

Statement by 29 academics on Italy seizing the rescue boat Open Arms

Italian authorities have seized the Spanish NGO rescue boat ‘Open Arms’ and have initiated criminal investigations against the NGO coordinator and the captain of the boat. The ‘Open Arms’ had refused to hand over to the Libyan coast guard 218 people it had rescued in international waters, while Italy claims that they were obliged to do so, on the basis of the Italian NGO Code of Conduct. Instead, the ‘Open Arms’ brought two rescued persons to Malta (where a mother and child were hospitalized in critical condition), and the remaining to Italy. The NGO people face prosecution on account of taking part in human smuggling (*Le Monde*, 22 March 2018).

Under international law, shipmasters are under the obligation to assist people in distress at sea, and to bring them to a place of safety. The captain of the ‘Open Arms’ has complied with this requirement by rescuing the 218 people and subsequently refusing to hand them over to the Libyan coast guard. On the basis of well documented human rights reports, the captain knew that handing them to the Libyan coast guard would imply the real risk that the 218 people would be subjected to torture, inhuman or degrading treatment, slavery, or forced or compulsory labour, which constitute grave human rights violations or even crimes against humanity. Libya is not a place of safety as required under international law.

It is, quite to the contrary, Italy that acts in violation of international law:

- Requiring captains of vessels engaged in SAR (regardless of whether they are NGO, European navy or coast guard, or merchant vessels) to hand over rescued people to the Libyan coast guard exposes rescued people to a real risk of becoming victims of grave human rights violations and crimes against humanity. Italy is responsible for the foreseeable consequences of such requests by its authorities.
- Seizing a boat dedicated to SAR activities reduces the capacity available for search and rescue, and foreseeably leads to loss of more lives. Italy is responsible for the foreseeable loss of life as a consequence of acts by its authorities.

The increasing assertiveness with which Italy exposes people to grave human rights violations and crimes against humanity, and reduces the SAR capacity in the Mediterranean, requires immediate action of the international community. We point to, and call upon the actors concerned to consider and pursue, the following options for invoking Italy’s responsibility for breaches of international law:

Italy should cease its policy of promoting, directing and enforcing returns to Libya with immediate effect, and should cease prosecuting actors who deliver people rescued at sea to a place of safety;

In case Italy fails to do so,

- 1. The UN Security Council should be seized to consider Italy's actions a threat to international peace and security; to call upon Italy to cease its violations of international law; and to promote a coordinated approach to SAR in the Mediterranean which does *not* include exposing rescued persons to the risk of grave human rights violations;**
- 2. Côte d'Ivoire, Equatorial Guinea, and Ethiopia – being the the African Union Member States that are currently members of the UN Security Council – whose citizens are directly affected by Italy's violations of international law, should propose an immediate meeting of the UN Security Council to this end;**
- 3. The Prosecutor of the International Criminal Court should *proprio motu* open an investigation concerning high-ranking Italian authorities as to their complicity in crimes against humanity taking place in Libya;**
- 4. Each Member State of the Council of Europe should consider filing an inter-state complaint against Italy at the European Court of Human Rights.**

PROPONENTS OF THIS STATEMENT:

Prof Alberto Alemanno – Jean Monnet Professor of European Union Law, HEC Paris; Global Professor of Law, NYU School of Law in Paris; Director, The Good Lobby

Dr Alexandre Skander Galand – Post-Doctoral Fellow, EUI and University of Oxford

Prof Andreas Philippopoulos-Mihalopoulos – Professor of Law and Theory, University of Westminster; Director of The Westminster Law & Theory Lab

Prof Audrey Macklin – Professor of Human Rights, University of Toronto

Prof Bill Bowring – Professor of Law, Birkbeck College, University of London; Barrister at Field Court Chambers, Gray's Inn

Prof Ciaran Burke – Professor of International Law, Friedrich-Schiller-Universität Jena

Dr Daniel Ghezelbash – Senior Lecturer, Macquarie Law School

Prof Deirdre Curtin – Professor of European Union Law and Head of Department, European University Institute

Prof Elspeth Guild – Jean Monnet Professor Ad Personam, Queen Mary University of London and Radboud University Nijmegen

Prof Francois Crépeau – Oppenheimer Professor of International Law, McGill University

Prof Gregor Noll – Professor of International Law, Lund University

Prof Hemme Battjes – Professor of European Asylum Law, Vrije Universiteit Amsterdam

Prof Iris Goldner Lang – Jean Monnet Professor of European Union Law, University of Zagreb; UNESCO Chair on Free Movement of People, Migration and Inter-Cultural Dialogue

Dr Itamar Mann – Senior lecturer, Law School, University of Haifa

Prof James Hathaway – James E. and Sarah A. Degan Professor of Law and Director Program in Refugee and Asylum Law, University of Michigan

Prof Janneke Gerards – Professor of Fundamental Rights Law, Utrecht University

Prof Jenni Millbank – Distinguished Professor of Law, University of Technology Sydney

Prof Marie-Benedicte Dembour – Professor of Law and Anthropology, University of Brighton

Prof Marina Aksenova – Professor of Comparative and International Criminal Law, IE Law School Madrid

Prof Martin Scheinin – Professor of International Law and Human Rights, European University Institute

Prof Martti Koskenniemi – Professor of International Law and Director, Erik Castren Institute of International Law and Human Rights, University of Helsinki

Prof Morten Kjærum – Director of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law

Prof Nora Markard – Junior Professor for Public Law, International Law and Global Constitutionalism, University of Hamburg

Prof Philippe De Bruycker – Professor of Law, Université Libre de Bruxelles

Prof Thomas Gammeltoft-Hansen – Adjunct Professor of Law, Aarhus University; Research Director Raoul Wallenberg Institute of Human Rights and Humanitarian Law

Prof Thomas Spijkerboer – Professor of Migration Law, Vrije Universiteit Amsterdam; Raoul Wallenberg Visiting Professor of Human Rights & Humanitarian Law, Lund University

Dr Valentina Azarova – Visiting Academic, Manchester International Law Centre, Manchester University

Dr Violeta Moreno-Lax – Senior Lecturer and Founding Director, Immigration Law Programme, Queen Mary University of London; Visiting Professor, College of Europe

Prof Wouter Werner – Professor of International Law, Vrije Universiteit Amsterdam