

SOLIDARITY PRINCIPLE IN THE EU. COMPARATIVE ANALYSIS OF APPLICATION IN THE FIELDS OF DEFENCE AND MIGRATION

Nicoli VANNI *

DOI: 10.62838/cjjc-2024-0024

1. INTRODUCTION

The principle of solidarity has played an important role in the political and institutional dynamics that have accompanied the process of European construction and integration over the years.

The first starting point that formed the basis of the current European Union comes from the words of Schumann. In his famous declaration of 1950, the French politician proposed the construction of a 'European Coal and Steel Community', whose members would pool the production of these two elements (precisely coal and steel). In particular, Schumann, emphasizing the impossibility of building a united Europe in a short period of time, pointed out that the success of this initiative would have to come through the resolution of the long-standing and deep-seated rivalry between France and Germany. Furthermore, focusing on the common production of the two energy resources mentioned above, so important in the industrial processes of the time, would lay a common foundation, again according to Schumann, for a prosperous and shared path of economic-industrial development, in the name of economic solidarity between the member states.

The concept of solidarity was later included in the Treaty establishing the ECSC in 1951, coming into force the following year and including Italy, Belgium, Luxembourg, the Netherlands, France and Germany. Specifically, in the preamble, one can read that the founding countries declared themselves aware that Europe can be built through concrete actions that create, first and foremost, a de facto solidarity.

As can be read from the agreement, solidarity has been described not as a preceptive principle; there is, in fact, no subsequent provision recalling this value and the latter is not, in turn, a direct source of any obligation or right.

This approach was confirmed in the 1957 Treaty of Rome that established the European Economic Community (EEC).

Once again within the Preamble of the agreement, solidarity, this time, is conceived as

* PhD candidate in Comparative Public Law at University of International Law and Adjunct Professor of International Law and International Cooperation in Master Degree at University of International Law, ITALY.

the source of ties with overseas countries, wishing to ensure the development of their prosperity in accordance with the principles of the UN Charter. Furthermore, solidarity is referred to in a joint declaration in the agreement concerning Berlin. In particular, a solicitation to confirm union with the German population was included.

Although it does not impose rights and obligations, it is emphasized that the 1957 text provided for a community mechanism in Article 108 that in its operation, despite the fact that the word solidarity is not explicitly mentioned, calls for solidarity.

The focus is on economic support given to help a member country. In particular, in the afore mentioned article, it can be read that, in the event of difficulties or a serious threat of difficulties in the balance of payments of a Member State, whether caused by the overall balance of payments or by the type of currency at its disposal, and which could jeopardize the functioning of the common market or the gradual implementation of the common commercial policy, the Commission could proceed without delay to an examination of the situation of the State in question and the action it has taken.

Furthermore, the Commission could indicate the measures to be taken by the Member State concerned to overcome these difficulties. In the event that the action taken by a Member State and the measures recommended by the Commission do not appear sufficient to overcome the difficulties or threat of difficulties encountered, the Commission recommends to the Council, after consulting the Monetary Committee, mutual assistance and appropriate methods.

Later, the reference to solidarity was also indicated in the Preamble of the 1992 Maastricht Treaty. In particular, this states that it is desired to intensify solidarity between their peoples, respecting their history, culture and traditions; furthermore, Article 2 states that the Community shall have the task of promoting solidarity between Member States.

In spite of this further and new recognition, there is still a very general indication as to how this principle should be applied and, once again, a lack of real obligations or rights arising from the application of solidarity.

In fact, consulting the text of the agreement, one can read two provisions. The first, found in Title V (Provisions on the Common Foreign and Security Policy), Article 11(2), states that the Member States shall actively and unreservedly support the Union's foreign and security policy in a spirit of loyalty and mutual solidarity. Immediately afterwards, it is stated that the member states shall work together to strengthen and develop their mutual political solidarity, refraining from any action contrary to the interests of the Union. The second reference, on the other hand, concerned Council decisions adopted according to the principle of unanimity. In this context, it is emphasized, in the name of a spirit of mutual solidarity, that a state disagreeing with an act discussed and adopted in the above-mentioned forum does nothing to hinder the adoption of the act in question.

