

# Sul Memorandum d'intesa Italia/Libia in tema di cooperazione nel campo dello sviluppo, del contrasto all'immigrazione illegale e al traffico di esseri umani.

## Lettera del Commissario per i diritti umani al ministro Di Maio e risposta del Rappresentante permanente d'Italia presso il Consiglio d'Europa

*NOTA: in argomento si veda anche*

- *Informativa urgente del Governo in relazione al Memorandum Italia-Libia, 6 novembre 2019;*
- *Intendimenti del Governo in ordine all'impegno dell'Italia in merito alla missione di supporto alla Guardia costiera libica..., Interrogazione a risposta immediata Palazzotto e Fornaro, 25 settembre 2019;*
- *Audizione del Ministro dell'interno, senatore Marco Minniti, Comitato permanente di controllo sull'attuazione dell'Accordo di Schengen, 10 ottobre 2017;*
- *Memorandum Italia-Libia in tema di contrasto all'immigrazione illegale e al traffico di esseri umani, Roma, 2 febbraio 2017.*

1.

Strasbourg, 13 February 2020, Ref. CommHR/DM/sf 006-2020

**Mr Luigi Di Maio**

Minister of Foreign Affairs and International Cooperation of Italy

Dear Minister,

As Council of Europe Commissioner for Human Rights, I monitor member states' observance of their human rights obligations towards migrants, including asylum seekers and refugees, who cross the Mediterranean in an attempt to reach Europe. As I have already stressed publicly on several occasions,

I am gravely concerned about certain types of assistance provided to Libya, in particular to the Libyan Coast Guard, which have resulted in increased interceptions of migrants and asylum seekers at sea, and their subsequent return to Libya, where they are subjected to serious human rights violations. The 2017 Memorandum of Understanding between Italy and Libya's Government of National Accord, which was automatically renewed on 2 February 2020, plays a central role in the facilitation of interceptions of migrants and asylum seekers at sea. On 31 January 2020 I publicly expressed my regret that the Italian government had not cancelled that agreement or at least changed its terms to ensure the appropriate protection of human rights. In this context, I note the announcement, on 9 February 2020, of your submission to the Libyan authorities of a proposal that would amend this Memorandum with the aim of guaranteeing better protection for migrants and promoting migration management that is in full compliance with the Geneva Convention and

other international human rights norms.

As these important discussions on mechanisms to guarantee human rights compliance in the future continue, I believe it is essential to remain focused on the present and to fully acknowledge the current realities on the ground in Libya and the time it will necessarily take for any changes that may be secured to have an impact. Given the safety situation in conflict-torn Libya at present and the great amount of evidence pointing to serious human rights violations faced by migrants and asylum seekers returned there, I call on your government to suspend the co-operation activities in place with the Libyan Coast Guard that impact, directly or indirectly, on the return of persons intercepted at sea to Libya.

In the specific context of the discussions with the Libyan authorities concerning the amendment of the Memorandum, I invite you to carefully consider the detailed recommendations contained in my Recommendation 'Lives saved Rights protected Bridging the protection gap for refugees and migrants in the Mediterranean', published in June 2019, a copy of which you will find enclosed. In particular, in order to effectively guarantee the respect of human rights in any migration cooperation with third countries, any activity envisaged should be preceded by thorough human rights risk assessments, which should look, *inter alia*, at the impact co-operation activities may have on the right to life of migrants and asylum seekers, freedom from torture or inhuman or degrading treatment, protection from refoulement, and the rights to liberty and private and family life.

I also draw your attention to the need to develop risk mitigation strategies, setting out the steps that will be taken to ensure that actual human rights violations do not materialise. These must be complemented by monitoring mechanisms, composed of independent and impartial actors, which continuously assess the impact of any activities implemented on the human rights of those concerned. Furthermore, an effective system of redress should be established for those who nonetheless consider that the enjoyment of their rights has been affected by the co-operation activities. Details of the co-operation activities foreseen, risk assessments, risk mitigation strategies and the results of monitoring should be made public so that they can be subject to scrutiny.

