



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

Nr. 0027

Geneva, - 8 JAN. 2021

Dear Ms. Balbin,

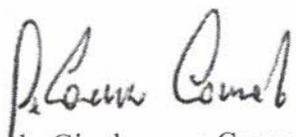
Following UN letter (AL ITA/7/2020), dated November 9, 2020, I have the honor to submit Italy's reply to Joint Communication by six UN Special Procedures that have requested Italian Authorities to provide them with information about the situation of human rights defenders along the Mediterranean route and trafficking in human beings.

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,


Amb. Gianlorenzo Cornado

To the attention of UN Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the situation of human rights defenders; the Independent Expert on Human Rights and International Solidarity; the Special Rapporteur on the Human Rights of Migrants; the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Special Rapporteur on Trafficking in Persons, especially Women and Children.



MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL COOPERATION

INTER-MINISTERIAL COMMITTEE FOR HUMAN RIGHTS

**ITALY'S REMARKS,
IN RESPONSE TO UN JOINT COMMUNICATION (AL ITA 7/2020)**

January 7, 2021

ITALY'S REMARKS

Further to letter, dated November 9, 2020 (AL ITA 7/2020), sent by UN Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the situation of human rights defenders; the Independent Expert on human rights and international solidarity; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on trafficking in persons, especially women and children, Italian Authorities are in a position to provide the following remarks.

Q. No. 1 and 2

Port State Control is the inspection activity carried out on foreign ships by the Port State Authority, which consists of a series of checks aimed at verifying and ensuring that the ship is not in sub-standard conditions compared to the applicable international Conventions governing: the safety of navigation; the prevention of pollution; the certification of the crew; and the living and working conditions on board.

The "Port State Control" activity in Italy takes place in compliance with Legislative Decree No.53, dated March 24, 2011 and subsequent amendments, which implements EU Directive 2009/16/EC as amended.

Directive 2009/16/EC establishes common and harmonized criteria for inspecting foreign ships through:

1. Periodic inspections, based on the ship's "risk profile" ("good" ships inspected less frequently, ships carrying flags of convenience or being detained more frequently); and
2. Additional inspections, when certain conditions are met (ships involved in accidents; ships reported for not complying with the applicable requirements, etc.).

The above Directive aims to inspect all foreign ships, calling at a ports and anchorages of an European Union port, when an interface (commercial operations, ship services, etc.) occurs between the port and the ship itself. The purpose of the inspection is to verify the compliance of the ship with the international legislation applicable to it, with the aim of drastically reducing substandard shipping in waters under EU Member States jurisdiction, also through detention measures (retention of the ship until safety conditions are restored) and ban (foreclosure of access to the EU ports for certain periods of time).

Italy carries out the "Port State Control" activity through inspectors belonging to the Italian Coast Guard - Harbour Masters' Corps (*Corpo delle Capitanerie di Porto - Guardia Costiera*) - as qualified in accordance with the professional requirements established by Decree No.53/2011 and duly authorized following the completion of a structured training course; inspectors carry out checks on the compliance of ships with the applicable Conventions requirements and ratified by Italy (so-called "Relevant instruments"), such as, among the others ~~all~~, the most significant Conventions on safety of navigation (SOLAS); prevention of pollution (MARPOL); training, certification and watchkeeping for seafarers (STCW); and living and working conditions on board (MLC, 2006).

The EU database called "THETIS" - implemented since January 1, 2011 - provides information on ships in port/anchorage or expected to arrive in the ports/anchorages of the Paris MoU Region (EU countries, EFTA countries, plus Canada and the Federal Republic of Russia) indicating ships to be inspected and allowing the results of the inspections to be recorded in the database, thus becoming available to all other Authorities.

The THETIS System also indicates the inspection priority (PI or PII) by calculating the "risk profile" of each individual ship and indicating ships which might be or have to be inspected:

Priority I (Priority One) – the ship that must be inspected;

Priority II (Priority Two) – the ship that can be inspected.

The risk profile of a ship is determined by the combination of certain parameters:

- Generic ones (type of ship, age, flag, performance of the "recognized¹ organizations" that have issued the statutory certification and ship's Company² performance); and
- Historical ones (number of deficiencies and detentions recorded during PSC inspections in a given period of time).

