

# PERMANENT PEOPLE'S TRIBUNAL

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## SESSION

### ON THE VIOLATION OF

### THE RIGHTS OF MIGRANTS AND REFUGEES (2017-2018)

**Palermo, 18-20 December 2017**

## JUDGMENT

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## 1. HOW THE PROCEEDINGS WERE CARRIED OUT<sup>1</sup>

### 1.1 Origins and objectives of this Session

The historical, doctrinal and operative reference framework for this session of the Permanent People's Tribunal (PPT) dedicated to "Borders" takes us back to what was presented and decided on at the opening Session of the proceedings concerning the violation of the rights of migrants and refugees (Barcelona, 7-8 July 2017).

The well-structured Indictment presented by more than 100 non-governmental associations and organizations, including the request for the opening of a judgement session received by the PPT in Barcelona, efficiently captures the transformation of one of human beings' fundamental rights, the one to migrate, into a criminal offence which symbolically expresses the political, juridical and cultural phase which Europe is experiencing today: the overturning of hierarchies of value which, with incremental accelerations over the last few years, has witnessed the marginalization of the constitutive categories of constitutional and international law in the name of security policies that are dominated by and dependent on economic and financial interests, with the production of widespread scenarios, beyond those of armed wars.

We recall the final document of the Barcelona session:

- \* due to the requests to examine the responsibility for the undermining of rights beyond the formal categories of penal law, when facing an obvious emergence of a structural situation which is not an emergency, and which is increasingly tragic insofar as the large-scale violation of the right to life of migrant people is concerned;
- \* due to the details on the route to be followed through various hearings, each of which is dedicated to delving into and classifying different aspects of the complex phenomenon of migrations.

The Palermo Session represents the first appointment along this route and it is specifically dedicated to the Southern European "border", where what occurs, in the interaction between actors and political, economic, juridical and social events, represents a crucial hub for the evolution or regression of European civility and that of the EU's member States.

Due to its geo-political location, Italy is in the middle of this scenario, both due to the transformation of the Mediterranean from a bridge-place for exchanges and communications into one of the most dramatic cemeteries in history, and to the very recent evolution of the relationship between Italy and Libya (and other African countries), whose evaluation has constituted a fundamental moment of this Session, from the perspective of legality and the relevant implications for human rights and those of peoples.

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As envisaged by its Statute, the PPT conveyed the Session in Palermo on the basis of a request from a range of expressions arising from civil society, independently active in the field of migration. Starting from the associations of Palermo (which undertook functions of operative coordination, alongside the PPT secretariat) and other Sicilian groupings which are more involved at the southern "border", as many as 96 national organizations' have turned to the PPT.

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<sup>1</sup> Translation from Italian into English by Yasha Maccanico (researcher at StateWatch and PhD at University of Bristol)

The competent authorities of the EU and of the Italian government (the Prime minister and the Interior minister) were informed of the Indictment (Annex 1), in accordance with the modalities and time frames envisaged in the PPT's Statute, and invited to participate in the PPT's public hearings to exercise their right to defence in whatever way they may choose. None of the actors concerned exercised their right to defence. According to what the Tribunal's Statute provides, in such cases the complete documentation of the statements and official acts concerning the themes examined in the Session is deemed sufficient to adequately evaluate the events and responsibilities. Such documentation has been cross-referenced with the detailed interpretations provided by the expert reports made available to the Jury. In the specific case of this Session, the document that immediately precedes the Tribunal's hearings, signed by Minister Minniti, appears especially significant. Its detailed analysis in the final statement highlights its strict overall coherence, both factual and methodological, with all the preceding documents and with the statement by the United Nations High Commissioner for Human Rights which is often referred to in this Judgment.

Coordination of the inquiry's activities, documentation and choice of witnesses was ensured by the joint activity of Simona Fraudatario, PPT coordinator, and Pasqua De Candia, representative of CISS, for the local organising committee.

Public hearings were held on the days 18-19 December 2017, following the attached programme (Annexe 3), and in the afternoon of 20 December the sentence was read out in the part containing the reason for the decision, ruling and recommendations.

The Palermo Session was possible thanks to the donations by organizations that signed the application to the PPT (with a special contribution by Rete Radiè Resch and the collective Donne per i Diritti di Lecco), and the hospitality of the Diaconal Centre "La Noce", Istituto Valdese, the Plesso Didattico Bernardo Albanese, and especially thanks to the work of volunteers who offered their time and availability over several weeks.

## **1.2 The PPT's Jury**

The jury headed by Franco Ippolito was composed, in line with the Tribunal's Statute, by seven members whose professional profiles follow, in alphabetical order:

### *Carlos Martín Beristáin (Spain)*

Doctor in medicine with a PhD in Social Psychology; he has 27 years' experience with victims of violence and war in several countries, with displaced people and refugees, with survivors and relatives of the disappeared. He coordinated the report "Guatemala. Nunca Más" and was a consultant for the Truth Commissions in Peru, Paraguay and Ecuador. He worked on the case of the Western Sahara and was part of the Interdisciplinary Group of independent experts of the Interamerican Commission for Human Rights in the case of the 43 disappeared Mexican students. He is a member of the "Truth Commission" established in Colombia following the recent peace agreements, and of the Permanent Peoples' Tribunal.

### *Luciana Castellina (Italy)*

Journalist and writer, she has been a representative of the Italian Communist party and the Party of Unity for Communism, was an MP in the Italian Parliament for several legislatures and an MEP on different occasions. She had previously been the vice-president of the Commission on Latin and Central America of the European Parliament and is the honorary president of ARCI and a member of the Permanent Peoples' Tribunal.

*Donatella Di Cesare (Italy)*

Tenured Professor of Theory of Philosophy at La Sapienza University in Rome and of Hermeneutics of Philosophy at the Scuola Normale Superiore in Pisa. She is among the most active philosophical voices in the public debate. She has been active on issues of politics and existentialism, studying violence in its various forms, and human rights. Among her latest publications: *Tortura*, Bollati Berlinghieri, 2016; *Terrore e modernità*, Einaudi, 2017; *Stranieri residenti. Una filosofia della migrazione*, Bollati Berlinghieri, Turin, 2017.

*Franco Ippolito (Italy)*

President of the Permanent Peoples' Tribunal. Section President and previously Secretary-General of the Supreme Court of Cassation. He has been the Secretary-General of the Associazione Nazionale dei Magistrati, the President of Magistratura Democratica, President of the Associazione Italiana Giuristi Democratici, a member of the Consiglio Superiore della Magistratura, and Director-General of the judicial organisation of the Justice ministry. He has written essays and lectures in national and international courses in the field of jurisdictional guarantees and of judicial organisation. He has taken part in numerous international missions in Europe and Latin America (in Argentina, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Nicaragua, Mexico and Peru).

*Francesco Martone (Italy)*

His fields of work and interest concern migrants, globalisation, peace and disarmament, human rights and environmental justice. He is currently the spokesman of the network *In difesa di, per i diritti umani e chi li difende*. He was twice a Senator of the Republic, member of the Foreign Affairs Commission and secretary of the Human Rights Commission. From 1988 to 1995 he worked for Greenpeace International, of which he was the President for three years. He founded and coordinated the Campaign to reform the World Bank and now Re:common. From 2008 to 2016, he worked for the English NGO Forest Peoples Programme, and is a consultant for the Tebtebba Foundation. He is part of the national council of *Un Ponte per* and *Transform! Italy*, and he is a member of the Permanent Peoples' Tribunal.

*Luis Moita (Portugal)*

Is a Professor of International Relations at the Autonomous University of Lisbon, where he is the Director of the OBSERVARE research centre which publishes an annual report and of the bi-annual scientific publication *JANUS.NET, e-journal of International Relations*. He directed the Portuguese NGO CIDAC, Amílcar Cabral Information and Documentation Centre, for 15 years. He is a founder member of the Portuguese Council for Refugees. He has cooperated with the Basso Foundation since the 1980s and is a member of the Permanent Peoples' tribunal.

*Philippe Texier (France)*

An expert consultant of the French Court of Cassation, from 1997 to 2012 he was a member of the Committee for Social, Economic and Cultural Rights of the Office of the High Commissioner for Human Rights, which he chaired from 2008 to 2009. He was an independent expert of the Commission for Human Rights in Haiti from 1988 to 1990 and the Director of the United Nations missions in El Salvador, ONUSAL (1991-1992). He is the Vice-President of the Permanent Peoples' Tribunal.

## II. EVENTS, REPORTS AND TESTIMONIES ACQUIRED BY THE PPT

In the inquiry phase that followed the aforementioned opening session in Barcelona, which continued in systematic and more targeted fashion from the moment when the indictment concerning this Session was received, the PPT has intensively monitored and examined the very abundant written and visual documentation which was produced, both at a European-international level and at the Italian level, by institutional parties and actors, as well as by independent bodies and authors.

A selection which focuses more specifically on the themes of this Session has been made available before the public hearings to all the members of the Jury, and it is considered to have been acquired as an integral part of the documentation which is relevant to the Judgement, as it has been structured in chapters IV to VII and in the Ruling (Annex 2).

Elements that should be recalled, mainly for their specific relevance in terms of factual information and their analysis of responsibilities, include a report published by Amnesty International (*Libya's wretched web of collusion*, December 2017), the declarations by the United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein (November 2017) and the letter by the Council of Europe's Commissioner for Human Rights, Nils Muižnieks to Minister Minniti (September 2017).

