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*Il Rappresentante Permanente d'Italia  
presso le Organizzazioni Internazionali*

*Ginevra*

Geneva, 7<sup>th</sup> February 2018

Your Excellencies,

I have the honor to refer to your kind letter of 28 November 2017 in which you conveyed the concerns of the Working Group of Experts on People of African Descent, the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, the Special Rapporteur on minority issues, the Independent Expert on human rights and international solidarity, the Special Rapporteur on the human rights of migrants, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on contemporary form of slavery, including its causes and consequences, the Special Rapporteur on trafficking in persons, especially women and children and the Special Rapporteur on violence against women, its causes and consequences, about the implementation of the Memorandum of Understanding on cooperation in the area of development, the prevention of illegal immigration, human trafficking and smuggling, and on strengthening border security between the State of Libya and the Italian Republic, signed in Rome by President Gentiloni and President Serraj on 2 February 2017.

Mr. Salebo Gumedze  
Chair-Rapporteur of the Working Group of experts on People of African Descent

Ms. Maud de Boer-Buquicchio  
Special rapporteur on the sale and sexual exploitation of children,  
including child prostitution, child pornography and other child sexual abuse material

Mr. Fernand de Varennes  
Special Rapporteur on minority issues

Mr. Obiora C. Okafor  
Independent Expert on human rights and international solidarity

Mr. Felipe González Morales  
Special Rapporteur on the human rights of migrants

Ms. E. Tendayi Achiume  
Special Rapporteur on contemporary forms of racism, racial discrimination,  
xenophobia and related intolerance

Ms. Urmila Bhoola  
Special Rapporteur on contemporary forms of slavery, including its causes and  
consequences

Ms. Maria Grazia Giammarinaro  
Special Rapporteur on trafficking in persons, especially women and children

Ms. Dubravka Šimonović  
Special Rapporteur on violence against women, its causes and consequences

Recalling what already highlighted in my letter dated 21<sup>st</sup> February 2017 in response to a previous letter on the same issue dated 2 February 2017, I have the honor to make the following observations.

On the outset, I wish to reiterate Italy's grave concern for all violations of human rights within the so-called Mediterranean Central Route, including the smuggling of migrants and human trafficking that endanger the lives of thousands of people in the Mediterranean Sea, and for the dire conditions of the migrants in the centers in Libya. As stated by Hon. Minister Alfano while chairing the monthly consultations of the Security Council on Libya last November: "The decline of migration flows is encouraging. But it cannot be at the expense of human rights. We want to improve the appalling conditions of refugee and migrant centers".

I wish at the same time to reiterate Italy's concrete commitment on the ground in the protection of human life, promotion of human rights, dialogue, engagement and cooperation on equal grounds with Libya – a sovereign country still facing the unprecedented crisis triggered by the events of 2011. Italy's strategy and concrete actions reflect the same values and principles enshrined not only in International and European law, but also in the Italian Constitution, and are implemented in conformity with Resolution 2259 (2015) of the UN Security Council, referring to the Government of National Accord as "urgently needed" to "provide Libya with the means to maintain governance, and promote stability and economic development".

The first pillar of this strategy is protection of human life. No other country in the international community can be credited with comparable numbers of people rescued at sea in international waters, thanking to the struggle of Italian women and men deployed in the framework of national and international missions such as the Mare Nostrum, Triton, Sophia – and now Themis – operations. With no exception, every action implemented by Italy in the course of the past few years was aimed at the fundamental goal of reducing the number of people dead at sea – a logical precondition, unfortunately, to the respect of their human rights and dignity. This struggle is still ongoing: since the signature of the MoU, Italy has rescued more than 119,000 migrants and asylum seekers who tried to reach Europe. It is important to underline that Italy is acting far beyond its Search and Rescue Area, driven to do so more by moral than by legal obligations. In addition to this, Italian ports never ceased to be available to a large number of foreign vessels disembarking asylum seekers and migrants to Italy. As a result, the number of people who died along the so-called Central Mediterranean Route decreased to less than 2,500 – still unacceptable, but much lower than the 5,143 deaths recorded in 2016. This effort will continue, in cooperation with the European Union. Even one single person dead at sea is unacceptable to us.

Italy considers trafficking of human beings, including migrants and refugees, a gross violation of human rights and a threat to peace, stability and the rule of law. We are working with determination to strengthen protection of human rights of migrants and refugees also by fighting human trafficking and the networks of organized crime that are responsible for it. In an extremely fragile context, we pay particular attention to those in vulnerable situations, such as women, children, persons with disabilities. The issue of the trafficking of human beings – both as cross-cutting issue and with specific reference to the situation in Libya – has been indeed at the very center of our mandate in the Security Council, ended last 31<sup>st</sup> December 2017. We devoted to this

issue the most qualifying moments of our tenure of the monthly Presidency of the Security Council in November. We promoted the unanimous adoption of UNSCR 2388 (2017) which addresses this issue in order to strengthen UN action and cooperation between States, focusing in particular on the needs of the victims, especially women and children. The resolution contains a series of operational clauses aimed at protecting children that are victims of trafficking, in particular unaccompanied minors, also in terms of identification, health and education.

