuses within a system that kept reminding them of the need to respect the law. The issue of the absence of any crime is reiterated in Sajjad's story:

> I thought that, in Europe, not only human beings but also animals had right. […] It is not like that, we have been incarcerated without having committed a crime. […] I am frightened. […] However, […] I have the responsibility of reporting, public opinion has to know. You see, nowadays I work with an association, I have been to schools and universities for giving testimony. Nobody ever knows what a CPT is. […] this is why it is my responsibility to keep reporting. […] I do not recall a time, even once, […] during which Father Cesare entered in the room without generating terror. Much worse than a prison. […] A butchery. The walls are blood-soaked: detainees break glasses, mutilate their body, crash their head against the walls, they do everything they can to hurt themselves and be taken away from that place. However, nobody ever takes them to the hospital (Rovelli 2006, pp. 78–80).

The horrors of the CPT of Regina Pacis were also experienced by Montassar. His dreadful description demonstrates the level of arbitrariness and violence prevalent in the Lecce camp (see also Perrone 1999; Puggioni 2006a). But Montassar's story also offers an important testimony of the courage and determination of many to resist that violence, a violence that became even more intolerable once it was discovered that a Catholic priest, Father Cesare, was the person primarily responsible for that horror. As Montassar puts it:

> I entered the Regina Pacis on the 24th October. I was beaten on the morning of the 23rd of November. […] I have seen people being slapped by Father Cesare. […] I cannot stay here. I have to escape. We try to escape […] we are forty. […] I am captured. […] The police (carabinieri) drag me before father Cesare. […] I refuse to glance down, he takes me by my hair, […] my head hits the wall, once, twice, three times; it is as if my eyesight was crashing, […] the blood drains out my face, […] I feel more blood coming out, […] and a pain pervades the whole of my body. […] I open my eyes, […] a doctor bends toward me, looks at me and says: 'He has to go to the hospital, […] we cannot leave him here'. […] I am taken, later, to hospital. 'What happened?' […] The centre's collaborator, a Moroccan like me, […] says: 'He fell down the balcony'. […] I do not speak Italian, but I do speak French, and the wording sounds alike. 'No,' I tell the doctor, 'Je ne suis pas tombé,' […] I have been beaten. I make them understand gesticulating too (Rovelli 2006, pp. 95–98).

All these examples suggest that the spatiality of the camps is much more complex than is often assumed. Despite the many horrors and violations arbitrarily perpetrated inside detention, the bearing of testimony and/or the denouncing of the many abuses to the juridical authorities do give some hope that the logic of the exception can be contested. Thus, these stories might also be viewed as representing some 'countertendencies that make it possible to think about the future in more optimistic terms' (Laclau 2007, p. 17), that is, by focusing not exclusively on the violence of the camp but also at the modalities through which this very violence is contested and resisted by those very subjects who have traditionally been considered as non-political. And because considered as non-political, traditionally their everyday acts of defiance, of resistance and/or simply their coping strategies have been largely ignored or overlooked.

(Forced) Migrants as Subjects of Rights

The key aim of discussing forms of resistance against unliveable spaces is to bring some contribution to the current debate on mobility and subjectivity (Beltrán 2009; Weber and Pickering 2011; Bosworth 2011; Nyers and Rygiel 2012). To claim that migrants, any migrants irrespective of their legal status, resist transformation into bare life or into objects of assistance as soon as the national borders are crossed, aims to highlight that migrants see themselves as subjects of rights. Their messages constantly evoke the respect of rights, legal norms and human dignity. How shall we understand the language, and constant invocation, of rights? Current citizenship debate is mostly articulated upon two different theoretical standpoints: an Arendtian versus a Rancierian perspective. The two perspectives are taken to be irreconcilable as the two look at rights and the subjects of rights through different lenses. While Hannah Arendt focuses on refugees from the perspective of state sovereignty—by highlighting that it is sovereign states, the nation-states, who decide upon life and death options (1967b)—Jacques Rancière focuses on the (acting) subjects irrespectively of the political context (1999, 2004). For Arendt, rights are meaningless as long as the principle of sovereignty prevails. As she put it: '[t]heoretically, in the sphere of international law, it had always

been true that sovereignty is nowhere more absolute than in matters of "emigration, naturalization, nationality, and expulsion"' (1967b, p. 278). For Arendt, human rights—the Rights of Man (see pp. 290–302)—were simply abstract formulae as long as it was up to states to respect them to the point that '[n]either before not after the second World War have the victims themselves ever invoked these fundamental rights, which were so evidently denied them' (p. 292). Thus, not only states were disregarding human rights, but the subjects themselves were not making claims upon them, which 'supposedly inalienable, proved to be unenforceable—even in countries whose constitutions were based upon them' (p. 293). Arendt thus recognised the importance of rights, and especially the 'right to have rights' (p. 296), but her understanding was articulated upon a very specific concept of the political space and the political subject, whose identities were elaborated upon sovereign identity, the very sovereign identity which this work is trying to contest.

In contrast to Arendt's essentialist understanding of being political, as well as against her understanding of the Rights of Man, lays Rancière's understanding of politics as a process, a process which ultimately contests established boundaries. As articulated by Andrew Schaap:

> Arendt's conception of politics is essentialist insofar as she identifies an authentic politics with the realization of a particular human potential. […] Rancière, in contrast, understands politics not in essentialist terms but as a process. […] politics does not correspond to a sphere, realm or potential but rather to the dynamics of politicization. Moreover, politics always ultimately calls into question the distinction between what is essentially political and what is not (2011, p. 38).

From a legal and formalistic perspective, migrants, irrespective of their legal status, are not rightless (Dembour and Kelly 2011). They are treated as such, but they are certainly not. All Western liberal democracies do recognise some basic human rights for everyone, irrespective of their nationality, as stipulated in international covenants on human rights, to which they are signatories. For instance, the European Convention on Human Rights applies to everyone within the jurisdiction of the Contracting States, irrespective of their legal status. The same holds true

for the International Covenant on Civil and Political Rights, whose core provisions guarantee, for instance, the rights to physical integrity (Art. 6–8), the rights to liberty and security of the person (Art. 9–11), individual liberties (Art. 12–27) and the right to justice and a fair trial (Art. 14). These are norms that are now part of *ius cogens* (peremptory norms) from which no derogation is permitted (Art. 53, VCLT).[1] Even some core articles contained in the 1948 Universal Declaration of Human Rights have become part of *ius cogens*. From this perspective, the biggest problem for migrants and forced migrants—as well as for any discriminated and excluded group—is not necessarily which rights they have but how to make those rights effective. One of the reasons why many Western states are holding unauthorised entrants inside isolated camps, or in the so-called 'enforcement archipelago' (Mountz 2011), is precisely dictated by a specific sovereign decision to eliminate any possibilities of legal advice and/or redress, which would make protection meaningful as already discussed earlier in the book.

What seems especially interesting is to evaluate how the idea of possessing rights becomes a driving force for claiming rights, for acting as if one possessed rights, irrespective of a substantial knowledge of what these rights are. Recurrent messages coming out of holding centres are precisely articulated upon the language of rights, on the importance of respecting rights equally, as some of the following excerpts, taken from different contexts, illustrate: 'Where is human rights? Where is freedom?' (Browning 2007); 'We demand papers so we are no longer the victims of arbitrary treatment […]. We demand papers so that we no longer suffer the humiliation of controls based on our skin, detentions, deportations, the break-up of our families' (Hayter 2000); 'we are simply demanding the piece of paper which is our right, so that we can live decent lives' (Cissé 1997); 'we cannot acknowledge any law that restricts us in our fundamental rights!' (Caravan 2015); 'Forget the concept of pity, of shelter they give us. We, in fact, are non-citizens without permission to become a citizen […], and we will rise up!' (McGuaran and Hudig 2014).

The many cases of protests, especially inside holding centres, illustrate not only the way in which people have refused to be transformed into

[1] Vienna Convention on the Law of Treaties, 23 May 1969, entered into force on 27 January 1980.

bare life (Bailey 2009; McGregor 2011; Rygiel 2011; Puggioni 2014b) but also the way in which they highlight how rights should be accorded equally to everyone and unjust legal provisions refused. By invoking the language of rights, (forced) migrants constitute themselves *both* as political subjects and as legal subjects, to the point that the line between the two blurs. While the claims articulated upon equality and rights pertain, strictly speaking, to the legal sphere, the very acts of claiming and advocating equality and the respect of the law make the claimants political subjects. In this respect, the work of Rancière is crucial, especially his concept of politics, which is not only a process enacted when there is something 'wrong' in the picture, but most importantly this wrongness is articulated around the idea of (in)equality, and thus around a political concept with legal connotations.

To begin with, for Rancière, 'politics is not the exercise of power' (2001, thesis 1) nor is it the arena in which to compete for the distribution of resources, roles and competences. This system of 'distribution and legitimization' is given another name: 'the *police*' (1999, p. 28). With the word 'police', Rancière does not refer to practices of repression or to 'the disciplining of bodies' but to the configuration of an order in which people are given a specific place, identity and functions (2007, p. 561). According to Gert Biesta, Rancière's idea of the police should be interpreted as an all-inclusive order. As he has put it:

> One way to read this definition of police is to think of it as an order that is all-inclusive in that everyone has a particular place, role, or position in it. […] This is not to say that everyone is included in the running of the order. The point simply is that no one is excluded from the order. After all, women, children, slaves, and immigrants had a clear place in the democracy of Athens (2010, p. 48).

Politics, 'antagonistic to policing', is the activity through which the logic of order and of control is contested and reconfigured anew (Rancière 1999, pp. 29–30). To engage in politics means not to participate in the 'game of order' but to create a 'radical disruption of such an order' (de Genova 2010, pp. 107, 108), a disruption which 'revolves around equality, or rather, around its presupposition' (p. 177). For Rancière, '[e]quality is

not a value to which one appeals'; it is a value that needs to be constantly verified in concrete practices. What matters in this process of verification is not to prove that people are (un)equal, but how people act under the assumption of equality. In other words, what matters is 'what can be done under that supposition' (1991, p. 46). What matters is what people effectively do when they realise that what is wrong in the picture is precisely equality: their unequal exclusion, their unequal transformation into the unqualified and their unequal positioning in an *un-space* (Rancière 2007, p. 561, emphasis in original). By contesting the given order of the police, people enact politics, in the sense that they demonstrate a wrong and 'political exclusion by enacting equality' (Schaap 2011, p. 22). But the people who call into question the dominant order are those very people who have a place in that order as the un-counted, as the 'un' of that order. It is precisely their being 'un', their being part of the sensible order as the 'un-qualified', that causes them to perceive the wrong of that order. By seeing the wrong of that order, they create a distance, a dis-identification, which at the very same time entails their emergence as new subjects. By contesting the dominant order, in a radically new and disruptive way, not only is their identity transformed but their very positioning within that order altered. Politics is thus that process—subjectification—through which new subjects are created and their 'capacity for enunciation not previously identifiable within a given field of experience' (Rancière 1999, p. 35) made visible and audible. To use Rancière's own words:

> Any subjectification is a disidentification, removal from the naturalness of a place, the opening up of a subject space where anyone can be counted since it is the space where those of no account are counted, where a connection is made between having a part and having no part (1999, p. 36).

By understanding politics as the capacity for enunciation in an unsettling and disruptive way, and most importantly as the capacity to imagine and propose alternative 'partitions of the perceptible' (1999, p. 62), it is *dissensus* which configures politics and not consensus. But dissensus, for Rancière, does not refer to a confrontation between different interests, nor does it refer to acts of protests. It refers to the process through which the wrongs of the police order are contested and reconfigured anew. As put it by Rancière:

> The word 'dissensus' obviously refers to a conflict. But it is not a conflict between individuals or groups sharing different identities, interests, opinions or values. Strictly speaking, dissensus means a conflict between one sensible order and another. There is dissensus when there is something wrong in the picture, when something is not at the right place. There is dissensus when we don't know how to designate what we see, when a name no longer suits the thing or the character that it names, etc. (2007, p. 560).

It is not by articulating a 'wrong' or by calling for more equal relations and practices that politics is enacted, but rather when there is a contestation and reconfiguration of the 'naturalness of a place' as well as a reconfiguration of the positioning of the uncounted within a given place. The process through which space is reconfigured makes visible and audible subjects who were previously of no account. This is done not by creating 'subjects *ex nihilo*' but by transforming their identities into new entities.

