#### **ITALY**

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#### ***Ministry of foreign affairs and international cooperation***

###### Comitato Interministeriale per i Diritti Umani

###### Inter-ministerial Committee for Human Rights

**Italy’s Remarks on the OHCHR’s draft report,**

**“Lethal Disregard”,**

**Search and Rescue and the Protection of Migrants in the Central Mediterranean Sea**

***April 30, 2021***

**Italy’s Remarks on the OHCHR’s draft report,**

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**in the central Mediterranean Sea**

*To the attention of**chernandez@ohchr.org e blewis@ohchr.org*

Italian Authorities are in a position to provide the following information, to be kindly reflected in the draft report under reference.

**With regard to the interventions of the Libyan LCG**, at **page 3**, at the Central Directorate of Immigration and Border Police-Ministry of Interior, from the available data mention has to be made of the following: in **2020, 10,352 migrants** were recovered and brought back to Libya compared to **8,403 migrants in 2019**[[1]](#footnote-1); in the draft report 11,000 migrants are reported in 2020, and 9,000 in 2019, respectively.

**With regard to landings from Libya**, at **page 6**, the aforementioned Central Directorate indicates that in 2017, **107,212 migrants** arrived in the country while in 2019 **4,122 migrants** arrived; 119,310 migrants are reported in the draft report in 2017 and 14,560 in 2019, respectively.

**With regard to page 9** *(“At the same time, OHCHR received information that some EU Member States have failed to render assistance to migrant boats in the central Mediterranean Sea either due to disagreements over the responsible coordinating authority—particularly where the SAR zones of Libya and Malta meet, or where the SAR zones of Italy and Malta overlap—or based upon a narrow interpretation of distress and their SAR responsibilities”),* the Ministry of Infrastructure and Sustainable Mobility - General Command of the Harbour Master Corps – Coast Guard (*Ministero delle Infrastrutture e della Mobilità Sostenibili*, *Comando generale del Corpo delle capitanerie di porto – Guardia Costiera)* is in a position to indicate, as follows:Italy ensures the effective coordination of search and rescue operations within its whole Search and Rescue Region (SRR), including the so-called “overlapping” areas with the SRR unilaterally declared by Malta, as well as an interpretation of the concept of "distress" in full compliance with international maritime law and in particular with the provisions of the International Convention on Maritime Search and Rescue (SAR Convention), signed in Hamburg in 1979. There are no cases reported in the draft report that may contradict the above indications and, therefore, the rectification of what reported is requested.

**With regard to page 10 (***“In another account, a migrant recalled that after several days at sea they phoned the Italian SAR authorities only to be given another number and told to call the Maltese authorities”),* the Ministry of Infrastructure and Sustainable Mobility - General Command of the Harbour Master Corps – Coast Guard (*Ministero delle Infrastrutture e della Mobilità Sostenibili*, *Comando generale del Corpo delle capitanerie di porto – Guardia Costiera)* is in a position to indicate, as follows:Italy and, in particular, MRCC Rome, in all cases in which it receives distress calls from vessels in danger of being lost at sea, requests to know: the position of the vessel; the number of persons aboard, as well as all useful information to allow an effective rescue intervention. If the position of the vessel falls within the SRR of another State, it immediately informs the RCC of that State, with the request to assume the coordination of the rescue operation, in accordance with the SAR procedures provided for by the Hamburg Convention. Not having sufficient elements to evaluate the case mentioned in the draft report since neither the date of the event nor the position of the vessel in danger has been spelled out, it cannot be excluded that MRCC Roma, after having acquired the above-mentioned information, having promptly informed the SAR authority responsible for the area concerned and having received confirmation of the assumption of the coordination of the SAR operation, correctly and dutifully informed the people in danger about which SAR authority was coordinating the SAR operation (indicating the telephone number to call), being the only one able to provide information about the way the rescue operation was being managed: The above, in order to avoid providing out-dated or, worse, incorrect information by an authority other than the one responsible for the area concerned and that was coordinating the event.

