

MIGRATION IN THE MEDITERRANEAN AREA AND THE CHALLENGES FOR "HOSTING" EUROPEAN SOCIETY



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# MIGRATION IN THE MEDITERRANEAN AREA AND THE CHALLENGES FOR "HOSTING" EUROPEAN SOCIETY

Edited by  
GIUSEPPE CATALDI - ANNA LIGUORI - MARIANNA PACE

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# THE 2017 ITALY-LIBYA MEMORANDUM AND ITS CONSEQUENCES

Anna Liguori\*

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## *1. Introduction*

The present Paper intends to analyze the recent Memorandum of Understanding between Italy and Libya of 2 February 2017 and explore to what extent Italy might be considered responsible for violating the fundamental rights of migrants rescued by the Libyan coast guard, if they are disembarked in Libya.

As observed, and under the motto “*Out of sight, out of mind*”, Europe’s policies of externalization aim at rendering invisible refugees and migrants, the violation of their rights and the actual causes of escape and displacement”.<sup>1</sup> In fact, as we have learned from Australian<sup>2</sup> and US border control practices,<sup>3</sup> externalizing

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The present Paper was presented at the Final Conference of the *OPEN DOORS Summer School on Migration, Sea Border Control and Human Rights* and takes into account developments up to 21 June 2017.

<sup>1</sup> See *Out of sight, out of mind: Externalization of migration and refugee policies*, available at: [www.proasyl.de/en/news/out-of-sight-out-of-mind-externalisation-and-regionalisation-of-migration-and-refugee-policie/\(10/17\)](http://www.proasyl.de/en/news/out-of-sight-out-of-mind-externalisation-and-regionalisation-of-migration-and-refugee-policie/(10/17)).

<sup>2</sup> Australia has experimented with extraterritorial processing twice, from 2001 to 2008 and again from 2012 onward, outsourcing to Nauru and Papua New Guinea the examination of the asylum claims of individuals, intercepting them before they reach Australia or sending them to offshore centres after initial identity and health screening in Australia. See, *ex multis*, S. Keebone, “The Pacific Plan: The Provision of ‘Effective Protection’”, in *International Journal of Refugee Law*, 2006, p. 696 ff.; the Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 28th sess., Agenda item 3, UN Doc.



border controls can lead to infringement of migrants' rights, in particular the prohibition of torture or inhuman treatment; the right to leave any country; the right to liberty (because of arbitrary and prolonged detention); the right to seek asylum; the rights of vulnerable people (children, victims of trafficking etc.); the right to effective remedies. What is usually a risk, becomes a certainty when we talk about Libya, because of the dire situation that migrants and asylum seekers face in this country, as well documented by several UN and NGO Reports, for example the Human Rights Watch World Report 2017, issued on 12 January 2017 (a few weeks before the Italy-Libya MoU), which states that in Libya "Guards and militia members subjected migrants and refugees to beatings, forced labor, and sexual violence" and held them in detention camps in inhuman conditions.<sup>4</sup> Also

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A/HRC/28/68/Add.1, 6 March 2015, 7-9; Amnesty International, *The State of the World's Human Rights 2015*, Report 2014/15, pp. 63-64; the *Communiqué to the Office of the Prosecutor of the International Criminal Court of February 2017 for the Situation in Nauru and Manus Island*, available at [https://law.stanford.edu/publications/communique-to-the-office-of-the-prosecutor-of-the-international-criminal-court-under-article-15-of-the-rome-statute-the-situation-in-nauru-and-manus-island-liability-for-crimes-against-humanity/\(10/17\)](https://law.stanford.edu/publications/communique-to-the-office-of-the-prosecutor-of-the-international-criminal-court-under-article-15-of-the-rome-statute-the-situation-in-nauru-and-manus-island-liability-for-crimes-against-humanity/(10/17)).

<sup>3</sup> US management of migration flows has varied between *refoulement* (endorsed by the Supreme Court in the *Sale* judgment) and pre-screening in the Naval Base of Guantanamo, in Jamaica, and Turks and Caicos, violating human rights for conditions of detention, and giving rise to difficulties in accessing fair procedures and the risk of *refoulement* to unsafe countries. See M. Flynn, "There and Back Again: On the Diffusion of Immigration Detention", in *Journal on Migration and Human Security*, 2014, p. 165 ff.; S. Legomsky, "The USA and the Caribbean Interdiction Program", in *International Journal of Refugee Law*, 2006, p. 680 ff.; and H. Koh, "The 'Haiti Paradigm' in United States Human Rights Policy", in *Yale Law Journal*, 1994, p. 2391 ff. On the *Sale* judgment see in particular Goodwin-Gill, "YLS Sale Symposium: The Globalization of High Seas Interdiction. Sale's Legacy and Beyond", 16 March 2014, available at: <http://opiniojuris.org/2014/03/16/yale-sale-symposium-globalization-high-seas-interdiction-sales-legacy-beyond> (10/17).