For the purpose of providing more direct documentation regarding the request submitted in the Indictment examined by the Jury in the Tribunal's public hearings (Annex 1), the programme has been organized to include, after the general reference framework of the Barcelona Session and the reading of the specific charge sheet for this session by the representatives of ADIF and CLEDU, the following five parts:

- 1) the historical setting of the Mediterranean as a border and its management by institutions at the European and Italian levels;
- 2) financing for the management of migration flows by Europe and Italy;
- 3) the facts and direct testimonies, which have taken up more than half the time of the public hearing;
- 4) the technical juridical reports concerning current obstacles and the prospects for the rights of the migrant people;
- 5) the final prosecution's charge, presented by ADIF and CLEDU representatives.

All the rapporteurs and witnesses were available to answer the questions they were asked by the Tribunal's Jury and the prosecuting party.

### 2.1 The reference framework for this Session

The policies adopted in recent times by the countries of the European Union have transformed the Mediterranean, a bridge connecting coastal countries and a traditional meeting place for civilizations and cultures, into Europe's Southern frontier, a material and juridical border, destined to prevent the arrival of migrants on European soil (see the contributions by Albahari M. and Murad-Jovanovich F.). The Mediterranean has been turned into a cemetery in which over 30,000 people have died or disappeared over the last 15 years, whose bodies are often not sought after, and hence neither recovered nor identified or returned to their families. The United Nations recently confirmed the existence of mass graves in the South of Tunisia and Libya. According to the census carried out by the Comitato Verità e Giustizia per i Nuovi Desaparecidos, just over the last three years, from 2014

to date, considering both the people who have on land and those who drowned in the Mediterranean, over 13,300 victims have been recorded.

Externalization policies for the purpose of preventing immigration are promoted by the governments of Member States with the EU's economic and political support, and enacted through agreements with migrants' countries of origin and transit. In the case of Italy, this Tribunal has paid particular attention to what started with the Khartoum Process that was launched in 2014, the Migration Compacts proposed during 2016, and finally the bilateral understandings with countries like Egypt (2007), Nigeria (2011), Sudan (2016), Libya (2017) or Niger (2017). Such understandings - promoted without taking into account the documented deterioration of the political and military situation in transit countries, nor the definitive rulings of the European Court of Human Rights - have, over time, been integrated by agreements between police forces and operative protocols.

As emerged from the analyses submitted to this Tribunal, such policies escape, due to their very nature, from any form of democratic accountability and transparency. They are adopted using instruments to regulate and govern migration policies at the European and national levels of so-called "soft-law" which are not subject to the jurisdiction of the courts, nor of public debate. These agreements or memoranda of understanding which are often reached in an "informal" manner are not made public, nor are they subjected to voting or scrutiny by parliaments, and they are an expression of a veritable paradigm shift in the management of the *res-publica*, by resorting to para-judicial regimes, with modalities such as agendas, partnerships, declarations, exchanges of notes, memoranda, which are characterized by opacity, informality, secrecy and sometimes arbitrariness. In this sense, the EU-Turkey agreement is emblematic, and a model for other agreements like the Migration Compact proposed by the Italian government and adopted by the European Commission. As it is not an act by the European Council, the European Court of Justice has declared that it is not competent to hear possible complaints by prejudiced parties concerning the agreement's implementation, whose consequences for the living conditions of thousands of migrants and refugees have been widely reported and condemned. Moreover, externalization policies make use of discretionary interpretations of the duty to enact sea rescues, the securitization of border control policies, the criminalization of organizations enacting sea rescues and of people providing assistance and solidarity to migrants and refugees, and the instrumental use of cooperation funds to ensure the cooperation of migrants' countries of origin and transit.

Two cases must be mentioned explicitly, which are both extreme cases and representative of the scenarios recalled above, as must their implications. The first is the Memorandum of Understanding between Italy and Sudan signed in August 2016 within the framework of European cooperation on migration issues through the Khartoum Process and the Emergency Trust Fund. The fact that President Bashir was twice found guilty by the International Criminal Court for crimes against humanity make it obvious that he cannot be considered a true guarantor of fundamental rights: what happened to the Sudanese migrants expelled collectively from Europe and certainly exposed to the risk of inhuman and degrading treatment, is sadly notorious. The second one is the Memorandum of Understanding with the national reconciliation government of the State of Libya, signed by the Prime minister of the Italian government on 2 February 2017 - and which recalls the bilateral cooperation agreements and operative protocols reached by the centre-left governments in 2007 and, later, by the centre-right government in 2008 - which did not consider the instability of the situation in Libya, whose authorities are unable to guarantee a jurisdictional power for the human rights violations committed at the expense of migrants. Numerous reports prior to the signature of the agreement did not produce any effects, although they recorded the existence of detention and transit centres, effectively enormous open air prisons beyond any control or safeguards against every sort of abuses, also as a result of substantial connivance between the "forces for security and the maintenance of public order" and organization of people traffickers. The Italian government did not take into account the letters it received from a consistent number of organizations which asked it to review the plan

outlined in Malta for the purpose of ensuring respect for the fundamental human rights of migrants and refugees, and which already foresaw the consequences of the transfer of responsibilities in the management of migration flows.

Insofar as the duty to carry out rescues at sea is concerned, the decision to cancel operation Mare Nostrum and the retreat of the line for patrolling and rescues in defiance of Italian territorial waters through operation Triton, has led (as had already been predicted by internal Frontex reports, Amnesty International and UNHCR) to an increase in deaths at sea, alongside the efforts of numerous NGOs in rescue operations at sea, apart from the externalization of interception and return duties to the Libyan Coastguard. It should be recalled on this matter that various European Union member States refused to sign amendments to the UN Convention on the Law of the Sea which would have entailed greater rescue duties, beyond those already set in the Convention. Moreover, the recent reform of the Frontex Agency, apart from increasing funding for returns, does not envisage appeal mechanisms for possible victims, leaving the attribution of responsibilities between the Agency and member States unspecified. After all, it appears evident that the priority for the European Union is that of repatriation, rather than respecting people's rights and dignity. The most recent documents adopted by the Commission in March 2017 bear witness to this: *Communication on a more effective return policy in the European Union – A renewed action plan [COM(2017) 200 final, 2.3.2017]* e *Recommendation on making returns more effective when implementing the Directive 2008/115/EC of the European Parliament and of the Council [C(2017) 1600 final, 7.3.2017]*.

## **2.2 Funds destined to border control and the prevention of migration**

This Tribunal has also acquired data and information on the instrumental use of international cooperation funds by the EU and Italy, for the ultimate purpose of strengthening control of borders and of preventing migration flows towards Italy and, finally, towards the Union's territory. Such funds are allocated by drawing on resources which are meant for fighting poverty, without oversight by the European Parliament, and they are distributed through projects that are approved using simplified procedures which are often not publicly readable or accessible. Among these, the Africa Trust Fund created at the Malta summit in October 2015, financed with 3.3 billion euros, 35-40% of which will be allocated for the purpose of fighting irregular migration in Africa. The Trust Fund has financed a border control project which has led to a decrease in departures towards Libya, but, at the same time, it has entailed the opening of other routes in the desert zones controlled by armed groups, with serious consequences for the conditions of migrants who are subjected to vexations by the Nigerien armed forces, and an increase in the number of deaths during desert crossings. Among the financed projects, it is worth recalling the equipment of military and police forces, support for the rapid reaction force in the Sahel, the training of border guards who are former Janjaweed militias in Sudan and the Libyan border guards. These figures should be added to by the 20 million euros to provide resources to the Libyan coastguard and 46 million euros approved in July 2017 for a border and migration control programme.

As far as Italy is concerned, the Africa Fund (200 million euros) envisages extraordinary interventions to fight immigration using funds which are meant for cooperation. In some cases, as is true of projects in Tunisia, the provision of naval and land vehicles with the direct involvement of the interior ministry is envisaged. In Libya, there is an intention to finance a coordination centre for the Libyan coastguard in Tripoli, a project that must be added to the 14-million-euro funding by the ministry for foreign affairs and cooperation to modernize the part boats and provide training to the Libyan coastguard, which has resulted in an increase in *refoulements* (20,000 people in 2017). In Niger, 15 million euros have been destined to "voluntary returns" managed by IOM, whereas 50 million euros have been used for other border control activities through the creation of specialized units and a further 46 million euros have been allocated from the European Trust Fund and managed by the interior ministry to reinforce the capacity for integrated border management by Libya.

More recently, Italian cooperation announced a call for tenders by NGOs for interventions to “humanize” camps in Libya. It is an impossible goal to pursue considering the current situation and the web of interests and co-responsibilities that this Tribunal has condemned. The United Nations High Commissioner for Human Rights himself, has confirmed in one of his statements that interventions by the EU and its member States have not done “anything to reduce the levels of abuse endured by migrants. (...) rather, what emerges from our monitoring is that their conditions in Libya have swiftly deteriorated” (14 November 2017).

The Italian government has also announced the deployment of a force in Niger for a training and support mission for operations to control migration routes, asking for the Parliament’s ex-post approval without an in-depth discussion.

### **2.3 Testimonies**

During the public hearings, the Tribunal heard numerous testimonies including those by migrants, social workers, human rights defenders and journalists. The facts that they told us confirmed, provided precise details and documented what was contained in the material that was examined, whose references are annexed to this Sentence.

