

Response

of the Italian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Italy

from 27 to 31 July 2009

The Italian Government has requested the publication of this response. The report of the CPT on its July 2009 visit to Italy is set out in document CPT/Inf (2010) 14.

Strasbourg, 28 April 2010

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ITALY

MINISTRY OF FOREIGN AFFAIRS
Inter-ministerial Committee of Human Rights
Comitato Interministeriale dei Diritti Umani

**ITALIAN OBSERVATIONS ON THE REPORT
BY THE COMMITTEE FOR THE PREVENTION OF TORTURE,
FOLLOWING ITS AD HOC MISSION TO ITALY
(July 27 – July 31, 2009)**

Rome, February 26, 2010

ITALY'S REPLY

In order to provide a comprehensive assessment of the situation concerned, Italian Authorities deem it is important to recall the previous relevant responses, both orally and in writing, dated July 30-31, and September 15, 2009, respectively, concerning the operations carried out by Italy on High Seas between May and July 2009.

A. In this regard, considering the nature of the CPT's mission – being not a judicial enquiry - Italian Authorities reiterate that the utmost cooperation has been ensured to the CPT delegation throughout its mission. Furthermore, Italian Authorities stress that all the support and relevant information – save confidential information - have been truly provided. In this perspective, the operation carried out on July 29, 2009 – which could not be foreseen in advance - was promptly reported, orally and in writing, to the CPT delegation, as soon as possible. The Administrations involved in rescue at sea activities supplied the CPT delegation with detailed indications, including in the course of the meetings with Mr. Camerini, Rear-Admiral, Commander of the sea Navy patrol Units, and with Gen. Carrarini, from the General Headquarters of the Italian Guardia di Finanza, which took place on July 31, 2009, in Rome.

As a way of example, this cooperation enabled CPT delegation to swiftly interview seven Nigerian citizens, hospitalised in Caltanissetta due to their health conditions, after being rescued on High Seas, on July 4, 2009.

On a general note, it should be noted that the operations, throughout their course, are coordinated by the Central Directorate for Immigration and Borders Police within the Department of Public Security (Ministry of the Interior), and involved the Navy, the Italian Coast Guard Headquarters and the Italian Guardia di Finanza, pursuant to Article 35 of Act No.189/2002 (For their terms of reference, please refer to the relevant Ministerial Decree, dated July 2003 and transmitted to the Committee with the Italian reply, dated September 2009).

The commanders of the Navy, of the Italian Coast Guard and of the Italian Guardia di Finanza, respectively, as well as the aboard physicians perform their duties under the mandate of their respective Administrations. Once again, Italian Authorities recall that for security reasons, are not in a position to provide the names of either the commanders of the Units involved or the physicians. Accordingly, neither logbooks nor relating documents can be provided since they should be considered as classified material.

B. On a more specific note, we recall that neither a report nor an inventory register of the personal belongings of the migrants was filled out, in accordance with the domestic procedures concerning the rescue at sea operations. Belongings gathered by migrants and deemed potentially dangerous for the safety of the Units, the crew and the rescued personnel, when temporarily retained, have been associated with a picture of the owner and a number. Assurances given to the CPT in the course of the interview of Navy personnel as to the existence of a full inventory register were referred in good faith to the above practice.

The shipwrecked, once aboard of the Italian vessels, were placed on the decks and checked in order to detect and prevent the use of any objects, potentially dangerous for themselves, the other migrants and the safety of the vessel. Such checks are conducted by the personnel aboard of Italian vessels, the officers of which speak either English or French.

The Italian Units personnel took pictures of the migrants - being without ID cards - with the aim of solely collecting their personal belongings to be given them back at the end of the transfer on the Libyan vessels.

The identification of foreigners is due only when an offence is committed, which is not the case for those migrants intercepted on High Seas.

C. At the international law level, the return of migrants is a procedure envisaged by specific Agreements. It may take place upon request by the State concerned when migrants intercepted on High Seas escaped the control of the Authorities of that State. The operations under initial monitoring by the CPT took place between May and July 2009 and referred to the return of migrants, intercepted in international waters, upon request by Algeria and Libya, respectively. Since these cases fell within the scope of “the return of migrants not applying for asylum” procedure, it was not necessary to detect either their identity or their nationality.

During such rescue operations, lasting for a 10-hours average, it was always supplied food, water and a shelter as it is the rule for those operations. Therefore Italian Authorities cannot agree with the relevant assumption by CPT delegation. Italian Authorities would be grateful to receive information about the reliable sources of the allegations concerning insufficient food, water and a shelter.

On a more specific note, Italian Authorities would like to recall the nature of search and rescue operations, which could not be described as an evident situation of deprivation of the liberty of those migrants being aboard of vessels in distress and merely rescued on High Seas. As a consequence, Italian Authorities believe that it is inappropriate to state that “persons being transferred onto Italian vessels....must be considered as deprived of their liberty by the Italian Authorities for the duration of their transfer/custody”.

As a matter of fact, individuals rescued at sea, irrespective of the final destination of the ship rescuing them, are not deprived of their liberty or subject to a restriction of their freedom, as they are not taken on board following an order, nor confined within a restricted space. The circumstance that spaces on board a military unit may be effectively limited is merely incidental. Furthermore such spaces are, with the exception of restricted areas (those areas where weapons or other dangerous objects of devices are held and those vital for the manoeuvring and sustainment of the Unit) are shared with the crew and vigilance is by degree and means exclusively aimed at presiding such areas.

With regard to the May 6th, 2009 and the July 1st, 2009 operations, respectively, again Italian Authorities reiterate that no tension was recorded on the Italian vessels. Specifically as for the July 1st operation, Italian Authorities confirm, once again, that the use of force was strictly limited to overcome the passive resistance by the irregular migrants during the trans-bounder, from the Italian ship to the requesting State's Unit by "lifting" them. Only two people – not six – were reported to be wounded and solely as a consequence of the need to disrupt forceful intrusion attempt into restricted areas of the vessel. Again, Italian Authorities would be grateful for more details about the reliable sources of the information reported by the CPT.

