



Permanent Mission of Italy
UN - Geneva

N. 5073

NOTE VERBALE

The Permanent Mission of Italy to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights (OHCHR) and, following the Letter AL ITA 4/2024 dated 31 May 2024 by the Special Rapporteur on the situation of human rights defenders, the Independent Expert on human rights and international solidarity and the Special Rapporteur on the human rights of migrants has the honour to transmit herewith Italy's reply.

This Permanent Mission would be grateful for kindly confirming receipt of this Note Verbale and of the attached document.

The Permanent Mission of Italy to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurance of its highest consideration.

Geneva,

- 5 AOUT 2024



Office of the United Nations
High Commissioner for Human Rights
GENEVA

ITALIA



Ministero degli Affari Esteri
e della Cooperazione Internazionale

COMITATO INTERMINISTERIALE PER I DIRITTI UMANI

Italy's Reply to UN Joint Communication AL ITA 4/2024

Luglio 2024

Italy's Reply

Further to UN Joint Communication AL ITA 4/2024 by Special Rapporteur on the situation of human rights defenders; the Independent Expert on human rights and international solidarity; and the Special Rapporteur on the human rights of migrants, we are in a position to provide the following information:

As for Sea Watch 5, following two interventions at sea operated on March 3, 2024, in the Libyan SAR area (which ended with the disembarkation in Lampedusa Island, after transshipment to a government vessel, of 70 migrants), the Italian authorities ascertained and charged the owner and the captain of the NGO vessel Sea Watch 5 with violation of art.1, paragraph 2 - bis, lett. f, of Decree-Law No. 130/2020, for not having observed, during the rescue, the indications of the competent Libyan authority, responsible for the SAR area of the event, thus contributing to create a dangerous situation.

Following a subsequent rescue operation, carried out by Sea Watch 5 in the Libyan SAR area, on March 6, 2024 (which ended with the disembarkation in Pozzallo of 51 migrants and the body of a child), the Italian authorities ascertained and charged the owner and the commander of the ship, with a further violation of art.1, paragraph 2 - bis, lett. f of Decree-Law No. 130/2020, for not having observed the indications of the competent Libyan authority, responsible for the SAR area of the event, thus contributing to the creation of a dangerous situation and, in addition, having taken on board 4 people in critical condition, for not having observed the recommendation, also given by the flag state, to reach the nearest Tunisian coast, continuing instead the navigation northward.

As a result of the above violations, in accordance with the provisions of article 1, paragraph 2 - *sexies* of Decree-Law No. 130/2020, the competent Italian authorities ordered the vessel to be stopped (*fermo*) for 20 days. In relation to both the event of March 3 and the one of March 6, respectively, the fine provided for by law (art. 1, paragraph 2 - *sexies* Decree-Law No. 130/2020), as quantified at € 4,000 for each of the events, was, in addition, applied. The restraining order was appealed before the judge who, by a purely provisional measure, adopted as a precautionary measure, suspended it pending the ruling on the merits. The two orders - injunction applying the financial penalty - were also challenged before the judicial Authorities. The related judgments are still pending.

As for the Geo Barents, on March 16, 2024, the NGO ship Geo Barents carried out three interventions at sea, taking on board, in total, 149 migrants, who were subsequently disembarked in Marina di Carrara. In relation to the second of the three events, the Italian authorities ascertained and charged the ship-owning company and the ship's captain with violation of article 1, paragraph 2 - *bis*, lett. f of Decree-Law No. 130/2020, for not having observed, on the occasion of the rescue, the indications of the competent Libyan authority, being responsible for the SAR area of the event, thus contributing to creating a dangerous situation. As a result of the violation, in accordance with the provisions of article 1, paragraph 2 - *sexies* of Decree-Law No. 130/2020, the Italian Authorities ordered the vessel to be stopped (*fermo*) for 20 days. The order was appealed before the judge, who rejected the application for precautionary suspension and adjourned to a hearing, to be held on November 27, 2024.

As for the proceedings against NGO-related ships, pursuant to article 1 of Decree-Law No. 130/2020, presently, are 23, referring to 10 ships,. There are 20 appeals brought against the orders concerning the stop (*fermo*). Of these, 2 - brought before the administrative authority - were defined with a declaration of inadmissibility and a rejection ruling, respectively: both rulings were appealed before the ordinary judge. The remaining 18 appeals were brought before the judicial authority. Of these, 13 are still pending; 3, on the other hand, have been defined with rulings of inadmissibility or rejection;

and only 2 have been defined with rulings of acceptance that will be appealed by the Administration.

On the administrative detention (*fermo*) of the vessels and the compatibility of Law Decree No. 1/2023, as converted by Law No. 15/2023, with the law of the sea, it regulates the activities carried out by private vessels carrying out rescue activities at sea. Its aim is to guarantee the safety of interventions and preventing possible abuses of relevant regulations. It identifies the conducts in the presence of which rescue operations can be considered in compliance with international conventions and national regulations - what excludes the adoption of prohibitory and sanctioning measures - introducing, on the other hand, according to a principle of proportionality, hypotheses of administrative offenses with related sanctions, following behaviors that differ from those prescribed.