<sup>4</sup> See also, *ex multis*, [www.fidh.org/en/issues/migrants-rights/eu-libya-cooperation-serious-risks-of-migrants-rights-violations](http://www.fidh.org/en/issues/migrants-rights/eu-libya-cooperation-serious-risks-of-migrants-rights-violations) (10/17); ASGI

noteworthy is the UNHCR-IOM joint statement<sup>5</sup> on addressing migration and refugee movements along the Central Mediterranean route, delivered on 2 February 2017, the very same day of the signing of the Italy-Libya MoU, whereby both organizations stated in very clear terms that “We believe that, given the current context, it is not appropriate to consider Libya a safe third country nor to establish extraterritorial processing of asylum-seekers in North Africa”. In the same direction, the Final Report of the Panel of Experts on Libya,<sup>6</sup> transmitted to the UN Security Council on 1 June 2017, which highlights, *inter alia*, serious human rights’ violations (including arbitrary detentions and summary executions) vis-à-vis migrants; links between armed groups, criminal groups, and different coast guard factions and in some cases even the coast guard’s involvement in smuggling, concluding that “[a]fter interception, migrants are often beaten, robbed and taken to detention centres or private houses and farms, where they are subjected to forced labour, rape and other sexual violence”.

## 2. *The Italy-Libya MoU as a small piece of a larger scenario*

Over the past decades the European Union and European Member States have been implementing different strategies of externalized border controls, such as visa requirements, carrier sanctions, extraterritorial patrolling of borders, “safe third

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(Associazione Studi Giuridici sull’Immigrazione): “The EU and Italy de facto violate the principle of non-refoulement”, 6 February 2017, at [www.asgi.it/english/libya-eu-italy-asylum-migration](http://www.asgi.it/english/libya-eu-italy-asylum-migration) (10/17); Amnesty Report “The human cost of European hypocrisy on Libya”, at [www.amnesty.org/en/latest/news/2017/03/the-human-cost-of-european-hypocrisy-on-libya/](http://www.amnesty.org/en/latest/news/2017/03/the-human-cost-of-european-hypocrisy-on-libya/) (10/17).

<sup>5</sup> [www.unhcr.org/news/press/2017/2/58931ffb4/joint-unhcr-iomstatement-addressing-migration-refugee-movements-along.html](http://www.unhcr.org/news/press/2017/2/58931ffb4/joint-unhcr-iomstatement-addressing-migration-refugee-movements-along.html) (10/17).

<sup>6</sup> <http://undocs.org/S/2017/466> (10/17). The Panel of Experts was established pursuant to UN Security Council resolution 1973 (2011).

country” procedures. The idea of externalizing border controls is not new in the European debate: what is new is the disturbing systematic recourse to this practice by multiple arrangements with third countries (i.e Turkey, but also several African countries), exposing migrants and asylum seekers to serious human rights violations. As noted, a new form of “‘contactless control of cross-border’ has been implemented, with the aim not only to deter, but also to pro-actively restrain the onwards movement of refugees and migrants to European territory”.<sup>7</sup> The so called Eu-Turkey deal<sup>8</sup> inaugurated this new approach while the MoU we are going to analyze is a disconcerting “from bad to worse”<sup>9</sup> evolution, given the well-known situation of migrants and asylum seekers in Libya as documented in the reports mentioned above.

Despite this, the signing of the agreement between Italy and Libya was envisaged and encouraged at the European level. Already in the European Council Conclusions of 28 June 2016 there is a clear endorsement of “the expanded role for Operation Sophia in ... training the Libyan Coast Guard”.<sup>10</sup> In even more unambiguous words the European Commission, in its Joint

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<sup>7</sup> V. Moreno-Lax, M. Giuffré, “The Rise of Consensual Containment: From ‘Contactless Control’ to ‘Contactless Responsibility’ for Forced Migration Flows”, in S. Juss (ed), *Research Handbook on International Refugee Law*, Cheltenham: Edward Elgar (forthcoming).