In general terms, the facts revealed may be traced back to the main classifications listed in the points that follow:

*1. The implications and consequences of the policies of the European Union and its member states on migrations and asylum.* On this point, the Tribunal heard Charles Heller, the author alongside Lorenzo Pezzani of the report *Death by rescue. The Lethal Effects of the EU’s Policies of Non-Assistance at Sea*, which clearly reveals the consequences and responsibilities of the higher echelons of the European Union’s executive institutions and of the Frontex agency, first for imposing that Italy suspend the Mare Nostrum rescue operation in 2015, with the consequences that have already been mentioned, and then for launching a campaign of defamation which also involved the judiciary against NGOs operating in the central Mediterranean, in association with the Italian government, which promoted further initiatives at a national level, like the “Code of Conduct”, for the purpose of discouraging their presence. Accused of collusion with traffickers, delegitimated by insinuating doubts as to their sources of funding, facing charges for saving human lives, these NGOs have seen their space of action progressively reduced. As we will see, the organisations which have continued operating were subjected to attacks by the Libyan coastguard.

Giacomo Zandonini reported on the consequences of EU policies in Africa and, in particular, on the exporting of the European model of penal repression of ‘illegal’ immigration in Niger. This witness was able to observe a worsening in the conditions of danger during journeys due to the attempt to find routes that were less exposed across the Sahara and the need to be concealed from view, hiding the migrants in closed spaces, in conditions of forced cohabitation, in poor hygienic and sanitary conditions. Zandonini himself spoke of a growing number of deaths in the Sahara, even though their numbers cannot be accurately definable due to a lack of information. He also spoke of having seen migrants dehydrate in the Sahara during their attempt to cross it.

*2. Consequences of the retreat of the Frontex and EUNAVFORMED naval units and the extension of the Libyan Coastguard’s interventions in international waters.* As was documented and complained about before this Tribunal, the many shipwrecks that continue to take place in the waters of the Libyan sea, understood as territorial sea and international waters, are primarily due to the withdrawal, as of 2015, of a majority of the naval assets of the Frontex mission, of the Mare Sicuro military naval units of the Italian navy, and of the retreat of the ships of the European mission EUNAVFORMED which,

when they are present, have the task of training the ‘Libyan’ Coastguard. Thus, provisions on respect for people’s fundamental rights and the duty to rescue by Frontex units involved in Search and Rescue (SAR) activities, contained in EU Regulation no. 656 of 2015, have had an increasingly limited scope of application, and ended up being subordinated in relation to the priority of arresting migrants fleeing towards Europe. Thus, there has been an intensification of interventions, through veritable interceptions of the migrants’ vessels at sea, by vessels belonging to the Libyan Coastguard.

### *3. Implications and consequences of the 2 February 2017 Memorandum signed by Italy and Libya with regards to migrants and refugees.*

3.1 The testimonies heard and examined have told us of many cases of deaths, deportation, people’s disappearance, arbitrary imprisonment, torture, rape, reduction into slavery and, in general terms, persecution, inflicted in a widespread and systematic manner on migrant men and women. According to the testimony by the journalist Nancy Porsia, with the Italy-Libya agreement, detention has become the lynchpin of the of the migrant trafficking business, replacing the main source of revenue which was previously determined by land and sea journeys. As the different testimonies heard by this Tribunal show, detention has increasingly become an instrument for extortion and torture is an instrument to blackmail relatives. Furthermore, the agreement has led to an increase in the number of detention centres in structures which are not listed and which, even more than before, do not guarantee any standards of human rights protection.

MEDU presented the results of its recent report on the human rights situation in Libya (which gathered over 2,600 testimonies) from which it clearly emerges how the decrease in arrivals has been accompanied by a tragic worsening of migrants’ physical and psychological conditions (around 700,000 people are currently blocked in Libya). 79% of the people interviewed has told of being held in inhuman conditions and bear the marks on their bodies and in their minds of the physical and psychological torture, of repeated blows, of mutilations, of sexual offences and violence they have undergone, like the terrible ones suffered by a woman from the Ivory Coast met in the reception centre (CARA) in Mineo. A migrant witness accompanied by MEDU told of his having attempted to escape from Libya at least six times, of having been taken back and detained repeatedly, passing from the hands of Libyan military personnel to that of traffickers. Having ended up in a centre where migrants suffer all sorts of abuses, he was later released following payment of a ransom by his relatives and, after being forced to drive an engine-powered dinghy, he was arrested and put on trial after his arrival in Italy.

Oxfam also confirmed the worsening of conditions for migrants in Libyan detention centres. The report it jointly produced with Borderline Sicilia and MEDU after the Italian-Libyan agreements, *L’inferno al di là del mare*, documented hundreds of cases of abuses, violence, torture and forced executions of migrants. A common feature of detention and kidnappings alike is the payment of a ransom, in which both traffickers and members of the Libyan police forces are involved. The Tribunal also heard the testimonies of two men who, as is true of the aforementioned witness, were forced to drive the boat carrying migrants. It is hard for the stories of the violence suffered by people forced to drive the vessels to emerge. Once they are in Italy, they are tried and detained for offences of facilitation without enjoying any sort of substantial guarantees, seldom even linguistic ones. A witness from Sierra Leone presented by Borderline Sicilia, also told of the fear he experienced in a Libyan detention centre; regularly beaten up and deprived of food, he stated that he has seen many people die with his own eyes.

The Baobab Experience association provided the Tribunal a series of written testimonies on the accounts by numerous migrants and reported that it has documented over 70,000 cases involving injuries. The Tribunal heard the story of a 21-year-old Nigerian woman detained with her daughters

in a Libyan centre. As a result of a lack of medical care, one of these was left to die in the detention centre and her body was made to disappear.

3.2. As mentioned above, with the agreements of 20 February 2017 for the purpose of blocking at sea and returning the largest possible number of migrants to Libya, a SAR zone of shifting size has been created which no longer corresponds to the needs for rescues and safeguarding lives at sea. A majority of rescue activities in international waters are coordinated from Tripoli and from Rome, that is, by the Italian Coastguard (IMRCC) which, in some cases, after calling and asking the closest humanitarian rescue boats to interrupt their rescue actions, contacts the Libyan Coastguard to intervene, pick up the migrants and take them back.

According to testimonies and the analyses which have been examined, the purpose of support, and hence of the externalization of rescue and push-back operations targeting migrants and refugees, appears to be that of circumventing the duties deriving from international conventions on human rights and on refugees, as well as those resulting from sentences by the Strasbourg European Court of Human Rights on *non-refoulement*. This Tribunal has been able to ascertain that on several occasions, without being in direct contact with the migrants at sea, naval units commanded by the Italian Coastguard and Navy have actively participated in reporting about vessels at sea through their coordination of operations or a presence in the vicinity.

On this theme, the Tribunal has heard some detailed charges concerning the behaviour of the Libyan Coastguard, collected during the testimonies by representatives of the German organisation Sea Watch and in the report, authored by Paolo Cuttitta of the Free University of Amsterdam, which describes what happened on the days 23 and 24 November 2017 to the Aquarius rescue boat of the French-Italian-German NGO SOS Méditerranée and to the Open Arms rescue boat of the NGO Proactiva Open Arms, both of which were invited by the MRCC (coordination centre for maritime rescues) in Rome to abstain from rescuing some vessels in peril in the international waters of the Channel of Sicily, leaving their passengers to await the arrival of the Libyan authorities.

These events confirm what the German NGO Sea watch told the Tribunal, whose representatives spoke of two aggressive interventions by the Libyan Coastguard on 21 October 2016 and on 6 November 2017. Already in the first case dating back to 2016, during the rescue intervention of a dinghy carrying 130 people on board, requested by the MRCC the Libyan Coastguard blocked the intervention by the German rescue boat, boarding it, beating up migrants and damaging the engine after they ascertained they were unable to remove it. The German rescue boat managed to save almost all the migrants who ended up in the sea after the Libyan Coastguard left the scene and despite the Gregoracci ship and the MRCC had asked for the operations to be interrupted. In the second case that occurred in November 2017, during a rescue operation it was conducting, the German ship was flanked by a Libyan Coastguard patrol boat which demanded to manage the operation, without complying with any of the rescue procedures and with deadly consequences for the migrants who ended up at sea, under the Libyan vessel. The witness also showed photographs of the operations and of the SAR helicopter which was trying to impede the movements by the Libyan patrol boat to save the passengers who had clung on to the vessel.

3.3. Several reports which this Tribunal has examined also highlighted that most of the people returned to the mainland by the Libyan Coastguard (including women who have already been raped and are pregnant, unaccompanied minors and victims of torture) are taken back to the detention centres where they are subjected to abuses, again. The sea interceptions and transfers take place without any form of scrutiny or identification procedures by the Italian authorities and the Libyan Coastguard, once the migrants are disembarked on the Libyan coasts.

It should be recalled that the European Court of Human Rights (ECtHR) has expressed itself repeatedly on the *non-refoulement* obligation for member states. In fact, art. 3 of the ECHR establishes that nobody can be subjected to inhuman and degrading treatment and this obligation also concerns the possibility that such treatment may occur in third countries towards which people are returned. It is also worth recalling that ECtHR jurisprudence directs member states to draw information concerning possible risks of inhuman or degrading treatment for those who may be returned by consulting reports by NGOs or other official sources. The Italian authorities should have - in accordance with the 2012 ECtHR sentence on *Hirsi and other vs Italy* - ascertained that the Libyan authorities respect duties for the protection of refugees before enacting direct or “indirect” *refoulements*.