As per domestic procedure, in relation to some of the operations at sea during 2009, Italian Authorities are in a position to inform that judicial investigations are ongoing. In this regard Italian Authorities recall the independence of the public prosecutors, as enshrined, inter alia, under Art. 112 of the Italian Constitution ("The public prosecutor has the duty to initiate criminal proceedings"). Accordingly, the judicial Authorities, including public prosecutors, do not bear any duty to inform the Government and in general the other Powers about their activity, according to the principle of the separation of powers.

For sake of clarity, with regard to the issue of the safest place, it should be stressed that the people rescued could be either returned under given circumstances to the State concerned or brought to the safest place, which, according to the relevant IMO standards, is not necessarily the closest one to the place where people were rescued.¹

D. As for the application of the principle of non refoulement, we recall that no migrant, once on the Italian ships, expressed his/her intention to apply for asylum. On a more general note, Italian Authorities disagree with the assessment contained under paras. 30-33. Specifically we recall that the operations under reference – namely rescue at sea operations on High Seas - do not fall under the Schengen Border Code. Thus there is no obligation to proceed with a minimum check, as requested by Article 7 of the Schengen Border Code. Within this framework, it is necessary to stress that the officers involved in Search and Rescue Operations are not in a position "to handle" asylum

¹ The International Convention on Search and Rescue at Sea operations dated April 1979 envisages the duty to rescue people regardless of their nationality or legal position, besides setting the duty to disembark the shipwrecked in a safe place. In this regard, it is worth recalling the IMO resolution MCS 167/78 dated May 20, 2004 and the amendments to the SAR and Solas Conventions (as entered into force in July 2006), by which it is mentioned as a safe place, among others, the place where the rescue operations are considered to have been completed.

requests. Their duties refer to rescue migrants being aboard of vessels in distress. Needless to say, in the event such migrants are in need of medical care or express their intention to apply for asylum or relating international protection measures, are promptly brought to Italy.

It is the opinion of Italian Authorities that, according to international and EU standards, there is no obligation during search and rescue operations to provide information on the possibility to apply for asylum. On the contrary, such information has to be ensured once the migrant expresses his/her willingness to apply for asylum.

The EU relevant standards envisage that information on rights and duties relating to the refugee status has to be ensured only after the recognition of said status (EU Directive 85/2005/CE). Nevertheless Italian Authorities emphasize that the Police Offices provide an ad hoc brochure when the application for asylum is submitted (Legislative Decree No.25/2008 incorporating the above Directive).

Considering the context under which the rescue at sea operations took place, Italian Authorities reiterate that the personnel of the Italian vessels includes English and French-speaking officers, so as to be able to provide adequate information in the event migrants express their willingness to apply for asylum (EU Directive 2005/85/CE). Along these lines, it is worth mentioning that there is no domestic provision by which it is envisaged the release of temporary protection measures regardless of the willingness of the migrant (the Unified Text on Immigration). There is no directive by which foreigners from given countries should enjoy the unconditional right to a form of protection. However the National Commission on the Refugee Status, by Memo dated June 19, 2008 called upon the competent Territorial Commissions to positively evaluate the applications by Somali citizens, except for those individual cases under which specific conditions do not allow to do so.

Before concluding, as for the Italian policy and more specifically its compliance with the principle of non refoulement, it is necessary to recall, as a general rule, that relevant return operations are carried out to combat human trafficking and to fight organised crime. Asylum and other relating forms of protection are always ensured to those holding the legal requirements. All the migrants, before the return undergo a medical triage; and those who cannot continue, are promptly hospitalised in Italy.

In line with international law, for safety reason, no migrant can remain aboard of the vessel in distress.

All in all, during rescue at sea operations on High Seas, no minor can be separated from his/her family, since such operations affect all the migrants intercepted.

To confirm such approach, Italian Authorities recall that when a migrant rescued at sea expresses the intention to apply for asylum or other forms of international protection on board of an Italian vessel, s/he is not returned to the country of departure/transit but s/he is brought to Italy. The same rule applies to all those who, after a medical visit, are in need of medical assistance. In fact, such procedures have been implemented in six cases, from July to November 2009, whereby 61 migrants were transferred to Italy due to poor health conditions and 523 more migrants were brought to Italy as they had expressed the intention to apply for international protection.

Specifically, in addition to the information provided by Italian reply dated September 15, 2009, Italian Authorities recall that, on October 8, 2009, during relevant operations, it was ascertained that 53 migrants were in need of health-care and thus brought to Italy. On October 9, 2009, during the rescue activity on High Seas, 22 migrants expressed their intention to apply for asylum and were thus brought to Italy. On October 26, 2009, 303 migrants expressed their willingness to apply for asylum and were thus taken to Italy. Last, on November 20, 2009, when 198 migrants expressed their intention to apply for asylum and were thus taken to Italy.

The Italian Authorities take this opportunity to reiterate their willingness to fully and extensively cooperate with the Committee on Prevention of Torture and confirm to remain seriously seized of this matter.

APPENDIX I
(Italian only)

ITALY



MINISTRY OF FOREIGN AFFAIRS
Inter-ministerial Committee of Human Rights
Comitato Interministeriale dei Diritti Umani

ITALIAN REMARKS,
FURTHER TO THE QUESTIONS PUT FORWARD
BY THE DELEGATION OF THE
COMMITTEE ON PREVENTION OF TORTURE
DURING ITS AD HOC MISSION TO ITALY
(July 27 – July 31, 2009)

Rome, July 30, 2009

RISPOSTA AI QUESITI DEL 27.7.09

Facendo seguito alle domande poste dalla delegazione del Comitato Prevenzione Tortura del Consiglio d'Europa, alle Autorità italiane, nel corso della riunione del 27 luglio u.s., si rappresenta quanto segue:

Le informazioni che seguono, relative alle operazioni di salvataggio in mare compiute da unità navali italiane a partire dal mese di maggio 2009, sono fornite nello spirito di cooperazione che contraddistingue le relazioni fra il Governo italiano ed il CPT, così come previsto all'articolo 3 della Convenzione europea per la prevenzione della tortura e delle pene o trattamenti inumani o degradanti.

La collaborazione prestata e le informazioni fornite non costituiscono peraltro un riconoscimento che si tratti di fattispecie che rientrano fra quelle considerate dalla Convenzione.