<sup>8</sup> On the nature of this agreement see *Order of the General Court* of 28 February 2017, case T-192/16, *NF v. European Council* and E. Cannizzaro, “Denialism as the Supreme Expression of Realism – A Quick Comment on *NF v. European Council*”, in *European Papers*, 2017, Vol. 2, No 1, [www.europeanpapers.eu](http://www.europeanpapers.eu) (10/17), p. 251 *et seq.*

<sup>9</sup> M. Giuffré, “From Turkey to Libya: The EU Migration Partnership from Bad to Worse”, in *Eurojus*, 20 March 2017, <http://rivista.eurojus.it/from-turkey-to-libya-the-eu-migration-partnership-from-bad-to-worse/> (10/17).

<sup>10</sup> European Council, *Conclusions*, European Council meeting (28 June 2016), available at: [www.consilium.europa.eu/press-releasespdf/2016/6/47244643506\\_en.pdf](http://www.consilium.europa.eu/press-releasespdf/2016/6/47244643506_en.pdf) (10/17), para. 19.

Communication of 25 January 2011,<sup>11</sup> states that: “To effectively cope with this current situation, part of the answer must lie in the Libyan authorities preventing smugglers from operating, and for the Libyan Coast Guard to have the capacity to better manage maritime border and ensure safe disembarkation on the Libyan coast. Of course, the Libyan authorities’ effort must be supported by the EU and Member States notably through training, providing advice, capacity building and other means of support”.<sup>12</sup> To this end the Commission recommends to “Deploy the full range of EU missions and projects to support the Libyan authorities in border management and migrant protection in Southern Libya”.<sup>13</sup>

At the informal Summit held at La Valletta on 3 February 2017 (the day after the signing of the MoU), the European Council agreed to a Declaration (known as the *Malta Declaration*) concerning the Central-Mediterranean route,<sup>14</sup> which states *inter alia* that “Where possible the EU and Member States will also step up cooperation with and assistance to Libyan regional and local communities and with international organizations active in the country” and that “Priority will be given to ... training, equipment and support to the Libyan national coast guard and other relevant agencies”.<sup>15</sup>

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<sup>11</sup> European Commission, *Migration on the Central Mediterranean route Managing flows, saving lives*, Joint Communication to the European Parliament, the European Council and the Council of 25 January 2017, JOIN(2017) 4 final.

<sup>12</sup> *Ibid.*, p. 6

<sup>13</sup> *Ibid.*, p. 13.

<sup>14</sup> European Council, *Declaration concerning the Central-Mediterranean route (Malta Declaration)*, adopted on 3 February 2017, available at: [www.consilium.europa.eu/en/press/press-releases/2017/01/03-malta-declaration/\(10/17\)](http://www.consilium.europa.eu/en/press/press-releases/2017/01/03-malta-declaration/(10/17)).

<sup>15</sup> In its recent report, *European Partnership Framework on Migration: Commission reports on results and lessons learnt one year on*, issued on 13 June 2017, the European Commission affirms that: “To respond to the

### 3. The Italy-Libya MoU of 2 February 2017

On 2 February 2017 Italy signed a Memorandum of Understanding with Libya “on cooperation in the development sector, to combat illegal immigration, human trafficking and contraband and on reinforcing the border security”.<sup>16</sup>

The MoU resurrects the *Treaty of Friendship, Partnership and Cooperation* signed in 2008 between then Italian Prime Minister Silvio Berlusconi and Libyan dictator Gaddafi (suspended in 2011 after the fall of Gaddafi and the subsequent civil war), which opened “the way to the highly criticized push-backs of boat - refugees to North Africa”<sup>17</sup> resulting in the famous *Hirsi* judgment of the European Court of Human Rights of 23 February 2012, where Italy was found responsible for violations of Articles 3, 13 and 4 of Protocol 4.<sup>18</sup>

It is important to focus first of all on the Preamble, which states: “Reaffirming the resolute determination of cooperating to

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ongoing crisis along the Central Mediterranean Route, the EU has deepened its work with North African partners and with Libya in particular”.

<sup>16</sup> Unofficial translation of the *Italy-Libya Memorandum of Understanding* signed on 2 February 2017 is available at: [www.statewatch.org/news/2017/feb/it-libya-mem-o-eng.htm](http://www.statewatch.org/news/2017/feb/it-libya-mem-o-eng.htm) (10/17).