By looking at politics as the process through which a given order is contested and reconfigured, Rancière understands it as the enactment of something extraordinary, something beyond common and accepted practices, which nonetheless puts the verification of equality under scrutiny. Thus, for Rancière, politics is not at all participation in the public sphere(s), nor is a political subject simply 'a group that "becomes aware" of itself, finds its voice, [and] imposes its weight on society' (1999, p. 40). Rancière's understanding of the public sphere as well as his idea of political participation in the public life is completely different from the Arendtian perspective recalled earlier. The political subject, for Rancière, is 'an operator that connects and disconnects different areas, regions, identities, functions and capacities existing in the configuration of a given experience' by making visible and audible the conflicts and contradictions between the police order and 'whatever equality is already inscribed there' (1999, p. 40). To put it differently, for Rancière, the subjects of the political are not those people who simply engage in acts of protest. Rather, they are those who protest and articulate the wrong of the system; those who verify the absence of equality in the law; those who make evident the different modalities through which human rights are (dis)respected; those who highlight the difference between the principle of equal dignity and camp violence, between the granting of refugee status and the unliveable conditions in which they found themselves.

Concluding Remarks

The question of who is the subject of politics, and thus the subjects of rights, is a highly contested issue. If the political is approached from the sovereign perspective, only the citizens are to be recognised as political subjects. From this standpoint, the ability to act politically—including the ability to contest the politics of (non-)protection—is an ability acknowledged exclusively upon the members of that society simply on the grounds of their legal status. By departing from this approach, through an analysis of the space of the political as well as the subject of the political, the preceding pages have highlighted the importance of rights upon which acts of dissent and contestation are articulated. By looking at politics from a Rancièreian perspective, the focus is on individuals' capacity to contest the given, away from the public space articulated upon the Athenian *αγορά* (agorá) on which current conceptualisation of public engagement and of citizenship have been historically constructed. The subject of the political, for Rancière, is not the included, the member, the part of the dominant group but, on the contrary, the excluded, the non-fully member, the one who has no part. It is those who have no part who contest the given by verifying the absence of equality in the application of the law. The constant appeals to respect the law, and especially to respect human rights, is especially important as it highlights the way in which (forced) migrants represent themselves as bearers of rights, and thus as subjects to whom human rights and human dignity have to be accorded. Refugees, the subjects of protection, are thus seen here as subjects of rights, that is, as subjects to whom legal and political subjectivities should be recognised. By advocating the language of rights, they see themselves as legal subjects. They are, however, legal subjects whose struggles, acts of protest and/or coping strategies come often from conditions of marginality and exclusion.

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5

Refugees' Encampment in Italy

It is not an easy task to offer an overview of the Italian situation, given the peculiarities of each region and city in terms of the history of reception, experience with forced migrants, local services and facilities. It is certainly insufficient to analyse only the legal provisions as the implementation process is different in each locality, not necessarily because the law is disregarded but because the very same norm might be applied or interpreted differently and/or different facilities and past experience might lead to different responses towards forced migrants. In general, refugees in Italy tend to be 'protected' in the sense that the principle of *non-refoulement* tend to be respected and access to the asylum procedure guaranteed. But we can hardly refer to protection in terms of emancipation. The biggest problem is not necessarily access to the asylum procedure but the following stage: the period in between the asylum application and the recognition of legal status, as well as the integration process. Refugees are left unassisted in the sense that there is a general lack of opportunities for receiving socio-economic support and/or housing facilities even under conditions of homelessness and destitution. In full respect of the 1951 Refugee Convention, Italy accords to refugees the very same socio-economic rights guaranteed to its

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nationals. The problem is not simply which rights are guaranteed in the Italian Constitution and in the 1951 Refugee Convention but how these rights are translated into practice, a translation which is also highly problematic to the many Italians living in similar economic conditions. The shift from legal norms to everyday reality is a crucial shift that causes a difference between destitution and dignified living conditions. Many are those who find themselves under conditions of destitution, mostly because of the lack of answers, solutions or alternatives from public institutions, which tend to shift protection to private charity organizations. This situation has resulted in the emergence of a myriad of conditions of (forced) encampment, in the sense that a great number of refugees have resorted to their own survival strategies, including finding a place of shelter or making one by themselves.

The decision to focus on refugees' encampment is due precisely to the existence of multiple sites of marginality and destitution that resemble unliveable spaces. In the country there exist a varieties of official centres; some of them are closed spaces of confinement, while others are simply big facilities—as for instance former hostels or military bases—that have been transformed into reception centres for accommodating, temporarily, high numbers of forced migrants. There are also other spaces which resemble camps in the sense that they evoke unliveable and abject spaces on the outskirts of cities in a condition of complete isolation, exclusion and marginalisation. As recognised by Laura Boldrini, former spokeswoman at the UNHCR in Italy, as reported in *The New York Times* (2012):

> 'Italy is quite good when in the asylum procedure, recognizing 40 percent, even up to 50 percent of applicants in some years […] What is critical is what comes after'. […] Italy has just 3150 or so spots in its state-financed asylum protection system, in which refugees receive government assistance. Waiting lists are impossibly long, leaving many to fend for themselves. […] 'If you're not lucky to get one of those, you're on your own. You have to find a way to support yourself, learn the language, get a house and a job'.

This has certainly been the case for some 800 refugees, who have experienced, and are still experiencing, a complete state of abandonment in the so-called Salaam Palace in Rome, which I have myself visited in January 2013.

Even if focusing on encampment, the intention is *also* to highlight the many ways in which refugees have resisted, manipulated and/or transformed those spaces into living spaces, but not necessarily into a comfortable home. The following pages will look mostly at those living/surviving spaces that refugees themselves have created as a result of public non-response. This includes abandoned buildings occupied by refugees—and by refugees I refer to those who have obtained recognition of the status and/or subsidiary protection—and or open-space areas where camping tends, old caravans or wooden/cardboard materials are used for building some forms of shelter. This situation is especially evident in the capital city, Rome, where a variety of informal camps have been created, moved, dismantled and re-created over the years. The most worrying aspect is that these unliveable spaces have already existed for too long and are well known by key actors, including the UNHCR, but no action is taken to ameliorate refugees' living conditions.

In order to offer a more comprehensive picture of the Italian system of non-protection, the analysis will cover a period of some 25 years, by focusing on key important and decisive moments related to asylum, starting from 1990 (see also Hein 2010). What will emerge in this chapter are especially the many contradictions, limits and difficulties for a country like Italy in setting up a well-functioning *public* system, articulated upon rights, benefits and the effective enforcement and implementation of existing welfare norms. Historically, the parallel coexistence of a well-organised *private* sector—the so-called *privato sociale*—has greatly impacted upon the way in which refugee protection is offered and organised, a protection easily transformed into mere assistance, and, perhaps worse, an assistance that leaves out many in need. As I argued elsewhere (Puggioni 2005), a top-down approach, that tends to be applied in northern EU countries in which it is state institutions that dictate the mechanisms of reception and assistance, can hardly be applied to the Italian asylum framework. Because of the interpenetration of the private into the public, the decisions and initiatives towards protection are not always clearly defined to the point that, at times, it is difficult to draw clear lines between roles and functions which are distinctively public, but which are nonetheless performed by the private sector. Nowadays, most of the service related to refugees have been privatised, from the running of holding centres to the

provisions of hot meals and health care services. Some of these services are under the so-called SPRAR (System for the Protection of Asylum Seekers and Refugees), integral part of the Ministry of Internal Affairs; others are private organisations, mostly connected with Catholic networks and/or migrants' associations; and still others are governmental facilities but outside the SPRAR system. Overall, the *public* system is insufficient to give a concrete response to asylum-seekers and refugees, and unfortunately this condition of insufficiency continues to persist since the 1990s. Parallel to the public system there exist myriad different *private* services, which offer some assistance without necessarily possessing the right competence and experience to do so. The high level of privatisation—resulting from its traditional understanding of assistance as an assistance better performed by the private sector—has resulted in the maintenance and perpetuation of a system of non-protection, articulated more on assistance than on rights, more on finding temporary shelter than creating ways of emancipating refugees from conditions of dependence and destitution.

What follows combines field-work findings, carried out at different stages, and an analysis of relevant materials on refugees' condition of (non-)protection and (non-)assistance in Italy. Special attention will be devoted to Rome, which for years has represented the first destination for many asylum-seekers, who tended to be directed towards the capital city as the so-called Central Commission, in charge of the evaluation of asylum claims, was there. Even if territorial commissions have been set up in different parts of the country, Rome continues to remain a point of destination, although what it can offer to people in need is extremely limited to the point that many refugees, even after many years, are still homeless.

Asylum in the 1990s: A Historical Overview

Despite being signatory of the 1951 Refugee Convention since 1954,[1] the first articles related to asylum were elaborated only in the so-called 'Martelli Act' in 1990 (Act 39/90). Even if an immigration law, it rep-

[1] The 1951 Refugee Convention was ratified on 24 July 1954 (law no. 722), while the 1967 Protocol on 14 February 1970 (law no. 95).

resented the first attempt to regulate the asylum procedure, although it became soon clear that legal provisions were not able to match the reality of the asylum situation. The most important provisions were the lifting of the geographical reservation to the Geneva Convention, *ex* articles 17–18—which allowed anyone fleeing from outside Europe to claim asylum in Italy—as well as the recognition of refugee status for all non-European 'foreigners' under UNHCR mandate.[2] The taken-for-granted assumption, in the 1990s, that Italy was not a country of destination—neither for migrants nor for refugees—had a big impact on its (belated) migration laws as well as on the organisation of services for newcomers. The identification of the country as a country of transit—in the sense that Italy represented simply one of the many routes through which migrants and refugees could easily enter before reaching their (chosen) destination—was especially evident in response to irregular entry. Those found without documents were not subjected to forced removal. They were given a 'decree of expulsion' (*decreto di espulsione*), in which they were ordered to leave the country within 15 days.

Generally speaking, during the whole of the 1990s, the country experienced a very fluid movement of migrants: entry and exit (ICS 2000). Italy, contrary to its European partners, was a country in which migrants—including forced migrants—could enter rather easily and just as easily transit the peninsula towards other destinations. The high and constant number of irregular entries—counter-balanced also by a high number of outflows—transformed irregular immigration into a mass phenomenon (see Galieni and Patete 2002). As evaluated in Claudia Finotelli and Giuseppe Sciortino's work, irregular entries should not be read as exceptional events, but indeed as a mass phenomenon whose origin lays in Italian migration policies. More specifically,

> irregularity has been an endemic feature for immigrants in Italy, a large majority of whom has attained legal status only through ex-post adjustments, nearly always through participation in regularization programs. After each regularization, moreover, a reproduction of a sizeable segment of irregular migrants has always quickly reproduced (2009, p. 120).

[2] Article 1(3) does not contain the wording 'refugees under mandate', but simply 'foreigners', despite the special protection received from the UNHCR.

To these important factors, one should also add, as emphasised in Lydia Morris' work, 'the history, nature and scale of immigration; the features of the national welfare system; [and] the functioning of the labour market', which all contributed to the emergence of a 'hybrid system' (Morris 2002, p. 54). More specifically, the existence of a widespread 'informal economy'—to be distinguished from a criminal economy—has facilitated, and encouraged, many migrants to live and work in the country, even for some years, without possessing a regular working permit (Reyneri 1998; Quassoli 1999; Sciortino 1999). Legally speaking, they were undocumented—in common language they were defined as *clandestine people*—and that condition was, directly or indirectly, facilitated and tolerated by the Italian system as a whole: relatively easy access into the territory, a widespread underground economy, sporadic controls to employers, informal access to medical assistance and in many cases also schooling for children (CeSPI 2000, pp. 851–854). Moreover, regular processes of regularisation of their status (*sanatorie*) have progressively allowed migrants, as well as many refugees, to legalise their residence status and to acquire a work permit (Zincone 2006).