**With regard to page 15**: **(**“*A Sudanese man, who made four separate attempts to flee Libya by boat before successfully arriving to Europe, reported that in January 2019 the boat he was travelling in called the Italian SAR Authorities for assistance. After several hours of awaiting a rescue, the LCG arrived to intercept their boat”),* please kindly refer to the above information as provided with regard to the issues raised at page 10, by the Ministry of Infrastructure and Sustainable Mobility - General Command of the Harbour Master Corps – Coast Guard (*Ministero delle Infrastrutture e della Mobilità Sostenibili*, *Comando generale del Corpo delle capitanerie di porto – Guardia Costiera)*.

**With regard to page 20**:*“OHCHR also received information regarding pull backs to Libya involving private or commercial vessels. For example, in one incident recounted by a Somali woman, a boat of migrants was rescue by a Philippine tanker approximately 44 nautical miles from Malta. The ship Captain radioed the Italian Maritime Rescue Coordination Centre (MRCC) to seek directions on disembarkation, and after reassuring the migrants that they would be disembarked in a place of safety, the migrants realized several hours later they were being returned to al-Khoms, Libya.”,* please kindly refer to the above information, as provided with regard to the issues raised at page 10, by the Ministry of Infrastructure and Sustainable Mobility - General Command of the Harbour Master Corps – Coast Guard (*Ministero delle Infrastrutture e della Mobilità Sostenibili*, *Comando generale del Corpo delle capitanerie di porto – Guardia Costiera)*.

**With regard to footnote no. 93, at page 21** (*“For example, in a legal complaint filed against Italy with the UN Human Rights Committee, the Global Legal Action Network (GLAN) claimed that Italy has engaged commercial ships in a series of “privatised pushbacks” to Libya. See, https://www.* [*https://www.statewatch.org/media/documents/news/2019/dec/glan-italy-libya-18-12-19.pdf*](https://www.statewatch.org/media/documents/news/2019/dec/glan-italy-libya-18-12-19.pdf)*”),* the Ministry of Infrastructure and Sustainable Mobility - General Command of the Harbour Master Corps – Coast Guard (*Ministero delle Infrastrutture e della Mobilità Sostenibili*, *Comando generale del Corpo delle capitanerie di porto – Guardia Costiera)* is in a position to stress, as follows:In compliance with the international Conventions in force regarding SAR, in carrying out search and rescue operations, the naval units, which as for position and characteristics can usefully intervene to save human life at sea, are employed in accordance with Chapter V, Rule 33 of the SOLAS Convention, and Art.98 of the UNCLOS Convention. With regard to the identification of the Place of Safety (P.O.S.), it should be noted that this is identified by the State responsible for the Search and Rescue Region (S.R.R.) where the rescue took place in cooperation with the flag State of the ship that provided the rescue[[2]](#footnote-2). In the case indicated in the press release referred to in footnote no. 93, it should be noted that the event did not take place in the Italian SAR area, nor was an Italian flagged vessel involved, and therefore Italy did not play any role in the designation of the Place of Safety.

**With regard to the MoU, at page 22, signed by Italy and Libya in 2017**, the Ministry of Interior is in a position to indicate as follows: In the draft report, it is reported as having been renewed, whereas the above MoU expired and its renewal is simply under negotiation. Moreover, the Ministry of Foreign Affairs and International Cooperation indicates as follows: The reference to the Italian-Libyan MoU on migration issues, whose amendment is currently under negotiation (p.22, in bold: "In February 2020, despite the opposition of several UN human rights experts and the Commissioner for Human Rights of the Council of Europe, and the fact that the agreement had previously been judged not conform to the Italian Constitution and to international law, a 2017 MoU between Italy and Libya was renewed. According to the new agreement, Italy undertakes to continue to financially support the LCG, together with capacity-building, training courses and equipment for SAR activities," for the prevention and fight against irregular immigration "**yet without having included amendments to the MoU to enhance Libyan authorities' compliance with international law** ") is not factually correct. The Italian proposal to amend the 2017 Memorandum includes a wide range of clauses that aim to improve the management of irregular migrations in Libya in accordance to human rights and international law standards, and to facilitate a bigger role of relevant international organizations. Therefore, we invite OHCHR to rephrase, as follows: “*In February 2020, despite the opposition of several UN human rights experts and the Commissioner for Human Rights of the Council of Europe, and the fact that the agreement had previously been judged not conform to the Italian Constitution and to international law, a 2017 MoU between Italy and Libya was renewed.****Since then, the two sides have been negotiating an amended version, whereby Italy - while continuing****to financially support the LCG, together with capacity-building, training courses and equipment for SAR activities, "for the prevention and fight against irregular immigration” -****is intending to improve the management of irregular migrations in Libya******in compliance with the human rights safeguards and international law standards, and to facilitate a bigger role of relevant international organizations*”**.

