TO THE EUROPEAN COMMISSION
TO THE UN COMMITTEE for HUMAN RIGHTS
TO THE EUROPEAN COMMISSIONER for HUMAN RIGHTS before the COUNCIL OF EUROPE

ASSOCIAZIONE PER GLI STUDI GIURIDICI sull'IMMIGRAZIONE (ASGI)

also in the name and on behalf of

- ASSOCIAZIONE CENTRO ASTALLI - JESUIT REFUGEE SERVICE/ITALIA
- ASSOCIAZIONE PROGETTO DIRITTI
- ASSOCIAZIONE GRUPPO ABELE ONLUS
- ASSOCIAZIONE NAZIONALE GIURISTI DEMOCRATICI
- ANAFE' - ASSOCIATION NATIONALE D'ASSISTANCE AUX FRONTIÈRES POUR LES ÉTRANGERS
- ARCI
- CASA DEI DIRITTI SOCIALI – FOCUS - COMUNITA' DI SANT' EGIDIO
- CONSIGLIO ITALIANO PER I RIFUGIATI (CIR)
- EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK
- FEDERAZIONE CHIESE EVANGELICHE
- GISTI - GROUPE D'INFORMATION ET DE SOUTIEN DES IMMIGRÉS
- JESUIT REFUGEE SERVICE EUROPE
- LIBERA. ASSOCIAZIONI, NOMI E NUMERI CONTRO LE MAFIE
- FLARE NETWORK
- MIGREUROP

intends to draw to the attention of the Institutions to which this document is addressed the serious violations of human rights perpetrated and claimed as legitimate by the Italian authorities.

THE FACTS.

On **7 May 2009**, 227 people (including 40 women, three of whom were pregnant) on board of three boats were rescued in the Maltese SAR area by Italian motorboats, 35 maritime miles away from the island of Lampedusa. As far as we know, following agreements with Libya, the captains of some **Italian Navy ships received all the migrants on board to then take them immediately back to Libya, were they were handed over to the Libyan authorities**.
On **8 May** there was a **second refusal of entry** after an Italian tow-boat in service on an ENI oil rig intercepted a boat carrying 77 people and led it back to Libya.
Analogous operations were also carried out in the following days, as was stated before the press corps by the Italian interior minister, who, until 10 May, indicated that the migrants returned to Libya were around 500, describing the episodes as a "historical result".

None of the people transported to Libya was officially identified, nor was their nationality recorded, there were no checks as to whether they were minors or not, the state of pregnancy of the women,

the migrants' health conditions, nor was there any control of possible requests for international protection.
Humanitarian workers and journalists have gathered numerous testimonies on such episodes that can be read on the websites of Migreurop (Paris), Picum (Brussels), Borderline Europe (Berlin) and Fortress Europe (Rome); testimonies that are also confirmed by reports by international agencies such as Amnesty International and Human Rights Watch.

It is reasonable and plausible to believe that there may have also been refugees among the migrants returned to Libya, who would have had the right – inviolable - to have access to the procedure for the recognition of international protection in Italy.
It suffices to consider that in its statement of 8 May 2009, **UNHCR** states that "*Although there is no information available about the migrants' nationalities of origin, it is deemed likely that among the returned people there are individuals who are in need of international protection. **In 2008, around 75% of those who have arrived in Italy by sea applied for asylum and 50% of them were granted some form of international protection**".*
UNHCR has repeatedly expressed its serious concern to the Italian government about the events detailed above, considering that the operations enacted by the Italian government "*contravene the non-refoulement principle sanctioned by the 1951 Geneva Convention that is also applicable in international waters. This fundamental principle that does not have any geographical bounds is also contained in European legislation and in the Italian judicial system. Confirming that there are poeple requiring protection among those sent back to Libya, UNHCR reiterated its request to the government in order for it to readmit these people into its territory, stressing that, from the point of view of international law, Italy is responsible for the consequences of the refusal of entry*" (UNHCR – press release of 15 May 2009).