Sulle 6 operazioni (5 con la Libia e 1 con l'Algeria) effettuate dalle unità navali italiane dallo scorso mese di maggio, si fa presente che sono terminate con la riconsegna degli stranieri soccorsi in mare ai Paesi dai quali i natanti da loro utilizzati erano partiti.

Per ognuna delle suddette operazioni, tutte svoltesi in acque internazionali e coordinate da questa Direzione Centrale dell'Immigrazione e della Polizia delle Frontiere, si forniscono le seguenti informazioni:

- **6 maggio 2009: 231 stranieri** (191 uomini e 40 donne), a bordo di 3 natanti in difficoltà di navigazione, rispettivamente con 80, 71 e 76 persone. Tutte le suddette persone, immediatamente rifocillate, al termine delle operazioni di soccorso sono state condotte verso la Libia e riconsegnate alle Autorità di quel Paese, che ne avevano fatto specifica richiesta, in quanto si erano sottratte ai controlli predisposti dalle locali forze di polizia. Hanno preso parte attiva all'operazione:
 - 2 unità navali del Corpo delle Capitanerie di Porto – Guardia Costiera (CP407 e CP282);
 - 1 unità navale della Guardia di Finanza (Guardacoste “G. 106 BOVIENZO”).Non risulta che si siano verificati episodi di tensione.
- **9-10 maggio 2009: 163 stranieri** (141 uomini, 20 donne, 2 dall'apparente minore età), a bordo di 2 natanti in difficoltà di navigazione, rispettivamente con 78 e 85 persone. Tutte le suddette persone, immediatamente rifocillate, al termine delle operazioni di soccorso sono state condotte verso la Libia e riconsegnate alle Autorità di quel Paese, che ne avevano fatto specifica richiesta, in quanto si erano sottratte ai controlli predisposti dalle locali forze di polizia. Hanno preso parte attiva all'operazione:
 - 1 unità navale del Corpo delle Capitanerie di Porto – Guardia Costiera (CP268);
 - 1 unità navale della Marina Militare (Nave “SPICA”), con a bordo un medico.Non risulta che sia siano verificati episodi di tensione.
- **14 giugno 2009: 23 stranieri** (tutti uomini), a bordo di un natante. Tutte le suddette persone, dopo essere state soccorse e rifocillate, sono state riconsegnate alle Autorità algerine, che ne avevano fatto specifica richiesta, in quanto si erano sottratte ai controlli predisposti dalle forze di polizia di quel Paese, che poco prima avevano autonomamente fermato altre 100 persone circa, a bordo di 5 imbarcazioni. Ha preso parte attiva all'operazione solo 1 unità navale della Guardia di Finanza (Pattugliatore “G. 9 CINUS”), mentre 1 natante del Corpo delle Capitanerie di Porto – Guardia Costiera è rimasto in appoggio, a distanza (CP291).
Non risulta che sia siano verificati episodi di tensione.

- **18-19 giugno 2009: 72 stranieri** (44 uomini e 28 donne), a bordo di un natante in difficoltà di navigazione. Tutte le suddette persone, immediatamente rifocillate, al termine delle operazioni di soccorso sono state condotte verso la Libia e riconsegnate alle Autorità di quel Paese, che ne avevano fatto specifica richiesta, in quanto si erano sottratte ai controlli predisposti dalle locali forze di polizia. Hanno preso parte attiva all'operazione:
 - 1 unità navale del Corpo delle Capitanerie di Porto – Guardia Costiera (CP408);
 - 1 unità navale della Guardia di Finanza (Guardacoste “G. 100 LIPPI”).

Non risulta che sia siano verificati episodi di tensione.

- **30 giugno-1 luglio 2009: 82 stranieri** (70 uomini, 9 donne, 3 dall'apparente minore età), a bordo di un natante in difficoltà di navigazione. Tutte le suddette persone, immediatamente rifocillate, al termine delle operazioni di soccorso sono state condotte verso la Libia e riconsegnate alle Autorità di quel Paese, che ne avevano fatto specifica richiesta, in quanto si erano sottratte ai controlli predisposti dalle locali forze di polizia. Ha preso parte attiva all'operazione solo 1 unità navale della Marina Militare (Nave “ORIONE”), con a bordo un medico, mentre 2 natanti del Corpo delle Capitanerie di Porto – Guardia Costiera sono rimasti in appoggio, a distanza (CP275 e CP2106).

Alcuni stranieri, al momento del trasbordo dall'unità navale italiana a quella libica, hanno opposto resistenza passiva; si è reso necessario, pertanto, vincere tale resistenza, con l'utilizzo di una forza proporzionale alla stessa, comunque limitata al superamento dell'opposizione registrata. A bordo della Nave “ORIONE” era presente personale medico. Uno straniero, una volta a bordo dell'unità navale libica, si è tuffato in acqua, ma è stato prontamente recuperato da un sommozzatore della idrobarca della “ORIONE”, messa preventivamente a mare per garantire assistenza e l'adeguata cornice di sicurezza all'operazione.

- **4 luglio 2009: 40 stranieri** (24 uomini e 16 donne), a bordo di un natante in difficoltà di navigazione. Tutte le suddette persone, immediatamente rifocillate, al termine delle operazioni di soccorso sono state condotte verso la Libia e riconsegnate alle Autorità di quel Paese, che ne avevano fatto specifica richiesta, in quanto si erano sottratte ai controlli predisposti dalle locali forze di polizia. Hanno preso parte attiva all'operazione:
 - 1 unità navale del Corpo delle Capitanerie di Porto – Guardia Costiera (CP408);
 - 1 unità navale della Guardia di Finanza (Guardacoste “G. 121 URSO”).

Non risulta che sia siano verificati episodi di tensione.

Nel corso dell'operazione, altri 7 stranieri (2 uomini e 5 donne), che erano a bordo dello stesso natante, a causa delle loro condizioni di salute sono stati visitati da un medico, appartenente al Sovrano Militare Ordine di Malta, che ne ha disposto l'immediato ricovero ospedaliero. Pertanto, i suddetti 7 stranieri, per i quali le relative informazioni sono già state fornite con nota dello scorso 27 luglio, sono stati trasferiti a Lampedusa e poi, con mezzi aerei, presso l'Ospedale di Catania, per essere ricoverati; è stato loro riscontrata una forma di disidratazione.