#### *4. Expulsion and return measures in the hotspots and areas equipped for disembarking*

The Tribunal has examined documents and heard testimonies to evaluate respect for the right of access to protection procedures and procedural and substantial safeguards in the field of expulsion and refusal of entry. What emerged is that, for many migrants who landed and were held for weeks in the hotspots, there aren't any effective guarantees, neither for their defence, nor for asylum procedures. In many cases, the choice between admission to asylum procedures and the start of a refusal of entry or an expulsion procedure has been left to the discretion of the police forces, perhaps on the basis of their nationality of origin and of existing readmission agreements with countries of origin, or even on the availability of places in detention centres (formerly CIEs, now called CPR, centres for repatriation). The praxis for accompaniments to the border, for migrants who have just landed or who do not possess the required legal information and that on measures that guarantee their rights, are often arranged without them being previously informed. The recipients of refusal of entry measure “with an invitation to leave the national territory within seven days”, are not given the possibility of legally leaving the territory, in the absence of documents and economic means.

Lawyer Alessandra Ballerini, connected via Skype from Lampedusa, confirmed the growing difficulty of providing legal assistance to the migrants held in the hotspots, and she spoke of the expulsion of 48 Sudanese nationals, eight of whom were able to contact a lawyer, obtaining recognition of their refugee status. According to the witness, it is reasonable to deem that the conditions of the other 40 who were repatriated were the same as for them. ARCI Porco Rosso presented the witness Mohamed, an Egyptian, who had left the army and escaped to Italy where he was the recipient of a deferred refusal of entry measure which was identical to 150 others. He also told the story of a forced vessel-driver who was tried and sentenced by the Italian judicial authorities and who, as is true of the other cases mentioned above, was not placed in a condition to tell the story of the violence he had undergone.

Other aspects concerning the collective returns to Egypt, Sudan and other third countries carried out on the basis of bilateral agreements signed by Italy were submitted through documental material annexed to the Indictment.

## **2.4 Current obstacles for the rights of migrants**

In close continuity with the factual analyses of the violations of migrants' fundamental rights by institutional actors from the EU and the Italian government (highlighted in particular by the contributions of A. Ciervo, A. Algostino, I. Gjergji, L. Jona, S. Prestianni), the last part of the public hearing was characterised by three structured reports (L. Masera, L. Trucco, G. Azzariti). With approaches that were complementary, they delved into possible modalities for translating the evident and obvious seriousness of the violations of rights which would be coherent with their acknowledgement and return by right to migrants (both individuals and the migrant people), in the presence of doctrinal and juridical approaches which are strongly oriented towards ruling out, *a priori*

and for political and economic reasons, the very notion of a people without a State, regardless of its being extremely real and defined as a victim by the concrete nature of an entire spectrum of violations of their human rights which they systematically endure. The formal categories of citizenship, which originally arose as an instrument of equality and equal dignity for everyone, are now an obstacle to the application of instruments acknowledging an equal human status to migrants. In turn, the cross-sectional, systematic and also fragmentary nature of practices of rights violation in the varied chain of responsibility requires a very innovative approach (which should also spread to the communication field, an issue raised by S. Termini) if there is a wish to maintain the Law's role as a guarantor and promoter of a social project based on inclusion rather than expulsion, within the logic expressed by the universal declarations and the Constitutions on which our democracies were founded.

### III. MOTIVATION OF THE PPT DECISION

From the facts examined and the testimonies heard, what emerges is the progressive denial of the rights and dignity of people which takes place throughout the migration route, from conditions in the place of origin, to the journey, to their stay in camps before they fall into the hands of traffickers, and then during the sea crossing. Those who are turned back enter the hell of legal or informal detention camps. Those who finally reach Italian territory end up in a hotspot, where their possibility of requesting recognition of refugee status is left to chance or fate.

What has been explained above clearly shows how responsibility is fragmented. This fragmentation is often used in order to profit intentionally from it. This makes it difficult to accurately point out who is responsible and must answer for what happens. Public opinion is disoriented by this. The series of events, the sequence, is so long, complicated, concealed, that the links between them are almost always lost. This does not allow the identification of those who are most responsible, leading, on the contrary, the buck to stop at the level of the most manifest and obvious persecutors, for example the Libyan guards, the “traffickers” or “drivers of vessels”, figures acting in that grey area that migrants are often unintentionally a part of. The testimonies on people “forced to captain vessels” were especially significant. Therefore, citizens of European countries feel entirely relieved from any responsibility. Through a perverse mechanism whose use is becoming frequent, the roles of victim and persecutor are inverted. Migrants are presented as the first culprits, to whom the original guilt is attributed, simply because they are on the move, thus disturbing the order of states. In practice, migration is viewed as deviance. If need be, the culprits are their Libyan, Egyptian, Tunisian or other persecutors. Yet, this guilt is stopped at the African borders or in international waters. As if to reiterate that they are the only guilty parties. Beyond those borders, it appears as if nobody is guilty. Even less so, the governments of European and EU countries. Yet, leaving people to die at sea, in internment camps, allowing any sort of violence to be inflicted on people, amounts to guilt.

The role played by the media in such a context is decisive. Although many have contributed to inform accurately, to reveal violence and abuses, nonetheless, in the political-media discourse migrants are portrayed as “illegal” (clandestine), dangerous, invaders and potential terrorists. Often emptied of their meaning, words have been bent to designate the opponent. “Hospitality” only appears to have maintained its meaning in terms of private morality or religious faith. Stripped of its political value, it has been turned into a symptom of a naïve “do gooder” attitude, whereas the “policy of reception” has been twisted to designate the opposite, that is, a policy of exclusion and refusal of entry, the police-led management of migration flows, and border controls. While the Other is portrayed as a contagion, infection and contamination, fear is the bond holding the community together and hospitality becomes impossible. The time has come to change direction and to reaffirm the right to emigrate, *ius migrandi*, and the right to hospitality as fundamental human rights.

#### 3.1 For the right to migrate, for a right to hospitality

The European Union and its member States provide continuous justifications when they are accused of hypocrisy and incoherence as the West when, on the one hand, they proclaim the universality, the indivisibility and the interdependence of fundamental rights while, on the other, they adopt policies which ignore or trample on such rights.

For the global South (and we should also get used to observing ourselves through the eyes of migrants who set off on a journey towards Europe) it is intolerable that European political and economic power forgets that it brutally used the great construct of the rights of peoples (Francisco de Vitoria, Alberico

Gentili) – in which a place of absolute prominence was granted to the *ius migrandi*, *ius commercii* and *ius communicationis* of Europeans - to legitimate the Conquest of the Americas and the Indians' genocide. Today, the principles which were affirmed at the time are overturned and, against migrants from Latin America, from Africa and Asia, the thoughts of Bartolomé de las Casas are rediscovered, whose "Treasures of Peru" - in opposition to de Vitoria to counter the legitimacy of the Conquest and genocide – wrote that "every people or nation or the king representing it may, by natural right, forbid foreigners from any nation access to its territory if it deems them a threat to the fatherland".

Beyond the strictly juridical problem over the existence or otherwise of symmetry between the right to emigrate and the right to immigrate, one cannot overlook the hypocrisy of affirming the right to leave one's country of origin at the same time as denying that of being received in the destination country, which ends up condemning migrants to a paradoxical destiny of a permanent odyssey around the world's waterways. Nor, on an ethical and political plane, can we forget that those to expatriate, move and reside, after being recognized as natural rights for centuries, were proclaimed as fundamental human rights in constitutions and in international treaties in the mid-20th century.

If "every person is free to leave any country, including their own" (art. 12.2 of the International Covenant on Civil Rights), if the right to employment "implies every person's right to have the opportunity to earn themselves a living" (art. 6.1 of the International Covenant on Social and Economic Rights), how can the closure of borders be deemed justified, as it resoundingly contradicts the inalienable right to leave one's country as a free choice or, even more so, due to a need to survive in order to provide oneself possibilities for one's own life?

There is no policy of closure by Europe, whose opulence (like that of all the developed West) was built through a predatory economic system targeting resources in the global South, which could be deemed legitimate, nor politically and ethically justifiable, until the European Union commits to create a different global economic model which may enable the development of the countries from which, at present, migrants flee, consciously accepting the risk of drowning in the Mediterranean rather than the certainty of starvation in their own land.

The need, which is often forced, to migrate must be recognized as an undeniable right which must correspond to an adequate hospitality. Security-minded cynicism and the chauvinism of wellbeing, like uncompromising stands on sovereignty, nourish populist xenophobia and end up undermining democracy from below. A walled and immobile citizenship closed within borders is no longer possible. It is time to open up, not just to an ethics of proximity, but also to a politics of coexistence.

Claiming freedom of movement in an abstract form does not mean reducing migration to the flat routine of mobility, but it also entirely disregards the decisive issue of hospitality. Then, it would suffice to remove the barriers so that everyone may be able to move in a planet understood as an easy-going place of exchange, an immense market of choices and opportunities to which everyone has access. Those who have suffered the mistreatments of war, those who have withstood hunger, or poverty, do not ask to move freely anywhere they choose; rather, they hope, at the end of their journey, to reach a place where the world may be shared again. They do not seek to join the community of citizens of the world, but they do expect to be able to coexist with others. Another way of understanding community is possible.

Migrating is a political and existential act. *Ius migrandi* is the human right of the new millennium that, with support from militant associations, international movements and a public opinion that is increasingly informed and vigilant, will require a struggle equivalent to that against slavery. But there is no right to migrate without hospitality, understood not in the reductive sense of a simple right to visit, but as a right of residence.