On this matter, we also attach the **data from the national Commission for the right to asylum** (Italian) on applications for the recognition of international and/or humanitarian protection for the year 2008 (published on 20.2.2009), on decisions adopted in this field. What emerges from this data is that, **particularly in the territorial Commissions that are based in the southern regions of Italy (which are competent for applications for protection that are "related" to landings), a high percentage of requests are granted, a circumstance that confirms that a majority of those who reach Italy by sea are effectively refugees**.

THE VIOLATIONS.

Having taken the migrants intercepted in international waters on board of Italian naval units has entailed **the taking root of Italian jurisdiction in Italy**, as the ships are "*Italian territory*" and Italian authorities are hence bound to apply international law, Community law and, not least, national law alike. In fact, on this matter it must be recalled that in accordance with art. 4 of the Italian penal code "*Italian ships and aircraft are considered territory of the State*" and that articles 2, 3 and 4 of the Code of navigation express themselves in the same terms.

The Geneva Convention on the status of refugees, the European Convention for the protection of human rights and fundamental freedoms, the UN Convention against torture and other cruel, inhuman and degrading punishment or treatment, the International Covenant on civil and political rights, and European law, **prohibit the refusal of entry, direct or indirect, of asylum seekers**.
This duty must be respected by any authority that carries out border control activities, or activities to prevent and counter illegal immigration, even if they are enacted in an extraterritorial setting.

Any person intercepted and rescued at sea must be taken to a "safe place" that must be interpreted not just in accordance with international maritime law, but also with humanitarian and refugees' law. Even in the presence of agreements with the third countries to which the immigrants are sent back, the States returning them are not exempted from respecting duties that have been assumed in an international milieu, and they become jointly responsible for any violations perpetrated against the people turned away that may occur.

1. VIOLATIONS OF INTERNATIONAL LAW

Law of the sea

The duty to protect human life at sea is in force in any maritime space and concerns all people, regardless of the lawful or unlawful activities in which they may be involved.

Among the norms of the Montego Bay Convention of 1982 (**UNCLOS**) that cannot be derogated by States, even through agreements with other Countries, one must firstly recall art. 98, which constitutes the application of the fundamental principle by virtue of which all States, through the captains of ships – public or private – who fly their flags, are bound to protect human life at sea and to lend assistance to people who are in danger.

Moreover, the Convention establishes that States must organise search and rescue services in co-operation with neighbouring Countries on the basis of regional agreements.
The same duty is envisaged in Chapter V, Regulation 33(1) of the 1974 International Convention for the safeguard of life at sea.

From 1 July 2006, the amendments to the **SAR** (Convention on search and rescue at sea) **and SOLAS Conventions** have been in force, which are particularly important because they seek to preserve the integrity of search and rescue services (SAR) and to guarantee that people who are in danger at sea are aided and, at the same time, that inconvenience for the boat lending assistance be minimal.
Rescue must be guaranteed regardless of the nationality, status or circumstances in which the people in danger find themselves.

Furthermore, art. 9 para. 1 of the **Protocol to the United Nations Convention** against transnational organised crime (**Palermo**, 2000)[1] concerning the trafficking of immigrants by land, sea or air, *inter alia*, provides that the State that adopts measures to prevent the unlawful trafficking of migrants also has an obligation to guarantee the security and human rights of the people who are being transported.
The same Protocol also envisages the non-interference of such rights and duties with those deriving from other sources of international law, including the 1951 Convention concerning the status of refugees.

The **SAR Convention** establishes that the Centre for the Co-ordination of Rescue must identify the safe place and most appropriate one for maring the rescued people disembark. However, the Convention does not specify what the subsequent actions that should be adopted once the people have been rescued are.

[1] www.unodc.org/unodc/en/crime_cicp_signatures_trafficking.html

For this purpose, both the amendment of SAR that has been in force since 1 July 2006 and the **Guidelines** on the treatment of people rescued at sea of May 2004 establish that "the Government responsible for the SAR region in which the survivors have been recovered is responsible for **providing a safe place** or to ensure that such a place is made available", and they define such a place as "a locality where rescue operations are deemed to have been completed and where the security of the survivors or their life is not threatened; where primary human needs (food, accommodation, medical care) may be satisfied and the transport of survivors to a nearby or final destination may be organised".
Hence, the Guidelines clarify that the ship that lends assistance temporarily constitutes a safe place, but that this responsibility should be lifted from it as soon as alternative solutions can be undertaken. **The guidelines emphasize the need to avoid making asylum seekers and refugees rescued at sea disemark in those territories where their life and freedom would be at risk**. Thus, in order to determine whether somewhere is a "safe place" for asylum seekers, appropriate controls must be carried out, while taking the specific circumstances of every single case into account.