Inoltre:

- tra gli equipaggi delle unità navali italiane opera personale che comprende le lingue maggiormente conosciute dalla popolazione straniera (inglese e/o francese);
- tale personale, la cui professionalità nelle operazioni di *search and rescue* è particolarmente apprezzata a livello internazionale, ha acquisito l'esperienza necessaria per comprendere i reali bisogni di ogni persona che viene soccorsa e recuperata in mare;
- a bordo delle unità navali della Marina Militare è sempre presente un medico, coadiuvato da personale parasanitario;
- all'occorrenza, anche le unità navali del Corpo delle Capitanerie di Porto – Guardia Costiera, si avvalgono della collaborazione di medici esterni, appartenenti al Sovrano Militare Ordine di Malta, come avvenuto durante la citata operazione del 4 luglio 2009.

Più in dettaglio, le 6 operazioni sono state effettuate congiuntamente alla Libia (5) ed all'Algeria (1); nel corso delle stesse non si sono registrati episodi di tensione.

Solo in occasione dell'intervento effettuato tra il 30 giugno ed il 1 luglio 2009, alcuni tra gli 82 stranieri rintracciati, al momento del trasbordo dalla Nave "ORIONE" della Marina Militare a quella libica, hanno opposto resistenza passiva; si è reso necessario, pertanto, vincere tale resistenza, con l'utilizzo di una forza proporzionale alla stessa, comunque limitata al superamento dell'opposizione registrata. A bordo della Nave "ORIONE" era presente personale medico, che ha prontamente assistito e medicato 2 stranieri.

Pur non essendo disponibili videoregistrazioni, nell'immediatezza dei fatti si è appurato che:

- dei suddetti 82 clandestini, solo 2 (un uomo ed una donna) sono stati ricoverati presso un ospedale libico;
- tale misura è stata adottata a scopo precauzionale, in quanto la donna era in stato di gravidanza, mentre l'uomo non presentava evidenti lesioni;
- gli 82 stranieri, prima di essere trasbordati sul natante libico, sono stati adeguatamente assistiti dal personale della Nave "ORIONE", anche con l'ausilio del medico di bordo, con la distribuzione di viveri, acqua e coperte;
- le operazioni di trasbordo sono state effettuate in una cornice di massima sicurezza, anche a mezzo di un gommone già predisposto in mare e con un sommozzatore a bordo;
- proprio tale precauzione ha consentito di recuperare prontamente un clandestino che si era lanciato in acqua.

Quanto sopra ha trovato autonoma conferma da parte dell'Ambasciatore italiano di Tripoli, in occasione del *report* sull'operazione trasmesso al Ministero degli Affari Esteri.

- Le unità navali della Marina Militare, della Guardia di Finanza e delle Capitanerie di Porto-Guardia Costiera sono state coordinate da questa Direzione Centrale dell'Immigrazione e della Polizia delle Frontiere, come previsto dall'articolo 35, della legge 30 luglio 2002, n. 189.
- Le 6 operazioni, effettuate dall'Italia congiuntamente alla Libia ed all'Algeria, sono state finalizzate alla **riconsegna** di stranieri, partiti clandestinamente a bordo di natanti ed intercettati in acque internazionali, alle Autorità dei suddetti Paesi, che ne avevano fatto richiesta.
- La **riconsegna** di stranieri è una procedura prevista da specifici Accordi; può essere attuata, a condizione che uno Stato ne faccia richiesta e gli stranieri, intercettati in acque internazionali a bordo di un'imbarcazione, si siano sottratti volontariamente al controllo di quelle Autorità. Infatti:
 - il **Protocollo addizionale della Convenzione delle Nazioni Unite contro la Criminalità organizzata transnazionale per combattere il traffico di migranti via terra, via mare e via aria**¹, consente all'unità navale di uno Stato di fermare un natante privo di nazionalità e sospettato di trasportare illegalmente stranieri;
 - la **Convenzione e i Protocolli delle Nazioni Unite contro il crimine organizzato transnazionale**², consentono al suddetto Stato di ricondurre gli stranieri nel Paese dal quale sono partiti, a richiesta di quest'ultimo, in applicazione del principio di cooperazione tra Stati, riconosciuto a livello internazionale.

¹ Firmato a Palermo il 12 dicembre 2000, è in vigore in Italia dal 1 settembre 2006, in Libia dal 24 ottobre 2004.

² Conclusi a New York il 15 novembre 2000 ed il 31 maggio 2001, sono stati ratificati dall'Italia con legge 16 marzo 2006, n. 146. La Libia ha ratificato la Convenzione il 18 giugno 2004, che è entrata in vigore il 18 luglio 2004.

- Nel corso delle suddette operazioni di **riconsegna**, protrattesi in media per circa 10 ore, **nessuno straniero**, una volta a bordo delle navi italiane, **ha manifestato la volontà di chiedere asilo**; pertanto, trattandosi di una **riconsegna di stranieri non richiedenti asilo**, procedura che per sua natura non richiede l'adozione di specifici provvedimenti, non è stato necessario identificarli compiutamente e neppure individuare specificamente la loro nazionalità, che era irrilevante.

Comunque, va tenuto presente che:

- **il presupposto indispensabile per attivare la procedura dell'asilo è che l'interessato manifesti una espressa volontà al riguardo;**
 - **nel corso delle 6 operazioni in questione, nessuno straniero ha richiamato in tal senso l'attenzione del personale operante, né ha manifestato segnali di disagio, comunque riconducibili al pericolo di una persecuzione nel caso di rientro forzato nel Paese di origine;**
- I principali accordi bilaterali tra l'Italia e la Libia sono i seguenti:
 - Accordo di cooperazione nel campo della lotta al terrorismo, alla criminalità organizzata, ed al traffico degli stupefacenti e sostanze psicotrope, firmato a Roma il 13 dicembre 2000;
 - Protocollo per la cooperazione nella lotta contro le organizzazioni criminali dedite al traffico degli esseri umani e allo sfruttamento dell'immigrazione clandestina, firmato a Tripoli il 29 dicembre 2007;
 - Protocollo aggiuntivo tecnico-operativo al Protocollo per la cooperazione nella lotta contro le organizzazioni criminali dedite al traffico degli esseri umani e allo sfruttamento dell'immigrazione clandestina, firmato a Tripoli il 29 dicembre 2007;
 - Trattato di Amicizia, Partenariato e Collaborazione, per il rafforzamento della collaborazione reciproca in vari settori, firmato a Bengasi il 30 agosto 2008;
 - Protocollo integrativo del Protocollo firmato a Tripoli il 29 dicembre 2007, sottoscritto a Tripoli il 4 febbraio 2009.
 - Le procedure adottate dagli equipaggi delle unità navali italiane sono conformi alla normativa interna ed internazionale, in particolare per quanto attiene alla salvaguardia dei diritti fondamentali delle persone; peraltro, i citati equipaggi sono particolarmente addestrati, in quanto:
 - ne fanno parte persone che comprendono le lingue maggiormente conosciute dalla popolazione straniera (inglese e/o francese);
 - dispongono di una professionalità adeguata, molto apprezzata a livello internazionale in occasione delle operazioni di *search and rescue*. Per tale motivo tutto il personale ha acquisito l'esperienza necessaria per comprendere i reali bisogni di ogni persona che viene soccorsa e recuperata in mare;
 - a bordo delle unità navali della Marina Militare è sempre presente un medico, coadiuvato da personale parasanitario;
 - all'occorrenza, anche le unità navali del Corpo delle Capitanerie di Porto – Guardia Costiera, si avvalgono della collaborazione di medici esterni, appartenenti al Sovrano Militare Ordine di Malta, come avvenuto nel corso dell'operazione del 4 luglio 2009.

- Il principio del *non refoulement* è sempre stato rispettato dall'Italia; infatti:
 - nessun richiedente asilo è stato respinto nel Paese di origine o di provenienza;
 - mai è stato negato ai clandestini intercettati la possibilità di chiedere asilo. Nel corso delle operazioni di soccorso in alto mare, durate in media circa 10 ore, tali persone non hanno chiesto alcuna forma di protezione, né riferito di essere perseguitate;
 - la Libia, pur non avendo aderito alla Convenzione di Ginevra del 1951 sullo *status* di rifugiato, ha:
 - ratificato la Convenzione dell'Unione africana del 1969 sui rifugiati in Africa. Detto Trattato, che è complementare rispetto alla citata Convenzione di Ginevra, impegna la Libia a garantire protezione non solo ai perseguitati, ma a tutti coloro che provengono da aree geografiche "a rischio";
 - consentito all'Alto Commissariato per i Rifugiati delle Nazioni Unite (UNHCR) di aprire un proprio ufficio a Tripoli, per effettuare lo screening dei richiedenti asilo. L'obbligo di collaborazione con tale ufficio discende, oltre che dall'adesione della Libia all'ONU, anche dalla citata Convenzione dell'Unione africana del 1969 e, in particolare, dall'articolo 8;
 - il Trattato di Amicizia sottoscritto tra l'Italia e la Libia, all'articolo 6, prevede che i due Paesi "**agiscano conformemente ... agli obiettivi ed ai principi della Carta delle Nazioni Unite e della Dichiarazione Universale dei Diritti dell'Uomo**".

- L'Italia assicura il rispetto dei diritti umani sia allo straniero che giunge illegalmente a Lampedusa che a quello intercettato in acque internazionali.

**APPENDIX II
(French only)**

**Déclaration de Monsieur Jean-Pierre Restellini, chef de la délégation,
lors de la rencontre qui s'est déroulée avec les autorités à la fin de la visite
du Comité européen pour la prévention de la torture et des
peines ou traitements inhumains ou dégradants (CPT)
en Italie**

Rome, le 31 juillet 2009

Monsieur le Ministre, Mesdames, Messieurs,

Nous sommes arrivés à la fin de cette mission et, comme à l'accoutumée, nous allons vous faire part de nos toutes premières observations. Bien entendu, celles-ci ne préjugent en rien d'autres observations dont il pourrait être fait état dans le rapport qui sera transmis ultérieurement aux autorités italiennes.

D'emblée, il a semblé nécessaire à la délégation de rappeler que l'objet de cette visite, en l'occurrence l'examen de la nouvelle politique de renvoi dans leur pays de départ d'étrangers interceptés dans les eaux internationales, fait partie du mandat du CPT.

Premièrement, il est indéniable que les personnes en question ne sont plus libres de leurs mouvements dès lors qu'elles ont été transbordées en haute mer sur un navire battant pavillon italien. En d'autres termes, elles ont été privées de leur liberté par une autorité publique dans un lieu relevant de la juridiction de l'Italie, même si cela n'a pas excédé quelques heures.

Deuxièmement, l'examen par la délégation des garanties offertes à ces mêmes personnes, en particulier, afin d'assurer le respect de l'obligation de ne pas les renvoyer vers un pays où il y a des motifs sérieux de croire qu'elles y courront un risque réel d'être soumises à la torture ou à d'autres formes de mauvais traitements, fait intrinsèquement partie du mandat du CPT.

Cela étant précisé, nous pouvons maintenant passer à nos observations à proprement parler.

S'agissant tout d'abord de la **coopération rencontrée**, la délégation doit malheureusement relever qu'elle n'a pas toujours été à la hauteur de ses espérances.

Tout d'abord, des informations sollicitées par la délégation en tout début de visite et qui étaient nécessaires au bon accomplissement de sa mission - telles que, par exemple, les noms des différentes unités navales impliquées lors d'opérations récentes de renvoi - ne lui ont été communiquées que très tardivement (en l'espèce, hier soir).

Deuxièmement, la délégation a été surprise de découvrir dans la presse avant-hier qu'une nouvelle opération de renvoi était en cours sans qu'à aucun moment les autorités italiennes n'en aient informé la délégation, alors que, faut-il le rappeler, il s'agissait du but même de cette mission, clairement exprimé lundi dernier.

En revanche, la délégation souhaite exprimer sa satisfaction concernant l'excellente coopération de la part des différentes autorités et institutions locales.

