

## Rescue at Sea, NGOs and the Code of Conduct. Some needed clarifications.

2 August 2017

### 1. The reasons of the Italian Minister of the Interior, Marco Minniti.

The Minister is committed to difficult tasks, including coordination duties that should be the responsibility of the Presidency of the Council of Ministers. These tasks include:

- **finding solutions after many years of delays, underestimation and mismanagement** of the presence of immigrants and refugees, which also the EU and Member States have long underestimated, having misunderstood the flow rate, and the fact that, in addition to wars, persecutions and situations of extreme poverty and rapid climate change, globalization has been spreading like wildfire, in Italy, too;
- **convincing the European Union and its Member States of the need for common policies**, sharing and replacing existing regulations and constraints, by now outmoded by reality;
- **reassuring public opinion** submerged by political manipulations that have produced disproportionate perceptions of reality resulting in exaggerated anxieties;
- **combating the smuggling and trafficking of human beings** which has reached crime levels that are no longer tolerable, also in view of the ramifications developing both on the African continent and in Italy;
- **managing reception** which frequently contends with parochial barriers countrywide;
- **coordinating rescues at sea** and managing them safely by combating criminal infiltration.

### 2. The Code of Conduct for NGOs at sea.

As a result of the Senate's survey, the minister felt as his duty to indicate a number of commitments to be subscribed by the NGOs. Actually, **this is not a real code of conduct but a set of administrative measures.**

It is good to recall, in short, **what the Code provides for:**

- **Never enter Libyan waters**, "except in situations of grave and imminent danger" and never hamper the work of the Libyan Coastguard
- **Never turn off or delay the transmission of identification signals** and never make communications to facilitate the departure of boats carrying migrants
- **Check on the technical competence and training of the crew** for the rescue operations
- **Inform your flag state** when an emergency occurs outside an established search area
- **Keep the relevant maritime coordination centre** up to date on how the rescue is progressing
- **Never transfer rescued people to other vessels**, except in the case of a request from the authority coordinating the rescue
- **Welcome aboard**, at the request of the competent national authorities, where appropriate, and only for the time strictly necessary, **Judicial Police officials** collecting evidence for investigations into criminal traffic
- **Declare sources of funding** for rescue operations at sea
- **Cooperate dutifully with the public safety authorities** of the place where the migrants are landing, also by providing information useful to the investigations
- A commitment, after the rescue, to **recover the boats and outboard engines as far as possible**, keeping the coordination authorities informed.

### 3. The reasons of the NGOs.

- **Rescue operations at sea are part of the overall humanitarian activities**, well known by the public opinion and the media, that NGOs carry out in countries such as Syria, Somalia, Sudan, the Central African Republic, Yemen, Iraq, etc., in coordination with national and international institutions and with agreed and consolidated rules and procedures vetted over time. **As a result**, the rescue operations and the rules and procedures adopted by the humanitarian NGOs in the Mediterranean are not makeshift but reflect consolidated and tested methodologies and codes of conduct.
- **The entire Code of Conduct reflects what is normally within the powers of the public administrations and what NGOs are already doing** regarding the Law of the Sea and international conventions, in full cooperation with the institutions and stakeholders involved and under the supervision, direction and coordination of the coastguard, providing the required information and monitoring their operational arrangements received for each rescue, as far as the port of destination.
- **This correspondence of much of the Code** with what happens daily in sea rescues **also demonstrates the falsity and malice of the message denigrating NGOs** that has been widespread in recent months and constantly repeated by some politicians and the media. Transparency is therefore one of the main pillars of humanitarian NGOs, without which they have no sense: their budgets are public, and they are always subject to external inspections by the institutions providing the financing as well as internal audits.
- **The NGOs who participated**, directly or indirectly, in the meetings over these last few days at the Ministry of the Interior **appreciated the latest changes made to the wording of the text**. And stated that they wished to observe all the measures it contains as far as possible.
- **Some of the NGOs could not sign the Code because of its general approach and two points liable to misrepresent the identity of humanitarian NGOs**, which are not only organizations that do good, but also entities employing universally acknowledged principles of autonomy, independence, neutrality and impartiality in the face of any person in danger.
  - a) **The general approach**. The Code **avoids clearly stating the priority of rescue** at sea where people are in danger, **while explicitly requesting active contributions to on-board investigations and police enquiries**. This therefore nullifies the fundamental principles that require an absolute distinction between police (or military) activities and humanitarian work. Humanitarian NGOs intervene all around the globe and it is the application of these principles which are strict, or at any rate laid out and contextualized in a stringently independent way, that allows them to operate even in very difficult situations, precisely because they are perceived as genuinely humanitarian, independent, and impartial. Military operations in Italy in the territorial waters of Libya and the insistence on entrusting the rescue and protection of migrants to that country's forces, without any guarantee that this will actually happen, confirm yet again the need for NGOs to be and be perceived as independent from these choices and actions.
  - b) **The two points which are particularly troublesome**.
    1. **The presence on board of armed officials**. This is contrary to the codes that the majority of humanitarian NGOs have adopted in all the countries where they intervene, which stipulate that no weapons must enter their properties. *"No weapons", It is forbidden to enter armed*. **This is a sign of impartiality and neutrality, and is also a guarantee of safety for the staff**. But it is a principle that must be respected, and therefore known by everyone, everywhere. For this reason, it musters respect for anyone: the military, police and militia, as well as individuals. Therefore, it is not about refusing to accept judicial officers and police on board but simply a request to hand over their weapons to the captain when embarking on the ship (in this case the

property of the NGO), and then picking them up when leaving, as occurs at the premises of many humanitarian NGOs, even for the military contingents in Afghanistan and Iraq, but cannot happen, apparently, for officers of the Italian judicial police.