A confirmation on this way of conceiving the principle of solidarity comes from the jurisprudence of a member country that has always been very sensitive in drawing the boundary between the state and the EU like Germany. The famous *Maastricht Urteil* (October 1993) of the German Federal Court set several limits aimed at defining, to some extent, the boundaries of the European integration process both with regard to the issue of the democratic deficit and with regard to the definition of the Union as a *Staatenverbund* aimed at establishing a stability community (*Stabilitätsgemeinschaft*). The limits of possible developments were thus established not only of the European democratization

process always marked by national mediation, but also of the construction of a stronger community of solidarity (*Solidargemeinschaft*).

Subsequently, solidarity has been referred to as a principle, explicitly or implicitly, by the amendments to the founding treaties, which have occurred over time and the acts of the Community institutions that have followed.

Finally, we come to the Lisbon Treaty of 2007. In this case, there was an explicit reference to the solidarity clause, as stated in the title of Article 222 TFEU. This clause provides that the EU and its member states shall act jointly and in a spirit of solidarity if a member state, which is the object of a terrorist attack on its territory or the victim of a natural or man-made disaster, requests assistance.

Other provisions of the same agreement that see a reference to solidarity are Article 67 (Title V on the area of freedom, security and justice), which, albeit in a generic form, provides that there shall be no controls on persons at internal borders, with the EU developing a common policy on asylum, immigration and external border control, based on solidarity between Member States and fair treatment of third-country nationals. Subsequently, Article 80 provides that European policies on border control, asylum and immigration (Chapter 2) shall be governed by the principle of solidarity and fair sharing of responsibility between Member States, including in financial terms. Also, Article 122, referring to decisions in economic and energy matters (with specific provision in Article 194), indicates that the Council, on a proposal from the Commission, may decide in a spirit of solidarity.

Having outlined this legislative history allows us to frame the political and institutional framework that has characterised solidarity over the years and the evolution of a united Europe.

Starting with the 2007 text, an analysis will follow on this Union principle as applied in the field of greatest interest (marked by the content of Article 222) and compare it to that of migration. The aim of this micro-comparison will be to highlight the nature of the functioning of solidarity in a field, migration, which would require, especially in the current international political and geopolitical scenario, its presence as a constant in the Union's history, but which would need to be implemented, given the growing importance and sensitivity of this field today. The comparison with Article 222 stems from the strategic importance that the defense sector has acquired and continues to acquire, which is inspiring the construction of a common European defence.

In this case, as well as in the case of migration, it is possible to see how the European Union is also putting itself at stake in its geopolitical nature and in the defence of geopolitical interests.

2. SOLIDARITY IN THE TREATY AND EU JURISPRUDENCE

The various articles of the 2007 Treaty that have been cited above show how the principle of solidarity has a different application that differs depending on the subject under consideration; this would make solidarity a transversal concept (Moschetta, 2019) with multiple declinations of meaning. In turn, these characteristics would not allow for an all-encompassing definition of the principle.

This element is further exacerbated by a triple meaning that accompanies solidarity (Lomonaco, 2022).

The first is inherent to its nature as a constitutional value that implies its recognition as a general principle inferable from the nature of the European Union and the principle of loyal cooperation between the Member States. In this regard, one is reminded of Article 4(3), which emphasizes the fact that there is mutual respect and assistance between the EU and the countries in fulfilling the tasks arising from the treaties. This approach translates into the responsibility of the Member States to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from acts of the institutions of the Union, abstaining from any measure which could jeopardize the attainment of the Union's objectives.

The second refers to its political nature. Here, solidarity can direct legislative activity at supranational level, presenting itself as a criterion inspiring the policies and acts of the Union. An example of this profile is the reference to the spirit of solidarity between the Member States. In this respect, Article 3 TEU sets solidarity as one of the objectives of the realization of the internal market, it also provides for an active role of the Union in the promotion of inter-state solidarity, along with economic, social and territorial cohesion.