<sup>17</sup> M. Giuffré, *From Turkey to Libya*, cit.

<sup>18</sup> On the *Hirsi* judgment see M. Den Heijer, “Reflections on Refoulement and Collective Expulsion in the *Hirsi* Case”, in *International Journal of Refugee Law*, 2013, p. 265 ff.; A. Liguori, “La Corte europea dei diritti dell’uomo condanna l’Italia per i respingimenti verso la Libia del 2009: il caso *Hirsi*”, in *Rivista di diritto internazionale*, 2012, p. 415 ff.; F. Messineo, “Yet Another Mala Figura: Italy Breached Non-Refoulement Obligations by Intercepting Migrants’ Boats at Sea, Says ECtHR”, in *EJIL: Talk!*, 24 February 2012, [www.ejiltalk.org/yet-another-mala-figura-italy-breached-non-refoulement-obligations-by-intercepting-migrants-boats-at-sea-says-ecthr/](http://www.ejiltalk.org/yet-another-mala-figura-italy-breached-non-refoulement-obligations-by-intercepting-migrants-boats-at-sea-says-ecthr/) (10/17); V. Moreno-Lax, “*Hirsi v. Italy* or the Strasbourg Court v. Extraterritorial Migration Control?”, in *Human Rights Law Review*, 2012, p. 574 ff.; N. Napolitano, “La condanna dei ‘respingimenti’ operati dall’Italia verso la Libia da parte della Corte europea dei diritti umani: molte luci e qualche ombra”, in *Diritti Umani e Diritto Internazionale*, 2012, p. 436 ff.

individuate urgent solutions to the irregular migrants matter which cross Libya to go to Europe by sea, through the provision of temporary hosting camps in Libya, under the exclusive control of the Libyan Interior Ministry, in anticipation of repatriation or voluntary return to the countries of origin”. What is really surprising is that the only two possibilities envisaged are expulsion or voluntary return, forgetting that neither of these alternatives is acceptable for people in need of protection.

In the following articles the Memorandum states in very clear words that “The Parties commit to start cooperation initiatives ... *in order to stem the illegal migrants’ fluxes*<sup>19</sup> and face the consequences coming from them”<sup>20</sup> ... and that “the Italian party commits to provide technical and technologic support to the Libyan institutions”<sup>21</sup> ... and financing of “the ... hosting centers already active”.<sup>22</sup>

It is the purpose of this Paper to analyze the consequences of the Memorandum, focusing in particular on an incident occurring on 10 May 2017, when Libyan authorities, in coordination with the Italian Search and Rescue Authority, intercepted 500 migrants in international waters and returned

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<sup>19</sup> Italic added. *Italy-Libya Memorandum of Understanding*, cit.

<sup>20</sup> *Italy-Libya Memorandum of Understanding*, cit. Art. 1 lett. A).

<sup>21</sup> *Italy-Libya Memorandum of Understanding*, cit. Art. 1 lett. C).

<sup>22</sup> *Italy-Libya Memorandum of Understanding*, cit., art. 2.2. However, as observed, “local authorities in Libya’s capital city Tripoli and elsewhere are mounting resistance to EU plans to stem migration flows towards Italy” because Libya cannot manage all migrants who will remain in Libya (see <https://euobserver.com/migration/136837> (10/17)). On 14 February 2017, a complaint was filed to Tripoli Appeal Court claiming the unconstitutionality of the Memorandum, which has been signed by President al-Sarraj in Rome without seeking the approval of the Parliament and the Government (see [www.internazionale.it/notizie/annalisa-camilli/2017/02/20/italia-libiamigranti-accordo-illegale](http://www.internazionale.it/notizie/annalisa-camilli/2017/02/20/italia-libiamigranti-accordo-illegale) (10/17)).

them to Libya. As noted,<sup>23</sup> “[t]he incident represented an extremely worrying departure from the procedures so far applied to search and rescue operations of refugees and migrants in the central Mediterranean”. Up to that time, in fact, SAR operations, coordinated by the Italian Coast Guard Maritime Rescue Coordination Centre in Rome (MRCC Rome) - with the cooperation of EU vessels, Frontex, the EU military operation EUNAVFORMED SOPHIA, as well as merchant vessels and, above all, ONG boats -, were directed to safe disembarkations in Italy.