**With regard to the access to detention centres for migrants and other places where disembarked migrants are received by coastal States**, the Ministry of Interior is in a position to indicate as follows: As to what has been reported by NGOs operating in the SAR area concerned and mentioned in the draft Report, at **page 26**, it is to be noted that access to Centres for stay and repatriation is allowed to all persons who are entitled to it because of the positions they hold, both domestically and internationally, such as the Guarantor of Persons Deprived of Their Liberty (NPM of Italy in accordance with OPCAT), International Organizations such as UNHCR and IOM, as well as all Organizations that have entered into specific agreements with the Department for Civil Liberties and Immigration-Ministry of Interior or individual Prefectures, for the performance of activities of assistance to migrants. The methods of access are sharply provided for by the Regulations for the management of the Centres referred to in Article 14 of Legislative Decree 286/1998, as approved by Ministerial Decree, dated October 20, 2014. The verification of respect for human rights by independent bodies is therefore ensured. Finally, it should be noted that some Organizations, not included in the list of those entitled to access, have not been allowed access to the Hotspots or the C.P.R. due to public order requirements as well as health protection requirements related to the current pandemic emergency.

**With regard to Ocean Viking NGO, at page 29**, the Ministry of Interior is in a position to indicate as follows: It is reported that in June 2020 the aforesaid ship produced a landing event amounting to 180 migrants; however, from the data held by the aforesaid Central Directorate-Ministry of Interior, while the number of migrants is confirmed, the aforesaid ship was involved in this event in **July 2020**.

With regard to the para., **at page 29**, starting with *“There have been several examples of delayed disembarkation …… rescued by crew members.”,* the Ministry of Infrastructure and Sustainable Mobility - General Command of the Harbour Master Corps – Coast Guard (*Ministero delle Infrastrutture e della Mobilità Sostenibili*, *Comando generale del Corpo delle capitanerie di porto – Guardia Costiera)* is in a position to indicate, as follows: In the case of the Maersk Etienne, a ship that had rescued migrants in the SAR area and under the coordination of RCC Malta, and where subsequently there was the intervention of the M/V "Mare Jonio" of "Mediterranea" NGO that trans-shipped the migrants to bring them to Italy, it is to be mentioned that, as reported by the press, the facts are currently under investigation by the Italian judicial authorities. In particular, the investigators are focusing on the circumstance that a large sum of money would have been paid by the Maersk shipping company in favour of subjects related to the ship-owner company of Mare Jonio: a payment admitted before the press, by the same parties involved[[3]](#footnote-3). *In this regard, it might be useful that the Office of UN High Commissioner for Human Rights integrates the final report, with the recommendation for non-governmental organizations operating in the search and rescue at sea of migrants and for States where the former operate, to ensure compliance with the principle of gratuitousness of the aid provided to people in accordance with international Conventions in force, as well as to ensure that the rescue operation itself is carried out by naval units that, as being permanently intended for this activity, are in possession of the appropriate rescue equipment, adequate sanitary facilities aboard, and crew members in sufficient number, to accommodate the hundreds of people they embark and, ultimately, the necessary certifications issued by their flag Administrations to carry out this activity.*