In the matter at hand, Italy, which has ratified the mentioned international instruments including the Guidelines, should have taken the migrants to a safe place after rescuing them at sea. **Such a place must be located in Italy**, as it is the **closest and safest** Country where the migrants would have been protected from serious human rights violations and could have had, where necessary, access to international protection in application of Italian, Community and international law.

The migrants could certainly not be handed over to the Libyan authorities, both because it is not certain that they had come from that country, and because Libyan territory cannot be considered a "safe place", as it has not ratified the Geneva Convention on the status of refugees nor the main Conventions in the field of human rights, and there are numerous international reports that allege serious human rights violations perpetrated against migrants.
As has already been pointed out, interception and rescue operations and the taking on board of migrants in international waters onto Italian navy units have **established Italian jurisdiction** in accordance with art. 92 of UNCLOS and art. 4 of the Italian penal code, and articles 2, 3 and 4 of the Code of navigation express themselves in the same terms. As the naval units are "Italian territory", the Italian authorities were/are responsible for applying national, Community and international law.

Deleted: ¶

The *non-refoulement* principle

Considering that Libya cannot be deemed a safe third Country, the Italian authorities should have respected the requirement that **forbids *refoulement*** detailed in **art. 33 of the 1951 Geneva Convention** on refugees.
This norm has an **absolute and inderogable character**, and must be applied **on the territory of the State and in an extraterritorial context alike**.

This principle has now moved beyond the borders of international refugee rights in which it first appeared, extending its scope to the entire field of international human rights law; in this sense, **art. 3 (1)** of the **UN Convention against torture** and other inhuman and degrading treatment or punishment must be recalled, which provides that "*No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture*."
Even the interpretation of **art. 7 of the International Covenant on Civil and Political Rights**, provided by the Human Rights Committee through its *General Comment* no. 20: art. 7

(10/03/1992), moves within the same perspective, stating in its para. 9 that "*State parties must not expose individuals to the danger of torture and other cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement*".
We highlight that at a regional level the **European Court on Human Rights**, with an approach that is now constant, has appreciated, in cases involving the return of people towards Countries where they may be exposed to a real risk of being subjected to torture or inhuman and degrading treatment, a violation of art. 3 of the ECHR (among others, see the sentences: *Soering vs. UK, Ahmed vs. Austria*).

In the light of the criteria envisaged by international law for the interpretation of treaties and recent developments in terms of doctrine and jurisprudence in the field, it should, by now, be considered that it cannot be argued that the applicability of the *non-refoulement* principle is limited by the territorial issue. **In fact, the obligation of *non-refoulement* binds States wherever they effectively exercise their jurisdiction, even beyond their territory**; hence, even when they are operating in border areas, the open sea and in cases in which they operate on the soil of a third State (regardless of whether this occurs with or without the latter's authorisation).
In this regard, it is worth recalling the Xhavara vs. Italy ruling adopted on 11 November 2001 by the Strasbourg Court, which noted the Italian responsibility for control activities carried out by Italian authorities in international waters and in Albanian territorial waters, in application of the bilateral agreement signed by Italy and Albania.
Attached, in reference to the principle of extraterritoriality of the prohibition of refoulement, there is the important opinion issued by UNHCR on 26 January 2007, in which it highlights that according to the constant jurisdiction of the European Court on Human Rights, **jurisdiction** is identified "*not if a person is found within the territory of the State concerned, but **if, in relation to their presumed behaviour, he or she is under the effective control of the State or not**, or whether they are affected by those acting on behalf of the State in question*" (cf. Cedu Loizidou vs. Turkey, appl. 15318/89 sent. 23.2.1995; Ocalan vs. Turkey, appl. 46221/99 sent. 12.3.2003; Issa et al. vs. Turkey, appl. 3821/96 sent. 16.11.2004).