### 3.2 Migrant crisis or crisis of Europe?

Migration management appears paradigmatic of the more general tendency that is underway towards a substantial modification of the model of democracy that is in force in the West, based on the division of powers and parliamentary control of the executive branches. This is because it has been primarily in this field that there has been a consolidation of the practice of decisions made by a wide range of bodies which are not accountable to anyone in spite of their work having considerable importance, because it concerns indispensable human rights, international treaties and military interventions that can give rise to armed conflicts on a large scale.

The deterioration of the democratic system guaranteed by the post Second World War constitutions is a process that has been underway for several decades, since the start in 1973 of the first long post-war crisis which brought the convertibility of the dollar into gold to an end, and to the modification of the equilibria set through the Bretton Woods agreements. It was precisely the emergent difficulties of the system, and the changes induced by an increasingly emphatic deregulated globalization that followed, which led to the explicit assertion of the need for quicker and more efficient decision-making, removed from the slowness which characterizes parliamentary democracies (see the Report of the Trilateral Commission, founded in Tokyo in the same year). This led to the growing transfer of decisions, including ones of great relevance, to executive bodies, to experts who are formally “neutral”, divested from politics, that is, from debate and the democratic parliamentary control which should oversee every choice made by governments. Slowly, a growing number of them was replaced by what a now widespread term calls “governance”, which is the term that designates the management of banks or private businesses, very different from the term government, which bases the legitimacy of its acts on the popular sovereignty of which it is an expression.

The conflict between universal human rights and the division of the world into nation States marks our epoch. The principle of the State’s sovereignty still lays down the law, making the nation the norm and migration deviance and irregularity. Migrants’ rights, starting from their right to move, clash with the state sovereignty exercised over the nation and based on territorial dominion. Thus, migrants are portrayed as intruders, outlaws, illegals; by migrating they challenge sovereignty, break the very questionable bond between nation as soil and the monopoly of state power. To reaffirm its own sovereignty, the State stops them at the border and, in order to do so, it is ready to violate human rights. As the prime location for confrontation and clashes, the border does not just become the rock against which many lives end up sinking, but also the obstacle against any right to migrate.

This contradiction is all the more jarring in the case of the democracies that historically arose proclaiming the rights of man and citizens. Migrations throw up a constitutional dilemma that deeply damages liberal democracies: the one between state sovereignty and adherence to human rights. Today, democracy is struggling in the midst of this double bind. It is not difficult to realise why, in this context, hospitality has been denatured so as to become, rather, hostility. The human rights of foreigners are suspended by the administrative accounting role played by “governance” while only the rights of citizens, worthy as they are, receive strong support. It is not by chance that in the public debate the questions surrounding the so-called “migration crisis” revolve around the ways to govern and regulate “flows”.

Further confirmation of the exclusive goal of blocking migrants is provided by the lack of provision or prearrangement of legal and safe channels of entry, in spite of awareness, as noted by all the international agencies, that migrations constitute structural phenomena that cannot be governed using material or juridical walls.

If the creeping disruption of our model of democracy is dangerous in general terms, it is all the more so if it is applied to the problem of migrations which are an irreversible phenomenon in a world where

capitals, merchandise and information circulate in an increasingly quick and free manner which makes it inconceivable that only human beings cannot do so. This process is destined to deeply transform our increasingly multi-ethnic societies that will therefore be obliged to review the traditional concept of citizenship itself.

### **3.3 Penal crimes and “system crimes”**

From the facts which emerged in the investigation by the Tribunal, different levels of responsibility may be outlined: firstly, that of the European union and/or the Italian State, and then that of specific representatives of the institutions who have signed agreements with Libyan factions which have committed and continue to commit heinous crimes against migrants (in detention camps and in the phases of transportation by sea). These responsibilities should be distinguished depending on whether they concern complicity for the torture enacted in Libya and refoulement towards Libya, or the thousands of deaths and disappearances of migrants and refugees over the last few years in the Mediterranean.

In the first case responsibilities are easier to assign to acts undertaken by the state and individuals of conscious cooperation in the crimes committed in Libya (represented at the very least by the provision of economic and material resources). On the grounds for responsibility by the Italian State of complicity the Amnesty international report of December 2017 recently intervened, providing the reasons for which it can be stated that, considering the principles of international customary law, a responsibility of the State exists regarding involvement in the crimes committed by the Libyan military forces to which Italy lends financial and instrumental assistance.

Nor are there any technically insurmountable obstacles (in terms of causality and awareness and, obviously, apart from the identification of precise facts constitutive of penal offences, or at the internal level amounting to ministerial offences, as envisaged in art. 96 of the Constitution) to outlining a penal responsibility in the involvement of the top institutional echelons which have enacted policies from which serious violations of the right to life and the wellbeing of migrants have arisen: the post-war period was marked precisely by the recognition that the murders and acts of torture committed in the context of armed conflicts must be answered for not only by States, but also by the people who are responsible, even at the highest institutional levels.

It is much more complex and technically harder to frame the crime of “leaving [people] to die at sea” within existing penal law, in which the unlawful conduct of people at the top institutional levels does not consist of positive behaviour, but of behaviour of omission in the presence of a precise juridical duty, by having failed to take action in an adequate manner when faced by tragic consequences which were entirely predictable and avoidable.

These are complex issues and problems which, in due time, will be faced by those competent for initiating penal actions at a national and international level.

Insofar as our present competence is concerned, in the absence of a univocal definition of peoples, we note that the right of peoples (as identified in the Algiers Charter which is the normative basis for this Tribunal) and, through such rights, people themselves, are essentially identified by violations and attacks deriving not just from actions and omissions for which well specified subjects may be accused, but also, more generally, from a loss of the sense of politics for the benefit of the market, the abnormal growth of inequalities, an exclusive concern for profits alongside the abandonment and compression of people’s human, civil and social rights; from wars and massacres suffered while international bodies prove inactive and incapable; from environmental destruction, whose effects are primarily suffered by the poorest peoples, caused by boundless and unchecked industrial development; from atrocities and tragedies, to return to the matters at hand, which are daily occurrences in the

Mediterranean at the expense of migrants forced to leave their countries due to war, hunger and environments that are impossible to live in.

These are evident violations of fundamental rights which cannot always be qualified within a typology from the penal law and are not always possible to attribute, as penal typologies require, to specified subjects. They are aggressions for which it is difficult to frame all the safeguards of the penal law: from the principle of personal responsibility to that of the specifically determined nature of facts which may entail punishment. These aggressions undoubtedly constitute crimes due to their devastating effects on an unspecified number of people and entire collectives which may be described as “system” crimes because they are the violent outcomes of mechanisms produced by the domination of the economic and political system.

The Permanent People’s Tribunal, which is a court of opinion, focuses its attention on these system crimes, and its main function is to mobilize public opinion against large-scale violations of the rights of peoples by raising awareness about their criminal nature.

In fact, the PPT is not obliged, as national and international courts are, to bound the scope of its investigation and judgement just in relation to penal law as it is established at a national and international level, but rather, it may include among its competencies systemic violations of the rights of peoples which do not directly or exclusively correspond to penal typologies forming part of positive law. Even for the laws and secondary norms that in Italy, as in several other European Union States, have been adopted against immigration, although their adoption cannot be configured as a penal offence, these can and must be identified as responsible for the massacre caused by the closures and refusals of entry at the borders for migrants.

The definition as a “system crime” mainly concerns the European Union’s responsibility for activating a global policy to fight illegal migration and impose omissive behaviour in border controls for the purpose of keeping migrants as far away as possible from European borders.

This policy has directly and indirectly caused countless deaths of migrants who tried to enter the EU through irregular routes in order to flee from repression, war or poverty, that is, to try to exercise their right to a dignified life. It is the same policy which condemned to torture those who were intercepted at sea or on land, and were then imprisoned and subjected to violence and all sorts of violations, which have sadly become “normal” in terms of their being degrading or inhuman.

Bringing charges against the European Union for the concept of “system crime” obviously does not dispense us from considering the responsibility of each of the European States, for not respecting the duty to rescue people, for direct complicity with conducts of torture, ill- treatment, serious risk of death, also through an increase in these crimes resulting from policies to close borders.

Hence, there is a need to acknowledge and assert a two-fold responsibility: of the European Union and of each State.

## **RULING**

More specifically, the PPT, meeting in its session in Palermo from 18 to 20 December 2017 – considering the multiple elements of testimonial evidence which emerged and the documents acquired, evaluating the Italian and European Union acts, acknowledging the statements by top level government officials to reply to or answer observations voiced in different for a, including by representatives of the United Nations – deems that:

- the European Union’s policies on immigration and asylum, starting from understandings and agreements reached between States of the European Union and third countries, constitute a denial of the fundamental rights of persons and of the migrant people, demeaning their dignity by defining them “clandestines” and “illegals” and by deeming “illegal” the activities to rescue and assist them at sea;
- the decision to make the Frontex and EUNAVFOR Med naval units retreat has contributed to expanding the scope for intervention by the Libyan coastguard in international waters, which blocks migrants heading for Europe, prejudicing their life and safety, taking them back to Libyan centres where they are subjected to practices of economic extortion, torture and inhuman and degrading treatment;
- the activities undertaken in Libyan territory and in Libyan and international waters by the Libyan police and military forces, as well as by numerous tribal militias and by the so-called “Libyan coastguard” following the Italian-Libyan memorandum of 2 February 2017, amount – in view of their objective consequences of death, deportation, disappearance of people, arbitrary imprisonment, torture, rape, reduction into slavery and, in general, persecution against the migrant people – to a crime against humanity;
- the conduct of Italy and its representatives, as envisaged and implemented by the aforementioned memorandum, amounts to complicity in the actions by Libyan forces against migrants, both at sea and in Libyan territory;
- following the agreements with the Libyan coastguard and in its activities to coordinate various agents’ conducts, episodes of aggression NGOs undertaking search and rescue activities in the Mediterranean have complained about, may also be attributed to the Italian government’s responsibility, at times in possible complicity with European agencies acting in the same context;
- the forced dismissal of NGO boats from the Mediterranean, also induced by the “Code of Conduct” imposed by the Italian government, has significantly weakened search and rescue activities for migrants at sea and has thus contributed to increasing the number of victims.