The asylum procedure was established for the first time in the Martelli Act (see Hein and Pittau 1991). The process started once a verbal request of asylum was expressed at the local police office (*Questura*). Unfortunately, the expression of such a willingness and the actual written application rarely coincided, which *de facto* also postponed the receipt of the necessary documentations. In case of destitution, a small financial support was legally due for a very short period of time—up to 45 days, which was (anachronistically) the length of time for the so-called Central Commission to consider the asylum applications and to take a decision, rarely achieved within the deadlines because of a rather lengthy process. The temporal gap between the first verbal expression of asylum and the written application had negative consequences for asylum-seekers in terms of living conditions. No temporary permit of stay was issued until the necessary papers were filled in, and no accommodation in any form was to be offered until an official recognition of the asylum request had been submitted. As noted by Maura De Bernart, a large number of asylum-seekers found themselves in a condition of 'forced irregularity' (1991–1992, p. 76), because despite possessing the pre-requisite for the

asylum application, the necessary papers were issued after a long time and no assistance during that time was offered. The living conditions of many asylum-seekers, especially those who had just arrived in the country, were thus very similar to those of the many irregular (economic) migrants. In this respect, it seems more appropriate to talk of '*stratégies de survie*', instead of '*stratégies de séjour*', as proposed in Godfried Engbersen's work (2001, p. 26). Contrary to the situation in the Netherlands, the definition of 'strategies of survival' seems more appropriate for the Italian case. The biggest problem for migrants was not to resort to everyday strategies for covering their identity and the lack of a regular permit but everyday survival. Asylum-seekers were to resort to self-help strategies to satisfy basic needs, especially once no public assistance was made available to them: from finding a place where to sleep to familiarise themselves with different (charity) services available *in loco*. However, each geographical region traditionally organised its reception differently according to the way in which the migratory phenomenon was perceived locally (CeSPI 2000). Despite regional differences, as noted in Marcella delle Donne, reception policies were generally based on a '*strategia dell'emergenza*' (emergency strategy) (1995, p. 41). The absence of pre-established reception plans resulted in the development of re-active, as opposed to pro-active, policies. Hence, refugees were constantly perceived in terms of crises, especially along the southern coastlines which experience migration flows through sea routes. However, in those regions, quite often basic assistance for up to 45 days was provided, even if many were also left out as reception availability was always limited in comparison to the demand. But at least some first reception centres were created, mostly by converting former military bases, quite exclusively located away from urban centres.

In cases of big numbers, even up to 900 in one single cargo, access to the asylum procedure was a bit easier: the Italian Refugee Council (CIR) tended to guarantee legal assistance and provided temporary shelter until a regular permit of stay for asylum was issued, normally within the following 30 days. As soon as the papers were received, the doors of the centres opened up: in the sense that asylum-seekers had to leave, no matter whether they had money with them and/or a place to go. They were not allowed to stay longer, nor were migrants willing to stay longer in those centres. What was peculiar in the Italian case was that the great

majority of migrants—even if possessing the pre-requisite for applying for asylum—demonstrated no willingness to do so. As highlighted during an interview with a representative of the CIR in the Calabrian region, 'in the vast majority of the cases, they themselves do not want to apply for asylum, because Italy offers no guarantee, no security, no rights [and] no policy of asylum'.[3] In other regions—as well documented in the so-called *Dossier Nausicaa* (ICS 2000), the first comprehensive analysis of reception in the country—information on asylum was rarely if at all provided, and the police forces were greatly responsible for this. The number of decrees of expulsion were especially high, and equally high were the outflows of would-be refugees/asylum-seekers towards northern European countries (ICS 2000, pp. 7–15). Apparently, the entry into force of the Dublin Convention did not have any immediate and significant impact on asylum. While many were unwilling to apply in Italy as they intended to submit the application in other European countries; others, willing to stay, were rarely provided with information on how to do so. Moreover, a lack of information on the consequences of the Dublin Convention also meant that a large portion of those who entered the European Union via Italy were destined to be sent back to Italy once a second application was submitted or once the port of entry was verified. At some stages, especially from the end of 1997—at a time during which a few big cargo ships of Kurdish would-be refugees landed on the southern coastlines—European neighbours started to request that Italy take more seriously international obligations related to the Dublin Convention and to the Schengen *acquis* (see Hailbronner and Thiery 1997). Paradoxically, there were occasions during which would-be refugees—especially those of Kurdish origin—were compelled to apply in Italy despite their initial refusal, precisely in respect of the Dublin Convention. This did not, however, prevent many of those who submitted an application to reach other European destinations soon after being 'released' from the reception camps (Puggioni 2005, 2006b).

According to the *Dossier Nausicaa*, it is realistic to estimate that only one-third of the overall refugee influxes tended to stay in the country,

[3] Social Adviser at CIR, Centro Servizi, conversation held in Badolato Superiore, Catanzaro, 22 May 2001.

with a big concentration in Rome and in central and northern regions. For instance, in 1999, out of 8311 applications examined by the Central Commission—a small fraction compared to 33,364 applications presented in that year—the vast majority of applicants, some 6029, called to have their cases presented before the commission, did not show up (ICS 2000, p. 14). However, as pointed out by a member of the Central Commission,[4] asylum-seekers' failure to show up determined a suspension of the individual case, and not its rejection as suggested in some *Caritas*' reports (1997, 1998), which did not distinguish between rejected cases and suspended applications.

The 1990s: Asylum and the Meaning of Reception

A close look at Italian policies seems to suggest that asylum-seekers were not seen as a category of people to whom specific rights had to be recognised and guaranteed but indeed as a category of people who needed assistance. Little was guaranteed by law, and that little was even extremely difficult to implement effectively. It was believed that it was the task of the *privato sociale* to take care of forced migrants. What prevailed was the idea that they could manage without *public* intervention because they could easily rely on well-structured charity networks. This approach *de facto* encouraged a system of asylum based on self-help, that is, an asylum system in which protection was translated simply into admission into the territory and in the recognition of the refugee status. Apart from some assistance offered by charities—mostly funded by public money—it was believed that asylum-seekers and refugees were able to manage by themselves and, if in need, they were able to find alternative solutions, including selecting another country of destination. As also discussed in Maja Korać's work, it was generally 'assumed that those in need [were] assisted primarily through self-help systems established within refugee and migrants networks' (2003, p. 399).

[4] Italian Official at the Ministry of the Interior and member of the Central Commission, interview held in Rome, 22 June 2001.

The condition of destitution of the great majority of asylum-seekers should be read as an *institutional* failure not simply to develop adequate reception policies—which could no longer be left exclusively to private initiatives—but also to guarantee that the application of the few asylum norms was not left to the discretion of local officials. By the mid-1990s, given the increase of would-be refugees entering the country, it was the private sector that started to demand a more visible and concrete intervention of the state. On its side, public institutions justified the absences of action under the claim that refugees, and migrants more generally, could manage without it, given the many charity organisations working in the field. This very narrative—that public intervention was unnecessary—was clearly spelt out during a conversation with a social adviser at the 'Special Immigration Office' (USI), according to whom

> We cannot compare Italy with France, England or Germany […] because they have been working with foreigners for the past fifty years. […] The cultural aspect is important. […] In Italy, as compared to northern countries, […] people manage to remain invisible (*stare nell'invisibilità*) because there is a quite welcoming [social] tissue within the private.[5]

The above statement invites us reflect on cultural differences as well as on the idea of migrants' invisibility, none of which is connected to the recent transformation of the country into a territory of immigration, as argued in some work (Bloch et al. 2000, p. 8). The question of invisibility—intimately linked to the Italian culture of assistance—mirrors not simply the existence of strong social networks but also the way in which these very networks have historically overcome the institutional vacuum. In this sense, it can be argued that the novelty for a country like Italy was not merely the shift from a land of emigration towards one of immigration but also, and perhaps more importantly, the recognition of the institutions' new role in protecting, assisting and caring for the well-being of refugees, a role that could no longer be left exclusively to the private sector. Moreover, the very concept of '*stare nell'invisibilità*' exemplifies the way in which the phenomenon of immigration was officially perceived,

[5] Social adviser at the Special Immigration Office, interview held in Rome, 19 June 2001.

to be clearly distinguished from the 'strategy of invisibility' that refugees adopt in order to conceal their identities and/or economic activities not officially accessible to them (Kibreab 1999, p. 399). The concept of remaining invisible represents the way in which state institutions perceived the presence of refugees. They were invisible in the sense that their presence, survival strategies and access to services were not approached as issues concerning political institutions, but indeed the social network, thus not in terms of rights but in terms of charity.

1997: Kurds and Non-protection

The vast majority of those who reached the Italian coastlines, particularly to the southern regions, tended to use the country as a territory of transit. Their failure to express a clear intention to apply for asylum, coupled with a generalised lack of information, resulted in the issuing of a high number of decrees of expulsion. The attitude of the government registered a radical change only at the end of 1997, once countries such as Germany, France, Austria and the Netherlands requested that Italy adopt tougher immigration and asylum policies. It was particularly the constant transit of Kurds from the southern regions of Italy towards those very countries that represented the most worrying aspect. Especially high was the number of Kurds transiting the peninsula. Between January and October 1997, some 4497 entered Italy and headed, soon afterwards, towards Germany, France and the Netherlands (*Migration News Sheet* 1998a, b). As reported by Kurt Schelter, the then spokesman of the German Ministry of the Interior, some 3000 Iraqis (mainly of Kurdish origin) entered 'illegally' into Germany during the first eight months of 1997, and Italy was considered to be directly responsible for such a transit (*La Repubblica* 13/11/1997a). The so-called 'Kurdish emergency' exploded, in an unprecedented way, soon after 796 would-be refugees (of whom 550 were Turks of Kurdish origin) disembarked at Santa Maria di Leuca (Lecce), on the coast of Apulia on 2 November 1997 (*Il Manifesto* 05/11/1997; *Il Corriere della Sera* 06/11/1997c). The vast majority received a decree of expulsion, and despite many protests particularly from Germany and France, no visible change was made. While political forces

debated which policies were *politically* more appropriate, a new influx (19 November) of 374 Turkish and Iraqi Kurds reached Monasterace on the coast of Calabria (*Il Corriere della Sera* 20/11/1997f). Before long, two new big influxes of Kurds arrived: on 27 December 1997 when 837 would-be refugees disembarked from the cargo boat *Ararat* near Badolato on the Calabrian coast (*Gazzetta del Sud* 28/12/1997), 386 then reached the coast of Apulia at the very beginning of 1998. It was especially these big groups of refugees, mainly of Kurdish origin, that made the phenomenon of 'mass influxes' institutionally visible, especially because of some Schengen partners' reactions and because of national and local mass media reports (see Puggioni 2006b).

The end of 1997 and the very beginning of 1998 were turning points, in three important respects. Firstly, the assumption that Italy was merely a country of transit could no longer be sustained especially after the entry into force of the Dublin Convention and of the Schengen *acquis*. The country had new obligations to fulfil. Secondly, the traditional attitude of indifference towards the destiny of the newcomers changed radically, making the Kurds shift from a condition of institutional invisibility to one of political visibility, as demonstrated by the subsequent animated political debate (see Commissioni Riunite I–III 1998). Thirdly, the reception gaps were dramatically exposed once the vast majority of the Kurds, especially during those months, *refused* to apply for asylum in the first safe country. Such a refusal, as well documented by the personnel of the CIR (1998a, b), represented an act of protest both against the absence of any guarantees of reception and against the new European provisions, which negated any opportunity to reach Kurdish communities already established in other European countries. Given the prevailing practices, the key issue was not simply whether the Kurds were requesting asylum in Italy—as demanded by Schengen partners—but more importantly whether they had any real intention to remain in Italy. The concern of the government was to demonstrate to its European partners that it was fulfilling its obligations by making the Kurds apply for asylum. But this was not enough. In order to ensure that the newcomers were not going to move outside Italy, the government needed the collaboration of the Kurds, a collaboration that was obtained only in the region of Calabria—though only temporarily (Puggioni 2006b). Given the absence of a clear

border politics in general and of asylum politics in particular—neither of which could be developed overnight—the participation of the Kurds, local administration and the private sector was essential for any positive outcome. It was insufficient simply to claim that would-be refugees were given the possibility of submitting an application in Italy. The lack of guarantees that adequate means of subsistence would be received, at least in the very first stage, made many look at other possibilities outside the country. This situation started to be evident at the time of the first big influxes on 2 November 1997. The vast majority of Kurds received a decree of expulsion, because they refused to apply for asylum in Italy (*Il Corriere della Sera* 06/11/1997c). The problem was neither simply to provide correct and full information about the Dublin Convention, nor whether those refusing to apply for asylum were in need of protection (*Il Corriere della Sera* 07/11/1997d). The refusal to request asylum was replicated in the first reception centre (i.e. camp) in Lecce, at the very beginning of 1998. As became clear in a report by the CIR (1998a), the key issue was how, after the request of asylum, the Kurds were going to survive while the Central Commission was examining their asylum applications. In the vast majority of cases, the refusal was *both* dictated by the non-existence of reception guarantees *and* by their intention to reunite with families and friends living outside Italy. At the time, the government's political intention was, first and foremost, to demonstrate to its Schengen partners respect for the Dublin Convention by making the Kurds request asylum. The question of reception was not raised properly, save in the province of Catanzaro, where significant attempts to encourage and facilitate a process of settlement *in loco*, and not simply of first reception, emerged (*Il Giornale* 28/12/1997; *Il Giornale di Calabria* 28/12/1997; *Il Tempo* 28/12/1997; *Il Giornale* 02/01/1998; *Il Quotidiano* 07/01/1998a; *Il Quotidiano* 09/01/1998b).

2001: Reception Possibilities in Rome

In 2001, when I carried out field-work in Rome, it was the USI that coordinated accommodation facilities in the capital. And it is here where much of the information on reception capabilities was obtained.