Similarly, Article 24(2) and (3) TEU states that the Union shall base its action in the field of the common foreign and security policy on the development of mutual political solidarity among member states, as does the afore mentioned Article 67. Another area in which solidarity between states is important is that of economic policy. Article 120 TFEU stipulates that the Member States implement their economic policy with the aim of contributing to the achievement of the Union's objectives (based on Article 3 TEU) and among these is the reference to inter-state solidarity.

The analysis regarding European solidarity cannot be limited only to the letter of the Treaty under analysis because, as shown by the case law of the European Court of Justice, which has extrapolated this principle from the TEU and the TFEU, it is possible to apply it in disciplines for which it is not expressly provided (McDonnell, 2014).

In the first years of the Court's activity, the European judges appealed to solidarity when settling questions concerning infringement proceedings brought by the Commission against Member States.

Since it is not possible to indicate and completely exhaust the large number of cases discussed and established by the Court, an analysis of a few selected judgments will follow.

A first case, from 1969, saw the European Courts uphold a complaint by the Commission against France (Joined Cases 6/11-69) concerning the violation of the preferential discount rate for export credits in the European Community for steel products. The French position was based on the lawfulness of the decision by virtue of the fact that monetary policy was, at the material time, an exclusive competence of the Member States. The European judges, invoking Article 104 of the Treaty in force at the time of the verdict, ruled that the member states must ensure the balance of their balance of payments is in equilibrium and that they have continued confidence in their currency; on this basis, the Court referred to Articles 105 and 107, which impose an obligation on the states to coordinate their economic policies to this end and to regard their exchange rate policies as a matter of common interest. The reference to these two points led the judges to argue, in conclusion, that solidarity, a value that underlies these obligations and the Community system as a whole, finds its corollary in the obligation for Member States, Article 108, in the case of imbalances in a country's balance of payments.

Another case in which the Court of Justice reiterated, with even greater force, this strong invocation of solidarity as an element that inspires the Community system, is that resulting from the ruling of February 1973 (Case 39-72), following the infringement action brought by the Commission against Italy. Specifically, the case concerned the ascertainment of Italy's breach of its obligations under two regulations (No 1975 of 1969 and No 195 of 1969) resulting from its failure to apply the system of premiums for the slaughter of dairy cows and of premiums for refraining from marketing dairy products. Particular here is the way in which the Court reaffirmed the central role of solidarity in relations between Member States. In fact, in front of the Italian position that justified the non- application of the regulations because they conflicted with national interests, the European judges remarked that this position undermined the equality of the Member States before Community law, subsequently leading to discrimination against their citizens. This would entail, according to the Court's position, the violation of a spirit of solidarity (presented more from a moral than a legal point of view), capable of shaking the foundations of the Community order (Morgese, 2021).

The call for solidarity is also present, again by the judges of the Luxembourg Court, in other EU policy areas, such as competition law.

In particular, mention is made (by way of example) of the judgment in *Cowan v. Trésor public* (case 186/87, 2 February 1989). The case concerned a decision of the Court adopted following a reference for a preliminary ruling by the Tribunal de Grande Instance of Paris, concerning a claim by a British citizen for compensation for an injury suffered in France.

In the main case, this claim was countered by the inapplicability of the national legislation due to its reference only to French nationals. For this reason, Mr. Cowan argued that the requirements under French law were contrary to the principle of non-discrimination expressed in the Treaty of Rome. The CJEU, in the judgment analyzed, upheld the British citizen's arguments and, rejecting the grievances put forward by the French government, held that the requirements set out in the rule to be applied in the present case were detrimental to the freedom of movement granted to nationals of the Member States. Thus, the solidarity that French law applied only to its own nationals was recognised as a principle whose application is necessarily to be extended to all, as well as being closely related to the principle of non-discrimination (O'Leary, 2005).

With the Cowan ruling, therefore, the Court paved the way for the abandonment of a strictly mercantilist view of the rules on freedom of movement, proposing a more solidaristic reading.

3. DEFENCE AND CRISIS SOLIDARITY

Today, one of the main provisions of the Lisbon Treaty that recalls the principle of solidarity and a solidarity-type mechanism of intervention by the Member States is Article 222 TFEU (the so-called 'solidarity clause').

The adoption of this provision led the EU institutions to provide a specific mechanism to implement solidarity (Del Chicca, 2018).