Venons-en maintenant au **respect de la prohibition de la torture et des peines ou traitements inhumains ou dégradants.**

S'agissant des allégations de mauvais traitements infligés aux personnes au cours de l'opération de renvoi du 1^{er} juillet 2009, comme vous le savez, la discussion avec la Marine Militaire et les responsables de la *Guardia di Finanza* sur cette question a eu lieu il y a une heure.

Dès lors, la délégation n'a donc pas encore pu se concerter sur ces nouvelles données.

Par conséquent, ce point sera examiné dans notre rapport écrit.

Deuxièmement, concernant la possibilité pour les étrangers transférés sur des bateaux battant pavillon italien de présenter, en pratique, une demande d'asile, les responsables militaires des gardes-côtes italiens ont déclaré à la délégation que les membres d'équipage n'étaient pas épaulés par des interprètes; de l'avis de la délégation, sans la présence d'un interprète, tout entretien avec les étrangers concernés sur une question aussi complexe qu'une éventuelle demande de protection asilaire, sera problématique et sujette à caution.

Par ailleurs, les interlocuteurs de la délégation ont insisté sur le fait qu'à leur avis, cette tâche ne leur incombait en aucun cas.

Selon ces mêmes interlocuteurs, il était, de toute manière, évident qu'un immigrant irrégulier, épuisé et déshydraté par plusieurs jours de mer, n'a pas la capacité de solliciter ou non un statut protecteur au sens de la législation internationale et italienne. A ce propos, la délégation se doit de rappeler qu'aucun droit ne peut valablement s'exercer ou se décliner si son titulaire n'est pas dans sa pleine capacité physique ou mentale.

Troisièmement, la délégation tient à rappeler, à ce stade, que le personnel de santé - quel que soit son statut - doit pouvoir continuer de bénéficier, en toute circonstance, d'une indépendance totale dans ses décisions de transférer sur les côtes italiennes les personnes dont l'état de santé le nécessiterait. Ce sujet délicat fera l'objet de développements dans le rapport.

Enfin et quatrièmement, la délégation a appris, de différentes sources dignes de foi, que des personnes privées de liberté par les autorités libyennes couraient un risque grave d'être victimes de mauvais traitements.

A la lumière de ces observations, la délégation en appelle aux autorités italiennes pour qu'elles assurent réellement aux immigrants irréguliers interceptés en mer, la protection à laquelle ils ont droit.

ANNEXE

1. Copie de tout accord (et protocoles de mise en oeuvre) entre l'Italie et la Libye ou l'Algérie relatives à la remise de migrants interceptés en mer¹
2. Une description détaillée de chacune des opérations de renvoi depuis le mois de mai 2009², y compris:
 - Les autorités impliquées dans chacune des opérations et description de leurs rôles respectifs ;
 - nom du bateau, composition de l'équipage, nom/contact du commandant et d'éventuels médecins ou interprètes présents³ ;
 - copies de rapports internes sur chaque opération et copie du carnet de bord⁴ ;
 - toute autre documentation utile, telle qu'une copie du registre d'inventaire des effets personnels (argent, documents officiels, etc) des personnes secourues, et qui ont été provisoirement saisis par les autorités italiennes, notamment lors de l'opération du 1^{er} juillet 2009⁵ ;
 - toute documentation relative à l'état de santé des personnes secourues.
3. Age, sexe et nationalité présumée des personnes interceptées en mer et renvoyées en Libye ou en Algérie depuis mai 2009⁶.
4. Toute information dont disposent les autorités italiennes sur la situation des personnes remises à la Libye ou tout autre pays étranger, après l'interception en mer⁷.

¹ Documents demandés oralement lors les entretiens officiels du 27 juillet 2009.

² Information demandée par lettre du 15 juillet 2009 (voir paragraphe 4).

³ Précisions demandées oralement lors les entretiens officiels du 27 juillet 2009.

⁴ Précisions demandées oralement lors les entretiens officiels du 27 juillet 2009.

⁵ Précision demandée oralement lors de l'entretien le 31 juillet 2009 avec les représentants de la marine militaire

⁶ Précision demandée par lettre du 15 juillet 2009 (voir paragraphe 4).

⁷ Information demandée par lettre du 15 juillet (voir paragraphe 5); demande renouvelée lors des entretiens du 27 juillet 2009.

APPENDIX III

ITALY

MINISTRY OF FOREIGN AFFAIRS
Inter-ministerial Committee of Human Rights
Comitato Interministeriale dei Diritti Umani

**ITALIAN FOLLOW-UP,
FURTHER TO THE QUESTIONS PUT FORWARD
BY THE COMMITTEE FOR THE PREVENTION OF
TORTURE IN AUGUST 2009,
FOLLOWING ITS AD HOC MISSION TO ITALY
(July 27 – July 31, 2009)**

Rome, September 14, 2009

ITALY'S REPLY

Recalling our previous relevant responses, both orally and in writing, dated July 30-31, 2009, please find below Government's supplementary indications concerning the operations at sea carried out between May and July 2009:

A. At the international law level, it is worth recalling the Optional Protocol against the Smuggling of Migrants by Land, Sea and Air, which envisages *inter alia* that State Party ships may stop any vessel without nationality, if suspected to illegally transport/smuggle migrants.

- This Protocol and the Convention thereto, as ratified by Italy and Libya, in 2006 and 2004, respectively, allow under specific circumstances the State concerned to return migrants who left from a given country if this requests it, in accordance with the international cooperation principles.

Within this framework, it is also worth recalling the following agreements between Italy and Libya:

- i. Cooperation agreements in the field of the fight against terrorism, organised crime and drug trafficking, as signed in Rome, on December 13, 2000;
- ii. Protocol on the cooperation in the fight against organisations involved in human beings trafficking, as signed in Tripoli, on December 29, 2007;
- iii. Additional Protocol to the above-mentioned one;
- iv. Partnership Treaty to strengthen mutual cooperation in various fields, as signed in Bengasi on August 30, 2008;
- v. Protocol dated February 4, 2009, supplementary to the one signed in Tripoli on December 29, 2007.

B. The commanders of the Navy Force, of the Italian Coast Guard and of the Italian Guardia di Finanza, respectively, as well as the physicians of the aboard health-care services (the latter being on board of the solely Navy Force Units), when engaged in rescue at sea activities, perform their duties under the framework of the mandate of their respective Administrations, to which directly ascribe such activities.