The European Convention on human rights

art. 3

We highlight that Italy has been condemned on several occasions by the Court on human rights for violating art. 3 of the European Convention on Human Rights in all the cases in which it sought to send foreigners back towards countries in which they were not protected from the risk of being subjected to inhuman and degrading treatment, even if they were countries that have ratified one or more human rights conventions. See case Saadi vs. Italy, [GC], (no. 37201/06), case Trabelsi vs. Italy (no. 50163/08), case Abdelhedi vs. Italy (no. 2638/07), case Ben Salah vs. Italy (no. 38128/06), case Bouyahia vs. Italy (no. 46792/06), C.B.Z. vs. Italy (no. 44006/06), case Darraji vs. Italy (no. 11549/05), case Hamraoui vs. Italy (no. 16201/07), case O. vs. Italy (no. 37257/06), case Soltana vs. Italy (no. 37336/06).

With the sending back of migrants to Libya that was enacted in the past days, Italy has violated art. 3 of the ECHR insofar as it has handed them over to the authorities of a country without checking and without having any elements that excluded that they may be subjected to inhuman and degrading treatment and/or their lives may be at risk, in spite of the notorious conditions in which migrants are held in Libya (in transit or after arriving there as a destination country) in the camps/prisons and from which they have often been made to leave without any means or resources towards the desert, where they face a certain death.

According to the jurisprudence of the European Court on Human Rights, the prohibition detailed in art. 3 of the ECHR applies both with regard to the State to which one belongs and in relation to States that do not guarantee the respect of the non-refoulement principle towards those countries where the treatments forbidden by art. 3 are enacted (cf. ECHR 30.10.91, Vilvarajah vs. UK case; 20.3.91, Cruz Varas vs. Sweden case; March 2008, Saadi vs. Italy case, and others).

art. 5

The arbitrary refusal of entry of hundreds of migrants entails the violation of art. 5 of the ECHR insofar as hundreds of people have been denied personal freedom in the absence of a measure (judicial or administrative) that instructed this, and without them being brought before a judge as quickly as possible (ECHR, art. 5 point 3), as is, moreover, also envisaged by art. 13 of the Italian Constitution.

The denial of personal freedom relates to the migrants' transfer to Libyan territory in spite of evidence of their will to reach the Italian or Maltese coasts, towards which they were heading when they were intercepted at sea.

On this matter, the violation of art. 5 of the ECHR is indisputable, as is that of Italian national law, as will be argued in greater detail in the paragraphs that follow.

art. 13

None of the people (hundreds) transferred to Libya against their will has been able to submit an asylum application (art. 1, 1951 Geneva Convention and article 1 and the following ones in legislative decree 251/2007 and legislative decree 25/2008) and/or a request for protection from the risk of being subjected to inhuman and degrading treatment (ECHR, art. 3) or for protection from the risk of losing their lives (ECHR, art. 2) in case of forced repatriation.

The consequence of the impossibility of submitting an application for protection is the violation of the right to an effective remedy against measures that limit personal freedom which, like refusal of entry and expulsion, impede the exercise of the right to protection (cf. ECHR jurisprudence in the cases: Gebremedhin vs. France, appl. No. 25389/05 in an instance involving precisely the turning away at the border of an asylum seeker; Conka vs. Belgium, appl. 51564/99).

Protocol no. 4 of the European Convention on human rights

Art. 4 of the ECHR's Protocol no. 4 **forbids the collective expulsion of foreigners**.

In the case that is under scrutiny here, this prohibition has been clearly contravened, in spite of the absence of administrative measures (not) adopted by Italy in accordance with art. 10 and art.13 of legislative decree 286/98, as will be highlighted below. Also the material conduct of the State, in fact, must be deemed to fall within the scope of implementation of art. 4 of Protocol no. 4, as it has the concrete effect of the mass return of foreigners (several hundred, according to the interior minister) towards a country that is claimed to be the one of departure.

It must be recalled that according to the jurisprudence of the European Court on Human Rights, **collective expulsions are all those measures that force foreigners "as a group" to leave a country**.