After the attacks on the US on 11 September 2001, the EU became aware of the need to establish a framework for cross-sectoral crisis coordination at the highest political level. In response to this need, the so-called 'Integrated Crisis Response Policy Arrangements' (IPCR) were adopted, which provide the Council with the important tools and flexibility

to best decide what the EU response should be in the face of such a scenario (which, it should be recalled, also include man-made disasters), as reflected in the letter of Article 222.

Through the mechanism of the IPCR, it is possible to provide a unique set of tools created to facilitate information sharing, with a joint and coordinated decision-making process also involving the highest political level. The three levels of the IPCR include an informal round table that allows the EU Council presidency to bring together key actors and specific expertise around the same time; then, the so-called 'integrated situation awareness and analysis report' (also referred to as ISAA), drafted to provide decision-makers with a clear common picture of the current situation; and finally, as a third and final step, an IPCR web platform that allows for the exchange of information.

This system can be activated by the Presidency of the Council of the European Union in the event of a major crisis where there is a perceived need for coordination for an event originating within or outside the territory of the Union. This mechanism also provides for activation at the request of the Member State. What characterizes the IPCR system is that it represents a political response for when the solidarity clause is invoked; in fact, by invoking this principle, a state automatically triggers everything that the IPCR entails (Nimark, 2019).

One of the first cases of activation of this mechanism was in response to the migratory flows that affected Europe in the second half of the 2000s; today, however, recent activations are due to two events outside EU territory, namely the Russian-Ukrainian war and the war between Israel and Hamas.

Besides the IPCR, another effect of Article 222 of the Treaty was the adoption of the ISS, the 'Internal Security Strategy', approved by the European Council in March 2010.

Through the establishment of this strategy, the EU set five strategic objectives for the period 2011- 2014, including specific actions for each objective in order to overcome the most pressing challenges and make the EU safer. Among the strategic objectives, it is worth mentioning the prevention of terrorism and countering radicalization and recruitment in order to empower communities, creating a European radicalization awareness network, organizing a ministerial conference on the prevention of radicalization and recruitment and drafting a handbook to support the actions of EU countries. Besides this, other objectives are to cut off terrorists' access to funding and material and to protect transport.

At the end of the 2011-2014 period, the European Parliament resolution of December 2014 renewed the EU Internal Security Strategy. The latter also made specific provisions due to some alarming data on the rapid increase in the number of EU citizens travelling to conflict zones to join terrorist organisations and later return to EU territory. This constitutes new types of risks for the internal security of the EU.

Linked to Article 222 and the solidarity clause is also the confrontation with the threat of natural disasters and, in particular, terrorism, especially after the Madrid and London bombings between 2004 and 2005. In particular, the EU has had a security and defence policy (ESDP) since 2004. As reflected in the Hague Programme adopted in December 2004, it has worked to bring together military and civilian capabilities for crisis management, internal security measures, emergency preparedness, defining a security strategy and a programme to strengthen freedom, security and justice. Furthermore, in 2004, the EU started a process to adopt a European programme for the protection of critical infrastructure. Over the years, the European Union has grown in responsibility for the

internal as well as the external dimension, also guaranteeing the security of the citizens of the member states (Missiroli, 2001).

These Union political initiatives were also followed by the Union Heads of State and Government declaring their firm intention to act together in a spirit of solidarity should a Member State fall victim to a terrorist attack. In this regard, the countries pledged to mobilize all the instruments at their disposal, including military resources, to assist a Member State affected by such an attack (de Vries, 2005).

In this direction, it is impossible not to mention the reaction of the French government to the terrorist attacks in Paris in 2015. In that case, France, for the first time in the history of a united Europe, invoked the application of Article 42(7) TEU, even though it did not specify what it needed most and obtained the support of Germany and the United Kingdom. Despite this important precedent, it seems appropriate, as also mentioned in the doctrine, to point out that France did not invoke Article 222 TFEU, but Article 42 TEU. The reliance on 'mutual assistance' rather than 'solidarity' may reside in two motivations. The first relates to the fact that according to Article 222, the scope of the prevention of terrorist threats and the assistance provided by the EU and its member states in the event of a terrorist attack are geographically limited to the territory of the attacked member state (France, on the other hand, might have had an interest in increasing support and strengthening the fight against the terrorist threat at a time of particular political, social and institutional vulnerability). The second, on the other hand, related to the fact that the mutual assistance clause is found in the chapter on security and defence (CSDP). Referring to the latter, France could have decided for an intergovernmental European reaction to terrorist attacks. This would lead to negotiations on individual contributions on a bilateral level between national governments, within the framework of the CSDP, with the EU in the 'mere' facilitating role (Moser, 2015).