## **RECOMMENDATIONS**

### **THE TRIBUNAL:**

- Demands an urgent moratorium on the implementation of all those agreements which, in a similar way to the EU-Turkey agreement and the Khartoum Process, are characterized by a lack of public scrutiny and by co-responsibility in the violation of migrants' fundamental human rights.
- Invites the Italian Parliament and the European Parliament to urgently convene Commissions of inquiry or investigation on migration policies, agreements and their impact on human rights, as well as on the use and assignment of funds meant for international cooperation, for the purpose of identify and where possible prosecuting responsible parties.
- Deems the specific responsibility of communicators and the mass media in ensuring a correct information on migration issues, recognizing migrant people not as a threat, but as a holder of fundamental human rights.

The Tribunal shares and reiterates the proposals issued by the UN Special Rapporteur on forced disappearances along migration routes (2017) as well as the demands and recommendations made by various non-governmental organizations, including those contained in the latest Amnesty International report (December 2017) on the situation in Libya.

## **THE OPEN WOUND OF THE DEAD AND MISSING.**

### **LISTENING TO THE MIGRANT PEOPLE**

The tribunal has heard migrants who have been victims of kidnappings and torture, who have become “survivors” during the long journey towards countries and borders while seeking a better life. The witnesses have uttered words that needs to be listened to, they have revealed stories concealed in silence because they are hard to tell. There are no words to express horror. Sometimes, even when it is just whispered, it can only be expressed through a scream.

For many people, migration has become a journey in which control of the territory and of people appear to be part of a new form of war. The migrants who testified have been turned into merchandise, subjected to kidnapping and torture, enacted as mechanisms of extortion and punishment, and as forms of extreme contempt for life.

The Tribunal stresses the seriousness of the fact that emerged from the testimonies about cases of torture and enslavement, veritable crimes against humanity, whose unquestionable commission implies a continuous hostility maintained throughout the control stages that migrants undergo, apart from the mistreatment they suffer during the circuits of migration and detention, alternately or promiscuously passing from official mechanisms to illegal enterprises or fully criminal forms of management, with the involvement of authorities with which the European Union has direct relationships, or of centres which are, albeit just formally, supposed to be under international oversight.

The analyses and testimonies have highlighted the existence of a system that constitutes the effect of policies of closure and of refusal of entry adopted by the EU and its member states, a system implemented to externalize its borders into African territory, to keep the effects it entails at a distance from the gaze of European public opinion, to enable the emergence of barriers or spaces of ambiguity in which it is easier to misdirect blame.

The political agreements taken into account and their forerunners reflect measures of governance which impact on people’s lives’ without any form of effective parliamentary control, and they give rise to several dramatic consequences, including military assistance which strengthen criminal networks or detention centres where people are subjected to acts of torture, denials of freedom, forms of slave labour and sexual violence. Other mechanisms operating in this transfer of responsibilities are the fragmentation of the responsibility and of the actions arising from migration policies between countries, working groups, Intergovernmental agreements or even simple changes in the direction of rescues at sea.

The accumulation of measures enacted (especially the reinforcement of control networks and the incremental strictness of policies) for the purpose of worsening the conditions for migrants seeking to reach Europe as they leave landscapes of war and environmental or humanitarian emergencies, highlights a clear intention to construct this juridical and material architecture. The testimonies heard in this Session in Palermo confirm the correlation between these measures and other operational actions that have limited rescue at sea activities, particularly through the interruption of [operation] Mare Nostrum which entailed an increase in the number of deaths in the Mediterranean, a fact that was notoriously predicted by and predictable even for the European Union authorities which, despite their awareness of its consequences in terms of deaths and human rights violations, have maintained this policy outlook, making it even more restrictive.

Measures to criminalize sea rescue operations deployed against NGOs have also given rise to an increase in vulnerability in terms of the conditions and number of deaths at sea, as has been revealed with clarity by dramatic testimonies of suffering and helplessness.

The violations of fundamental rights and related tragedies do not just require that responsibilities be assigned, but also a search undertaken by international organizations to find the mass graves where the bodies of people who died along the Mediterranean coast have been buried. There is not yet a map of these sites, a national or international register containing the data and information on the identity of these people or on their countries that they came from. The conditions in which migration takes place and the lack of an independent investigation into these graves imply a violation of the right to truth and to mourn for thousands of families in the countries of origin.

It is urgent to create a network of information for relatives, to collect the testimonies of survivors on the possible identities of the people who died or disappeared at sea or in the deserts, a procedure which has now commenced in reception centres or following migrants' arrival. Likewise, it is necessary to make contact with relatives, supporting the activities of NGOs and of local associations working for the respect of human rights. Mechanisms like the WGFD (Working Group on forced disappearances) or the United Nations' Committee on Forced Disappearances must work alongside human rights organizations, the Special Rapporteur against torture, the ICRC [International Committee of the Red Cross] and the communities which are affected to be able to answer relatives' demands for their right to truth to be respected.

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*The Tribunal ends by stressing that this hearing and the entire session would not have been possible without the commitment and active contribution of the organizations, associations and collectives which, in Sicily, Italy and Europe, are actively practicing solidarity, hospitality and lending assistance to migrants and refugees, and of those acting to safeguard their fundamental rights. For this reason, they are attacked, criminalized and delegitimized. Alongside migrants, they are the life-blood of our work. Our gratefulness and support goes out to them.*

## **Annex 1**

### **Session on the violation of the rights of migrants and refugees (2017-2018)**

Palermo, 18-20 December 2017

#### **INDICTMENT**

This session calls upon the Peoples' Permanent Tribunal to ascertain, and develop the resulting deliberations, whether the policies adopted by the European Union in the field of immigration and asylum, of which recent practices, normative instruments and policies adopted by Member States are an expression, constitute, in terms of their concrete effects on the migrant people, a crime against humanity and/or whether they entail serious violations of the articles enshrined in the Universal Declaration of the Rights of Peoples signed in Algiers on 4 July 1976.

Recalling that the definition of crime against humanity encompasses, in accordance with art. 7 of the Rome Statute, the following actions:

a) Murder; b) Extermination; c) Enslavement; d) Forced deportation or transfer of the population; e) Imprisonment and other serious forms of denial of personal freedom in violation of fundamental norms of international law; f) Torture; g) Rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization and other forms of sexual violence of equal seriousness; h) Persecution against a group or a collective possessing their own identity, inspired by reasons of a political, racial, national, ethnic, cultural, religious or gender-based nature; i) Forced disappearances of people; j) Apartheid; k) Other inhuman acts of the same nature aimed at intentionally causing great suffering or serious prejudice to the physical integrity or to physical or mental health.

Further recalling that the Algiers Declaration enshrines the right to assistance (Section I) and political self-determination (Section II) of every people; as well as peoples' economic rights (Section III); their right to culture (Section IV); their rights to the environment and common resources (Section V); and the right of peoples which represent minorities (Section VI).<sup>\*</sup> The Algiers Declaration establishes that any instance of non-compliance with the provisions it contains "constitutes a transgression of duties towards the entire international community" (art. 22); that "any unbalanced treaties, agreements or contracts reached in contempt of peoples' fundamental rights cannot produce any effects" (art. 25); that "the most serious violations of peoples' fundamental rights, especially their right to existence, constitute international crimes entailing personal penal responsibility for their authors (art. 27) and that, finally, "re-establishing a peoples' fundamental rights, when they are seriously disregarded, is a duty which weighs on all members of the international community" (art. 30).

In fact, the Peoples' Permanent Tribunal is not obliged, unlike national and international penal courts, to limit the scope of its investigation and judgement only in relation to penal law as it is enshrined at the national and international level, but rather, it can also include within its remit systematic violations of peoples' rights which do not directly or exclusively correspond with penal typologies recognized by positive law.

Within this framework there is a need to consider, in particular, the Italian government's externalization policies - undertaken with the EU's political and economic support - enacted through agreements with migrants' countries of origin and transit, particularly with Libya, by evaluating their

substantive effects on the rights of the migrant people which is forced to cross the central Mediterranean route, understood as Europe's southern border.

Finally, it is worth recalling that linking the complexity of individuals with their different trajectories who are migrating towards Europe using the most dangerous routes, is a direct result of the European Union's policies of closure, which have created a unique, mass people of victims of the violence of borders comprising women, men and children who are bearers of stories and issues that may be very different.