- For the above reasons and for security ones, too, Italian Authorities are not in a position to provide the names of either the commanders of the Units involved or the physicians.

Furthermore, the Administrations involved in such operations supplied the CPT delegation with all relevant and detailed indications in the course of the meetings with Mr. Camerini, Contre-Admiral, Commander of the sea Navy patrols, and with Gen. Carrarini, from the General Headquarters of the Italian Guardia di Finanza, which took place on July 31, 2009, in Rome.

- Italian Authorities are not in a position to provide logbooks and relating documents due to their confidential nature, since they are classified.

- In accordance with the domestic procedures concerning the rescue at sea operations, neither a report nor an inventory register of the personal belongings of the migrants was filled out. The shipwrecked, once aboard of the Italian vessels, were placed on the decks and checked in order to detect and prevent the use of any objects potentially dangerous for themselves, the other migrants and the vessel safety.

The Italian Units personnel took pictures of the migrants - being without ID cards -, with the aim at only collecting their personal belongings to be given them back at the end of the transfer. Their personal belongings, collected and temporarily stored in single plastic bags with their pictures, were placed all together in a bigger bag. At the conclusion of the transfer to the Libyan Units, such bags were delivered to the Libyan Authorities. Therefore, as to an eventual inventory register of personal belongings of people rescued at sea, the only procedure in use envisages the collection of personal belongings, to be stored, with a picture of the owner, in single plastic bags, to be given back through the Authorities of the State of return.

- As to the age, gender and nationality of migrants, Italian Authorities are in a position to provide only information about the gender, since the nature of such rescue operations does not allow to further the investigations.

- As to medical reports, Italian Authorities are in a position to supply the information for only those migrants who were hospitalised in Italy.

C. The return of migrants is a procedure envisaged by specific Agreements. It may take place upon request by the State concerned when migrants intercepted in international waters, escaped the control of the Authorities of that State.

The operations under reference took place between May and July 2009, in order to return migrants, intercepted in international waters, upon request by Algeria and Libya, respectively. Such cases fell within specific agreements, aimed at “returning to requesting States those migrants, being intercepted in international waters, who had escaped the controls of the relevant Authorities” of the Countries from which shores they departed.

Further, since these cases fell within the scope of “the return of migrants not applying for asylum” procedure, it was not necessary to detect either their identity or their nationality.

During such operations, which last for a 10-hours average, no migrant, once on the Italian ships, expressed his/her willingness to apply for asylum.

More specifically, such operations took place in the following days:

- i. On May 6, 2009, towards Libya, 231 irregular migrants (**191 men and 40 women**);
- ii. On May 9-10, 2009, towards Libya, 163 irregular migrants (**141 men and 20 women, whose two likely to be under the age of 18**);
- iii. On June 14, 2009, towards Algeria, 23 irregular migrants (**all men**);
- iv. On June 18-19, 2009, towards Libya, 72 irregular migrants (**44 men and 28 women**);
- v. Between June 30 and July 1, 2009, towards Libya, 82 irregular migrants (**70 men, 9 women, of whom three were likely to be under the age of 18**);
- vi. On July 4, 2009, towards Libya, 40 irregular migrants (**24 men and 16 women**);
- vii. On July 29-30, 2009, towards Libya, fourteen irregular migrants (**of whom two were likely to be under the age of 18**).

All the above operations, which were **coordinated by the Central Directorate for Immigration and Borders Police within the Department of Public Security (Ministry of the Interior), involved the Navy Force, the Italian Coast Guard Headquarters and the Italian Guardia di Finanza**, pursuant to Article 35 of Act No. 189/2002 (**For more details on the terms of reference of their respective mandates, please refer to Ministerial Decree, dated July 2003, herewith attached**).

The irregular migrants returned - and not *refoulés* – amounted to 625 people, of whom 602 brought back to Libya and 23 to Algeria, respectively.

On a more specific note, all the above operations, as jointly performed with Libyan and Algerian Authorities, were concluded with the return of all migrants, rescued at sea, towards those countries from which the ships had left. The cited operations, which took place in international waters, were coordinated by the Central Directorate on Immigration and Borders Police. In this regard it is worth recalling as follows:

- **May 6, 2009: 231 migrants** (191 men and 40 women) were on board of three vessels in distress, transporting 80, 71 and 76 people, respectively. All the people aboard were promptly fed and transported towards Libya, where they were returned to the Authorities expressly requesting them, since these people had escaped the control of the local Police forces. The following Italian vessels actively participated in this operation: 1. Two vessels from the Coast Guard (namely **No. CP407 and CP282**, respectively); 2. One vessel from the Italian Guardia di Finanza (**Italian Guardia di Finanza vessel “G. 106 BOVIENZO”**). No moments of tension was recorded.
Geographical coordinates: 35 06 N - 012 56 E.
Staff aboard of the Italian Guardia di Finanza vessel: 5 Inspectors, and 7 Revenue Guards;
Staff aboard of the Coast Guard vessels: 1 Officer, 5 Non-commissioned officers, 6 Seaborne troops (407); and 5 Non-commissioned officers, 3 Seaborne troops (282), respectively.
- **May 9-10, 2009: 163 migrants** (141 men and 20 women, of whom two likely to be under the age of 18) were on board of two vessels in distress, with 78 and 85 people, respectively. All the people aboard were promptly fed and transported towards Libya, where they were returned to the Authorities expressly requesting them, since these people had escaped the control of the local Police forces. The following Italian vessels actively participated in this operation: 1. One vessel from the Coast Guard (**No. CP269**) ; 2. One Navy vessel entitled **“SPICA”** with one physician aboard. No moments of tension were recorded. **Geographical coordinates:** 35 14 N - 012 26 E.
Staff aboard of the Navy vessel: 13 Officers, 31 Marshals, 9 Sergeants, and 19 Seaborne troops.
Staff aboard of the Coast Guard vessel: 5 Non-commissioned officers, 3 Seaborne troops.