Apparently, the USI was unable to provide for immediate solutions, though acknowledging that many asylum-seekers were forced to sleep in public parks, such as for instance the *Colle Oppio*, by the Coliseum. Accommodation, if available in the reception centres, was given according to strict bureaucratic procedures, which required a minimum waiting time of one week. The waiting time for accommodating families was much longer: between two and three months, with an average of ten to twelve families on the waiting list. Unfortunately, no other accommodation options were available from local social services. However, the vast majority were left out as the total number of beds available in reception centres were simply 492, less than a third of the overall annual requests (ICS 2000, pp. 46–47). Although the USI was created to help migrants, since 1997 the office has been accommodating—in the sense of offering a bed for the night—almost exclusively asylum-seekers, to the point that 95 % of the beds in reception centres are allocated to them. Being simply centres for migrants, they were inadequate for responding to asylum-seekers' needs. The centres had been created under the assumption that migrants were going to work during the day and that, as a first response, they needed a temporary shelter for the night. This resulted in creating centres which were closed during daytime—to the point where asylum-seekers could return to the centres only and with no exceptions in the evening—in running Italian language course only in the evening, and finally in establishing fixed periods of accommodation. As highlighted in Antonio Tosi's report (1995), the rationale for creating reception centres, originally established in the Martelli Law, was to offer temporary reception, up to 60 days, to economic migrants who had just arrived in the country. Only at the end of the 1990s, was it recognised that asylum-seekers were to be accommodated in centres for a maximum period of nine months, during which the Central Commission would examine their asylum application. As already noted, accommodation was provided only once a temporary permission to stay had been issued by the local *Questura*. Thus, all those who requested asylum but failed to receive soon after the necessary documentations were deprived of any official assistance until the documents were ready. Self-initiatives were thus the norm, and quite problematically, there existed no coordination between the different public and private services to the point where it was

asylum-seekers who had to move from one place to another in order to find some answers to their everyday survival needs.

The case of some Kurdish asylum-seekers and refugees living at the so-called Global Village is an example of self-help strategies. The decision to visit the *Ararat* in July 2001, inside the so-called *Villaggio Globale* (Global Village), was mainly due to information I had received at the CIR, *Centro Astalli* (part of the Jesuit Refugee Service), *Azad* and UIKI (Kurdistan Information Office in Italy), where all mentioned the *Ararat*, without providing much details. All the interviews with the Kurds took place at the Global Village, a former slaughterhouse, which had been abandoned for years until its reconversion into a social centre. As explained by a voluntary social worker at the *Azad*, the possibility of utilising this abandoned place was considered in 1997 once the Kurdish 'crisis' first exploded and no answers were offered by the municipality of Rome. The many Kurds who arrived in the city, having no place to sleep, resorted to spending nights outside on the park benches. Some assistance, in terms of hot meals and warm clothes, was provided exclusively by charitable organisations. The official responses were simply non-responses. The Prefect, instead of decreeing a state of emergency—which would have allowed the adoption of extraordinary measures and the provision of some temporary accommodation—decreed that the park should be cleared. It was only at that point that left-wing organisations started to get involved by transforming the abandoned slaughterhouse into a social centre.

The name of the centre mirrors the way in which life inside was organised. The centre was laid out as a *village* both because different charitable associations had established a small office there and because the village represented a place of temporary refuge since no alternative accommodation had been made available by public services. It was a *global* village in the sense that a multiplicity of ethnic groups worked and interacted there, and many internationally oriented activities were constantly organised *in loco*. It was within this global space where the *Ararat* was established: a centre run by Kurds whose main objective was to provide basic needs—including some rooms used as sleeping rooms—and a space to interact, particularly during daytime when public reception centres were closed. Apparently in 1997, the building was in a complete state of abandonment. Thanks to the help of charitable, left-wing and

Kurdish networks, a small group of Kurds managed to transform the building into a common living space. It was however a common living space which could not possibly be defined as a home. As written on one side wall of the building: '*Ararat: casa ai senza casa*' (Ararat: a home for the homeless). This very definition was strongly connected to the lack of responses of the municipality of Rome and to the informal structure of the village that was transformed into a place where individuals belonging to different ethnicities could find a refuge for the night. The village was itself a space of refuge, hence a 'home', though it was not perceived as the hoped, secured and private home that Kurdish refugees expected in Italy, or more accurately in Europe as many of them referred to it. It represented, indeed, a temporary refuge for those who found themselves in a condition of 'homelessness' (see Damiani 1999; Dillon 1999). As emerged during a conversation with Gaffar, my interpreter, who was himself a refugee living at the *Ararat*, despite being proud of the way they had transformed the building into a living and social space, the longed-for home, and not simply a shelter for the night, was still far away, even for someone like himself who had refugee status and was *de jure* entitled to work (however hard it was to get) and to receive social assistance, including accommodation. However, despite their perception of being homeless, and despite the meagre support provided by official public institutions, an incredible vein of optimism and a strong determination to keep going pervaded some of the Kurds interviewed. Such a determination was particularly strong in those who had been in the country for a few months but who had, however, expressed some diffidence towards, and mistrust of, public institutions.

What was rather peculiar was the different emphasis that each of the Kurds put in describing his or her story, which clearly emerged during the extensive interviews conducted with all the Kurds living there at the time. Those who had been politically involved in the activities of the Kurdistan Workers' Party (PKK) in Turkey expressed stronger interest in remaining in the country, despite the paltry assistance they received. Italy was perceived as a friendly country, because it hosted their leader, Abdullah Ocalan, and hence as a place where a wider debate on the Kurdish issue could emerge. This was especially the case of Ibrahim and Muhlis, who had experienced one of the worst camps, the *Regina Pacis*

in Lecce (Perrone 1999) and many difficulties in reaching Rome—as no money was given to them when they left and in finding a place where to eat and sleep when they first arrived in the capital. Their stories did not aim to describe everyday difficulties, but on the contrary, the importance of having reached Rome, and of being in a country which had expressed lots of solidarity with their people. For instance, the conversation with Ibrahim—a member of the PKK, who had experienced Turkish prison for quite some time—was very peculiar. He claimed, quite convincingly, that a 'revolutionary', such as himself, possesses the capacity to find the right solution even from scratch to any problem. However, this 'revolutionary' attitude was completely lacking during his forced permanence in the camp of *Regina Pacis*—officially at that time a centre of identification and expulsion, in which many asylum-seekers had been held. He tended to remain silent, stay away from troubles and wait patiently to become free again. The camp was not at all understood as a space in which to react, and the protests organised by some were perceived as unnecessary and inadequate. As argued elsewhere, such an attitude could be explained by looking at the way in which that particular camp was run—and the Catholic Church for a long time was heavily involved in the violence perpetrated inside—and the modalities through which life inside was transformed into bare life, a bare life that some of them had the courage to oppose and resist (see Puggioni 2006a; Rovelli 2006). A dreadful description of life inside is offered by a group of students, who collected their impressions and put them in the form of a diary (Perrone 1999). As they described the camp, it was as if entering into a space in which the formal and informal got mixed up, and in which the roles of the police force and of the administrators got confused—to the point where the police were in charge of security but refused entry if someone failed to possess an entry pass issued by the Catholic *Caritas.* It thus became a space of marginalisation and abuse with no visible sign of interpreters and/or members of the CIR (Perrone 1999, p. 38). What was missing was not simply information about procedures—that is, what was going to happen to them—but humane conditions inside the camp: the camp was humid, dirty and unhealthy; the beds were also used as 'dining table' and the bed linen also as towels (1999, pp. 38–40). The absence of communication with the external world, in the hope of receiving some external help and

advice, seemed to nullify even the few acts of courage demonstrated by some (1999, p. 46). None of these dreadful descriptions were mentioned by Ibrahim and even his narration of his first days in Rome was extremely brief, as if completely insignificant to him. He used two very short sentences to describe the nothingness received upon arrival, quickly moving his attention to another issue that for him was much more important: the new era of peace that the PKK had announced:

> once I arrived in Rome, I lived in very difficult conditions, which have been experienced by primordial societies centuries ago. After two days, I arrived here at the Ararat and, after two weeks, I got a bed in a reception centre. However, Italy is important because our president has arrived here. Rome […] has become a symbol. […] I would rather remain in Italy than move towards north Europe because Italians have been friendly and welcoming towards the Kurds.

What was quite surprising during the conversation with Ibrahim was his optimism and determination to remain in the country, despite the many difficulties. The solidarity that a large portion of Italians did express to Ocalan was much more valuable than receiving economic support from local institutions. The conversation with Muhlis, already in Italy for eight months, followed the same line. He did not describe *at all* the living conditions in Rome but aimed exclusively to describe the dramatic conditions experienced by the Kurds in Turkey, because:

> it is them who need help most. […] For us Kurds, the recognition of political and social rights is much more important than a piece of bread and some water. […] We do not expect to receive from you any money or any bread, […] the whole of our people are oppressed, and the recognition of the basic human rights is much more important than to find a job.

Their optimism—which was expressed by some others as well—was also due to the fact that their expectations in terms of help and assistance from public services were very low. Moreover, their work in refurbishing and improving the facilities in the *Ararat*—which benefited from external financial support—was a positive and visible sign of their efforts and of the help and support received. Moreover, the many initiatives of the UIKI

and *Azad*, as well as of some volunteers, to transform the *Ararat* into a cultural association represented another reason for being optimistic.

Great optimism was expressed as well by Behzad, the only Kurd from Iraq I managed to interview. At that time, he was living at the 'Forte Prenestino'—another informal living space on the periphery of Rome—though he was a regular 'guest' at the *Ararat*. After two months in the capital, he was still waiting to fill in the asylum request and to receive permission to stay, without which no official assistance would be made available to him. Despite his short stay in the country, the conversation was conducted in Italian, a clear manifestation of his intention to become as soon as possible part of the society. Upon arrival, Behzad, like many others, had been sleeping outside for five long days; had experienced the apathy of the police personnel, who gave him no information on asylum; and had queued for a long time at the *Questura*, normally outside the doors starting from six in the morning. He had also had to deal with the slowness of Italian bureaucracy and the large gap between local institutional practices that constantly seemed to humiliate and ignore refugees and unofficial social spaces where more humane encounters were created. Only after having roamed around Rome for a few days, and having received no help and attention from the police, did Behzad and his friends encounter some Kurds, who directed them to the *Centro Astalli* and to the *Ararat*, where they finally found 'humane people' (*persone umane*) and a space that allowed them to feel human again. As he himself put it:

> when we first saw the police at the central station in Rome, I told them that we wanted to apply for asylum. They told us that they knew nothing […] to go away. […] Soon after, we met some Kurds who directed us to the Church. It was the Church that, finally, directed us to the Centro Astalli. The centre gave us the paper for requesting asylum and all the necessary information. […] During the first period, together with some friends, we slept outside near a Church. […] The Centro Astalli said that once we get a permission to stay, they will help us to find an accommodation in a reception centre. I do not have a permission to stay yet, maybe I will get it next week.

Behzad described in a few sentences the problems that many faced, especially in Rome, as compared to those who reached southern coastlines:

a complete absence of information which finally arrived not from the police forces but by some Kurds, and the lengthy bureaucracy.

The Italian bureaucracy was experienced as well by Hamdullah, whose story started in September 1997, a time when the vast majority of would-be refugees were more likely to receive a decree of expulsion than information on asylum. This is precisely what happened to him, who wished anyway to reach his extended family in Germany, which the police force apparently helped him to do. His wife, Rahime, and three children reached the coast of Badolato on 26 December 1997 (see Puggioni 2006b), and contrary to their expectation, local institutions had attempted to create a reception centre to keep them in the country. After a long and prolonged journey, the family was reunited in Germany, though after more than a year in Germany, in compliance with the Dublin Convention, they were sent back to Italy, the first safe country. After more than three years since they had left Turkey, they were still 'unsettled', and their legal status was highly precarious. Hamdullah, who had 'applied for asylum more than one and a half years [earlier], [was] still awaiting to obtain permission to stay' from the *Questura*; while Rahime had managed to receive temporary permission on humanitarian grounds thanks to the help of the CIR. Although at that time they were accommodated in a first reception centre, they had already spent the maximum period allowed by law, though no one had the courage to send them back onto the street. What seems important to highlight from the stories of Rahime and Hamdullah was the way in which they perceived the gap, if not a parallel world, between the public and the private: between the public sector from which they received very little and the private sector, including ordinary citizens from whom they received lots of support. The lengthy bureaucracy—evident in the delays that Hamdullah experienced in terms of a permit of stay and in receiving financial support for their children—became more apparent after the assistance they received in Germany from the public sector and from Rahime's family. However, their biggest frustration was not due merely to the Italian asylum system but to their failure to reunite with their extended family in Germany, and hence to their forced permanence in a country not of their choice.

