



*The Permanent Representative of Italy
to the International Organizations
Geneva*

Prot. 1184

Geneva, 15 SEP. 2020

Dear Ms. Balbin,

Following UN letter (AL ITA/3/2020), dated July 20, 2020, I have the honour to submit Italy's reply to Joint Communication by five UN Special Procedures.

By this reply, we take the opportunity to reiterate our firm willingness to continue full and extensive cooperation with all UN Special Procedures Mandate-Holders.

Should additional information be made available, allow me to ensure you that we will promptly share it with you.

Please accept, Ms. Balbin, the assurances of my highest consideration.

Sincerely yours,


Gian Lorenzo Cornado

Ms. Beatriz BALBIN
Chief of the Special Procedures Branch
OHCHR
GENEVA



MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL COOPERATION

INTER-MINISTERIAL COMMITTEE FOR HUMAN RIGHTS

**ITALY'S REMARKS,
IN RESPONSE TO UN JOINT COMMUNICATION (AL ITA 3/2020)**

September 14, 2020

ITALY'S REMARKS

Further to letter, dated July 20, 2020 (IL ITA 3/2020), sent by UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions; UN Special Rapporteur on the Human Rights of Migrants; UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; UN Special Rapporteur on Trafficking in Persons, especially Women and Children; and UN Special Rapporteur on Violence against Women, its Causes and Consequences, Italian Authorities are in a position to provide the following remarks:

Introductory remarks

1. The Italian (rigid) Constitution determines the political framework for action and organization of the State. The fundamental elements or structural principles of the constitutional law governing the organization of the State are as follows: Democracy, as laid down in Article 1; the so-called *personalistic* principle, as laid down in Article 2, which guarantees the full and effective respect for human rights; the pluralist principle, within the framework of the value of democracy (Articles 2 and 5); the importance of work, as a central value of the Italian community (Articles 1 and 4); the principle of solidarity (Article 2); the principle of equality, as laid down in Article 3 (it is also the fundamental criterion applied in the judiciary system when bringing in a verdict); the principles of unity and territorial integrity (Article 5); and, above all, the relevant principles, including the social state, the rule of law and the respect for human rights and fundamental freedoms.
2. The Italian legal system aims at ensuring an effective framework of guarantees, to fully and extensively protect the fundamental rights of the individual. Indeed, we rely on a solid framework of rules, primarily of a constitutional nature, by which the respect for human rights is one of the main pillars.
3. For more comprehensive information, the Common Core Document of Italy forming part of reports to Treaty Bodies (UN Doc. HRI/CORE/ITA/2016, dated July 25, 2016) provides an overview of the domestic system, including safeguards and guarantees.

Turning to the specific issues

4. In general terms, as of 21 July 2020, 9,885 migrants landed irregularly on the Italian coasts. Migrants arriving on the Italian coasts are mainly from Tunisia (32%), Bangladesh (18%) and Ivory Coast (8%). As of July 17, 2020, 13,465 asylum applications have been submitted, down of 46% comparing it to the same period of last year. The main countries of origin of asylum-seekers are Pakistan (19%); Nigeria (10%); and Bangladesh (9%).
5. By inter-ministerial Decree, dated April 7, 2020, No. 150 it has been established that, for the entire duration of the COVID-19 health emergency (in place until October 15, 2020), Italian ports do not ensure the necessary requirements for the classification and definition of "places of safety" for maritime rescue cases carried out by vessels with a foreign flag outside the Italian SAR area.

6. It should be noted that pursuant to the 1979 Hamburg Convention on Maritime Search and Rescue, the determination of the "Place of Safety", namely the safe place of disembarkation of the shipwrecked, falls within the responsibility of that State responsible for the area where the rescue event took place and/or that coordinated it.
7. The above Decree is part of the urgency-related emergency measures framework adopted by the Italian Government, following the declaration of the national epidemiological emergency due to COVID-19, as a result of which certain restrictions were imposed on the free movement of people on the national territory and on the entry from abroad: to protect public health; to counter the spread of the COVID-19 contagion among the population; and to regulate access to national health-care facilities to tackle the outbreak of this pandemic.
8. In line with this governmental guidance, the Ministry of Infrastructure and Transportation has in parallel introduced specific provisions for: maritime transportation, suspension of the cruise activities for Italian ships; and prohibition for foreign-flagged passenger ships from entering national ports (Decree No.125, dated 19 March 2020).
9. The overall emergency situation has also required to take into account the effects of the landing of migrants along the national coasts following rescue operations - in view of the specialty of this matter and of the obligations arising from the Hamburg Convention related to the assignment of the "place of safety" to Italian ships or to foreign ships that have carried out rescue activities under the coordination of the Italian SAR Coordination Centre.
10. As a result, by Decree No.150/2020 the competent Ministries prohibited the entry into national waters and the disembarkation of migrants only to foreign units that have carried out the rescue in waters of non-national SAR responsibility and outside the coordination of the Italian SAR Authority (IMRCC).
11. Moreover, it is to be noted that in the above case (operations conducted by foreign flagged units without Italian SAR coordination), Italy would not in any case be obliged to identify the "place of safety" in accordance with relevant norms of international law.
12. It follows that the Inter-ministerial Decree No.150/2020 is in line with international and national standards on maritime rescue as long as it pursues the objective - in the cases described above - to mitigate the impact of the risk of epidemic spread linked to the arrival of migrants while ensuring, during the emergency under consideration, the full efficiency of the national health-care system.
13. It is to be added that the "place of safety", by its very own definition, also includes the need, for the port State, to guarantee appropriate health-care assistance to the migrants rescued, which is a requirement that could not be fully insured in the face of the overloading of the national health-care structures due to the current emergency period.
14. In this respect, it should be noted that IMO MSC 167(78) Resolution, at paragraph 6.15, provides that the landing at "a place of safety" should also take into account the *particular circumstances* of the case, including "the medical needs" of the rescued persons, to which due attention is to be paid.
15. In light of the above, it is clear that the provisions of the Inter-ministerial Decree No.150/2020:

- Address all foreign ships involved in rescue operations outside the maritime area of Italian SAR responsibility and without the coordination of the Italian SAR National Coordination Centre;

- Do not affect the regularity of the IMRCC's tasks, which continue to be carried out in strict compliance with international and domestic rules governing the matter under reference.

16. It is crystal-clear that the measure limiting the arrival of migrants at national ports does not bring, in any way, in both its rationale and the aims described, the effect of "incentivising" the arrival of migrants at ports that do not meet the requirements of the "place of safety".

17. As part of the overall measures for the assistance and reception of migrants which the Italian Government has constantly taken charge, it is to be included the use of the ferry units for the quarantine of those migrants arriving along the national coasts.

18. In this respect, it is worth noting that Italy has also transhipped migrants rescued from foreign vessels - although following SAR operations not coordinated by the IMRCC - towards passenger vessels rented for this purpose to allow for health-related surveillance and isolation prior to their transfer to the shore-based hotspots.

19. The urgent measures adopted by the Department of Civil Protection have made it possible to ensure the stay of migrants aboard of the motorboat "Rubattino", in an initial phase, and - to date - aboard of the motorboat "Moby Zaza", for the prescribed period of health surveillance, thus entrusting the migrants to Italian Red Cross assistance personnel permanently present on board.

20. The measure under reference is therefore directly aimed also at protecting the health-care of migrants - including many minors who are the recipients of the prescribed special protection, from a logistical and health-care standpoint -, all being properly and adequately housed in individual accommodation, suitable to prevent any further spread of the virus.

21. Furthermore, the use of ferries as initial reception facilities has been arranged to prevent the risk that migrants may come into direct contact with COVID-19 positive people in the shore-based facilities and that they may be unable to benefit from adequate health-care (should they need it).

22. Last, it should be noted that the competent body of the Italian administrative justice system (TAR Lazio, Section III, 25 May 2020, No.3934) rejected the request for suspension of the effects of Inter-ministerial Decree No.150/2020, as long as the motivation behind this measure is firmly anchored in the current emergency situation and the subsequent impossibility of providing a "place of safety" for the disembarkation without the risk of compromising the effectiveness of the national health-care, logistical and safety structures responsible for containing the spread of the contagion and for the care and treatment measures for the COVID-19 patients.

23. More specifically, the Court has pointed out that *"...the danger for migrants (current or potential) to be exposed to the risk of shipwreck at sea must be correctly framed within a complex normative framework (national and international) in which assistance is guaranteed in any case to those persons who may be rescued at sea, by providing adequate measures, in the face of situations that threaten their lives, aimed at meeting basic needs and the access to fundamental services under a health, logistical and transport-related profile..."*.

24. As for the need to ensure assistance and health-related surveillance of migrants rescued at sea or arrived on the national territory following autonomous landings - and not having had any success

the previous procedures experienced - on the basis of *the determination to contract* adopted on July 26, 2020 by the Implementing Authority, the Head of the Department for Civil Liberties and Immigration of the Ministry of the Interior, it is necessary to identify a naval unit, with Italian and / or EU flag suitable to provide the service under reference before the landing of migrants in the POS indicated by the competent Administrations.

25. The economic operators interested in being invited to submit an offer must submit, by Wednesday, 29 July 2020 at noon, their respective expression of interest by using the forms also published on the website of the Ministry of Infrastructure and Transport (<http://mit.gov.it/comunicazione/news/migranti-soccorso-navale/migranti-avviso-per-la-presentazione-di-manifestazioni>).

26. With regard to the SAR event occurred on April 16, 2020 mentioned, this fully developed in the SAR area of Maltese responsibility and under the coordination of the competent Rescue Coordination Centre in Valletta.

27. More specifically, as informally reported by the Maltese authorities to MRCC-Italia, in the morning of April 15, 2020, a rubber boat with migrants on board was rescued in the Maltese SAR area. In the afternoon of the very same day, the staff of the State Police at the Italian Embassy in Tripoli was informed by the Libyan Coast Guard that a fishing boat with migrants on board had arrived in the port of the capital.

28. From further information collected at the above Coast Guard, it emerged that the above fishing boat had 49 migrants and 5 corpses on board, probably attributable to the aforementioned event, the rescue of which would have been coordinated by the Maltese Authorities, since this activity fell within the area SAR of responsibility of the aforementioned European country. In light of the above, the Maltese Government may be in a position to provide the relevant information.

Conclusion

Italian Authorities take this opportunity to reiterate their firm willingness to continue effective cooperation with all UN Special Procedures and will provide additional information, once available.