- **June 14, 2009: 23 migrants** (all men) were on board of a vessel. All the people aboard, after being rescued and fed, were returned to the Algerian Authorities expressly requesting them, since these people had escaped the control of the local Police forces that just a short time before had stopped about 100 more people being on board of five vessels.

*** On that occasion, only one vessel from the Italian Guardia di Finanza (**Vessel “G. 9 CINUS”**) participated in the operation, while another vessel from the Coast Guard remained at distance but available to support the former (**No. CP291**). No moments of tension emerged. **Geographical coordinates:** 38 24 N - 008 12 E

Staff aboard of the Italian Guardia di Finanza vessel: 1 Officer, 6 Inspectors, 1 Supervisor, and 9 Revenue Guards;

Staff aboard of the Coast Guard vessel: 6 Non-commissioned officers, 3 Seaborne troops.

- **June 18-19, 2009: 72 migrants** (44 men and 28 women) were on board of a vessel in distress. All the people aboard were promptly fed and transported towards Libya, where they were returned to the Authorities expressly requesting them, since these people had escaped the control of the local Police forces. The following Italian vessels actively participated in these operations: 1. One vessel from the Coast Guard (**No. CP408**); 2. One vessel from the Italian Guardia di Finanza (**vessel “G. 100 LIPPI”**). No moments of tension emerged.

Geographical coordinates: 34 42 N - 012 38 E.

Staff aboard of the Italian Guardia di Finanza vessel: 5 Inspectors, 4 Supervisors, 2 Revenue Guards;

Staff aboard of the Coast Guard vessel: 4 Non-commissioned officers, 2 Seaborne troops.

- **June 30 - July 1, 2009: 82 migrants** (70 men, 9 women, of whom three seeming to be under the age of 18) were on board of a vessel in distress. All the people aboard were promptly fed and transported towards Libya, where they were returned to the Authorities expressly requesting them, since these people had escaped the control of the local Police forces.

In this specific case, only one vessel from the Navy (vessel entitled **“ORIONE”**), with a Navy physician aboard, actively participated in such operation, while two vessels from the Coast Guard remained available, but at distance (**No. CP275 and CP2106**, respectively).

Geographical coordinates: 35 04 N - 012 32 E

Staff aboard of the Navy vessels: 13 Officers, 31 Marshals, 9 Sergeants, and 19 Seaborne troops.

Staff aboard of the Coast Guard vessels: 4 Non-commissioned officers, 4 Sea-borne troops (275); 2 Non-commissioned officers, 2 Seaborne troops (2106), respectively.

Before the trans-bounder, all 82 migrants were adequately assisted, by means of food, water and other supplies, by the personnel from the vessel **“ORIONE”**, including the Navy board physician. The medical personnel aboard of **“ORIONE”** promptly assisted two migrants.

One migrant on board of the Libyan vessel jumped in the water, but was promptly recovered by a scuba-diver from a tender of the vessel **“ORIONE”**, which had been previously deployed in the sea, to guarantee an adequate assistance.

The use of force was strictly limited to overcome the passive resistance offered by the irregular migrants during the trans-bounder, from the Italian ship to the requesting State's Unit.

- **July 4, 2009: 40 migrants** (24 men and 16 women) were aboard of a vessel in distress. All the people aboard were promptly fed and transported towards Libya, where they were returned to the Authorities expressly requesting them, since these people had escaped the control of the local Police forces. The following Italian units actively participated in this operation: 1. One vessel from the Coast Guard (**No. CP408**); 2. One vessel from the Italian Guardia di Finanza (**vessel “G. 121 URSO”**). No moments of tension emerged.

Geographical coordinates: 34 22 N - 012 32.

Staff aboard of the Italian Guardia di Finanza vessel: 1 Officer, 4 Inspectors, 2 Supervisors, 5 Revenue Guards

Staff aboard of the Coast Guard vessel: 4 Non-commissioned officers, 2 Seaborne troops.

During such operation, seven migrants (2 men and 5 women), being aboard of the same vessel, were submitted to a medical examination, due to their apparent health condition, by a physician of the Sovereign Military Order of Malta, who decided for their immediate hospitalisation. Therefore, the above seven migrants - about whom specific indications were provided on July 27, 2009 -, were sent to Lampedusa Island and then, by plane, to the Catania Hospital. Afterwards:

- i. **One man, probably from Nigeria, was sent to the Identification and Expulsion Centre in Rome-Ponte Galeria;**
 - ii. **Two women, probably from Nigeria, were sent to the Centre for Asylum-seekers in Caltanissetta, since they applied for international protection;**
 - iii. **Four minors, of whom three women and one man, probably all from Nigeria, were sent to those facilities indicated by the Juvenile Judicial Authorities, located in Caltanissetta (three people) and in Catania (one woman).**
- **July 29-30, 2009: 14 migrants** (thirteen men and one woman, of whom two seeming to be under the age of 18) were aboard of a vessel in distress. All the people aboard were promptly fed and transported towards Libya, where they were returned to the Authorities expressly requesting them, since these people had escaped the control of the local Police forces. On this occasion, only one Italian unit from the Italian Guardia di Finanza actively participated in this operation (**vessel “G. 121 URSO”**). **Geographical coordinates:** 35°02’N 13°01’E. No moment of tension emerged. During this operation, no migrant, once on the Italian vessel, expressed his/her willingness to apply for asylum.
Staff aboard of the Italian Guardia di Finanza vessel: 1 Officer, 5 Inspectors, 1 Supervisor, 5 Revenue Guards.

Besides, it is worth emphasizing as follows:

- **Among the personnel of the Italian vessels, there are officers able to speak English and French;**
- **On board of the Navy vessels, there is always a physician, supported by paramedical personnel;**
- **If necessary, the vessels of the Coast Guard resort to the cooperation of physicians from the Sovereign Military Order of Malta, as was the case during the events dated July 4, 2009;**
- **If necessary, physicians are now present on the vessels of the Italian Guardia di Finanza.**

D. In terms of follow-up activities, the Italian Authorities are in a position to report that despite the lack of video-tapes, it was ascertained that following the operation dated June 30/July 1, 2009, **two individuals (a man and a woman) out of 82 irregular migrants were transferred to a Libyan Hospital.** Such precautionary measure was adopted since the woman was pregnant, while the man did not present evident lesions.