To these so-called "Periodic" inspections - at intervals established on the basis of the "risk profile" - "additional" ones are to be added (see Article 8, letter b, of Decree No.53/2011), which are determined by "unexpected" factors (e.g. reporting of alleged anomalies; crew complaints, etc.) or "overriding" ones (of absolute priority, such as collision, grounding, report of a Member State, etc.) which are inserted by the State of the port concerned in THETIS, thus making ~~that~~ the ship subject to

¹ It is the body to which the flag delegates the inspection and certification of the ship activity with respect to the international standards applicable to it. At the European level, the recognition of organizations is governed by Regulation (EC) 391/2009.

² It is the company that has taken over from the shipowner the management of safety on board and, therefore, must comply with the "international safety management code" (ISM code) as made mandatory by the SOLAS (Safety of life at sea) Convention, ratified by Italy by Act No.313/1980.

non mandatory (PII) or mandatory (PI) inspection respectively, regardless of the interval time since the last PSC inspection.

It has to be taken into account that SOLAS (Safety of life at Sea) Convention stipulates that ships must be equipped and certified for the "service" they are intended for.

Every single flag State must have rules ensuring that ships flying its flag are suitably equipped and certified for the "service" they perform. It is therefore the responsibility of the flag State to certify NGO vessels for "search and rescue" activity.

SOLAS Convention attributes to the port States, where foreign ships call, the right/duty to carry out their own inspection activities. The purpose of the inspection is to verify that the ship is operating safely on the basis of the certificates issued by the flag State and does not constitute a danger to the voyage to be undertaken and/or the "service" that the ship intends to perform.

A similar standard is contained in all international Conventions as pollution prevention (MARPOL); training, certification and watchkeeping of seafarers (STCW) and living and working conditions on board of the ships (MLC, 2006).

NGO ships underwent both "periodical" and "additional " inspections; "Additional inspections" were carried out on the evidence of the systematic transportation of a number of persons higher than the number certified by the "Safety Certificates" issued by the flag State. This evidence was the prerequisite for verifying whether the ship was operating in compliance with the certification issued by the flag State. The outcome of the inspections led to the detection of a substantial number of technical and/or operational deficiencies with respect to the international standards on safety of navigation, pollution prevention, crew certification and living and working conditions on board, which individually and as a whole, due to their seriousness, constituted a reason to apply the administrative retention (*fermo amministrativo*, so-called detention) of ships until safety conditions were restored.

Q. No. 3

The Italian Coast Guard Headquarters, in its capacity as National Competent Authority coordinating the activity of the national Port State Control inspectors, has provided technical instructions to its inspectors regarding the technical and operational controls to be carried out on safety of navigation, pollution prevention, certification of crew and living and working conditions

on board, to guide the inspector in inspecting NGO's ships having regard to the statutory/national certificates issued by the Flag State.

The inspectors also operate in accordance with the "Code of good practice" as contained within the specific instruction published by the Secretariat of the Paris MoU (instruction 41/2008/07).

This technical guidelines was issued by the Italian Coast Guard Headquarters in order to harmonize the inspection activity of NGO ships when undergoing PSC inspections in accordance with the modality reported under Q.2.

Therefore, NGO ships, falling within the scope of one or more international Conventions on safety of navigation, pollution prevention, living and working conditions on board and certification of seafarers, are subjected to periodical and/or additional inspections when in ports or anchorages of the European Union, to verify compliance with applicable relevant provisions.

When ships have been systematically and almost exclusively carrying out rescue activities at sea, in the light of the above mentioned SOLAS provisions, it will be necessary for those ships to be equipped and certified by the Flag State accordingly. In this regard, some NGO ships have requested and obtained, from their own flag State (currently *Open Arms – Spanish flag and Ocean Viking – Norwegian flag*), the search and rescue certification, thus placing themselves within a framework of legitimacy also with respect to the rules relating to the safety of navigation.

Q. No.4.

The international normative framework regarding search and rescue operations at sea is established by the International Convention on Maritime Search and Rescue, as adopted in Hamburg on April 27, 1979, which provides that each State must identify an area of responsibility within which it is responsible for coordinating search and rescue operations at sea.

Italy adhered to the aforementioned Convention by Law n. 147/1989 and by the subsequent implementing regulations pursuant to the Decree of the President of the Republic n. 662/1994, which entrusted the Minister of Transport and Navigation (currently the Ministry of Infrastructure and Transport) with the responsibility for the execution of the Convention, and the Italian Coast Guard Headquarters with the general coordination of maritime rescue services. For this purpose, the

aforementioned Italian Coast Guard Headquarters has been identified as the National Maritime Rescue Coordination Center (Italian Maritime Rescue Co-ordination Center - I.M.R.C.C.).