#### *4. The maritime operation of 10 May 2017*

On 10 May 2017 the Italian Coast Guard Maritime Rescue Coordination Centre in Rome (MRCC Rome) was contacted by refugees and migrants in distress on an overcrowded wooden boat in Libyan territorial waters.

MRCC Rome alerted both the Libyan authorities and a vessel of the German NGO Sea-Watch which was in the vicinity. When the Libyan coast guard agreed to coordinate the rescue operation, the Italians informed the German NGO that the Libyan coast guard had “on scene command”. By the time the Sea-Watch vessel detected the boat in distress, the latter was already in international waters.

The Libyan coast guard, ignoring the radio calls sent by Sea-Watch, made a very dangerous high-speed manoeuvre, putting at risk its own crew and that of the German vessel. The scene was filmed:<sup>24</sup> as observed by Amnesty International<sup>25</sup> on the

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<sup>23</sup> See Amnesty Public Statement, *Italy: Refugees and migrants in the central Mediterranean, cutting the lifelines*, available at: [www.amnesty.org/en/documents/eur30/6319/2017/en/](http://www.amnesty.org/en/documents/eur30/6319/2017/en/) (10/17).

<sup>24</sup> For a detailed report of the incident, including a video, see: <https://sea-watch.org/en/libyan-navy-is-putting-sea-watch-crew-and-refugees-into-danger-during-an-illegal-return-operation> (10/17).

basis of the available video, the entire interception and rescue operation “was carried out by the Libyan coast guard in a manner which put the refugees and migrants at grave risk of falling into the water and drowning” and was in clear contempt of standard practices. In fact, the Libyan Coast Guard came so close to the overcrowded boat on one side that it risked causing it to sink (“a manoeuvre which has in the past caused boats to capsize as the people on board tend to move all on the side of the vessel approaching to rescue them”<sup>26</sup>); moreover, the Libyan Coast Guard did not provide the rescued migrants with life-jackets nor did it cast a lifeboat into the water; in addition, they didn’t even try to identify vulnerable people in need of urgent medical care.

Some of the rescued migrants were transferred onto the Libyan vessel, while the majority remained in the wooden one. Both boats were taken back to Tripoli.

### *5. Italy’s responsibility*

Could Italy be held responsible for the fate of those migrants rescued and towed back to Libya? To this end we must verify that the conduct:

- a) is ‘attributable’ to the State
- b) constitutes a breach of an international obligation of the State.

With respect to point b), in light of the revelations in the above mentioned international Reports, there is no doubt that the migrants’ return to Libya violates at the very least<sup>27</sup> the

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<sup>25</sup> See Amnesty Public Statement, *Italy: Refugees and migrants in the central Mediterranean, cutting the lifelines*, cit.

<sup>26</sup> *Ibidem*.

<sup>27</sup> On the possible violation of “the right to leave” see N. Markard, “The Right to Leave by Sea: Legal Limits on EU Migration Control by Third



prohibition of torture due to the risk of torture and ill-treatment while in Libya and of *refoulement* from Libya to countries of origin (such as Eritrea and Sudan).

With respect to point a), according to general international law, a State is directly responsible for the conduct of its organs and agents (the organ or agent exercising elements of government authority acts for the State, even when it exceeds its authority or acts contrary to instructions): this might entail direct responsibility on the part of Italy both if it adopts a decision to transfer migrants who have already arrived on its territory (*Soering* jurisprudence), or if it intercepts a vessel carrying asylum seekers and diverts it to Libya (*Hirsi* case).

In this particular case (the incident of 10 May 2017), because a State organ (Italy's Maritime Rescue Coordination Centre, MRCC) instructed the Libyan authorities to take "on scene command" (even though it was aware that such instruction would lead to the return of intercepted people back to an unsafe place: i.e. Libya), the outsourcing State is responsible for its own conduct.<sup>28</sup>

In general: if there are no specific instructions but, as might happen as a consequence of the Italy-Libya MoU of 2 February 2017, the Libyan Coast Guard intervenes with assets provided by Italy (boats, equipment or financial aid), then Italy may incur indirect responsibility for complicity.<sup>29</sup>

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Countries", in *European Journal of Migration and Law*, 2016, p. 591 ff. and V. Moreno-Lax, M. Giuffrè, *The Rise of Consensual Containment*, cit.