Through such strategies, the EU has been progressively adept at building capacity in areas that include military peacekeeping missions on other continents, measures to prevent the further spread of disease, and responses to the challenges of terrorism. At the same time, the more 'implicit' organisational crisis management capabilities of the Brussels-based European institutions are being strengthened; in particular, in prevention such as crisis preparedness so that they can be addressed, drawing lessons that can be used to strengthen resilience in all areas of EU competence.

Currently, in an international geopolitical scenario characterised by multiple and bitter conflicts that closely affect the European Union in its external dimension and in its geopolitical soul as an international player, solidarity has been further strengthened in the field of European defence institution building.

In particular, the new European defence document adopted in 2022 and called 'Strategic Compass' represents an ambitious action plan to strengthen the EU's security and defence policy by 2030, advancing with the member states towards a common, forward-looking strategic culture. This Strategic Compass aims through unity and solidarity to make Europe safer and stronger, improving the capacity to take decisions in crises to defend the Union's security and that of its citizens.

Despite the fact that this is an act that does not contain clear provisions and precise indications as to how the EU should provide for the fulfilment of these requirements and tasks (Biscop, 2019), it seems appropriate to see how, at least from a formal point of view, solidarity is still present as a principle that characterizes the EU and its action.

4. SOLIDARITY IN THE FIELD OF MIGRATION

If, as seen above, the principle of solidarity turns out to have an important application in the field of defence (although not commented on here, the importance of this value in the economic-financial sphere is recalled), solidarity is also present in the field of migration and the management of migratory flows towards Europe.

In particular, Articles 78(3) and 80 TFEU suggest the application of solidarity in emergency situations that do not include the areas mentioned above, within Chapter 2 on border control, asylum and immigration policies.

Combined with these two legislative references, the Council, on a proposal from the Commission, may adopt temporary measures in favour of Member States in an emergency situation characterised by a sudden inflow of third-country nationals. This procedure is applied following the principle of solidarity and fair sharing of responsibility between the Member States, including in financial terms.

The framework just outlined was also confirmed by the Court of Justice, which ruled in the *Jafari and A.S.* cases (relocation of third-country nationals in the event of a mass influx into EU territory) and in the joined cases between the Commission and, on the other hand, Hungary and the Czech Republic.

In the case of the first two sentences, some Afghan nationals and a Syrian citizen entered Europe by the Balkan route, from Greece, arriving in Croatia as irregular immigrants because they did not have entry. The Croatian authorities, due to the high number of people seeking international protection, transferred some people to Austria and Slovenia so that they could apply in these countries. In Austria, however, the authorities rejected their applications, contesting the fact that their entry into Croatia had been irregular.

As part of the national proceedings, the Austrian courts asked the European courts for an interpretation of the provisions of Regulation 604/2013 concerning the criteria and mechanisms for determining the Member State responsible for examining such applications. In particular, the Court of Justice was asked whether, in the presence of exceptional circumstances, such as the arrival of an extraordinarily large number of third-country nationals, Article 13(1) of the Dublin III Regulation could be interpreted in such a way as to consider entry into an EU border state tolerated by the local authorities as irregular. This question was raised because, according to the above-mentioned regulation, third States would not be competent to examine the request (in the specific case of the two Afghan nationals and the Syrian national) given the competence of Croatia. Furthermore, the Austrian request would be strengthened by a provision of the Schengen Borders Code which states, Article 5(c), that third-country nationals may be authorized by a Member State to enter its territory on humanitarian grounds. In addition to this, there is also Article 6(4) of the Return Directive, which provides that, at any time, Member States may decide to issue an autonomous residence permit or other authorization conferring the right to stay to a third-country national whose stay in the territory is irregular, thus conferring so-called humanitarian protection.