**As for living conditions aboard of quarantine ships, the access to health-care and the assistance provided to migrants in the post-disembarkation stage**, the Ministry of Interior is in a position to indicate as follows: With regard to concerns about the living conditions and care provided to migrants on board quarantine ships, at **pages 30 et ff.**, it is to be noted that quarantine ships are temporarily adapted to the conduct of quarantine for the time envisaged by the current health-related provisions. In the Decree of the Head of the Department of Civil Protection No.1287 of April 12, 2020, by which the possibility of carrying out the measure of quarantine on board ships has been provided for, it has been also established that for the services of assistance and health surveillance the Implementing Body "*makes use of the Italian Red Cross as an operational structure of the National Service pursuant to Article 13 of Legislative Decree No. 1/2018*", as well as "*makes use ...of the Maritime, Air and Border Health-Care Offices*". For the performance of health-care and surveillance services on board ships, the Implementing Body, on May 9, 2020, signed a specific agreement with the Italian Red Cross (acronym in Italian, CRI) and subsequent addenda. The start of execution of the charter contract of the ship and, therefore, of the activity on board by the CRI is subject to the positive outcome of the checks carried out aboard by the Commission provided for by art. 25 of Law no. 616/1962, as set up at the Port Authority and responsible for ascertaining that the naval unit meets the requirements as contained in the Guidelines/Focal Points for the conversion of passenger motor vessels into a protected isolation system, as prepared by USMAF and contained in the Technical Annex to the charter contract. This Guidelines provides for technical, health-care, hygiene and behavioural prescriptions to be adopted on board, as well as a health garrison, including "*health staff on double shifts: 2 doctors, 2 nurses, 1 OSS*". The services that Italian Red Cross is committed to ensuring, with staff on board and 24-hour services, are as follows:

(a) Health care throughout the whole period of quarantine or fiduciary isolation on the ship;

(b) Specific support activities for migrants;

(c) Logistic support activities and services, including the provision of individual protective equipment to embarked personnel, related to on-board activities.

The above services are described in Annex 1 to the above-mentioned agreement (in Art.1, para.1), which enlists the following organizational modules:

**A) Module of *“Health-Care Assistance”:***

- Setting up and management of a medical outpatient area

- Screening of general conditions of migrants

- Screening of body temperature, peripheral oxygen saturation to identify cases at risk of Covid-19 (active surveillance)

- Swabbing of the entire population received on the ship

- Isolation of Covid-19 risk cases

- Treatment of emergency/emergency conditions that may occur on board

- Identification of vulnerable persons

- Identification of pregnant women and their support

- Treatment of detected chronic conditions

- Educational actions on infection control

- Application of infection control procedures

- Linguistic-cultural mediation aimed at health-care activity

- Psychological support to users and operators

**B) Module on administrative management**

- Registration of migrant and management inclusion

- Release of identification badge

- Warehouse management

- Administrative management

**C) Module on “ *Assistance to the person*”:**

- Linguistic-cultural mediation

- **Social Assistance**

-Distribution, storage and control of meals

- Laundry

**D) Module on goods supply**

- Bedding components

- Personal hygiene products

- First entry kits and subsequent changes

- Supply of personal protective equipment

**With regard to the provision of medical services on board**, the Ministry of Interior is in a position to indicate as follows: The Palermo USMAF, following specific investigations, has represented that care services are effectively guaranteed through the presence of at least one doctor and several nurses during the period of quarantine or fiduciary isolation.