If the prohibition is valid in cases involving expulsions ordered using a formal administrative measure, it cannot be deemed not to be equally valid when this outcome **is attained through a mere factual behaviour** enacted by public authorities.

2. VIOLATION OF COMMUNITY AND NATIONAL LAW

Art. 63 point 1 of the Treaty of the European Communities (TEC) provides that Community legislation adopted by EU member States must be applied in accordance with the Geneva Convention and other international treaties.

By taking on board hundreds of migrants on Italian Navy ships and handing them back to Libyan authorities, Italy **has violated EC Regulation no. 562/2006 of the European Parliament and of the Council of 15 March 2006** (which establishes a Community Code concerning the regime for the crossing of borders by people) insofar as:

- **Point no. 7** of the **Preamble** establishes that "*Border checks should be carried out in such a way as to fully respect human dignity. Border control should be carried out in a professional and respectful manner and be proportionate to the objectives pursued*";

In the matter at hand, the dignity of migrants has not been respected at all, as they were handed over to the Libyan authorities, in spite of them not being citizens of that country in which they are certainly subjected to inhuman and degrading treatment merely as a result of their condition as irregular migrants, as has been conclusively ascertained by numerous international reports.

- **Point 20** of the **Preamble** states that "*This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. It should be applied in accordance with the Member States' obligations as regards international protection and non-refoulement*".

In the case that is under examination, **there has not been respect for any of the fundamental human rights that are recognised by Community law as well as by the European Charter**, as none of the migrants intercepted and sent back to Libya was allowed access to the procedure for international protection, just like it was not verified whether the right to human dignity (art. 1), to people's integrity (art. 2), not to be subjected to torture or to inhuman and degrading treatment (art. 4), to freedom and security (art. 6), to respect for private and family life (art. 7) and to political asylum (art. 18) are respected in Libya.

- **Art. 3 letter b)** of the Regulation establishes that "[it] shall apply to any person crossing the internal or external borders of Member States, **without prejudice to the rights of refugees and persons requesting international protection, in particular as regards non-refoulement**".

- **Art. 7 of Reg. 562/2006** provides that "*All persons shall undergo a minimum check in order to establish their identities on the basis of the production or presentation of their travel documents*".

It does not appear that in the case in question the Italian authorities checked whether and what documents the migrants taken to Libya possessed, or whether they were identified in any other way. Thus, Italy has omitted to conduct the minimum checks required to know what the countries of origin of the migrants were, and hence to have elements of certainty that their return from Libya to those countries would not have resulted in human rights violations.

- **Art. 13 of Reg. 562/2006** allows States to refuse entry to foreigners who do not comply with requirements for entry but takes care to provide that "*this shall be without prejudice to*

the application of special provisions concerning the right of asylum and to international protection", and nonetheless establishes that "***Entry may only be refused by a substantiated decision stating the precise reasons for the refusal***. *The decision shall be taken by an authority empowered by national law. It shall take effect immediately*". Moreover, a subsequent subsection clarifies that "*Persons refused entry shall have the right to appeal. Appeals shall be conducted in accordance with national law*".

In the case in question, **it does not appear that any written and substantiated measure was issued, resulting in a violation of provisions in the Community Regulation**.

On this matter, we recall that Community Regulations have full normative effectiveness in the territory of the State and wherever it exercises powers that derive from its own power of authority and its jurisdictional sphere. In spite of having received the migrants on its naval units – considered "floating extensions of Italian territory" – **Italy has not allowed them to have access to any sort of procedure** for the recognition of the right to asylum on the basis of legislative decrees to receive Community norms and of art. 10 point 3 of the Italian Constitution.

The lack of access to the procedure for the recognition of international protection has resulted in the **violation of Directive 2004/83/EC** that details the minimum norms for the attribution to citizens of third countries or stateless people of the status of refugees or of people otherwise requiring international protection, and of the minimum norms on the content of recognised protection.
Art 21 paragraph 1 binds member States to respect the non-refoulement principle in accordance with international obligations.

Furthermore, there has been a violation of **Directive 2005/85/EC** on the minimum norms for procedures implemented in member States for the purpose of recognising and withdrawing refugee status, received by legislative decree no. 25 as it was modified by legislative decree no. 159.