I would appreciate if you could inform me of the extent to which the amendments to the Memorandum currently being discussed will cover the measures mentioned above.

Finally, let me assure you that I will continue to call for more solidarity from Council of Europe member states with those countries which, like Italy, are on the frontline of migration movements to Europe, and for better co-operation to ensure the effective preservation of life and the protection of the human rights of those at sea, including thorough responsibility sharing for adequate rescue capacity and the timely disembarkation of those rescued. I will also continue to try to impress upon all member states the need to support the efforts of international organisations to provide protection to refugees, asylum seekers and migrants in Libya, and to contribute to safe humanitarian corridors, evacuation and resettlement programs. I stand ready to discuss with you how I can best support Italy and other member states in ensuring these measures are implemented as soon as possible.

I look forward to receiving your reply and continuing a constructive dialogue.

Yours sincerely,  
Dunja Mijatovic

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Strasbourg, 20th February 2020

**Ms Dunja Mijatovic**

Commissioner for Human Rights

Council of Europe

Dear Commissioner,

With reference to your letter dated 13th February 2020, I have the pleasure to convey to you the following considerations.

I am convinced that the Memorandum has proven effective in countering illegal trafficking of human beings along the central Mediterranean route and has been instrumental in reducing the number of attempts at crossing the sea and thus the unacceptable death toll connected to this scheme. More specifically, the number of casualties along this route went down from 2,853 in 2017 to 743 in 2019.

We are fully aware that there is room for improvement in the cooperation established in 2017 with Libya, but figures as such tell us that we have to keep working along this direction, rather than disengaging from the country. Hence, our overall objective is to guarantee better protection to migrants and asylum seekers in Libya and progressively replace the current system based on detention centers with new formulas, adhering to the principles of the rule of law, victim-centered and human rights oriented.

That objective has been, and continues to be, pursued also through a strengthened and fruitful partnership with the United Nations. In the last years, Italy has reinforced its unwavering support to UN activities in Libya by funding dozens of projects aimed at improving living conditions for migrants, refugees, IDPs and local communities. Likewise, Italy's political advocacy and financial support proved essential to the operations of UNHCR's Emergency Transit Mechanism and Gathering and Departure Facility, both tools devised for rescuing vulnerable refugees in Libya. On top of that - and in addition to the thousands of migrants stranded in Libya that have benefited from IOM's voluntary humanitarian returns funded by our country - as of today Italy remains the only European country that carries out direct humanitarian evacuations of hundreds of refugees from Libya straight into its own territory, ensuring their integration and wellbeing in our society. As you correctly state, negotiations with the Libyan government - based on the Italian proposals - have just begun. Italy is confident that an amended agreement with improved terms of cooperation may be reached timely. Amendments proposed by Italy include, inter alia, explicit references to and acceptance of international humanitarian and human rights law, including principles and purposes of the 1951 Refugee Convention of Geneva. The new text suggests a number of actions in order to improve conditions of migrants held in official centers, while those in a situation of

vulnerability (i.e. women and children) should be immediately released. When conditions allow, a new system should be established, placed under the responsibility of the Libyan Ministry of Justice, based on the rule of law, on appropriate judicial procedures and on the principles of fair trial.

International engagement would prove a most valuable asset. In this sense, Italy is very much looking forward to cooperating with other international partners, including the Council of Europe and its Members States, in order - as you mention - to support e.g. the efforts of international organisations to provide protection to asylum seekers and migrants in Libya, to establish humanitarian corridors, evacuation and resettlement programs. Your intervention towards this direction and your call for more solidarity are indeed a welcome sign of support.

Ultimately, collective and coherent efforts by the International Community in supporting a substantial and durable stabilization of Libya - through the commendable efforts of the United Nations and of the Special Representative of the Secretary General for Libya, Ghassan Salame, within the Berlin Process - would be instrumental in creating a political, security and rule of law environment conducive to a more effective management of all aspects of the complex and delicate migratory issue in Libya. We count in the support of the Council of Europe and of all its Member States in achieving this objective.

I would be pleased to further discuss this matter with you.

Yours sincerely,  
M. Giacomelli