Advocate General Sharpston, in his Opinion, recalled that the criteria laid down by the Dublin III Regulation must be interpreted in a spirit of solidarity, thus linking Regulation 604/2013 to that body of rules which help to shape the Common European Asylum System and, in addition, considering that the provisions of the Schengen Borders Code and the

Return Directive referred to, in the terms set out above, by the referring courts are included in that system. The Advocate General's position concludes by stating that Austria could not consider that the third-country nationals in question had crossed Croatia irregularly, given that Croatia, on humanitarian grounds and in an extraordinary emergency situation characterized by the arrival of a large number of persons crossing the border, allowed the two Afghans and the Syrian to enter its territory and reach that of another Member State in order to enable them to apply for international protection.

On the other hand, however, the European Court did not recognize this broad interpretation in the name of solidarity, promoting a more restrictive interpretation of Regulation 604/2013. Specifically, the judges held that this provision is characterized by the sole objective of achieving solidarity between the Member States through a distribution among them of the competence to examine the applications in question, and this cannot be derogated from because it is in the interest of all that it be fully respected.

From this consideration, the judges concluded their reasoning by stating that Article 13(1) of the Regulation in question must be applied by considering that a third-country national crossed the border of a Member State without fulfilling the entry conditions because he or she entered illegally. This entry, the Court added, was done without taking into account that it was tolerated by the Croatian authorities because they had to cope with the arrival of an extraordinarily high number of nationals from third countries.

In this decision, the Court overlooked the fact that the Lisbon Treaty, according to Article 67 TFEU, established that the EU shall develop a common policy on asylum, immigration and external border control based on solidarity between Member States and with third-country nationals. In particular, the Court seems not to have grasped the new meaning of solidarity manifested by the 2007 Treaty, which understood this as a principle that must find its fair application towards third-country nationals, in connection with the centrality attributed to the human person, as established by Directive 2013/33(Mengozzi, 2017).

Moreover, a part of the doctrine has also seen in this decision of the Court an underestimation of the European constitutional scope of this principle. In fact, a different interpretation by the courts could, at a later stage, have fostered integration by adhering to Dublin III even when Member States no longer do so or deviate from it by invoking exceptions or simply closing their borders. A functional interpretation could have been based on this sense of openness and renewal of the EU system, establishing exceptions based on the willingness of member states to circumvent the rule of the state of first entry in order to help countries bordering hotspots such as North Africa and the Middle East, easing the situation along European and EU borders (Westlund, 2023).

Solidarity in the area of migration is also present and operational with regard to the relocation of third- country nationals in the event of a mass influx into EU territory. This area gained even more centrality with the establishment of the European Asylum Support Office in 2010 to strengthen cooperation in this area by coordinating operational support to Member States under pressure. Then, in 2015, the 'European Agenda on Migration' was adopted to address the crisis in the Mediterranean. In particular, this initiative aimed at tripling the capacities and means of the joint operations of Frontex, Triton and Poseidon to safeguard the humanitarian situation in the Mediterranean basin; a temporary distribution mechanism for relocation in emergency situations; and an EU resettlement programme to be offered to refugees with a clear need for international protection. Alongside these

intentions, the afore mentioned Agenda was also based on four pillars that included reducing incentives for irregular migration; border management; the moral duty to protect migrants through a stronger common European asylum policy; and the promotion of a legal migration policy. Underpinning this European political project was the five-point plan presented by the then European Commission President Juncker in Malta in which he called for greater solidarity in EU migration policy. Similarly, the then Commissioner for Migration, Home Affairs and Citizenship Avramopoulos called for a greater spirit of solidarity to implement a comprehensive approach to migration.

Referring back to the judgments mentioned above in the joined cases between the European Commission and Hungary and the Czech Republic (2015/1523 and 2015/1601), it is recalled that the Court of Justice has reiterated its guidance on the derogation from the EU commitment in the face of migration flows. In particular, the European courts had already had occasion to state (in the joined cases *Council of the European Union v. Hungary and Slovak Republic* C-643/15 and C-647/15) that the derogation to the area of freedom, security and justice can occur when national governments have to respond in order to defend public order and safeguard internal security.