This latter aspect was emphasised as well by Ahmet, who had been compelled to apply for asylum in Italy, despite his initial refusal. Only

at the end of the conversation did he list all the reasons why he did not intend to remain in the country, reasons that—as he noted—were common to many Kurds: 'they do not have the opportunity to get a bed to sleep in, no opportunity to work, and […] not so many social rights. It is only the health service that works'. As the interpreter then added: 'no one loves Germany or France, everyone asks simply for a job and a place to live'.

2002: The New Asylum System

The first national plan of reception for asylum-seekers and refugees was regulated by the so-called Bossi-Fini Act (189/02),[6] an immigration law elaborated by the centre-right coalition, aimed more at criminalising migrants than introducing adequate asylum provisions. The key novelties were the introduction of some ten territorial commissions,[7] located in different regions of entry and in charge of asylum claims; the decision to make compulsory the holding period inside the Centre for Identification and Expulsion (CIE) for the undocumented; the introduction of new reception centres for asylum-seekers (CARA); and the establishment of a central 'system for the protection of asylum seekers and refugees', SPRAR (see www.sprar.it). Although many of the changes introduced were due to the transposition of EU directives on reception and the recognition of asylum status (Legislative Decree 25/2008, 140/2005), many everyday asylum practices did not change. In terms of reception, the new norms (Legislative Decree 25/2008, art. 13.1) related to minimum standards guaranteed the following: asylum-seekers were to be accommodated in reception facilities, only if 'possessing insufficient means of guaranteeing a quality of life adequate for one's own health and for the subsistence of oneself and one's own family' (article 5.2). The reception, up to a six-month maximum period, was to be guaranteed immediately after the asylum decision had been notified (article 5.6), and as soon as the local prefecture had verified the condi-

[6] Its implementation was regulated only following the D.P.R. 303/2004. Up to April 2005, the previous law was applied 40/1998.

[7] From 20 August 2014, the number of the territorial commissions have been doubled (Law Decree no. 119/2014).

tion of 'insufficient means of living' (article 5.3). Only at that point could refugees apply for a space in the SPRAR system and start a six-month 'integration process'. However, the entry in the SPRAR required that free space was available in the system as no alternative solution was on offer. Thus, according to the legal rationale, asylum-seekers, upon arrival in the country, were going to be accommodated in the CARA and 'held' there until a positive decision from the local commission was reached and were moved soon after to the second stage: the six-month integration process inside the SPRAR system, which included language courses, job placement and legal advice. In practice, spaces in the CARA were extremely limited—to the point where many asylum-seekers were quite often held in the CIE (see Commissione de Mistura 2007) and/or left to their own survival strategies—and equally limited were spaces in the SPRAR.

When set up, the SPRAR was a very ambitious system, premised upon the idea of establishing a public system of 'international protection' together with the cooperation of the private sector, that is to say that each region and municipality was to set up its own reception plan according to local private initiative. The government—through a centralised system coordinated by the Central Service in charge with the functioning of the SPRAR—was to coordinate different local initiatives and ensure that those initiatives conformed to minimum standards of living. As well explained in the SPRAR website (English version), it

> consists of a network of local authorities that set up and run reception projects for people forced to migrate. […] At a local level local authorities, with the valued support of the third sector, guarantee an "integrated reception" that goes well beyond the mere provision of board and lodging, but includes orientation measures, legal and social assistance as well as the development of personalised programmes for the social-economic integration of individuals. SPRAR' main objective is to take responsibility for those individuals accepted into the scheme and to provide them with personalised programmes to help them (re)acquire self autonomy, and to take part in and integrate effectively into Italian society, in terms of finding employment and housing, of access to local services, of social life and of child education (SPRAR 2016)

The public system of reception was conceived as a system based upon the support of the private sector, which makes the system itself highly

problematic. What is especially problematic is the existence of a myriad of local/national associations and NGOs which, though respecting minimum standards, offer a variety of different services. As well observed by Valeria Carlini (2010, pp. 230, 233), there exists a 'galaxy of local projects', of projects related to an impressive variety of centres: including public and private ones, those related to first receptions and those related to second receptions (i.e. the integration stage); closed camps and open camps, ones administered by national NGOs and others by very local ones and those which provide full services and those which provide only some.

What was, and still is, especially limiting was the very set-up of the SPRAR: a system based upon *voluntary* engagement, that is, each region or municipality *volunteers* to be part of the system by offering specific services in compliance with specific guidelines. The SPRAR rationale was thus not to impose any forced dispersal policy but to encourage different localities to create the conditions for proposing a set of services according to the peculiarities of their own local framework. The rationale of the plan was, actually, remarkable as it was based upon the idea that different localities were able to offer different services and thus it was for those very localities to propose to the Central Service feasible projects that they could effectively carry out. In practice, this freedom of engagement created such a variety of services and projects, each with its own peculiarities, that resulted in a lack of homogeneity in the provision of basic services, services which were always temporary services, because organised upon temporary projects.

Since 2011, the system has run following a three-year plan. If we have a look at the figures up to 2013, we get a general idea of the number of asylum-seekers and refugees who have entered the SPRAR system, that is, a tiny minority in comparison to overall demands. Against an influx of some 42,925 who entered Italy through its southern coastlines during 2013 (MSF 2016a, p. 3), the SPRAR system could guarantee only 150 beds in Rome and some 3000 in the whole country, up to a maximum of 2206 beds if we add other accommodation options, both public and private, outside the SPRAR. Even if those figures are doubled—as the maximum stay in the centres was six months—the overall numbers were clearly insufficient.[8] According to the Association for Juridical Studies

[8] Interview with a protection officer at SPRAR, Rome, 10/12/2012. In March 2012, some 4634 were in their waiting list.

on Immigration (ASGI), only some 32 % of overall asylum requests in 2012 were accommodated in public/private facilities. Given these overall figures—confirmed during institutional interviews in Rome with members of UNHCR, SPRAR, Centro Astalli, Ministry of the Interior and IX Municipio,[9] the vast majority of refugees had no option other than to find a solution by themselves. Self-help strategies continued to be the norm. In Rome, in 2013, it was estimated that some 1800 people holding protected status, either as refugees or another subsidiary status (see Council Directive 2004/83/EC), were living in highly precarious conditions. This went up to 8000 if the national level was considered.

The conditions of destitution and homelessness are further confirmed with two more important figures: virtual residency and occupied buildings. To begin with, even if those holding refugee or subsidiary status are granted the very same rights as Italians, including free access to health care and schooling for children, registration for these services requires an important declaration: a residential address. This is certainly a normal request as most of the services in cities are divided according to residential districts. However, the address needs to be a verified address, that is, an address that the police recognises as a registered building, which possesses some minimal safety and hygiene requirements. This procedure excludes all abandoned and insecure buildings as well as encampments where a great number of refugees effectively live. Since the 1990s, many NGOs working with forced migrants agreed to register many of them using their office addresses, which was the only option to ensure access to local services, if no other living solutions were found. The number of people who are officially registered as living at the address of a local organisation—that is, in a virtual domicile—gives a sense of the high number of forced migrants who live in unliveable structures/camps to the point of being unable to declare their place of living. At this point, we arrive at another big contradiction in the system: asylum-seekers and refugees are not provided with adequate housing facilities, but at the same time they cannot be registered for accessing any social service unless they provide proof of a decent living space. In the Centro Astalli alone, some 6250

[9] Formal and informal conversations were held in Rome between mid-December 2012 and beginning of February 2013.

people applied for residency at their address in 2011, reaching a total number of 7688 people virtually living there, a figure which was slightly lower in 2014: 6095. Even the municipality of Rome authorised the use of their address for those who lacked a decent roof (ASGI 2011, p. 79, note 7). Virtual addresses certainly did (and do) not solve the problems of accommodation and in some cases even created more problems in accessing social services including the health service. Registration at the local General Practice (SSN, National Health Service) is done according to the declared living address. While all the associations are based in the centre of Rome, all the destitute live on its periphery.[10] In practice, even health service is provided *privately* by the many charity organisations working in the field, making even access to the doctor not a right but a charitable service. In the Centro Astalli, some 2422 medial checks were carried out in 2011, and some 400 hot meals were offered weekly, once a day, to refugees for free. However, even the location of the Centro Astalli is in the city centre and many on the peripheries do not normally use those services unless strictly necessarily. Most, if not the totality, of those declaring a virtual residence are living in extremely precarious conditions, conditions which for European standards will be considered as degrading and unacceptable. The great majority of refugees who fled from Afghanistan, Sudan, Somalia, Ethiopia and Eritrea live in many 'non-places' (Auge 1995) made of tents, huts, unfinished and/or abandoned buildings, mostly located in Romanina, Collatina, Ponte Mammolo and Ostiense, in which some 1800 people holding a protected status were sleeping (See Fondazione IntegrA/Azione 2012; MEDU 2011). And these are the 2011 figures. The conditions of the past five years have got worse. Those locations are still locations of unliveable encampments, in conditions of isolation, marginalisation and ultimately of undignified life. Given the unliveable conditions of a great number of asylum-seekers and refugees, many are those who try *to escape* towards another EU country in the hope of finding another place of refuge. Unfortunately, in many cases their experience does not last more than one year, if another asylum application is submitted. Refugees find themselves trapped within another legal

[10] Conversation with a member of Cittadini del Mondo, Rome, January 2013.

context: the Dublin III Regulation,[11] according to which asylum-seekers and refugees should be taken care of by the first EU country of entry. In cases of multiple requests, and/or transit in another EU country, refugees are most likely to be sent back to the first country.

The idea that all these people are invisible as argued in different reports (Fondazione IntegrA/Azione 2012), or even 'institutionally invisible' (Puggioni 2005) as I myself argued a decade ago, can hardly be applied today. The number of African people, who queue outside the Centro Astalli—in the very heart of Rome, next to Piazza Venezia—are not invisible, not even for the tourists. The number is too high to make them invisible. All those people working for refugees with whom I spoke during my most recent visit in Rome in February 2013—including SPRAR, UNHCR, ASGI, Centro Astalli, Action, IX Municipio—were all aware of the residential locations of refugees, even if the vast majority of them did not visit those encampments. The number of virtual residences and of the so-called *dublinati* (Dublin-transfer) are strong indicators that show that these dramatic and unliveable conditions are well known to all public and private organisations. And perhaps, many organisations—including the Centro Astalli whose voluntary services have been remarkable and admirable—are partially responsible for this situation, given all the funds received by the municipality of Rome as well as the privileged role they play in the many roundtables on immigration. Even if *private* organisations try to compensate for the many *public* inefficiencies, they are part of a system which seems to make, and keep, refugees always already as 'recipients of aid' (Harrell-Bond 1999), perhaps not much different from the many charity organisations offering support and assistance in refugee camps.

What is the situation today? Highly dramatic as reported by *Médecins Sans Frontières* (MSF 2016a; see also MEDU 2016). Instead of specifying the number of service provided—as most organisations working in the field tend to do—in its report, MSF considered the excluded, by focusing attention on the many informal refugee settings existing in the country. One single figure is sufficient here: nearly 10,000 are left out of

[11] Dublin II Regulation applied up to end of 2013.

the SPRAR system (MSF 2016a, p. 1). As Giuseppe De Mola, researcher at MSF, clarifies:

> For nearly a year, we have visited occupied buildings, shanty towns, farmhouses, parks and train stations, in rural areas but also in urban areas, and we have documented a desolating reality, mostly disregarded by the institutions […] Thousands of men, women, children, vulnerable people who have fled dramatic conditions and who have all the right to receive assistance, they live under deplorable conditions, often with insurmountable barriers which compromise access to essential heath care (2016b).

The conditions inside those encampments are highly dramatic: only 50 % of those spaces have drinkable water and electricity; access to health services is rather limited if it exists at all; one-third of them are not yet registered in the national health service; and two-thirds do not have regular access to their doctors (MSF 2016a, p. 2). The most alarming conditions are in Rome, in which some 19 buildings are occupied by migrants and forced migrants holding a legal status, that is, up to some 3500 people out of a total of 103 informal sites nationally (MSF 2016a, p. 7). What is worrying for MSF is not so much the current figure that, while high, might be manageable but the likely increase in this figure by the beginning of summer 2016 (MSF 2016a, p. 1). In particular, MSF is considering the current number of people 'kept' under the extraordinary plan enacted by the government. Following the high number of entrants along the southern Mediterranean borders in 2014 and 2015, the government has increased the availability of reception centres. Since 2015, the number of available spaces, that is, beds, has been expanded and so-called Centres of Extraordinary Reception (CAS, Centri di Accoglienza Straordinaria) have been created. Some 100,000 asylum-seekers are currently accommodated in state-reception facilities, facilities which are up to 70 % outside the SPRAR system, and thus not under its control or subject to its standards. The question, as MSF itself posed it, is what is going to happen to these 100,000 once the six-month period is over? Given past experience, it is legitimate to predict that new (forced) conditions of encampment will be created, which will be accompanied by new conditions of marginalisation and undignified life.