It should be emphasized that the prescribed conducts are functional to the timeliest securing of the persons rescued, since the protection of human life is a priority. Among them, of particular importance are those pertaining to the cooperation of the rescuing vessel, which is substantiated by adhering to the information obligations and complying with the instructions given by the authorities responsible for search and rescue at sea; promptly requesting and reaching the assigned port without delay; and refraining from conduct that may contribute to the creation of dangerous situations during rescue operations.

As for the violation of each of the aforementioned rules of conduct, it is envisaged, in addition to the fine, the accessory administrative sanction of the administrative detention (*fermo*) of the vessel used, for a gradually longer period depending on the possible repetition of the infringement, as well as, in the presence of multiple repetitions, and the confiscation of the vessel. This provision, by increasing the afflictive intensity of the sanction in response to the repetition of the conduct, responds-as is evident-to a canon of proportionality.

The rationale of the illustrated conducts is to avoid that a lack of link between private individuals who intervene in rescues at sea and the authorities responsible for coordinating the operations translates into a danger for migrants. And indeed, the Italian legislation has positivized what was already recognized at the customary level: the solidaristic and customary norms of the law of the sea, in fact, contemplate the principle of loyal cooperation for the purpose of safeguarding human life at sea.

It is thus clear from the foregoing that, by Decree-Law No. 1/2023, the Italian state - through the introduction of rules of conduct functional to the safety and timeliness of relief operations - has prepared a discipline aimed at safeguarding fundamental rights, such as the right to life and safety of migrants, balancing these rights with the need to ensure an orderly flow of migration and adequate protection of the security-related profiles connected with it, as well as the need to prosecute crimes to protect public order.

As for the allocation of the POS and the impact on safeguarding the human rights of people rescued at sea, with regard to the concerns expressed on the criteria for the identification of the place of safety (POS), rescue operations related to the migratory phenomenon, conducted with the help of private naval units, are part of the broader and more complex activity of governing and managing incoming flows by sea and therefore involve, in addition to technical-nautical evaluations, inherent to the safety of navigation and the protection of life at sea, also evaluations pertaining to the possible impact of the landing on the dedicated structures and the bodies in charge of managing arrivals in a given location.

The identification of the POS must therefore necessarily balance, in a reasonable and proportional manner, both the migrants' need for timely rescue and the State's need for the management of the

migratory flow in an organized, equitable and sustainable manner. This inescapable need underlies the decision to also assign ports of disembarkation other than those (located in southern Italian regions) closest to the area of rescues.

In identifying the POS, therefore, besides the specific situation in which migrants find themselves at sea (also with reference to the characteristics of the rescue vessel and the weather and sea conditions), the following circumstances and conditions must necessarily be evaluated: the logistical and organizational aspects related to the effective management of flows within the State, with particular regard to the need not to congest the geographically most exposed territories which, as usual landing places also of the so-called "autonomous landings" - not foreseeable or programmable - should be burdened only in the case in which such a choice appears necessary in relation to the circumstances of the case; the need to ensure the most efficient performance of the activities immediately following disembarkation (photo-signaling and identification of migrants, preparatory procedures for their possible removal from the national territory or for the formalization of the application for international protection); the need to ensure the best management of public order measures and the timely intervention of the authorities responsible for investigative activities; the need to ensure the correct performance of assistance and reception services and of the procedures for evaluating applications for international protection.

Finally, for the sake of equity, the authorities engaged in the assignment of the place of safety should ensure, as far as possible, a rotation of the ports of arrival, due to the significant repercussions that landings have on a given location also in terms of the burdens placed on the bodies and authorities responsible for managing the arrivals.

It should be emphasized that the indication of the ports located in various Italian regions responds to multiple needs, as detailed below. In contingent situations of constant and close arrivals in Lampedusa Island or, directly, on the Sicilian or Calabrian coasts, the indication of alternative disembarkation locations has the positive effect of avoiding congestion and overcrowding of the very first reception facilities, allowing the procedures specific to the crisis points (so-called hotspots) to be carried out in an orderly manner.

It should also be noted that especially in Sicily during the summer period and during other holidays (e.g. Easter time), it is often difficult to find a sufficient number of buses for travel from the hotspots to the subsequent destinations, as the needs of the tourism sector absorb the availability of the transport companies. This leads to unplanned periods of stay of migrants in facilities organized for a short stay and not for longer stays. Even in situations in which the management of arrivals from the Mediterranean front does not present critical peaks, the determination of alternative ports to those where the hotspots are located in Sicily and Calabria entails other undoubted benefits, related to the territorial distribution of migrants, operated on a regional basis, by the competent offices of the Ministry of the Interior.

Arriving in ports located in the destination regions or in neighboring regions makes transfer procedures easier and reception immediate. Disembarking, for example, in Porto Empedocle or Pozzallo with Tuscany or Emilia Romagna as the final destination involves a transfer that is certainly not easy, by bus (sometimes difficult to find). Arriving directly in other regions, on the other hand, involves shorter times and more streamlined procedures, upon arrival. It should be noted, however, that any medical emergency situations on board ships are addressed based on rapid rescue procedures by helicopter. Therefore, it is precisely the aforementioned assessment that constitutes the rationale for identifying disembarkation ports that do not always coincide with those closest to the place of recovery of people at sea.

CONCLUSION

We take this opportunity to reiterate our firm willingness to continue cooperating fully with all UN Special Procedures.