The joined cases against Hungary and Slovakia arose from Budapest and Bratislava's refusal to accept 120,000 persons in need of international protection from Italy and Greece for a fixed period of two years. In this circumstance, the Court explained how the request for relocation of protection-seekers was proportional to the Italian and Greek needs to be able to manage a smaller and therefore simpler number of persons in need of international protection. From this established proportionality follows a connection described as necessary with the spirit of the value of solidarity and the European judges impose this as an obligation on member states.

The flaw in this pronouncement, however, is that the judges succeed in imposing the bindingness and compulsoriness of solidarity measures, but fail to address the issue of recognizing solidarity as a fundamental EU value.

However, this issue is addressed by Advocate General Bot who, in his conclusions, stated how solidarity between peoples (an important point in the Preamble of the EU Treaty) can be deepened in the absence of real solidarity between member states in the event that one of them is faced with an emergency situation. It is indeed in such a situation that the basis of the European project would be at stake.

In this perspective, the Advocate General defined solidarity as a basic and existential value of the Union. On the other hand, on the other hand, the Court of Justice did not go so far as to recognise and elevate the principle of solidarity. The Luxembourg judges have argued the obligation and binding nature of states to respect the relocation measures adopted by resorting to other principles, including the afore mentioned proportionality, the discretion of European institutions in adopting eminently complex and political measures, and the criterion of the act's manifest inadequacy in relation to the objective pursued. It has been correctly observed in the doctrine that beyond a mere political exhortation or the definition of a legal obligation to respect the measures adopted on relocation, the Court of Justice has circumscribed the scope of the principle of solidarity to the sole, but essential, function of governing the common European asylum policy. The Luxembourg judges thus missed a good opportunity to define solidarity as a fundamental value of the Union. In this regard, in fact, the judgment showed the limitation of having declared the principle of solidarity only as instrumental to the adoption of necessary and

temporary measures aimed at making up for a moment of contingent crisis in the management of migratory flows. Giving solidarity an essential function as a governing principle of the common European asylum policy would allow solidarity to be a constant and structural value and not merely an emergency one (Rizza, 2018).

5. CONCLUSIONS

A general reconstruction of the principle of solidarity in two of the most important areas of the institutional and political life of the European Union can provide an insight into the foundations of this political organization that seems to be forced to shed its skin once again in the course of its history.

In particular, the European Union has sought to define itself and present itself on the international political scene as a super-state. One thinks, in this regard, of the initial ambition concerning the adoption of the 2007 Lisbon Treaty, initially compared to a Constitution and formally endowed with the two classical components that characterize a fundamental Charter, namely a descriptive part (the TEU) and a programmatic one (the TFEU). The famous *Lissabon Urteil* of the German Federal Court was a very important warning, signaling and underlining the nature of a *Staatenverbund*, i.e. a group of member states that have joined this common international political project.

Therefore, having established this identity for the EU, it seems important to place this international organization within the international and geopolitical scenario. Today, the Union is a major international player, called upon to confront the geopolitical challenges posed by the world scenario, particularly in geographical areas of direct Union interest such as the Mediterranean and the Middle East.

By virtue of these geopolitical developments, the European Union is showing an increasingly evident geopolitical nature that also requires a careful and constructive adaptation of European solidarity. In this regard, one need only think of the difference in the ways in which this principle has been constructed and applied over the years in the field of defense and support for member states in the event of aggression or natural disasters compared to the emergency situations related to the management of migratory flows that see Europe as their final destination.

Missed opportunities to definitively exalt the principle of solidarity as a constitutional value of and for the EU could have repercussions on the way migratory flows are managed, which, over the years, have seen an important change in their defining characteristics that have made it more difficult to categorize them. First of all, it highlights the transformation of the migration phenomenon from international to transnational due to its renewed and strengthened capacity to go beyond the borders of different states and affect different territories at the same time. But, from a geopolitical perspective, migrations have acquired a new status. In particular, these flows could be used as alternative and new instruments within a hybrid war, i.e. a conflict no longer (or only) fought with weapons, but also with demographic instruments that can undermine the institutional and political structure of countries or, as in the case of the EU, of international organisations.