2011: Arab Spring and Temporary Protection

The 2011 Arab Spring attracted great international attention. If, on the one hand, it was applauded for the way in which different young generations demanded changes and challenged traditional politics, on the other hand, it caused problems including generating anxieties of possible invasion in Europe. The key issue for the EU countries, including Italy, was how to protect its southern borders. New influxes from North Africa and Arab countries were perceived as a new crisis, as a new humanitarian crisis which required political solutions. The most commonly adopted solution was prevention: prevention of new influxes. The Mediterranean Sea was transformed into a patrolling area, in which to stop and send back any suspicious boat before it entered European waters and thus its jurisdiction (Monzini 2007; Hamood 2008; Wolff 2008; Klepp 2010; di Pascale 2010). This is precisely the politics that the Italian government had already adopted for a few years since December 2007 when a Cooperation Protocol was signed in Tripoli—and suspended since the NATO bombing—as well as a cooperation agreement with Tunisia soon after the landing of some 26,329 people during the first four months of 2011, that is, soon after the beginning of the (internationally applauded) Arab Spring. The border patrolling and the push-back policy that Italy used in the past had been sanctioned by the European Court of Human Rights (ECHR) in the Hirsi Jamaa and Others v. Italy case (no. 27765/09)[12] which made Italy change its approach, as demonstrated by

[12] The application was originally lodged by 11 Somalis and 13 Eritreans who claimed that their forced transfer to Libya by the Italian authorities violated article 3 of the Convention and article 4 of the Protocol no. 4. The case goes back to May 2009, when Italian policy of interception at sea and push-back started to be more aggressive, following the agreement of 29 December with Libya, into force since 4 February 2009. On 6 May, three vessels, with some 200 people on board, were intercepted by three ships from the Italian Revenue Police (Guardia di finanza) and the Coastguard. Although the location of the interception was the Maltese Search and Rescue Region of responsibility, all the people were rescued and transferred to the Italian military ships and returned to Tripoli. No identification was carried out, and no information on protection was given. Once in Tripoli, all of them were handed over to the local authorities, and forced to disembark against their will. Fourteen of them were later granted the refugee status by the UNHCR office in Tripoli. Twenty-four were later contacted by the Italian Refugee Council, which played a key role in submitting their application to the ECHR. Two aspects are especially important to recall here from the ECHR's sentence, enunciated in paragraphs 129 and 131. In the first one, 'The Court observes that Italy cannot evade its own responsibility by relying on its obligations arising out of bilateral agree-

the 2014 *Mare Nostrum* operation (Amnesty International 2014, p. 23). However, the change of attitude was mostly due to the many thousands of migrants who died on the high sea and to the many protests that followed (see Puggioni 2015) rather than to the ECHR ruling.

The turmoil in the Maghreb countries and the NATO bombings in Libya altered the migration control strategy and encouraged thousands of people to flee. A cooperation agreement was signed with Tunisia, on 5 April, which included new control of frontiers on the other side of the Mediterranean Sea: that is, Tunisians were to block possible departure from their coastlines. After some 3600 migrants landed, mainly from Tunisia, on 12 February, the Italian government declared 'a state of humanitarian emergency', generally referred to as the 'North Africa Emergency'. For the first time, the whole country was officially mobilised. On 6 April, the government convened a unified meeting with local authorities and three key decisions were taken. Firstly, migrants were going to be placed in all the Italian regions—with the only exception of Abruzzo due to the 2009 earthquake—up to a total, and estimated, arrival of 50,000 people. Secondly, those opting to stay in Italy were going to be *assisted* for a six-month period only, while to all those who had voiced their desire to move to other European countries, their desires were satisfied. The government issued them legal documents that allowed them to circulate freely within the Schengen area. Lastly, the government proposed at the European Council meeting the implementation of article 5 of the 55/2001 Council Directive EU directive on 'Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons', which did not receive a positive response.

In terms of refugee reception and placement, a new politics of encampment was *de facto* put into place. The new plan was organised and supervised

ments with Libya'. As well documented in the Report of the Council of Europe's Committee for the Prevention of Torture, Libya could not be considered as a safe country in terms of human rights and refugee law. And because unsafe, Italy had to take its international obligation seriously and could not shift its responsibility against countries whose human rights records are extremely poor. The consideration that Italy should have known the Libyan (violent) methods has been reaffirmed in paragraph 131, which states: 'It therefore considers that when the applicants were removed, the Italian authorities knew or should have known that, as irregular migrants, they would be exposed in Libya to treatment in breach of the Convention and that they would not be given any kind of protection in that country'.

by the Department of the so-called *Protezione Civile* (Civil Protection), that is, the emergency department of the Presidency of the Council of Ministers and not via the national programme of asylum, the SPRAR. This meant creating new *ad hoc* rules and new *ad hoc* centres. Under the umbrella of 'emergency', all the basic costs of reception—mostly accommodation inside former military bases or newly established camps isolated from urban settings—were covered. Although the involvement of the *Protezione Civile* has the clear advantage of arranging and coordinating a reception plan within a relatively short period of time—using the very same strategies adopted after earthquakes or flooding—many of the municipalities involved have little or no experience of refugee reception. The key rationale was pure assistance, and mostly temporary assistance: shelter and basic necessities for six months. In terms of numbers, some 8229 were assisted under the emergency plan out of the 62,000 who reached the Italian coastlines in 2011 and of which 28,542 made asylum applications (*La Repubblica* 2011; Presidenza del Consiglio dei Ministri 2011; Manconi and Anastasia 2012).

In short, a large percentage of those who entered Italy moved to other EU countries. The condition of destitution of many encouraged them to leave Italy. People were not simply escaping from African countries, they were also escaping from the first safe country. They were escaping from Italy. And they are escaping at different stages. Some simply entered the country after terrifying journeys across the Mediterranean Sea and attempted to move towards European countries without going through any identification process. Others applied for asylum and moved away soon after they found themselves completely abandoned by local institutions, and still others moved away even if in possession of an official piece of paper that granted them international protection.

2013: Some Voices from the Camp of Salaam Palace

The so-called Salaam Palace, at times also referred to as Selam Palace, is an isolated building, an unfinished public building of the Tor Vergata University, located on the south eastern periphery of Rome in the Romanina area, where some 800 refugees, mostly Somalis and Sudanese,

have found irregular refuge. The building resembles a camp in the sense that it reproduces the very same conditions of marginality, degradation and abnormality that we tend to associate with refugee camps. At first sight, Salaam Palace does evoke those unliveable and abject spaces in which the language of exclusion, and certainly not the language of rights, predominates. However, Salaam Palace also represents a space which people have attempted to transform into a living space, once no other options were available to them. This does not mean that its 800 inhabitants understand this space as a liveable space, which it is certainly not by any European standards, nor that they silently accept this option. The use of the concept of 'camp' in reference to Salaam Palace aims, thus, to highlight both the condition of marginality and exclusion that it certainly evokes, but also the modalities through which exclusion is resisted. Salaam Palace remains, however, a space of exception, in the sense that conditions of legality and illegality coexist together. This living space is the result of an irregular act: this palace was *occupied* by the Somali and Sudanese refugees, once no other living options were made available to them. Throughout the years, its population engaged in a dual struggle. They have been struggling to make this place a liveable space, but they have also struggled to make the Italian authorities understand that more dignified solutions should be offered to them, or better, *together with* them. Despite the fact that nearly the totality of its population holds a legal status, they still live in extremely precarious socio-economic conditions. During my short visit to Salaam Palace in January 2013, the voices that emerged through the authorised spokesperson were not voices that represented themselves as powerless or helpless but voices determined to achieve acceptable living conditions despite their experience of abandonment, marginalisation and exclusion. Even if they hold the very same socio-economic rights as Italian citizens, these rights are not put into practice. And they are also not put into practice for the many Italians living in Rome in the very same conditions. Looking at the broader picture of Rome, and its institutional inabilities, and perhaps unwillingness, to give appropriate responses to those in need of housing and socio-economic help, the occupation of Salaam Palace should not be understood as an exception but, on the contrary, as a *normal* exception (see Corriere Romano 2011). It is a nor-

mal exception in the sense that many empty and abandoned buildings have become the target of occupation strategies, quite often coordinated by Action, an NGO directly involved in the practice of occupying specific empty buildings, which are then allocated to people in need, who are also involved in the process. The 800 refugees in Salam Palace have thus become squatters.

The occupation of the building started already in 2006 as part of a bigger initiative coordinated by Action. Initially there were some 250 people in the building, a population that has slowly grown, even up to 1000 during winter time. The second floor is used specifically for temporary stayers, despite the very poor conditions. Nearly the totality of people living inside hold a protection status, either a refugee or subsidiary status, and they all come from four countries: Eritrea, Ethiopia, Sudan and Somalia, although the number of Sudanese and Somalis are the highest. As an unfinished building constructed for office use, the hygienic facilities inside are certainly inadequate to be shared by many families. On top of that they do not have heating or hot water, save in those cases in which people managed to do some work and basic refurbishing.

The camp of Salaam Palace is certainly a space of marginality and of institutional abandonment, if one is to consider that this space was occupied by the many refugees as an act of self-response against institutional non-responses. Despite being a space of marginality, it is also a space of *(re)active marginality*, in the sense that the people living there are not simply inactive refugees waiting for some charity. It is a space of marginality given its condition of isolation, exclusion and degradation. It is a space of reaction, in the sense that many of the people living there have been active participants in the process of its occupation and of its transformation into a liveable, but not yet decent, place. If no solutions are offered from the top, responses are looked to from the bottom. Even the help they receive inside is very different from the help offered by the many organisations in the city centre. Some members of the Citizens of the World Association (*Associazione cittadini del mondo*) offer assistance directly *in loco*. Since 2006, every Thursday evening, some volunteers go there, including a doctor who checks the health of those in need. As she herself said:

> We have been here some seven years and we have done lots of battles for its official recognition. No one listen to us. There was an article in the Herald Tribune (2012). It is a nonsense! We have talked with all the institutions, at all level from the municipality of Rome, province and region. […] I am the only doctor![13]

During my visit, I had a rather long conversation with the Sudanese Bahar, the nominated spokesperson of the committee, who agreed to share his thoughts on the Italian system, by giving voice to most of the people living there. After a brief introduction, the conversation started with a very direct question: which protection they were receiving—a question that, I have to admit, was very embarrassing given the visible conditions of decay of the building:

> Well, we are refugees in Italy, but the only thing that we have found here in Italy, is a permit of stay. Only this. A piece of paper with name and surname. Here there are some 800 people! […] Some 100 people work. Those who do not work are helped by those who work.

Well aware of the fact that they should receive support from Italian institutions, which the vast majority did not receive, and given the experience of many of them in another EU country, the description of life in Italy was done through a comparison with the services offered abroad:

> In Italy, there is no respect for refugees. They are treated differently than other countries. In other countries, if you are a refugee, you do not understand the language, you do not know the country, you have family, they help you. Here you receive a permission of stay, a piece of paper and tell you to go away. But where shall I go? You stay for ten days in a camp, perhaps a month, you receive a piece of paper and they tell you to go away. But where shall I go, if I do not understand Italian, I have no friends, I have nothing? Where do I go? Where do I go and have a sleep? On the road! This is what I received in Italy. […] If people found no place where to sleep, they take a piece of cardboard and sleep under a bridge. Until you find someone who tells you: do this, do that.

[13] Doctor Donatella D'Angelo, member of the NGO, Cittadini del Mondo, conversation held at Salaam Palace, Rome, January 2013.