Consistent with this approach, since the signing of the abovementioned bilateral Memorandum of Understanding, our collaboration with the Libyan authorities has deepened, with the goal of helping the Libyan institutions to appropriately carry on their responsibilities related to the respect of human rights as well as fighting against human trafficking networks. Our vision is the one of a comprehensive and effective response to these challenges, focusing on security, on the humanitarian level, on fundamental rights and on empowering local communities.

We strongly reject any assumption (such as the reference in your letter to the Hirsi Jamaa case of the European Court of Human Rights) implicitly portraying Italy as a country “delegating” to Libya any action whatsoever amounting to a violation of human rights, such as the principle of *non refoulement*.

The starting point is that in no way Italy has control or any form of direct or indirect authority over individuals in the territory of Libya, including in Libyan territorial waters. Italian cooperation with Libyan authorities fully corresponds to the goals established by the above-cited Resolution on 2259 (2015) of the UN Security Council. Moreover, it is in full compliance with the principle of sovereign equality of all Members of the United States granted by Article 2(1) Charter of the United Nations, and with the duty not to interfere in the internal affairs of a foreign State granted by Article 41 of the Vienna Convention on Diplomatic Relations.

In implementing such cooperation, Italy is bound not only by the international treaties and conventions related to human rights recalled in your letter, but also by its adherence to the European Convention on Human Rights and Fundamental Freedoms, as well as to the European Union – we shall not forget that in this latter context, Italy is facing the burden of being, in the highest percentage of cases, the country of first entry of asylum seekers and migrants crossing the Central Mediterranean.

At the same time, the Italian Government is driven and inspired by the principles enshrined in the Italian Constitution. In relation to the rights of asylum seekers, let me kindly recall Article 10 of the Constitution of Italy, stating that “[...] *A foreigner who, in his home country, is denied the actual exercise of the democratic freedoms guaranteed by the Italian constitution shall be entitled to the right of asylum under the conditions established by law*”.

Any assumption referring to Italy as a country violating the *non refoulement* principle in Libya is not only lacking any legal grounds, but it also totally refuted by facts. Notwithstanding the circumstance that the number of migrants who reached Italian shores in 2017 has decreased by approximately 34% compared to 2016 (still being more than 118.000) the number of requests for asylum or international protection submitted to Italy has increased by 7% over the same period, totaling 127.828 – a new record for my country. While it contributes to the fight against human smugglers putting the lives and dignity of people at risk, Italy is increasingly exploring all

possibilities to make legal channels available for asylum seekers wishing to reach Europe. In cooperation with UNHCR and civil society organizations, last December a first group of 162 highly vulnerable refugees (Eritrean, Ethiopian, Somali and Yemeni citizens, including unaccompanied children and women) were resettled through a new “humanitarian corridor” from Libya to Italy. This initiative – the first direct evacuation of refugees from Libya to the European Union – was carried out jointly with the Italian Ministry of Interior and the Italian Episcopal Conference. It will be shortly followed initiatives of the same kind. At the same time, in 2017, IOM carried out 19,370 Assisted Voluntary Returns from Libya, compared to 2,775 during 2016. We encourage the other Members of the United Nations to follow this example, as an effective way to disrupt the business model of smugglers while at the same time protecting the lives, fundamental rights and dignity of the victims of traffics, and to fulfil the hopes of asylum seekers.

Italy is currently the only European country to keep an Embassy open in Tripoli, despite the difficult security context on the ground. The Embassy not only works tirelessly on a daily basis to contribute to the goals highlighted above. It also issues visas from Tripoli and Tobruk – a rare opportunity of direct engagement with the people of Libya.

Concerning the activities of search and rescue at sea, while continuing to undertake an unmatched number of search and rescue operations that led to a tangible decrease in the numbers of tragedies in the Central Mediterranean, in an endeavor praised by the whole international community and in the spirit of the UNCLOS, SAR and SOLAS Conventions (in the context of which regional cooperation in search and rescue activities at sea is of pivotal importance), the focus of Italy’s work is to help relevant Libyan Authorities (Libyan Coast Guard and General Administration for Coastal Security) to improve their capacities in search and rescue operations at sea in full compliance with human rights protection and safety standards. Our training activities are specifically conceived to obtain these goals, Libya will never become a stable country until it is not able to effectively control its borders in line with the most advanced standards, not only in terms of safety and security, but also in terms of fundamental rights protection. Achieving this goal in such a difficult context requires engagement and cooperation.

Following this approach, the code of conduct of non-governmental organizations is another tool the Italian Government has adopted. Indeed, it is aimed at strengthening coordination mechanisms in search and rescue operations at sea in order to grant the most extensive assistance to the thousands of people in distress who risk their lives daily in the Mediterranean Sea and help those who reach our shores. It is fully aligned with the international norms in this field, as proved by its adoption by the majority of the NGOs active in the Central Mediterranean area (including SoS Méditerranée, MOAS, Proactiva Open Arms, Save the Children, Sea-eye, Sea Watch, and Mission Lifeline), which were previously consulted and actively contributed to drafting the text.

