

Submission of the International Transport Workers' Federation to the UPR Session for Italy, 28 March 2019

1. In advance of the Universal Periodic Review of Italy due to take place in November 2019 International Transport Workers' Federation (ITF), a global union federation of 670 affiliated unions, submits the following information on behalf of seafarers around the world. It makes this submission in response uniquely to recent issues related to search and rescue of migrants in the Mediterranean.

State Obligations under International Law

2. Italy has ratified the United Nations Convention on the Law of the Sea (UNCLOS) and the International Convention for the Safety of Life at Sea 1974 (SOLAS). UNCLOS article 98 *Duty to Render Assistance* obliges states to "require the master of any ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers: (a) to render assistance to any person found at sea in danger of being lost; (b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him". The coastal state shall also establish an effective search and rescue service.

3. Regulation 7 of SOLAS outlines the necessary arrangements of states "for the rescue of persons in distress at sea around its coasts. These arrangements shall include the establishment, operation and maintenance of such search and rescue facilities as are deemed practicable and necessary, having regard to the density of the seagoing traffic and the navigational dangers and shall, so far as possible, provide adequate means of locating and rescuing such persons."

4. The 1979 International Convention on Maritime Search and Rescue obliges States to establish maritime rescue coordination centres and sets out emergency operating procedures.

5. It is the ITF's particular duty to advocate for seafarers, who may find themselves in an irregular situation in the Mediterranean where they are called upon to rescue migrants. The ITF feels compelled to submit this statement out of its grave concern with respect to the recent pressure that has been exerted by the Italian state upon seafarers to abandon their moral, humanitarian and international law duty of search and rescue, or risk their own unfair treatment, incrimination and even criminalisation.

6. The ITF leaves certain aspects of the issue in this submission to be better elaborated on by the UN and other international bodies dedicated to refugee and migrant issues such as the UNHCR and the IOM. We would refer, nevertheless, to the international customary law principle of *non-refoulement*, Italy's ratification of the 1951 Refugee Convention and UNHCR *General legal considerations: search-and-rescue operations involving refugees and migrants at sea*.¹

¹ <https://www.refworld.org/docid/5a2e9efd4.html>

7. It is of note that the international obligation of *non-refoulement* also applies extraterritorially while fulfilling their obligations to carry out search and rescue operations, even outside of its own waters.²

Italy's Previous UPR Session

8. We are conscious that the focus of the UPR sessions should be on the outcomes of the last four years since the last Universal Periodic Review of Italy. We refer to the previous UPR session's report of 10 December 2014, where Italy noted that its particular geographical location had exposed it to "massive inflows of migrants" over the two years preceding the session, and purported to be "at the forefront of an extraordinary effort to save human lives at sea". It confirmed in paragraph 11 its respect of the principle of *non-refoulement* in accordance with international law and reaffirmed its commitment to search and rescue activities at sea, ensuring migrants were brought to Italian territory. We note the launch of the Mare Nostrum operation following tragic shipwrecks in October 2013, which contributed to saving the lives of many thousands of migrants. China commended Italy for its search and rescue operations to save innocent lives at sea and, indeed, Indonesia considered it a good practice example of a state handling the exceptional arrival of migrants from the sea.

ITF Concern for Seafarers in the Mediterranean

9. In recent years, however, the ITF has become increasingly concerned about the situation of migrants crossing the Mediterranean with the aim of reaching European shores in light of the tangible shift in government approach since the 2014 UPR session. Recent events in the Mediterranean show a stark contrast in action and attitude of the Italian state to the efforts worthy of commendations above.

10. In June 2018, the ITF made a public statement condemning the action of Italy and Malta in denying the Gibraltar-flagged search and rescue ship, Aquarius, to land and set migrants ashore. The Panama Maritime Authority reportedly cited political pressure from Italy as contributing to its decision to de-flag the rescue ship in September 2018. Italy further brought charges against the ship in November 2018, accusing it of dumping potentially toxic waste at its ports - charges that Doctors without Borders (one of the NGOs running the vessel) claimed to be unfounded.

11. It was particularly concerned to read, via the European Union Agency for Fundamental Rights of the "recent trend" in Italy, amongst several other EU states, of criminalising search and rescue operations in the Mediterranean carried out by NGOs and other private entities, resulting in the arrest of vessels and crew.³ The ITF is shocked and dismayed that the Italian state would suggest that, in a situation of disaster and human tragedy at sea, seafarers ought

²UNHCR intervention before the European Court of Human Rights in the case of Hirsi and Others v. Italy <https://www.refworld.org/docid/4e0356d42.html>

³ <https://fra.europa.eu/en/theme/asylum-migration-borders/ngos-sar-activities>

to make a choice between risking criminal prosecution and saving lives. This cannot amount to the fair treatment of seafarers.

12. Merchant ships and seafarers have been fulfilling their moral and legal obligations and have rescued over 50,000 people in distress in the Mediterranean in the three years before mid-2018 when the Aquarius was refused port in Italy. There is clearly a difference between people smuggling and those genuinely offering assistance in life-threatening situations.

13. We object to the investigation, criminalization and prosecution of any seafarers, whether on state, NGO, commercial or private vessels, for rescue actions that amount to performing their moral duty at sea. These urgent and desperate situations are unimaginably fraught for all involved, with potential psychological consequences for rescuers as well as those in distress. This is without the suggestion that a seafarer in that situation weigh up which he values more: his moral culpability or his legal culpability. A seafarer should not have to suffer the additional angst of pitching potential criminal consequences against potential deaths at sea.

14. We understand that Italy cannot resolve nor respond to the ongoing influx of migrants single-handedly, simply due to its geographical location, and will require the cooperation and support of the European Union in developing an appropriate holistic response. We call on the EU to answer this need and provide longstanding sustainable and humanitarian solutions consistent with UNHCR principles.

15. The ITF would stand by the FRA recommendation that EU guidance on the implementation of the EU Facilitation Directive (Directive 2002/90/EC) against the facilitation of unauthorised entry, transit and residence needs to exclude explicitly punishment for humanitarian assistance at entry to the EU of migrants in an irregular situation. Italy should explore ways of implementing such an interpretation of the directive.

Recommendations

16. We recommend that the government of Italy:

- a. *respect its obligations under UNCLOS to require masters of ships with its flag to, in so far as possible, render assistance and rescue those in distress;*
- b. *respect its obligations under SOLAS to establish effective search and rescue operations around its coastal areas;*
- c. *respect the international customary law principle of non-refoulement;*
- d. *adopt measures to ensure that search and rescue operations are fully equipped and staff are fully trained in the above international law obligations;*
- e. *withdraw all charges currently brought against seafarers who have been involved in (search and) rescue at sea, and ensure the fair treatment of any seafarers facing investigation relating to acts carried out in their professional duties;*
- f. *explicitly exclude punishment for humanitarian assistance at entry of migrants in an irregular situation.*