For Bahar, the biggest problem in Italy was not simply a lack of information, which in any case makes a huge difference in the quality of life offered, but the lack of respect. As he put it, it is respect that makes the real difference, a respect which is first and foremost connected to the satisfaction of basic necessities. If institutions would had some respect for refugees, they would help them to find acceptable living solutions as well as implement their rights. He was well aware that there exists a system of reception and that some people have been 'lucky' enough to live comfortably for a few months but also that this very option is not offered to everyone. This different treatment was completely incomprehensible to him, as well as to many others at Salaam Palace. It was even more incomprehensible if one was to compare the help received from ordinary people and the 'nothingness' offered by the government or if one compared the assistance received in other EU countries and the condition of destitution in which many find themselves in Italy:

> I have never found this. I do not know how many here. I know there is someone, for six months, perhaps one year, and afterward, you are out. The lucky ones got one year. I do not know how it works, as I have never been there. […] You need to make many applications for getting something. There is no one for helping you doing this. There are some Italians helping, but no one from the government. […] We have been here six years and no one has ever come to ask something. Many Italian TV stations have come, many journalists. They do not see us. Nothing! Only after the German journalists have come here, then someone has come. […] Foreign journalists have come first. Really strange! […] We do not live comfortably (lit. good) here. Many people come here and say: *mamma mia*, this is becoming Africa! We have not accepted to live in this way, however, we live like this if we have no other place where to go. […] We would like to live comfortably. Why have we left our country? […] Out of our country, we have found the very same problems. We did not imagine that in Europe, we would have found these conditions. Never. If you go in Sweden, they respect people. […] Near here, there is a bus stop. Busses stop only if there is an Italian. If no Italian, they do not stop, even if there are some hundred people. It does not stop. How can we possibly live like this? We are not saying that Italians are bad people, it is not Italians' fault. It is the fault of the government. It is the government that has to ensure the respect of

> people. You should not make some 800 people live in these conditions. […] We have rights. Where are our rights? We have rights. We ask Italy to get our rights. […] Let at least spend 10%. They spend nothing on us. This is not respect. It is sufficient to see the other countries. […] We have respect for others, but the others do not respect us. Even the government do not see us as refugees. […] If the government would have seen us as persons, it would not have left us, as refugees, 800 people, 50 children and 250 women here. […] There is no security here. We live like this. At least for the children born here, they should have some respect. Leave us out, as we have come here. We have no rights, very good, no problem, but the children born here in Italy […] they should receive the same respect as the Italians. What do these children understand? These are Italians. They know no other country. When children go to school, they ask questions: mum, why do the others live comfortably and we live like this? If this is not our country, why don't we go to our country and live comfortably there?

During the conversation, Bahar put a lot of emphasis on the precarious conditions of the people inside, especially the high number of women and children, who deserved much more dignified living conditions. But if people in the institutions were not even listening to their needs, how could they possibly help? As he put it:

> I do not talk for myself. I talk on behalf of the 800 people, 50 children and 250 women. We have this problem, and the government should listen to us when we talk. However, no one listens. […] They have no time to meet us. At least they should listen to our words. They listen nothing. Let alone if they are going to meet with us! We have been asking for the residency for a long time. For 800 refugees, we have been asking for the residency for two years. […] If they do not recognise this home as our residence, we cannot renew the permit of stay, renew the health service card, and look for jobs. If they are not recognising this place as a residence, then they should give us a home, because it is their responsibility to give us a home, so that, at least, we can renew the permits.

Towards the end of the conversation with Bahar, specific questions on his experience were asked even if he shifted the conversation towards the experience of others, especially in reference to their experience abroad, directly connected to the lack of a future in Italy:

> Many have gone abroad. I have been abroad as well. I have been to England, and after one year, I came back. Everything was fine, a home, a doctor, a school. There was everything. For this reason, I did not want to stay in Italy and I went away. I slept in Termini[14] for three days, then I took the train and went away. […] When I arrived in Italy. I stayed a month in Foggia,[15] took the permit of stay, after a month I was forced out. Where do I go? I took the train to Rome. In Rome I knew nobody. In the following three days I stayed in the station, wandered around and took another train. What was I supposed to do? It is not like this now, I know the language.

After one year, he was forced back to Italy, in compliance with the Dublin II Regulation. After arrival at Fiumicino airport in Rome, he was given a ticket to the city centre and nothing else. He had to start all over again. Many people, like him, do not want to remain in Italy as the country offers very little, if at all, and there are many who do not simply escape once but move out of Italy even some five or six times:

> I only left once. There are people who have done it also some five, six times. They do not want to remain here, because there, they have found another life, and people are respected. Because when we go there, they see us treated as persons. Many people have gone crazy here. Now they sleep in Termini. Before, they were good guys. Because of what had happened [condition of destitution], they have gone crazy.

The condition of destitution of Salaam Palace's forced inhabitants has not changed in the three years since my visit in 2013 nor has it changed after ten years since it was first occupied. The people living inside the builing are still under very precarious socio-economic conditions, the NGO *Cittadini del Mondo* continues to offer its medical support there, while temporary medical care has been offered by the Italian Red Cross—mostly because of tuberculosis cases and the increase in the number occupants up to 1600 in May 2014 (CRI 2014). Despite several visits from various institutions, countless protests and several donations from private citizens, the institutions have taken very little action. We certainly can-

[14] Termini is the main train station in Rome.

[15] Foggia is the location of a CARA, that is, reception centre for asylum-seekers.

not claim that the life inside Salaam Palace is unknown (see Cittadini del Mondo 2014). The conditions of destitution there are well known in Rome and indeed even beyond Italy (see *New York Times* 2014; *Herald Tribune* 2012; *Der Spiegel* 2014). As reported in the *New York Times*:

> Salaam Palace is just one of several similar squats, though certainly the most famous, or infamous. Italy's president called the building a national shame in a televised address in 2012. […] The mayor of Rome visited last year and pledged help. Pope Francis has quietly sent his own "Almoner," or alms giver, to put his social message into action, sending workers to unclog sewers and donating a prefabricated hut with showers (2014, p. 6).

In the past two years, very little has changed in terms of living conditions, but at least an official delegation—made of members of Parliament, the spokeswoman for the association LasciateCIEntrare, the so-called CODA (Centro Operativo per il Diritto all'Asilo—Working Centre for the Right to Asylum) as well as members of the association Citizens of the World—has visited the building and assessed the living conditions. The only official response was to act against the local police headquarters which kept refusing to renew the residence permit because people there failed to reside in formal, and thus authorised, buildings. Even if this was done in compliance with current legal norms (Law 80/2014), by not accepting 'virtual residency', the police has made itself responsible for the non-renewal of their legal documents of stay, which at the very same time has prevented access to some core rights, including registration on the national health service and job contracts (CODA 2015). Oddly enough all the blame was on the police and not on other institutions charged with socio-economic conditions whose responsibilities were much more serious.

2015: Hotspots and New Encampments

During 2014 and 2015, important changes occurred, and not only for Italy. A series of deadly shipwrecks in the Mediterranean Sea encouraged a new approach towards border management: the politics of letting migrants die on the high sea has been officially abandoned (see Heller

et al. 2012). The number of rescue operations greatly increased as well as the number of entrants, especially along the Greek islands, via Turkey, and Italy, via Egypt and Libya. In terms of numbers, some 170,100 in 2014 and 153,842 in 2015 reached the Italian coastlines, and some 50,000 and 856,723 on the Greek islands respectively (UNHCR 2016b, c). The Dublin Regulation has come under severe scrutiny. From the Italian perspective, by restricting asylum claims to the first country of entry, irrespective of any other consideration, the Regulation is limited in two respects. Firstly, it does not consider that some countries are more exposed than others to asylum influxes, by creating imbalances in the European asylum system. Secondly, it does not take into consideration the desire of newcomers, who are demonstrating a clear unwillingness to apply for asylum in Italy. While officially it was agreed that EU countries were to help in the reallocation of asylum-seekers—up to 40,000, increasing to 160,000 in the latest decision on 22 September 2015 (Council Decision (EU) 1523/2015a, 1601/2015b)—what was happening on the ground was far from demonstrating any real coordination and any real attention to human rights. Although for the first time since the Dublin Convention, EU countries made themselves available to a redistribution of asylum-seekers, the achievements so far are rather limited. Even if in the preamble of both EU decisions, the significant migratory pressure to which Italy and Greece were exposed was acknowledged, European action is extremely slow. Using the wording of the Council Decision:

> Among the Member States witnessing situations of considerable pressure and in light of the recent tragic events in the Mediterranean, Italy and Greece in particular have experienced unprecedented flows of migrants, including applicants for international protection who are in clear need of international protection, arriving on their territories, generating a significant pressure on their migration and asylum systems (Council Decision (EU) 2015a/1523, para 9).

The first countries of entry are dealing with *their* asylum problems, with little support from asylum agencies, a support that is mostly limited to asylum claims. What is most problematic is the mismatch between the number of entrants and the number of asylum requests in both coun-

tries, meaning that many, who have entered in the past two years, have not applied in the first country of entry (Progetto MeltingPot Europa 2015). The EU reallocation plan considers liable for reallocation only those who enter and apply for asylum in the first country of entry. This clearly discourages them from using Italy and Greece simply as a land of transit towards other destinations. Only three nationalities are considered for reallocation: namely, Syrians, Eritreans and Iraqis as their recognition rate is above 75 %, as per Council Decision. A look at the figures for reallocation applications gives a sense of the failure of the plan (Human Rights Watch 2015c). Some 17,012 places have been made available, against the 160,000 planned, and only some 1,411 from Italy have been reallocated, according to the most recent figures on 27 October 2016 (EC, Migration and Home Affairs, 2016).

In September 2015, another important decision was taken at the EU level: to create hotspots, that is, specific frontlines, which are to comply with the Dublin Regulation. In other words, some localities are required to register all entries, take fingerprints, provide asylum information and provide first reception. This means in practice that the country of first entry is going to provide all the services related to arrival, which are precisely the most demanding services. This clearly demonstrates that very little is being done to relieve the significant pressure on Italian and Greek migration and asylum systems. EU countries will eventually enter the asylum scenario only after the processes of screening, first reception and asylum requests have been managed by the first country of entry.

The situation at the Italian hotspots is highly dramatic from all points of view. What is *not* surprising is 'the reluctance of asylum seekers to participate' in the process, and it is not simply a question of '[o]ffering work authorisation upon arrival to asylum seekers' as Human Rights Watch suggested (2015c, p. 16). There are two options for (forced) migrants upon arrival at the hotspots: either they submit an asylum request or recognise that they are economic migrants. On the ground, the situation is not so clear-cut. Many are those who are refusing to apply in Italy, many are also those expressing a desire to be reallocated to other EU countries, and many are those who do not know what to do. If they apply in Italy, there are lots of uncertainties around their future; if they apply for reallocation, they do not yet know how long they will be forced to remain in

the hotspots, which are often unliveable camps; and if they do not take a decision, they will be issued with a paper ordering them to leave the country within seven days via the airport of Fiumicino, Rome (Progetto MeltingPot 2016a, b). The question is not simply whether the Italian authorities are providing full and correct information; in a situation of uncertainties, the information received is also uncertain, especially for those not willing to submit an application at the first port of arrival. What is likely to happen, as is already happening, is that those who are not applying for asylum will either stay in Italy irregularly or will attempt to reach other EU destinations, in which they will not be able to make any asylum application.

The emergency system is in a complete state of chaos. The institutions—which rely on accommodating asylum-seekers in new facilities outside the SPRAR, and thus outside any asylum competences—are unable to fulfil their basic obligations, and forced migrants are protesting precisely against these conditions. Many are the examples of recent public protests in Italian streets of new asylum-seekers accommodated in open reception centres. Three cases are worth mentioning here: protests against fingerprinting, protests for not receiving documents promptly and protests for improving conditions inside the centres. In the first case, some 200 migrants, who landed on the isle of Lampedusa, refused to have their fingerprints taken and thus to claim asylum in Italy. On 17 December 2015, they went out of the camp and protested outside the city hall (*The Independent*, 18/12/2015). The protests lasted for more than a month, until there was forced reallocation off the island for those who presumably organised the protests. From the migrants' perspective, to be fingerprinted meant that they would be unable to reach their desired destination and apply for asylum elsewhere. The key message of the protesters was thus against what was perceived as an unfair system, because it restricts migrants' choice: choice to decide where to apply for protection according to their specific needs and aspirations, including the aspiration to reunite with extended families already settled in some other EU countries.

In the two other cases, the protests were much more visible and disruptive for local life, as road traffic was blocked and local institutions had no choice other than to listen to the protesters. Some 100 asylum-seekers

occupied one of the roads that leads towards Milan, just opposite the reception centre in which they were accommodated, in Bresso. There were two reasons for the protests: against the slow bureaucratic process, in issuing regular paperwork, including a working permit, and to make their living conditions known to the outside world. This latter attempt did not work out as the media, which tried to visit the centre during the protests, were not allowed in. This further exacerbated the protesters (*La Stampa* 24/08/2015). The Red Cross, in charge of the centre, a camp made of tents, was against the entry of the press. The second big event worth mentioning took place just along the entry route to the camp (CARA) in Crotone, in the Calabrian region, the very same route leading to the local airport. On 16 March 2015, some 300 migrants went outside the camp and occupied the main road, to the point where no access to the airport was possible and some flights had to be cancelled. There were many reasons for the protests: delays in the issuing of the legal documents, the absence of Wi-Fi connection, the issuing of vouchers instead of money, the limited number of clothes available as well as the quality and quantity of the food distributed (*Il Crotonese* 16/03/2015; *Il Corriere della Calabria* 16/03/2015).