It is also worth stressing that Italian policies and initiatives on the ground abide by the most advanced standards in terms of transparency and accountability. According to Article 28 of the Italian Constitution, “Officials of the State or public agencies shall be directly responsible under criminal, civil, and administrative law for acts committed in violation of rights”. According to Article 112, “The public prosecutor has the obligation to institute criminal proceedings” – the latter principle avoiding any form of discretion in the exercise of criminal proceedings involving violations of human rights. Article 361 of the Italian Criminal Code establishes upon any public

official a duty to denounce with no delay to the judicial authorities any information relating to any suspected criminal offences.

In light of the above, Italy's commitment to its obligations under international law, including international human rights law and international humanitarian law, is out of question. Human rights obligations have been granted a specific attention during the negotiations of the abovementioned Memorandum, and they are granted an even more careful attention during its implementation. Allow me to reiterate that the text explicitly recalls "the obligations under customary international law and the agreements binding the Parties, including Italy's membership of the European Union" and that Art. 5 states that "the Parties pledge to interpret and apply this Memorandum with due regard for the international obligations and agreements on human rights to which both countries are party".

Among the set of provisions regulating the treatment of migrants, the Memorandum includes the obligations of the Parties to support the international organisations active in Libya for migratory issues, with a view to improve the conditions of migrants in Libya, to enhance the Libyan institutions' capacity in the camps management and ensure the full respect of human rights.

In this regard, the Italian Government is strongly supporting the initiatives promoted by the European Union in Libya, as well as the action plans enacted by the United Nations High Commissioner for Refugees and the International Organization for Migration with the specific purposes of ensuring protection and direct assistance to migrants and refugees, improving conditions in the Libyan centers, increasing assisted voluntary returns and resettlements, monitoring of humanitarian conditions, through a direct financial support to the humanitarian activity of the IOM and the UNHCR.

Thanks to the Italian advocacy action within the EU, UNHCR and IOM got the confirmation of the 100 million Euros pledge in support of their action in Libya in 2018. Thanks also to the Italian commitment, UNHCR was able to visit 28 out of 29 centers for migrants throughout the Country and has identified more than 1000 vulnerable people who could apply for international protection and be resettled to other Countries. In 2017, a total of 1,350 refugees and asylum-seekers have left the camps following UNHCR's interventions. Furthermore, as widely stated and also praised by the Security Council, thanks to the assistance of our Embassy in Tripoli, Libyan Authorities and UNHCR reached an agreement for the establishment of a "gathering and departure" office of UNHCR in Tripoli that will allow the Agency to provide timely humanitarian assistance and a durable solution in third countries to vulnerable migrants with international protection needs.

Italy has been one the main drivers for an increased commitment of the European Union in the Central Mediterranean Sea, bringing to the international community's attention the sense of urgency that this challenge imposes. The signing of the Memorandum of Understanding has been widely praised as a mayor moment in the endeavor of confronting the smuggling of human beings also by the European Union. As stated by the Members of the European Council in the "Malta Declaration on the external aspects of migration: addressing the Central Mediterranean route", adopted in La Valletta on 3 February 2017, the EU welcomed the Memorandum and expressed its readiness to support Italy in its implementation.



As part of its overall action, the Italian Government will allocate further financial contribution to complement the ongoing activities with other projects to be carried out by Italian Non-Governmental Organizations, in partnership with Libyan NGOs and in coordination with OIM and UNHCR, in the sectors of health-care, women and minor protection, and humanitarian assistance inside the centers for migrants.

So far, 60% of the 42.5 million Euros committed by Italy to Libya within the so-called "Africa Fund" were dedicated to humanitarian and development cooperation activities, including 2 million Euros for waste management in the city of Tripoli, 18 million Euros as Italian contribution to the IOM Action Plan on Assisted Voluntary Returns, assistance and information to migrants and development of local communities, and 10 million Euros as Italian contribution to the UNHCR Plan for assistance to refugees, migrants and local communities. We intend to complement our ongoing activities with other projects by Italian NGOs, for a total amount of approximately 6 million euros, in areas such as the strengthening of health structures and the protection of women and children, as well as to provide humanitarian assistance in centers where refugees and migrants are located.

In doing so, Italy is concretely implementing a global approach which aims at virtuously combining promotion and full respect for of human rights, dialogue and engagement, safety, security, social dimension, economic development, on the premise that growth, development, peace, security and human rights are interconnected by an indissoluble link. We are strengthening cooperation with local authorities, particularly the ones that are most affected by the issue of the trafficking in human beings, by providing in this phase emergency humanitarian relief. In close coordination with the EU, Italy is working on specific initiatives aimed at supporting a great number of Libyan municipalities in the sectors of infrastructures, security, health and education.

The Italian Government confirms its fullest cooperation with the Special Procedures of the Human Rights Council and stands ready to share all the relevant information on the implementation of the above mentioned Memorandum.

Yours sincerely,

Amb. Maurizio Enrico Serra