**With reference to the two reported cases of children’s death**, **at page 30,** the Ministry of Interior is in a position to indicate as follows: It should be noted that they did not occur aboard the vessels, but on dates subsequent to disembarkation: In the former case, concerning Abdallah Said, he was a patient already suffering from a previous pathology (hydrocephalus), admitted, on September 7, 2020, at a hospital in Syracuse and then transferred to Catania, in intensive care unit where he died, on September 15, 2020. In the latter case, Abou Diakite, for the entire period of stay aboard the ship “Allegra”, from September 18 to September 29, he was assisted by the doctors of the Italian Red Cross and subjected to constant monitoring, as it results from the reports of the medical staff present on board. On September 29, the doctor noted that "his general conditions appear to have worsened with respect to the previous day", so after having obtained the authorization to MEDEVAC, the doctor "*personally accompanied him by using a wheelchair and took him ashore and handed him over to the 118 team*". From that moment on, the medical staff of *Cervello* Hospital followed this minor. On September 30, a hospital social care worker reported to the CRI doctor on board that the patient had been admitted in apparent stable condition and they agreed to have the patient reunited with his travel companions once quarantine was over. On October 5, after the transfer to the intensive care unit of *Ingrassia* Hospital, the guardian informed the CRI doctor about the death of the minor. Moreover, as for the situation of this minor, the management of USMAF in Palermo, from the examination of the medical documentation and the clinical reports drawn up by the doctors on board the ship, did not find, in act, any elements of professional responsibility. In any case, it should be noted that since October there are no unaccompanied foreign minors on board the quarantine vessels. Hence, as for the following phrase, “ *….. Stays on Italian quarantine ships reportedly resulted in the death of two children in Sicily….”,* **at page 30**, we would like to express our utmost concern for the inappropriate use of the article referred to in footnote no. 142. In particular Politico’s relevant article stresses that, “*The boys’ causes of death remain undetermined”*. In light of this, and also on the basis of what reported by the Ministry of Interior above, it is not possible to draw any conclusions, not even the ones you mention. We, therefore, ask to delete the above-mentioned phrase.Moreover,along these lines, for a comprehensive and transparent picture, it should be also recalled the relevant assessment recently made by Italy’s National Preventive Mechanism (*Garante*) in line with OPCAT. On 17 September 2020, the National Preventive Mechanism of Italy, following a meeting at the Prefecture in Palermo, visited the ship “Rhapsody” where migrants from Lampedusa Hotspot were quarantined. At the end of the visit, the *Garante* acknowledged that the quarantine ship solution offers an "*overall feeling of dignity of the accommodation found and of professionalism of the operators*".

An overview of his relevant visits is available on NPM’s website (https://www.garantenazionaleprivatiliberta.it/gnpl/it/dettaglio\_contenuto.page?contentId=CNG9411&modelId=10021).

**It should be noted that at the time of disembarkation,** the Ministry of Interior indicates, **material and health-care assistance as well as information are immediately guaranteed.**  In the current particular epidemiological emergency, for the purposes of quarantine, adults or family units are embarked on quarantine ships or received in facilities in the territory. Unaccompanied foreign minors and subjects whose vulnerability is deemed incompatible with the stay on board of ships, such as pregnant women, are received in dedicated facilities. Following identification procedures and at the end of quarantine, migrants are directed to reception facilities if they are asylum-seekers, or dedicated facilities if they are unaccompanied foreign minors, or detention facilities in the event that expatriation procedures start.

Finally, the Ministry of Interior is in a position to indicate as follows: **It should be noted that the health-care measures to prevent the spread of Covid-19** are adopted upon indication of the Health Authorities and, with particular regard to the duration of quarantine, by the Circular Letter of the Ministry of Health, No. 32850, dated October 12, 2021, which is applied without any discrimination. Any extension of the health-related surveillance measures are attributable exclusively to the circumstances identified by the above-mentioned Circular Letter, and therefore to the occurrence of positivity to Covid-19 or to the existence of contacts with Covid 19-positive subjects, on the basis of individual assessments carried out by the health-care authority.

**To conclude**, Italian Authorities take this opportunity to reiterate their firm willingness to continue full and effective cooperation with the OHCHR.

1. Data provided for by the General Command of the Harbour Master Corps (*Comando Generale del Corpo della Capitaneria di Porto*). [↑](#footnote-ref-1)
2. See IMO MSC 167(78) Resolution dated 2004 and IMO’s Circular FAL. 3/Circ. 194, dated 22 January 2009, respectively. [↑](#footnote-ref-2)
3. As for the payment of a significant amount of money, please kindly refer to press release by Maersk ship company, as available to the following link:<https://maersktankers.com/newsroom/maersk-etienne-company-statement>;

   For additional information on this case, please kindly refer to the following press articles:

   <https://www.lasicilia.it/news/cronaca/396149/mare-jonio-pagata-per-trasbordo-migranti-ong-accusata-di-fare-da-taxi-del-mare.html>

   <https://www.lastampa.it/cronaca/2021/03/01/news/inchiesta-della-procura-di-ragusa-la-mare-jonio-pagata-per-trasbordo-dei-migranti-1.39968717> [↑](#footnote-ref-3)