Point 13 of the Preamble to the Directive envisages the right for an asylum seeker to have an "*effective access to procedures*", to be afforded "*sufficient procedural guarantees to assert their rights in each phase of the procedure*" and, not least, the "***right to remain while awaiting the decision of the examining authority***". These are principles and rights that are sanctioned in specific articles of the Directive, including articles 6 and 7 and, not least, by art. 35, that binds every member State to authorise, in any case, an asylum seeker to stay in the border area for the purpose of admission to the procedure for the recognition of asylum.

If the migrants were in a state in which their lives were in danger, it was Italy's duty to rescue them and hence to take them on board of Italian Navy units. **Having effectively received the migrants on Italian ships is equivalent to recognising that they were effectively in a situation of danger**, as in the absence of this situation we would be dealing with unlawful conduct by the naval authorities that would have enacted an unlawful physical coercion of the migrants by taking them on board against their will or through artifices and deception, from their boats onto the Navy ships. It has already been stated that the Italian ships are Italian territory (art. 4 of the penal code; arts. 2, 3 and 4 of the Code of navigation; art. 92 of UNCLOS). In application of Italian legislation, the specific position of the people had to be verified **on Italian territory** and their admission to asylum procedure had to be ensured in the presence of a request to this effect.

Italian legislation on refusals of entry itself, in **art. 10 point 4 of the Consolidated Text on immigration**, excludes the applicability of refusals of entry precisely because they are measures that "*are not applied in cases envisaged by the provisions that are in force that regulate political*

asylum, the recognition of refugee status or the adoption of measures of temporary protection for humanitarian reasons".

In the matter at hand, it cannot be considered that the refusal of entry detailed in art. 10 point 1 of the Consolidated Text on immigration, legislative decree 286/98, has been enacted ("*The border police refuses entry to foreigners who present themselves at border crossings without having the requirements demanded by this consolidated text for entry into Italian territory*"), insofar as it is a case that rules out physical entry into Italian territory that exclusively concerns people who "present themselves" at the border and hence, evidently, people who have not yet entered Italian territory; the border crossings are crossings at land, air and sea border points that are identified as such by Community law, such as those that are permanently recognised for the international traffic of people and are supervised by police staff for this purpose, which is not possible in the case in question, as it occurred in international waters and was enacted by Italian naval units that do not have a qualification as border police. Likewise, it cannot be considered that so-called deferred refusal of entry, which is decreed by the *questore* [the police chief in a given city] in the cases provided for by art. 10 point 2 of the Consolidated Text on immigration, legislative decree 286/96, in which migrants have been temporarily admitted into Italian territory (in spite of having to be expelled) "**for reasons of public assistance**", has been enacted. In the case in question, no *questore* of the Republic has issued any written measure detailing the reasons for it, as provided by the norms that are in force.

In any case, during operations of public assistance on Italian territory, the **specific position of people who had entered** without a visa **had to be checked**, and hence every single migrant had a right to be informed of their rights and to submit an **application for political asylum** (as established in art. 10 point 3 of the Italian Constitution) **or for international protection** (legislative decrees 251/2007 and 25/2008) if they believed they were in such a situation and could therefore not be refused entry, according to what is guaranteed **by art. 33 of the 1951 Geneva Convention** on refugees (ratified by Italy through law no. 722/54), as well as **by art. 6 of legislative decree 25/2008** (implementing Directive 2005/85/EC that specifies the minimum rules for procedures implemented in member States for the purpose of the recognition or withdrawal of refugee status) that recognises the right of access to procedure, with a right to stay in Italy for the entire duration of the procedure (**art. 7 of legislative decree 25/2008**). Finally, it seems necessary to stress the **prohibition of expulsion and refusal of entry that is envisaged in art. 19 point 1 of the Consolidated Text on immigration, legislative decree 286/98**, according to which "***Under no circumstances*** *may expulsion or refusal of entry be decreed towards a State in which the foreigner may be subjected to persecution for reasons of race, gender, language, nationality, religion, political opinions, personal or social conditions,* ***or may be at risk of being sent back to a State in which they are not protected from persecution***".