Furthermore, by the above Decree n. 662/1994, it was identified the Italian "search and rescue region", within which, according to the provisions of the Hamburg Convention, search and rescue services are provided and the coordination of SAR operations is ensured by the I.M.R.C.C. In this regard, it should be noted that this area of responsibility does not extend to the entire Central Mediterranean – insisting, in this stretch of sea, areas of responsibility of other coastal States that have declared their own SAR area of responsibility.

In any case, the IMRCC ensures, in accordance with the provisions of the Hamburg Convention and the relevant international SAR procedures, cooperation with the equivalent Maritime Rescue Co-ordination Centers (MRCCs) of the other coastal States, and particularly with those nearby States, also in order to provide information about any units or people in danger of getting lost within their respective areas of responsibility and to allow the timely coordination of the search and rescue operation by the competent MRCC.

Within its entire area of responsibility, Italy ensures a full and effective supply capacity of SAR services, through the use of highly specialized SAR units, equipped with specialized personnel, as well as effective coordination of SAR operations by the IMRCC.

Finally, it should be pointed out that the rescue activity coordinated by I.M.R.C.C. is carried out in full compliance with international and national legislations, also with reference to human rights without any discrimination based on age, gender, nationality, religion, political opinions, etc. of persons in need of assistance. These activities are also carried out in conjunction with the competent national Institutions on the basis of the national legal system (Ministry of the Interior).

The Ministry of Interior, through the Department for Civil Liberties and Immigration, co-financed the ADITUS project with *FAMI* 2014-2020 funds, created in collaboration with the IOM, for the implementation of information services for migrants arriving via sea, with particular reference to "victims of trafficking and unaccompanied minors". This project provides for the implementation of early identification and assistance for victims of trafficking in the landing places and at *hotspots*;

the promotion, among local institutions and first aid and reception operators, of knowledge on the phenomenon of trafficking in human beings and on the protection measures provided for by current legislation; and knowledge of prevention and protection interventions - including psychosocial ones - in favor of migrants exposed to forms of labor exploitation and other forms of abuse. The activities of this project follow on from those previously carried out with the *Assistance and Praesidium* projects, both co-financed by the aforementioned Department.

From November 2017, as part of the actions of the "ADITUS" project, actions of capacity-building and support were also launched, with the involvement of the Prefectures, concerning the creation of training courses on the issues of "trafficking in human beings" and to support operators involved in the management of the phenomenon of trafficking and exploitation, respectively.

In support of the above initiative, the aforementioned Department issued to the Prefectures, on 27/10/17, a Circular Letter by which they were called to play a role of "collector" of the various bodies managing the reception centers active in their own territory, with awareness-raising and involvement of recipients in training activities.

The ADITUS project, which started on 1 January 2017, ended in December 2019. In consideration of the positive results achieved by this project, it was decided to continue its activities; and, on 20 December 2019, it was sent to IOM an ad hoc invitation to submit a project proposal, which has been approved and admitted for funding. It should also be noted that, in continuity with the contents of the previous FAMI project, UNHCR presented a new project proposal, as admitted for funding, for which the process aimed at signing the Agreement with the Department for Civil Liberties and Immigration is currently underway: This provides for the training of personnel involved in arrivals by sea, land and air, in the various phases of identification, referral and response as well as protection of applicants and international protection holders, with an approach sensitive to: age, gender and diversity.

For the implementation of measures to contain the risk of epidemiological spread of COVID-19 among migrants rescued at sea, or arrived in the national territory following autonomous landings, by Decree of the Head of the Civil Protection Department (DCDPC) No.1287 of 12 April 2020, the Head of the Department for Civil Liberties and Immigration was appointed "Implementing body",

with the possibility of using ships for the period of health surveillance, as identified through the structures of the Ministry of Infrastructure and Transportations. To carry out these measures, on May 9, 2020, a special agreement was signed with the Italian Red Cross.

The aforementioned Convention, in addition to health-care prevention services, provides, among others, services to the person, including linguistic-cultural mediation, also aimed at health activities, including the screening of migrants, as well as the identification of vulnerable persons and psychological support.

Furthermore, during the entire period of stay on board, training sessions and individual interviews are organized, during which useful information is provided on the context of arrival and on the situation in Europe, providing in particular information also on labour exploitation, on trafficking in human beings and international protection. With regard to the remaining guarantees and services provided for the victims of trafficking, even in phases subsequent to disembarkation, it should be noted that Article 17 of Legislative Decree No.142/2015 expressly includes victims of trafficking among persons with special needs for which are guaranteed throughout the reception phase assistance measures and appropriate medical care, as well as specific psychological support.