**2. The prohibition of transfer from a smaller ship to a larger one better equipped for rescue and medical care.** This appears as nothing but a limitation on rescues. Smaller vessels have often provided an essential contribution to the operations, stabilizing boats in difficulty, distributing life belts and welcoming some of those suffering most on board, in the expectation that larger ships will cater for the rescue and boarding of the shipwreck victims in the shortest possible time. The Code, while admitting exceptions, jeopardizes this possibility of normal collaboration between vessels of varied sizes, indeed, puts people's lives at risk.

#### 4. The Italian and European regulations on rescue and humanitarian aid.

A spokesperson for the EC's Directorate-General for Migration and Home Affairs linked the Code to adherence to "*certain principles and operating standards in line with international law*", without which there can be no "*guarantee of access to Italian ports. ... Because we must all work together to destroy the traffickers' business model and prevent loss of life at sea.*" In reality, **even without the Code, the rescue operations have been carried out in full compliance with Italian and international law** and under the coordination of the relevant institution, the Coastguard Command.

**But it is the lack of consistency with the extensive provisions and operating standards, already encoded both in Italy and in the EU with regard to humanitarian relief, that has left people baffled and dubious.**

- a) **Italy** has adopted and further developed the guidelines for humanitarian aid embraced by the major donor countries and by the EC itself (a fact which the Council of Ministers recently confirmed in the Document on Programming and Directing Cooperation Activities). Principle 2 reads as follows: "Humanitarian Action must be guided by principles of (i) humanity, which affirms the priority of saving human lives and mitigating suffering wherever they are found; (ii) impartiality, which implies the realization of humanitarian actions solely on the basis of need, without discrimination between or within the populations affected; iii) neutrality, according to which humanitarian action should not favour any party involved in an armed conflict or other dispute; (iv) independence, which declares the independence of humanitarian objectives from political, economic, military or other kinds  
[http://www.aics.gov.it/wp-content/uploads/2016/04/Emergenza\\_GHDLineeGuida\\_finale.pdf](http://www.aics.gov.it/wp-content/uploads/2016/04/Emergenza_GHDLineeGuida_finale.pdf)).
- b) **The European Union** has laid down precise definitions of humanitarian aid and of the necessary quality criteria in many documents approved by the various Member States and other Community institutions.  
"The EU's humanitarian assistance is based on the principles of humanity, neutrality, impartiality and independence. EU humanitarian aid is distributed without regard to any political agendas, and seeks to help those in the greatest need, irrespective of their nationality, religion, gender, ethnic origin or political affiliation. (Dg ECHO, from A to Z, [http://ec.europa.eu/echo/files/media/publications/2012/AtoZ\\_en.pdf](http://ec.europa.eu/echo/files/media/publications/2012/AtoZ_en.pdf)).  
"Whereas it is necessary to preserve, respect and encourage the independence and impartiality of NGOs and other humanitarian institutions in the implementation of humanitarian aid" ... (EC Regulation No. 1257/96 concerning humanitarian aid, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1996:163:0001:0006:EN:PDF>).  
"The European Consensus on Humanitarian Aid underlines the Union's strong commitment to adopt an approach based on needs and to support and promote the fundamental humanitarian

principles of humanity, neutrality, impartiality and independence (EU Regulation 375/2014 of the European Parliament and Council

<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014R0375&from=EN>).

"The 'humanitarian space' that is needed to ensure access for vulnerable populations and the safety and security of humanitarian workers must be preserved as an essential precondition for the delivery of humanitarian aid, and for the European Union (EU) and its partners in the humanitarian field to be able to get assistance including protection to crisis-hit people, based on respect for the principles of neutrality, impartiality, humanity and independence of humanitarian action, enshrined in International Law, in particular International Humanitarian Law" (European Consensus on Humanitarian Aid – Statement by the Council, Member States, the European Parliament and the EC, (2008/C 25/01)

[http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:42008X0130\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:42008X0130(01)&from=EN)).

## 5. No closure. The doors must remain open.

- **The NGOs that have not signed are still committed to carrying out operations at sea under the coordination of the Coastguard Command**, which has been assigned this task, and in a way that fully complies with national and international standards. They will also continue to comply with all the provisions of the code that do not contradict the points highlighted. This is a demonstration that there is agreement with the effort of coordination and systematization that the Ministry of the Interior is making, only bringing out some humanitarian imperatives which, however, do nothing to contradict this effort.
- **The Ministry of the Interior has failed to consider that the NGO world is complex** and based on principles and codes that correspond to the specific nature and humanitarian mandate which cannot be questioned on penalty of losing identity. If even international organizations such as UNICEF, according to its deputy executive director Justin Forsyth, have seen in the Code "*changes that might inadvertently hinder relief and cause the loss of human lives*", a greater and more in-depth dialogue from the Minister with the NGOs would certainly favour the search for a Code that is truly shared, respectful of humanitarian principles, and therefore felt by all as their own and not as some external imposition to be obeyed.
- **The NGOs' willingness and availability for full cooperation**, within the limits of the long-standing tried and tested codes based on humanitarian principles, is also an invitation to leave the doors open in both directions, and the Minister should take this into account. **There have been several requests to set up a round table, until now unanswered.**
- **The divisions in the NGO world and between NGOs and institutions at a difficult moment such as this help no one, especially given the issues affecting the life and death of people and therefore the fundamental values of our common life, which we cannot relinquish and cannot delegate to others, turning our cheeks.** The signals that are arriving are far from reassuring since they could aggravate these divisions instead of remedying them for the overall benefit of our country. The authority of the State is not doubted for one minute; the proof of this is the continuous dialogue and the collaboration with political and administrative institutions that has always characterized our actions. We believe that, even in this matter, dialogue can help overcome the divisions.