The risk of this further transformation stems from the presence of the EU's geopolitical adversaries, such as Russia and China, in critical areas where the soft power of these two powers has allowed them to wedge themselves into some countries with a difficult and fragile political and institutional history.

The possibility that these international actors can manipulate the migratory flow towards Europe and have, on the front line, direct contact with African political realities.

A convinced and widespread development and strengthening in all EU powers and institutional actors that animate Europe also in the area of migration would give more strength to this large and important international organization. It is true that with regard to the management of migratory flows, the problem is that one enters and deals with the sovereignty of each country, but it becomes important (if not necessary) to understand what is at stake at continental and global level.

Strengthening solidarity could further strengthen the inter-state structure of the EU and be able to stand up to international geopolitical actors with greater strength and means. Making the EU more competitive also means improving the individual member states.

REFERENCES

- Biscop S., 2019, *From Global Strategy to Strategic Compass: Where is the EU Heading?*, in SecurityPolicy Brief, no. 121.
- De Vries G., 2005, *The European Union's Role in the Fight Against Terrorism*, in Irish Studies in International Affairs, vol. 16.
- Del Chicca M., 2018, *Solidarity among Member States in case of a Terrorist Attack*, in Jimenez Piernas C., Pasquali L., Pascual Vives F., *Solidarity and Protection of Individuals in E.U. Law. Addressing New Challenges of the Union*, Turin, Giappichelli.
- Lomonaco G., 2022, *Brief considerations on the European solidarity clause*, in International Law Worksheets. Retrieved from: <https://www.lex.unict.it/it/crio/fogli-di-lavoro>.
- McDonnell A., 2014, *Solidarity, Flexibility, and the Euro-Crisis: Where Do Principles Fit In?*, in Rossi L. S., Casolari F., *The EU after Lisbon Amending or Coping with the Existing Treaties?*, Berlin, Springer.
- Mengozzi P., 2017, *The application of the principle of mutual trust and its balancing with respect for fundamental rights in relation to the area of freedom, security and justice*, in Freedom, Security & Justice: European Legal Studies, no. 2.
- Mengozzi P., 2022, *The idea of solidarity in European Union law*, Bologna, Bologna University Press.
- Missiroli A., 2001, *Coherence for European Security Policy*, in Occasional Papers, no. 27.
- Moser C., 2015, *Awakening dormant law - or the invocation of the European mutual assistance clause after the Paris attacks*, in Verfassungsblog on constitutional matters, 18th November 2005.
- Morgese G., 2021, *Il 'faticoso' percorso della solidarietà nell'Unione europea*, in Post di AISDUE, III, Sezione 'Atti convegni AISDUE', no. 6.
- Moschetta T. M., 2019, *Interstate solidarity in EU energy policy: notes in the margin of the judgment of the General Court Poland v. Commission*, in AISDUE Posts, I.
- Nimark A., 2019, *Post-Lisbon Developments in EU Crisis Management: The Integrated Political Crisis Response Arrangements*, in O'Mathúna D. P., de Miguel Beriain I., *Ethics and Law for Chemical, Biological, Radiological, Nuclear & Explosive Crises*, Berlin, Springer Verlag.

- O'Leary S., 2005, *Solidarity and Citizenship Rights in the Charter of Fundamental Rights of the European Union*, in de Burca G., 2002, *Eu Law And The Welfare State: In Search of Solidarity*, Oxford, Oxford University Press, 2002.
- Rizza L., 2018, *Solidarity obligation and loss of values (Note to Judgment of the Court of Justice of the EU, Grand Chamber, 6 September 2017, Joined Cases C 643/15 and C 647/15, Slovak Republic and Hungary v. Council of the European Union)*, File 2.
- Westlund M., 2023, *The Road not Taken. The CJUE's Restrictive Way of Reasoning in Asylum Cases and How it Could Change in Light of the Free Movement Case Law*, in *Nordic Journal of European Law*, vol. 6, issue 3.