<sup>28</sup> See J.-P. Gauci, "Back to Old Tricks? Italian Responsibility for Returning People to Libya", in *EJIL: Talk!*, 6 June 2017, [www.ejiltalk.org/back-to-old-tricks-italian-responsibility-for-returning-people-to-libya/](http://www.ejiltalk.org/back-to-old-tricks-italian-responsibility-for-returning-people-to-libya/) (10/17).

<sup>29</sup> See also J.-P. Gauci, *Back to Old Tricks?*, cit.; F. De Vittor, *Responsabilità degli Stati e dell'Unione europea nella conclusione e nell'esecuzione di 'accordi' per il controllo extraterritoriale della migrazione*, Presentation at SIDI Conference which was held in Trento on 9 June 2017, available at: [www.youtube.com/watch?v=gCTcTJuWC3I&Index=4&list=PL-auIDviyDFLQIMWQwBnWYZFmUcdySz2j](https://www.youtube.com/watch?v=gCTcTJuWC3I&Index=4&list=PL-auIDviyDFLQIMWQwBnWYZFmUcdySz2j) (10/17); V.

According to the International Law Commission, which regulates “Aid and Assistance” at article 16 ASR,<sup>30</sup> three conditions must be satisfied: “first, the relevant State organ or agency providing aid or assistance must be aware of the circumstances making the conduct of the assisted State internationally wrongful; secondly, the aid or assistance must be given with a view to facilitating the commission of that act, and must actually do so; and thirdly, the completed act must be such that it would have been wrongful had it been committed by the assisting State itself”.<sup>31</sup>

Indeed, all three of these requirements can be considered met if migrants are taken back to Libya in compliance with the Italy-Libya MoU<sup>32</sup>:

1. Returning migrants back to Libya puts them at risk of torture and ill-treatment in Libya (and chain *refoulement*): both the prohibition of torture and the principle of *non-refoulement* are recognized as customary international law. Italy is well aware of the circumstances making the conduct of Libya internationally wrongful as several reports have clearly demonstrated the existence of risks to migrants once they are returned to Libya and Italy had already been condemned once

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Moreno-Lax, M. Giuffré, *The Rise of Consensual Containment*, cit. On Italy’s responsibility see also F. Vassallo Paleologo, “Elementi per un esposto nei confronti del governo italiano a seguito dell’applicazione del Memorandum d’intesa sottoscritto con il governo di Tripoli il 2 febbraio 2017”, 14 June 2017, available at: [www.a-dif.org/2017/06/14/elementi-per-un-esposto-nei-confronti-del-governo-italiano-a-seguito-dellapplicazione-del-memorandum-dintesa-sottoscritto-con-il-governo-di-tripoli-il-2-febbraio-2017/](http://www.a-dif.org/2017/06/14/elementi-per-un-esposto-nei-confronti-del-governo-italiano-a-seguito-dellapplicazione-del-memorandum-dintesa-sottoscritto-con-il-governo-di-tripoli-il-2-febbraio-2017/) (10/17).

<sup>30</sup> ILC Articles on the Responsibility of States for Internationally Wrongful Acts (‘ASR’), [2001] YILC Vol. II (Part 2), Annex to UNGA Res. 56/83, 12 Dec. 2001 (A/56/49(Vol. I)/Corr.4).

<sup>31</sup> ILC Commentary to ASR (‘ASR Commentary’), [2001] YILC Vol. II (Part 2), (A/56/10), at 66-67, paras 1 and 10.

<sup>32</sup> See also J.-P. Gauci, *Back to Old Tricks?*, cit. and V. Moreno-Lax, M. Giuffré, *The Rise of Consensual Containment*, cit.

before for the same violation by the ECtHR in the *Hirsi* case. Since then, the risk of abuse of migrants in Libya has become increasingly worse.

2. The substantial financial resources for the ‘hosting camps’, in addition to the provision of boats and equipment to the Libyan Coast Guard in order to “stem the flow of migrants”, is clearly giving assistance to Libya “with a view to facilitating the commission of the wrongful act”, i.e. the returning of migrants to Libya. It would be another matter if aid and assistance were given in good faith - for example, as aid for development -, and was subsequently misused by the receiving country to enforce border controls resulting in *refoulement*.

3. Finally, there is no doubt that such inhuman treatment of migrants would be considered an internationally wrongful act if committed by Italy.

Italy can therefore be held responsible for complicity for the aid given to Libya with the explicit aim of stemming the flow of migrants, irrespective of their protection needs, in addition obviously to Libya’s own responsibilities.

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