As regards the reception profiles, and without prejudice to the places made available for victims of trafficking by the Department for Equal Opportunities, the foreigners who hold residence permits for special cases, including victims of trafficking, if not accessing the specifically dedicated paths (art.18, of Legislative Decree No.286/98) can be accommodated in the structures of the Reception and Integration System (now SAI, formerly SIPROIMI), thus renamed due to the changes introduced by Decree-Law No. 130/2020. Furthermore, Article 17 of Act No.47/2017 establishes that particular protection must be guaranteed towards unaccompanied foreign minors, who are victims of trafficking, by setting up a specific assistance program that ensures adequate reception conditions and psycho-social, health and legal assistance besides providing long-term solutions, even beyond the age of majority.

In addition, there is a multidisciplinary age assessment procedure in force that respects the presumed age of the self-declared UAM victim of trafficking and his/her gender identity, as prescribed by Prime Ministerial Decree No.234/2016. In the first reception Centers financed with

FAMI resources there are teams made up of specific professional figures, foreseen by the relevant calls, such as social workers, linguistic mediators, educators and legal operators who follow the minors throughout their own pathway with the aim of promptly referring the potential victims of trafficking in order to activate the protection procedures provided for by the law.

Without prejudice to the connections that each project has established with the anti-trafficking network, the relevant projects are included in an update planning on issues relating to minors, which includes a focus on trafficking by IOM in the context of training of European Asylum Support Office (EASO).

Furthermore, good practices implemented by some projects were highlighted during dedicated workshops. The theme of UAMs trafficking is also part of the issues dealt with during the online workshops sponsored by EASO for 2020, in favour of SIPROIMI integrated reception projects and local authorities involved in UAMs matters.

It should also be noted that, by Decree of 21 July 2020, the Responsible Authority (AR) of the FAMI of the Department for Civil Liberties and Integration adopted the Public Notice "System interventions for strengthening the prevention and contrast of violence against foreign minors!". The beneficiaries of this proposal are regions, local authorities, local health authorities, international organizations and civil society operating in the relevant sector, schools and research institutes. The activities envisaged in the projects will be completed by 30 September 2022.

Moreover, in collaboration with the UNHCR, the National Asylum Commission published on 13 January 2020 the updated version of the information brochure for asylum-seekers and refugees pursuant to Art.10, paragraph 2, of Legislative Decree No.142/2015, which is delivered to the applicant at the time of submitting the application. The brochure, also available in English, French, Spanish, Arabic and Persian, lists the UNHCR and IOM contacts, as well as the Anti-Trafficking Toll-Free Number of the Equal Opportunities Department, operating 24 hours a day, every day of the year, with a service working anonymously and equipped with multilingual specialized staff.

For completeness, the document drawn up by the Ministry of Interior together with UNHCR, concerning the Guidelines for the identification of victims of trafficking among applicants for

international protection and referral procedures, is here reported: <https://www.unhcr.it/wp-content/uploads/2017/09/Vittime-di-tratta-Linee-guida-compresso.pdf>.

On a more specific note, in the context of the procedure of recognition of the international protection, National Asylum Commission and UNHCR developed “*Guidelines on identification of victims of trafficking among asylum seekers and referral procedures*”, as recently being revised (in 2020), in order to strengthen capacity of Territorial Commissions, competent for the examination of the applications for international protection, to individuate potential victims of trafficking in human beings among asylum seekers. This Guidelines has greatly contributed to improving the ability of Commissions staff to pre-identify potential victims of trafficking among asylum seekers and to outline standardized procedures allowing the staff to report them to specialized bodies within the single program for the emergence, assistance and social integration provided for by article 18 of Legislative Decree No. 286/1998.

The pre-identification of possible victims of trafficking among applicants for international protection is implemented on the basis of the so-called *referral procedure*, aimed at providing the immediate assistance and protection to the victim, in order to give him/her the chance to get away from the exploitation network. Through the referral mechanism, the applicant whose profile shows trafficking indicators is immediately put in contact with the bodies specialized in assistance and protection.

In order to facilitate the emergence of victims of trafficking among asylum seekers, Territorial Commissions signed **Memoranda of Understanding** (31) with public and private bodies active in the implementation of emergence, assistance and social integration programs for victims of trafficking in human beings.

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.