Italian authorities should have proceeded to verify the existence of situations regulated by art. 19 point 2 letter d) of the Consolidated Text on immigration, legislative decree 286/98, that rules out the possibility of expelling **pregnant women**. In compliance with this norm, the authorities should have ascertained the conditions of the women who were in that state and, in any case, they should not have proceeded to refuse them entry as in fact happened in the cases in question. Likewise, the possible **presence of minors** should have been verified, and particularly of **unaccompanied minors**, with a view to the adoption of measures for their care. Finally, the migrants should have undergone medical visits, also for the purpose of ascertaining the possible presence of pathologies that could not be cured in the country of which they are nationals, or that could be deemed a danger

for health, resulting in the enactment of the duty **not to expel them for health reasons** (Constitutional Court sentence, no. 252/2001).

None of the obligatory activities described was enacted by the Italian authorities, which limited themselves to transferring the migrants who were "temporarily received" on the Italian naval units to Libya, with the resulting violation of national law, as detailed above.

*

The illegal refusals of entry carried out by Italy as of the past 7 May cannot even be justified in reference to the following normative measures:

Interior ministry decree of 19 June 2003 – Measures for activity to counter illegal immigration by sea. In fact, it allows patrolling activities by Italian naval units, also for the purpose of returning boats that are not flying any flag to the harbours from which they set off (not to any harbour), while respecting some well-specified procedures and, in any case, all the activities must be tailored to "*safeguard human life and respect the dignity of people*" (art. 7).

Treaty between Italy and Libya, signed in late August 2008 and ratified at the start of March 2009, which envisages bilateral co-operation in the field of immigration, referring back to the agreement for co-operation in the fight against terrorism, organised crime, illegal trafficking in drugs and psychotropic substances and illegal immigration signed in Rome on 13 December 2000 (published in the Official Journal no. 111 S.O. of 15.05.2003) and subsequent co-operation protocols signed in Tripoli on 27 December 2007. The interior ministry website also alludes to a further protocol signed in Libya on 4 February 2009, which has not yet been made official. The Italian-Libyan agreements in the field of immigration and surveillance of the sea reached in 2000, 2007 and 2009 are agreements of a political nature, or which nonetheless entail a financial burden, and hence they have been stipulated in a simplified form, contravening the obligation envisaged in art. 80 of the Constitution to subject the law authorising them to ratification, and the texts of the agreements of 2007 and 2009 have not even been published in the supplement of the Official Journal, contrary to what is required by art. 13 of the consolidated text on provisions for the promulgation of laws, the issuing of decrees of the President of the Republic and the Italian Republic's official publications, approved through presidential decree no. 1092, of 28 December 1985.

It must also be considered that none of the agreements between Italy and Libya legitimises operations to hand back migrants intercepted in international waters to Libya, as the agreement of December 2007 envisages joint patrolling to be carried out at the limit of the Libyan coastal waters for the purpose of sending back vessels laden with migrants fleeing from Libya. In any case, the mentioned agreements could never allow the Italian authorities to violate Constitutional norms, Community norms and international ones.

***

By virtue of the reasons detailed above, the undersigned Associations ask the Institutions to whom this document is addressed, each on the basis of their own part of competence:

- **to condemn Italy** for the extremely serious violations of human rights, of Community law, of international Conventions, asking it not to carry out any further refoulements;

- **to embark upon an infringement procedure** with regard to Italy for violating Directive 2005/85/EC, with particular consideration for the right to effective access to procedure for international protection, for the violation of Regulation (EC) no. 562/2006 and subsequent modifications for having arranged the collective return of an unspecified number of migrants to Libya without having previously adopted written orders explaining their reasons and without having allowed appeals before a jurisdictional authority;

- **to demand that Italy produce and explain the nature and contents of the agreements stipulated with Libya in the field of the control of irregular migrations by sea, in order to check whether they comply with Community and international law;**

- **to conduct suitable missions in Italy and to acquire any information and documentation that may be useful for the purpose of verifying the respect or violation by Italy of fundamental human rights guaranteed by Community law and by the international Conventions that it has ratified.**

Turin, 16.6.2009
Avv. Lorenzo Trucco – president and legal representative of ASGI