### **I. The EU's border externalization policy**

The border externalization policy's consequences, as it was recently implemented within the framework of the Khartoum Process, which has witnessed fundamental stages in the summits held in Malta in 2015 and 2017, must be urgently investigated in relation to their effects in terms of human rights violations. Such possible violations must be evaluated with regard to what happens in migrants countries of transit and of origin, in the (national and international) waters of the central Mediterranean, and also within European territory when, in the name of agreements with home countries and countries of origin, people are excluded from access to rights (starting from the right to ask for protection), and are then refused entry or expelled *en masse* without any regard for their conditions and personal stories.

Collaboration with migrants' countries of origin and transit in the so-called fight against immigration that is defined as "illegal", appears to nourish the business networks that promote that immigration and from which they draw economic revenue, apart from the risk of legitimating national governments or authorities which oppress their populations.

It should also be gauged, with regards to agreements like those with Egypt and Sudan, or those which are being drawn up with Niger, Mali and prospectively also with Ethiopia and other sub-Saharan African countries, to what extent such understandings with migrants' countries of origin and transit imply delegating the task of indiscriminately arresting, rejecting and detaining migrants who are on their way to Europe to the police forces of these countries, where there are often no guarantees on the functioning of the rule of law, and even less so the possibility of obtaining a protection status.

On this terrain, there is a need to verify and assess the European Union's responsibility for failing to adopt effective measures to counter the nationalistic drifts in the countries of the Visegrad Group (Poland, Hungary, Czech Republic, Slovakia), thus fuelling the xenophobic leanings of a growing part of the European population.

All of this should always be borne in mind while examining the related responsibilities of Member States, including Italy, which, using the agreement promoted by the EU Member States with Turkey in March 2016, has triggered processes that it no longer seems capable of fully controlling and which may have very serious consequences, especially in Libyan territory and in the central Mediterranean.

The conclusions of the last European Council imply a precise assumption of responsibility for the policies that violate fundamental rights which are intensifying precisely along this central Mediterranean route and regarding relations with the various Libyan authorities.

Beyond appearances, for some time, Italy and the European Union have been talking univocally: the *Migration Compact*, presented as a "non-paper" by the Italian government in April 2016 using the March 2016 agreement with Turkey as a blueprint, is in perfect continuity with it, both for the dyscrasia between the negligible legal value of this type of documents and the extremely concrete consequences they produce in terms of policies and practices, with the 2015 European Agenda and

the *New Partnership Framework with third countries under the European Agenda on Migration*, produced by the EU Commission in June of the same year.

In these documents, migration policies that do not include safe and legal channels of entry, focus on blocking migrants who are generically classified as “economic migrants”, especially when they enter through the central Mediterranean route, ignoring the fact that they may be bearers of protection requests or vulnerable subjects.

With regards to all humanitarian workers who have not given their consent to these policies, a process of criminalization is underway which has nourished worrying campaigns in the press and movements in public opinion that appear not to lend any priority to people’s human rights.

Finally, even when migrants manage to cross the sea, the European Union’s policies need to be investigated and judged in relation to a management of migration which is unbalanced towards control and exclusion requirements, rather than safeguarding rights, for example, through the establishment of the so-called hotspots, places of selection and illegalization which seem fundamental hubs to enact the refusals of entry and returns envisaged in agreements. In the centres like those for administrative detention, the people who are held find it difficult to claim even the most basic rights of appeal, even when their direct expulsion may compromise their safety and their right to life.

For all these reasons, there is a need to adopt an evaluation of the facts that have been reported which takes formal juridical categories into account, which can be used at the national and international levels, but which also manages to address the substance of the violations suffered by the migrant people in transit, identifying their sources bearing responsibility and reaching guilty verdicts.

The understandings and agreements signed between European Union Member States and third countries must be assessed in terms of the effects they produce, beyond formal statements of respect for human rights and international conventions, especially insofar as the right to life, to physical and psychiatric integrity and to personal freedom of the people suffering its consequences are concerned.

## **II. Italy’s bilateral agreements and the memorandum with Libya**

In the landscape outlined above, the Italian government has asked and obtained, with the Malta Conference on 3 February 2017, substantial backing from the European Union and considerable economic support, in order to externalize border controls and transfer the powers of arrest and refusal of entry that have been exercised by the Italian authorities in the past in ways that do not comply with the international treaties and conventions.

Despite definitive sentences condemning Italy by the European Court of Human Rights, which has reaffirmed its jurisdiction even for cases of violations committed in international waters, and in spite of the documented worsening of the political and military situation in transit countries, the Italian government nonetheless pursues its process for the externalization of border.

It should suffice to consider the agreements with Egypt, Nigeria and Sudan to immediately grasp how problematic the understanding signed by Italy, often as mere Memoranda of Understanding (MoU) which have not even been approved by the national Parliament, with regards to the consequences for the lives and bodies of migrants subjected to them. It now appears that repatriations to Sudan and Nigeria may have been suspended, but the effects these returns have had on the migrants who underwent them should be investigated and evaluated.

Likewise, it is now indispensable to investigate and evaluate the concrete consequences of the Memorandum of Understanding with the Government of National Reconciliation of the State of Libya

for the human rights of the migrant people. It was signed by the Italian Prime Minister on the past 2 February, and it recalls agreements and operative protocols reached with previous Libyan authorities which, unlike the current ones, controlled the entire national territory.

The Italian government negotiated with the authorities in Tripoli and in other cities in the Tripolitania region in spite of them not representing, to date, a single state entity led by a stable government, as shown by the ongoing armed conflicts. In the chaotic Libyan situation, the authority of the mayors of Libyan cities with which the Italian government developed its negotiations appears to be closely dependent on the support of militias which control those same cities and which have managed, in past years and at present, the migrant trafficking business.

Hence, at present, such militias which are often transformed into veritable border guards, risk being fostered using Italian and European resources.

Therefore, it is indispensable to investigate what responsibilities may be assigned to the European Union and the Italian government, in relation to the very serious violations committed at the expense of migrants blocked at sea by the Libyan forces and then taken back to the detention centres in its territory. These are places where, as was recently reported even by the UN High Commissioner for Human Rights, there is no rule of law in operation, heinous violence is a daily occurrence and people often become victims of trade in humans, trafficking and slavery. Regarding these places, there is a need to investigate the relationship between the militias, police and criminals, the funds with which they are financed and their actual number in Libyan territory, setting off from an awareness of the fact that they are not yet fully recorded and that thousands of migrants among those returned to the mainland by the Libyan authorities then disappear into thin air.

On this issue, it would be worth taking a close look at what the centres defined generically in the Memorandum as “reception centres” are, as it proposes their “upgrading and financing” using Italian funds and those of the EU “within respect for relevant norms” (art. 2.2).

Within the same context, there is a need to also investigate the causes and consequences of placing the NGOs that were conducting search and rescue activities in the waters of the central Mediterranean at a distance, although they were acting in compliance with international laws and conventions, after European states decided to put an end to operation Mare Nostrum and had forced a retreat of a majority of the ships involved in Frontex’s operation Triton. These NGOs’ rescue boats, apart from being forced to sign a “code of conduct” which restricts their independence of action considerably, have even been subjected to aggressions and armed attacks during their rescue operations, also because they were left without any cover. It also appears necessary to reconstruct the chain of command that led the naval units of Frontex and EUNAVFORMED to retreat, moving away from the limits of Libyan territorial waters where they were previously deployed.

In this way, without witnesses, the Libyan patrol boats started accosting and blocking vessels laden with migrants, advancing without any disturbance into international waters, also thanks to the ill-defined division of SAR zones in the Mediterranean; this procedure is also under investigation by the International Criminal Court, and it seems necessary to delve deeper into the role that is being played by the Central Command of the Italian Coastguard (IMRCC).

In fact, these are events regarding which it is possible and necessary to investigate responsibilities for omission of assistance - while also considering possible direct consequences in the shipwrecks of the last few months - and for complicity in the crimes committed against migrants, by both European authorities and the state bodies that determined them, as well as by the military authorities which executed their instructions.

As was done in Libyan territory, in its territorial waters and then in international waters, there are zones which have been de facto removed from any jurisdiction, spaces in which people's lives and rights can be violated with impunity without any of the political decision-makers or the higher echelons of the military being liable to be assigned any responsibility whatsoever for what is happening.

The naval and state authorities that coordinate rescue activities in coordination with the Libyan Coastguard cannot ignore the fate that is suffered by migrants, a consistent number of whom are still "rescued" in international waters and returned to a territory from which they will not be able to escape before suffering further abuses and violence. For this reason, while it is true that it is the Libyan Coastguard or the Libyan militias which directly perpetrate all sorts of abuses on the people subjected to their authority, without any jurisdictional guarantee or any sort of judicial or administrative system to punish such abuses in Libya, one cannot fail to assign a precise responsibility for this to the European and Italian authorities which have reached, financed and executed those agreements.

This Tribunal has also been called upon to investigate the consequences of the bilateral agreement between Italy and the Egyptian government, whose full functionality with regards to the effectiveness of returns is currently treated as a blueprint or model to also perfect other bilateral agreements with migrants' countries of origin and transit. In fact, serious doubts remain on the legality of the collective repatriations towards Egypt undertaken with Egyptian police personnel arriving in Italy to take charge of the people undergoing forced removals in airports, people who are even denied the possibility of applying for international protection or to file appeals against their returns for other reasons.