In short, the so-called Mediterranean crisis has highlighted many of the limits to protection. The Italian responses continue to be articulated upon a politics of emergency, that is, a politics that tends to react to forced migrants as if an unexpected phenomenon, which require immediate (emergency) solutions. But the solutions adopted are solutions based more on assistance than on rights, more on temporary shelter than on integration, more on uncoordinated responses than on a plan of protection. The dominance of an approach based on emergency continues to perpetrate a humanitarian perspective, a perspective based on some charity and not articulated upon rights. The subjects of protection have, however, demonstrated a great capacity to contest the current politics of (non-)asylum by refusing to remain silent, even if acts of contestation have not necessarily achieved the hoped-for outcome, as the many newspaper articles and NGOs' reports and websites suggest (see www.openmigration.org; www.senzaconfine.org; www.mediciperidirittiumani.org/en/; www.meltingpot.org, www.asgi.it; www.associazionecittadinidelmondo.it).

Concluding Remarks

By touching upon some key historical moments in Italian asylum politics as well as on its most problematic aspects, this chapter has tried to highlight the many limits, dysfunctions and dynamics related to the politics of protection. Not only is the state not one single sovereign entity which simply decrees over issues concerning entry or exit, nor are forced migrants necessarily agentless. Refugees are demonstrating themselves to be knowledgeable people as well as people who have specific objectives. They are far from accepting passively whatever options are chosen for them. Many are, however, facing legal constraints and everyday survival needs. Entry into Italy is not the entry into a longed-for Europe, nor are human rights simply something that can be invoked in order to be implemented.

Despite external constraints, many forced migrants arriving in Italy demonstrate great capacities of adaptability—as for instance moving between regions in search of better living conditions—as well as actively attempting to move outside the country, despite prevailing legal norms. While all these movements demonstrate that forced migrants are active people in search of better living conditions, their state of displacement clearly does not end once a first safe country has been reached. As already highlighted by Crisp (2013), and discussed in the Introduction, forced migrants' movements lead to inconclusive outcomes. The question is thus not simply what forced migrants are doing to find better solutions for themselves but also what sovereign states are prepared to do, and most importantly how they perceive the concept of protection. The Italian case clearly demonstrates that the question of protection is not simply a question of sovereignty. In other words, difficulties in providing protection stem not exclusively from the existence of a world order founded upon sovereign states—which decide upon entry and exit—but also from the uncertain and shifting meaning attributed to protection, a protection that in Italy continues to be interpreted as if it meant mere (temporary) assistance. Refugee protection—as well as citizens' protection—is not an activity that can be devolved to the private sector, as what the private sector can offer is a humanitarian approach, the very same humanitarianism

that has been heavily contested when applied in refugee camps (see Cutts 1998; Malkki 1996; Warner 1999; Hyndman 2000). Finally, the forced condition of encampment in which many asylum-seekers and refugees have found themselves in Italy highlights the importance of rethinking the concept of protection, by focusing more on what protection is from a refugee perspective rather than what the limits to protection are from the sovereign perspective.

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6

Rethinking International Protection

Rethinking International Protection is an attempt to think differently about protection, by questioning first and foremost what protection is. A great part of IR literature tends to focus attention on sovereignty and on the way in which sovereign states protect themselves from refugees. The aim of this book is not so much to discuss the limits of protection—that is, the difficulty for would-be refugees in accessing protection in light of the many security technologies introduced by Western states—but to discuss the difference between protection and assistance, between guaranteeing rights and offering assistance, between the task of the state to protect and the role of charity to assist. By rearticulating the distinction between protection and assistance, the importance of the state as the key protector of rights was highlighted. If we were to consider protection, as meaning legal protection—and thus a protection connected to access to rights and to their full implementation—there is a need to draw clear lines between the role of the public and the role of the private. There is a need, in particular, to distinguish a politics of protection from a politics of assistance, and most importantly which subjects we want to privilege: the protectors or the protected, that is, the sovereign states or the refugees.

R. Puggioni, *Rethinking International Protection*,
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By contesting the concept of sovereignty, we argued that, as long as the concept of Westphalia sovereignty remains dominant, no reconciliation between sovereignty and protection is possible. The question is not simply to reformulate the concept of sovereignty but how to move away from it. If it is the state that protects, then it is from the state that the analysis of protection should start. By privileging a national starting point, we highlighted, among others, that a bottom-up approach should be combined with a top-down one. More specifically, the question is not only to integrate a top-down approach to Forced Migration Studies, as argued in Betts and Loescher (2011, p. 3), but also to integrate a bottom-up perspective in IR. Although we certainly agree with Betts and Loescher that 'it is often the choice of states and other political actors that determine outcomes for the displaced' (pp. 3–4), the role of local/national institutions and charity networks should also be taken into consideration. This is especially needed when states decide to abandon their role as protectors and leave refugees' assistance to humanitarian organisations, as amply demonstrated in the Italian case.

To argue that more attention should be given to the state, to the liberal/constitutional state, does not necessary imply that the liberal/constitutional state does always already provide protection. This limit is especially evident if we are to look at the many policies enacted, or suggested, by Western right-wing parties which are precisely contesting the application of constitutional guarantees to migrants. The centrality given to the liberal/constitutional state aimed at suggesting that—if we were to discuss protection in terms of rights, and most importantly in terms of refugees' emancipation—our analysis should start from the very political system which guarantees rights and emancipation. And it is the liberal/constitutional state that is articulated upon those premises. The idea of putting aside the concept of sovereignty was articulated upon the recognition that to evoke sovereignty amounts at evoking, at the very same time, an authority of power, command, obedience and above all an authority that decides over entry and exit policies at its discretion. Sovereign state's *raison d'être* is not to provide protection to aliens but to provide security to its own citizens. Our analysis has been thus articulated upon the premise that as long as we evoke sovereignty we disregard any discourse articulated upon rights, rights upon which the 1951 Refugee

Convention was originally formulated and upon rights envisaged by the human rights regime. By locating sovereignty at the centre of our analysis, we *de facto* deny the respect for human rights and/or subject it to arbitrary conditions.

The Mediterranean Crisis that is unfolding before our eyes is an illuminating example of the dominance of the sovereign approach. EU states are acting first and foremost as sovereign states, that is, as states that can close their borders in name of state security, economic security or even societal security. Border controls are the first steps for claiming the respect of sovereignty and the need to prioritise national security against external (potential) threats. The EU agreement with Turkey is a clear indication of this trend. What matters is not the respect for human rights but the respect for the concept of sovereignty; not Turkey's human rights record but that it keeps its borders closed; not what is going to happen to those left out but how to prevent them in. This (traditional) approach is clearly an approach that sees sovereignty as an overriding principle against any other principle, even if principles of human rights and democracy are loudly proclaimed internationally as fundamental principles (see Gould 2004; Guilhot 2005). When it comes to frontiers, it is sovereignty not the state of rights that is privileged, as extensively discussed in Hannah Arendt's *The Origins of Totalitarianism* (1967b), recalled in Chap. 3.

Thus, if it is the concept of sovereignty that, so to speak, impedes rethinking about protection, then there is a need to move away from this very concept and start considering new modalities and/or starting points. As well articulated in Haddad's work: '*How can the refugee ever be reconciled with an international system that rests on sovereignty?* […] If the concept of asylum inherently clashes with the concept of sovereignty, what chance is there for refugee protection?' (2008, p. 11, emphasis in original). As argued in Chap. 1, such reconciliation is impossible. If we evoke sovereignty—a very specific conception of sovereignty articulated upon the Westphalian system—we cannot evoke protection. Refugee protection—as well as citizens' protection—involves rights while the concept of sovereignty evokes state's security, or more accurately people's insecurity (see Krause and Williams 1997; Peoples and Vaughan-Williams 2010). More specifically, what we tried to claim is that by naming any refugee policy as 'international protection', we can hardly distinguish (effective)

protection from policies which hide, encamp, shield, look after, safeguard and/or assist refugees. They are all related to some policies that evoke protection, but it is mostly a protection enacted from the perspective of the protector.

By starting our investigation from the perspective of the liberal/constitutional state, not only is the question of protection articulated upon (equal) rights and human dignity, but the question of protection also moves away from the traditional binary opposition: either communitarianism or cosmopolitanism, that is, either the protection of national communities in the name of a common identity or the protection of the (needy) others in the name of humankind (see Walzer 1983; Linklater 1990; Beitz et.al. 1990; Bell 1993; Bader 1997; Cole 2000). The premise upon which the question of protection was formulated is not at all articulated upon a question of identity, as for instance formulated by R.B.J. Walker as early as 1993. By asking whether we are 'citizens, humans or somehow both' (1993, p. 154)—and thus whether our political commitment is projected towards our community, towards the cosmos or in-between—Walker's answer considered only the sovereign perspective. As Walker put it:

> [a]s a response to questions about whether 'we' are citizens, humans or somehow both, state sovereignty affirms that we have our primary—often over-riding—political identity as participants in a particular community, but retain a potential connection with 'humanity' through participation in a broader international system (1993, p. 154).

Traditionally protection was formulated according to whether we are open towards other communities or whether we privilege our own community. Walker's question 'who are we?', was simply a non-question, or more accurately it was a question to which the answer was already pre-established, as he himself acknowledged. Walker's answer was articulated upon the sovereign identity, that is, from the 'us' perspective and not from the 'them' perspective. However, by privileging an 'us' perspective, protection—despite the word used—is doomed to be transformed into non-protection. If we are focused on us, how can we possibly focus, and thus protect, them? We are certainly not claiming that the question of

identity is irrelevant or even that it is easy to eliminate this traditional opposition: us versus them. On the contrary, the meaning of protection, discussed in the book, is *still* elaborated upon identity. But this is done in a different way. By highlighting rights and the political capacity to act irrespective of the legal status, the question is no longer who we are politically but indeed which role human rights play upon us (and them). In other words, do we see ourselves as rights-holders or do we see ourselves as citizens of a particular state? If we consider ourselves as rights-holders, do we consider others—irrespective of their citizenship status—as rights-holders as well? This is a key point if we are to recognise protection in terms of rights and in terms of emancipation. If refugees continue to be thought of in terms of charity and assistance, then what will continue to prevail is non-protection as the Mediterranean crisis is precisely demonstrating. Refugees will continue to be seen in terms of crisis—that is, from the sovereign perspective—and not as subjects of rights. The historical shift from objects under the sovereign command into subjects under the liberal/constitutional state was precisely a shift articulated upon rights, upon the recognition of equal rights against sovereign arbitrary power. And it is this important shift from objects into subjects that I have tried to discuss in this book by advocating a rethinking of protection—protection as emancipation—as well as a rethinking of the figure of the refugee, not as the object of humanitarian assistance but as the subject of rights.

To conclude, *Rethinking International Protection* should be read as an attempt to think afresh about core political categories that we take for granted. The analysis on the meaning of protection, sovereignty, the state of rights and the figure of the refugee is an attempt—still in its early stage—to reflect upon alternative starting points. What the analysis of the Italian case has attempted to demonstrate is that protection needs to be distinguished from mere assistance and that the state has a crucial role to play which should not be delegated to the private sector. To claim that protection and assistance need to be kept separate does not imply that assistance is something irrelevant but simply highlights the different rationales of each concept. It means recognising that the two roles are complementary but not interchangeable. Protection, in Italy, has been privatised to the point that it is no longer protection. Moreover, while Italy is a safe environment in which refugees can live free from

life-threatening events, it is not an environment conducive to their emancipation. The question of drawing lines between protection and assistance seems especially important when looking at the Italian case—which is not however the only case—which guarantees refugees a broad set of rights, but when it comes to socio-economic integration, a logic of charity and assistance tends to prevail. Finally, the distinction between protection and assistance is especially relevant in consideration of the fact that we tend to articulate refugee protection as 'negative' protection, as *protection from*: from persecution, threats, physical assaults and from sustained violence. We have argued that protection should not involve simply a state that *refrains from* committing abuses but a state that actively *engages towards* positive conditions for a dignified life, a dignified life for all those living in its territory. The (non-)protection practices in Italy have precisely demonstrated the importance of the role of the state and how this role cannot be performed by the private sector. Refugees themselves are also articulating protection upon the respect of rights and not in terms of charity, upon rights that they believe are protected because this is Europe, the very same Europe that requires the respect of rights as one of the key criteria for membership in the EU. As recalled in Chap. 3, forced migrants make use of the language of rights, because they see themselves as rights-holders and upon this very understanding they are reacting, even violently, against unliveable conditions by making use of the language of rights and of equal human dignity against the dominant language of the sovereign exception.

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