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**La strage dei bambini
davanti alle Nazioni Unite**

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Fogli di lavoro
per il Diritto Internazionale



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Con la decisione del 4 novembre 2020 il Comitato delle Nazioni Unite per i diritti civili umani ha adottato un parere secondo il quale l'Italia ha violato i diritti di oltre 400 migranti imbarcati (molti dei quali minori) su un barcone partito dal porto libico di Zuwarah nella notte tra il 10 e l'11 ottobre 2013¹.

Il Comitato, adito da tre cittadini siriani e un palestinese (difesi dall'avvocato italiano Andrea Saccucci) sopravvissuti alla strage, ha riconosciuto che l'Italia non ha prestato tempestivamente soccorso ai naufraghi che lo avevano ripetutamente richiesto².

L'Italia, in verità, non era intervenuta subito perché il barcone si trovava in zona SAR maltese, inviando poi una nave quando si era appurata l'inerzia dei maltesi.

Per il Comitato, l'Italia avrebbe dovuto invece attivarsi tempestivamente, anche se l'imbarcazione non era nella SAR italiana, poiché gli obblighi scaturenti dalla normativa a protezione dei diritti umani devono essere considerati prevalenti su ogni altra considerazione.

¹ Il Comitato era così composto: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Duncan Laki, Muhumuza, David Moore, Photini Pazartzis, Hernán Quezada, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann, Gentian Zyberi.

² Vedi su L'Espresso del 5 giugno 2017 *La legge del mare: così la Marina ha lasciato affondare il barcone dei bambini*

Sul punto non sono però mancate divergenze tra i componenti del Comitato, molti dei quali hanno redatto opinioni dissidenti (Yuval Shany, Christof Heyns, Photini Pazartzis, Andreas Zimmermann, David Moore) o concorrenti (Gentian Zyberi, José Santos-Pais, Vasilka Sancin, H el ene Tigroudja)

La decisione del Comitato non  , come si sa, una sentenza, ma l'Italia   tenuta a rispondere entro 180 giorni alle osservazioni formulate nella comunicazione.

Ecco qui di seguito l'analisi del Comitato

8.1. The Committee has considered the present communication in the light of all the information made available to it by the parties, as provided under article 5 (1) of the Optional Protocol.

8.2. The Committee notes the claims by the authors that the State party violated their relatives' rights under article 6 (1) of the Covenant due to the State party's negligent acts and omissions in the rescue activities at sea, which endangered their relatives' lives and resulted in their death or disappearance. The Committee notes, however, the State party's claims that in the present case responsibility belonged to RCC Malta and that the Italian Navy vessel ITS *Libra* did intervene in the rescue operation, even before a formal request from Malta, that it became the focal point of the rescue operations, and that it saved many lives.

8.3. The Committee notes that the right to life includes an obligation for States parties to adopt any appropriate laws or other measures in order to protect life from all reasonably foreseeable threats. It also notes that such due diligence require taking reasonable, positive measures that do not impose disproportionate burdens on States parties in response to reasonably foreseeable threats to life.

8.4 In the present case, the authors maintain that the Italian authorities have failed to respond promptly to the initial distress call, and have greatly delayed the dispatch of ITS Libra towards the vessel in distress. They further claim that the naval ship was ordered to move further away from the vessel in distress as, had it been identified by Maltese patrol boats, the latter would have avoided taking charge of the rescue operation. The Committee also notes the authors' claim that had the Italian authorities directed in good time the ITS Libra and other coast guard boats to rescue the persons onboard the vessel, these boats would have reached the vessel before it sank. The Committee notes however that the State party claims to have informed promptly the Maltese authorities of the distress call and that it advised the callers from the vessel in distress to establish a direct contact with the Maltese RCC. Furthermore, it notes the State party's claim that 23 rescue operations were carried out simultaneously on the day of the shipwreck in question, and that ITS Libra was dispatched to the vessel in distress even before information about it was notified that it had capsized.

8.5 The Committee notes that the principal responsibility for the rescue operation lies with Malta, since the capsizing occurred in its search and rescue area, and since it undertook in writing responsibility for the search and rescue operation. The Committee however considers that the State party has not provided a clear explanation for what appears to be a failure to promptly respond to the distress call, prior to the assumption of responsibility for the search and rescue operation by the Maltese authorities. It also notes that the State party has not provided any information about measures taken by State party authorities to ascertain that the RCC Malta was informed of the exact location of the vessel in distress and that it was effectively responding to the incident, despite the information about the deteriorating situation and the need for Italian assistance. In addition, the State party failed to explain the delay in dispatching the ITS *Libra*, which was located only one hour away from the vessel in distress, towards it, even after being formally requested to do so by RCC Malta. Finally, the Committee notes that the State party has not clearly explained or refuted the authors' claim that intercepted phone calls indicate that the ITS *Libra* was ordered to sail away from the vessel in distress. In light of these facts, the Committee considers that Italy has failed to show that it has met its due diligence obligations under article 6 (1) of the Covenant.

8.6 The Committee notes the authors' claims that the authorities of the State party failed to undertake an official, independent and effective investigation into

the shipwreck in order to ascertain the facts and identify and punish those responsible for it, and that this failure constituted a violation of the victims' rights under article 6 read in conjunction with article 2 (3), as well as a violation of the authors' rights under article 7 read in conjunction with article 2 (3) of the Covenant. The Committee also notes the State party's explanation that the investigation into the shipwreck is still ongoing and that the investigation has been complex due to the high number of stakeholders involved and the difficult reconstruction of facts.

8.7 The Committee considers that the State party has not provided a clear explanation for the long duration of the ongoing domestic proceedings, other than a general reference to their complexity. Nor has the State party indicated what is the anticipated timeline for their completion. In these circumstances, the Committee considers that the State party has failed to show that it has met its duty to conduct a prompt investigation of the allegations relating to a violation of the rights to life, and that, as a result, it has violated its obligations under article 6 (1) read in conjunction with article 2 (3) of the Covenant.

8.8 Having found a violation of article 6 of the Covenant, read alone and in conjunction with article 2 (3), the Committee decides to not separately examine the claim under article 7 of the Covenant read in conjunction with article 2 (3).

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of article 6, read alone and in conjunction with article 2 (3).

10. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant's rights have been violated, bearing in mind the potential responsibility of other States for the same incident. Accordingly, the State party is obligated, inter alia, to proceed with an independent and effective investigation in a prompt manner and, if found necessary, to prosecute and try those who are responsible for the death and disappearance of the authors' relatives. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the

measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and disseminate them widely in the official languages of the State party³.

³ Vedi UN doc. CCPR/C/130/D/3042/2017