Theme 1: Global agenda for international migration Presentations

Panel proposal:

Resettlement and complementary pathways as disguised externalisation:

Lessons learnt from national and regional practice

In recent years, collective responsibility towards refugees has been acknowledged as a key goal on the international agenda. The 2016 New York Declaration and the UN Global Compacts on Migration and Refugee expressly recognised the pursuit of durable solutions as a global responsibility. This has triggered the development of resettlement and complementary pathways in many countries as a promising way to deal with protracted displacement. Lacking any legal basis for these schemes under international or regional law, the proliferation of cooperation on resettlement and complementary pathways risks, on the one hand, expanding fragmentation and asymmetry, on the other, prompting consequences on refugees' rights. This panel engages in a critical appraisal of the potential and pitfalls of resettlement and complementary pathways with a view to demonstrating how they can be turned into measures of disguised externalisation and deterrence. The analysis takes into account both North-South and South-South resettlement and/or complementary pathways, by investigating three national case studies – Australia, Canada and Argentina – and comparing them with the developments in the European Union (EU).

These case studies have been selected due to the commonalities that can be identified among their resettlement and/or complementary pathways, both in terms of conceptualisation of these tools as safe route alternatives and with regards to the intended goal of enhancing the responsibility-sharing among the states. Drawing on the outcomes of the previous analysis, this panel aims to contribute to the scholarly and policymakers' debate on how to reduce the fragmentation in the design of resettlement and complementary pathways, while preventing an instrumental use of these safe route alternatives as migration management tools.

Case #1 – South-South complementary pathways: the strange case of Argentina (Marilù Porchia, PhD candidate, University of Ferrara)

Argentina is the first and so far the only country in Latin America to implement a community sponsorship programme, through the "Special Humanitarian Visa Programme for Foreigners Affected by the Conflict in the Syrian Arab Republic", commonly known as the "Syrian Programme". It is also the only South-South complementary pathway in the world to date. While the implementation of the programme has been widely welcomed, its limited scope raises concerns. The sponsorship programme focuses on a population fleeing war 13,000 kilometres from Argentina, but excludes people from nearby countries such as Venezuela, Colombia and Haiti, where most protection requests originate. This selective geographical focus suggests a strategic use of complementary channels, possibly aimed at presenting a humanitarian image to the international community at the lowest possible financial cost (Rovetta Cortés 2024). Moreover, there is a discrepancy between the projected and the actual number of people admitted to the country (Cyment et al. 2019; Liguori et al., 2018), as well as indications of a trend that could be described as discrimination on the basis of religion, which favours Christians (Rovetta Cortés 2024). However, the element that most points to a policy of control rather than inclusion is the lack of "complementarity": the private sponsorship scheme is being implemented in a country where there is no public resettlement programme, and the State delegates its responsibility for the reception and integration of the forcibly displaced to civil society actors. These criteria allow states using community sponsorship to reduce costs and increase their ability to select desired refugees, suggesting a policy of migration control that mirrors the model of the Global North. The objective of the research is to analyse the implementation of legal pathways in the context of Latin America, with a view to identifying potential

avenues for creating safe asylum pathways in other Latin American countries. The research is conducted on the basis of an analysis of data on the implementation of the programme, the available literature, and interviews with the actors involved. The final objective is the construction of a regional model of legal pathways, whose potential in the Global South is still unexplored.

Case #2 – A North-South market-driven refugee resettlement model: the case of Australia (Cristina Milano, PhD candidate, University of Tuscia)

The Australian Community Support Program (CSP) which was formally established in 2017, allows for the resettlement of 1,000 sponsored refugees per year, focusing on those who are "work ready" and have "functional English". However, despite its structured approach, the CSP has faced considerable criticism. Indeed, the practice of using private funding to directly replace government-funded places, together with the preference given to "work-ready" refugees in the CSP means that the Australian initiative cannot be seen as an additional pathway to resettlement. Instead, in its current form it may represent a market-driven outsourcing and privatisation of the existing refugee programme. In addition, high visa application and processing fees create a significant financial barrier, making the programme accessible primarily to those who can afford it or have sponsors with sufficient resources. Moreover, the selection criteria have been criticised as discriminatory, favouring refugees who meet certain economic and linguistic benchmarks over those most in need of protection. This preferential treatment is consistent with a broader policy of deterrence, whereby the government seeks to control and limit refugee arrivals to those who can quickly integrate and contribute economically. These challenges highlight a broader issue: ensuring that complementary pathways to refugee protection, such as community sponsorship, are truly safe and effective alternatives to traditional asylum procedures.

Case #3 – North-South community-driven complementary pathways: the case of Canada (Luca Galli, Assistant Professor of Administrative Law, University of Milan)

Canada is usually referred to as an inspirational model for any legal system wishing to implement resettlement procedures and, in particular, complementary pathways characterized by an effective involvement of civil society. Indeed, the success of the Private Sponsorship of Refugees Program is witnessed by its own numbers: more than 45 years since its beginning and more than 300,000 refugees assisted, which are the results of a clear regulatory basis and the involvement of an articulate social base of sponsors willing to take responsibility for the relocation, reception and integration of the beneficiaries. On the other hand, the Canadian experience is not without critical issues, ranging from excessively time-consuming selection procedures to flaws in coordination between private sponsorship and public resettlement programs. In light of this, an analysis of the Canadian model certainly demonstrates a strong interest, whether in terms of best practices to be replicated or flaws to be prevented in designing new mechanisms for refugees' protected entry.

Case #4 – European approaches to resettlement and complementary pathways: searching for an EU model of community sponsorship (Daniela Vitiello, Tenure-track Assistant Professor of EU Law, University of Tuscia)

Since the EU-Turkey Statement, the EU has expressly framed the recourse to resettlement as an instrument of solidarity towards third countries and responsibility sharing in the field of asylum. At the same time, lacking any binding regulatory framework at the EU level to discipline these developments, the 1 to 1 resettlement scheme foreseen by the EU-Turkey Statement has turned – on the implementing stage – as a tool of "disguised externalisation" (Vitiello 2018). While embracing the narrative of solidarity and responsibility-sharing, it allowed the return of Syrian refugees who arrived irregularly on the European shores, and the admittance – in exchange – of Syrian refugees who were trapped in Turkey

and did not even try to spontaneously arrive in Europe. In this way, resettlement was turned into a deterrence tool, based on an external application of the principle of solidarity among the EU Member States, enshrined in Art. 80 of the Treaty of the Functioning of the EU (TFEU). The scheme's innovative yet controversial nature attracted significant attention and criticism. Indeed, it challenged key principles of international refugee law, by raising the problem of discrimination between certain nationalities of asylum seekers and others, and suggesting that the spontaneous arrival of asylum seekers could be limited for border management purposes, regressing on the principle of non-penalisation of refugees for their irregular entry. The 2020 EU New Pact on Migration and Asylum in its overall structure, and in particular the new Union Resettlement Framework and the Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013 (so called "Asylum and Migration Management Regulation"), seems to uphold this trend and streamline the nexus between resettlement/complementary pathways and return, in the sense that "[a]n effective and common EU system for returns […] can promote safe legal pathways" (European Commission policy document, "Towards an operational strategy for more effective returns" of 24 January 2023). Other features of the new EU framework for safe route alternatives seem to be the externalisation of the application of the principle of solidarity and responsibility sharing among the EU Member States in order to justify asylum burden shifting to third countries along with a skilled-based approach to humanitarian admission. In light of this, the analysis evaluated the consistency of this model with the premises of EU asylum law and suggests possible alternatives.