Given these premises, the People's Permanent Tribunal, in the Palermo Session on 18,19 and 20 December 2017, is called upon to evaluate:

- Whether the European Union's policies on immigration and asylum, starting from understandings and agreements reached between states of the European Union and third countries, constitute a denial of the fundamental rights of human persons, demeaning their dignity by defining them "clandestines" and "illegals" and by deeming "illegal" the activities to rescue and assist them at sea.
- Whether making the Frontex and EUNAVFORMED naval units retreat has contributed to expanding the scope for intervention by the Libyan coastguard in international waters for the purpose of blocking migrants heading for Europe, subordinating the obligation to find and rescue them, and possibly giving rise to responsibility by omission.
- Whether the activities undertaken in Libyan territory and in Libyan and international waters by the Libyan police and military forces, as well as by numerous tribal militias and by the so-called "Libyan coastguard" following the Memorandum of 2 February 2017 struck with Italy, amount – in view of their objective consequences of death, deportation, disappearance of people, arbitrary imprisonment, [28] torture, rape, reduction into slavery and, in general, persecution against the migrant people – to a crime against humanity.
- Whether, once such a crime has been ascertained, the conduct of Italy amounts to complicity because the actions by Libyan forces against migrants, both at sea and in Libyan territory, are undertaken in enactment of the aforementioned memorandum, signed by the Italian prime minister with the Government of National Reconciliation of the Libyan State.

- Whether, following the agreements with the Libyan coastguard, the episodes of aggression NGOs undertaking search and rescue activities in the Mediterranean have complained about may also be indirectly attributed to the Italian government's responsibilities, in possible complicity with European agencies acting in the same context.
- Whether the forced dismissal of NGO boats from the Mediterranean, also induced by the "Code of Conduct" imposed by the Italian government, has significantly weakened search and rescue activities for migrants at sea and has thus contributed to increasing the number of victims.
- Whether collective repatriations to Egypt enacted on the basis of the bilateral agreement signed by Italy with that country violate the human rights to apply for asylum and to have access to an effective remedy, and whether they entail a high risk of contravening people's other fundamental rights, including those to life and not to be subjected to torture and arbitrary imprisonment.

*This Indictment was drafted by a working group coordinated by lawyer Fulvio Vassallo Paleologo, the president of ADIF (Associazione diritti e frontiere), in the name of ninety-six Italian associations and NGOs.*

## Annex 2

### DOCUMENTATION USED AS REFERENCE

#### 1) List of the sources of evidence attached to the indictment

##### **On the Financing by Italy and the European Union in relation to capacities, centres, means and personnel**

Letter from the President of the European Commission, Jean-Claude Juncker, to Renzi (20 April 2016)

Letter from Matteo Renzi accompanying the Migration Compact non-paper (15 April 2016)

Italy-Libya Memorandum of Understanding (2 February 2017)

Italy/European Union Migration Compact (2016)

Italian Ministry of Foreign affairs and International Cooperation, *The Italian Strategy in the Mediterranean. Stabilizing the crisis and Building a positive Agenda for the region* (2017)

##### **On the conditions of serious violation of human rights in Libyan detention centres, enslavement and disappearances at the expense of migrants intercepted at sea by the Libyan coastguard following the Memorandum signed with Italy**

Amnesty International, *Libya's dark web of collusion. Abuses against Europe-bound refugees and migrants* (December 2017)

ASGI, *Le nuove iniziative del governo italiano per contrastare l'arrivo dei rifugiati dalla Libia* (August 2017)

Letter from Nils Muižnieks, Commissioner for human rights, Council of Europe, to Minister Minniti (28 September 2017)

Letter from Medici per i Diritti Umani handed to Minniti in Pozzallo (25 November 2017)

Open letter from Médecins Sans Frontières: "I governi europei aumentano il business della sofferenza in Libia" (7 September 2017)

Letter from NGOs about agreements with Libya (22 February 2017)

Medici per i diritti umani (MEDU), *Esodi* (interactive web map)

Mannocchi F., "Italy accused of bringing Libyan militias to stop migrants reaching Europe", *Middle East Eye* (25 August 2017)

Michael M., "Backed by Italy, Libya enlist militias to stop migrants", *AP News* (29 April 2017).

OHCHR, *Detained and dehumanized, Report on human rights abuses against migrants in Libya* (December 2016)

Oxfam Italia, Borderline Sicilia, MEDU, *L'inferno al di là del mare. Le politiche dell'Unione europea, la realtà vissuta dai migranti in Africa*

UNHCR, *Libya: Activities at disembarkation, monthly update* (November 2017)

### **On the omission of assistance or the slowing down of rescues in the Mediterranean Sea**

Amnesty International, *Una tempesta perfetta. Il fallimento delle politiche europee nel Mediterraneo centrale* (April 2017)

Cassio F., *Glossario del Diritto del mare. Diritto e geopolitica degli Spazi Marittimi*, IV Edizione, Rivista Marittima (2016)

European Court of Human Rights, *Hirsi Jamaa et al vs. Italy*, Sentence of 23 February 2012

Heller C., Pezzani L., "Migrant mortality rate and SAR NGO vessels in central Mediterranean", in *Blaming the Rescuers*, Forensic Oceanography (2017)

Heller C., Pezzani L., *Death by rescue. The Lethal Effects of the EU's Policies of non-assistance at sea*, Forensic Oceanography/Forensic Architecture (2016)

Letter from Paolo Gentiloni to Mr. Nils Muižnieks, Commissioner for human rights, Council of Europe (11 October 2017)

### **On events involving aggression at sea against NGOs undertaking search and rescue operations**

De Lorenzo G., "Zuccaro difende accordi in Libia: Chi non controlla i migranti mette a rischio la civiltà dello Stato" (17 November 2017)

Frontex, *Biweekly Analytical Report* (December 2016)

Heller C., Pezzani L., *Blaming the Rescuers*, Forensic Oceanography (2017)

Jugent Rettet Juventa, *Press Kit* (September 2017)

Ministro dell'Interno, *Codice di condotta per le ONG impiegate nel salvataggio dei migranti in mare*

Senato della Repubblica Italiana, 4° Commissione Difesa, *Documento conclusivo sull'indagine conoscitiva sul contributo dei militari italiani al controllo dei flussi migratori nel Mediterraneo e sull'impatto delle organizzazioni non governative* (16 May 2017)

Tribunale di Trapani, *Caso Iuventa*, Decree for a preventive confiscation (2 August 2017)

### **On the mass expulsions from hotspots or the mass issuing of refusal of entry orders**

Amnesty International, *Hotspot Italia: come le politiche dell'Unione europea portano a violazioni dei diritti di rifugiati e migranti*, (November 2016)

National Ombudsman on the rights of detainees and people who are denied their personal freedom:

- Report to Parliament (2017)
- Report on the visits in CIEs [detention centres] and hotspots in Italy (2016-2017)
- Report on the monitoring of the operation for the forced return of Nigerian citizens organized by Italy (17-18 May 2017)
- Letter from the Ombudsman to the Head of the Interior Minister's Office (visit to the Ventimiglia reception camp), 22 December 2016
- Report on the monitoring of a charter flight for the return of Tunisian citizens enacted by the Italian Interior Ministry (May 2016)

Legal Clinic, University of Turin, *Memorandum of understanding between Italy and Sudan, a legal analysis* (2016)

Memorandum of understanding Sudan-Italy (2016)

Oxfam, *Rapporto Hotspot, Il diritto negato*, Oxfam briefing paper (May 2016)

## **2) List of the sources of evidence attached to the final prosecution's charge**

Audition of prefect Mario Morcone, head of the Department for Civil Liberties and Immigration of the Interior Ministry, session no. 32, 3 December 2017

Biondi P., *The Italian Job: Playing the complicity game in Libya*, University of London

European Council, *The Bratislava Roadmap - One Year On* (October 2017)

European Council, *Council conclusions on external aspects of migration* (May 2016)

Cuttitta P., *Respingimenti in Libia, soccorsi ritardati, ONG ostacolate. Riflessioni sui fatti di*

novembre, Vrije Universiteit Amsterdam

Cuttitta P., *Egitto. L'altra frontiera nordafricana dell'Europa*, Vrije Universiteit Amsterdam, 17 April 2017

Médecins Sans Frontières, *Libya, The arbitrary and Inhumane detention of migrants, refugees and asylum-seekers* (December 2017)

Ministry for Foreign Affairs and International Cooperation, *Decreto Africa* (1 February 2017)

Paolombaro Valerio, *Sviluppi in tema di applicazione extra-territoriale della CEDU nelle missioni militari all'estero: la sentenza Jaloud c. Paesi Bassi* (27 March 2015)

Senate of the Republic, *Libia: partner per il governo dei flussi migratori? Un aggiornamento* (31 July 2017)

Tinti P., Westcott T., *The Niger-Libya Corridor, Smugglers' Perspective* (November 2016)

UNHCR, *Libya. Detention centres and disembarkation points*, June 2017 (slide)

UNHCR, *Libya: disembarkation points*, September 2017 (slide)

United Nations Security Council, *Letter from the Panel of Experts on Lybia to the President of the Security Council established pursuant to Resolution 1973 (2011)*, June 2017

## **Annex 3**

### **Peoples' Permanent Tribunal**

#### **Session on the violation of the rights of migrants and refugees and their impunity (2017-2018)**

Palermo, 18-20 December 2017

Bernardo Albanese didactic complex

Piazza Napoleone Colajanni - Palermo

### **PROGRAMME**

#### **Monday 18 December 2017**

08:30-09:00: registration

#### **First part**

**09:00 - 14:00**

**09:00 - 09:30**

*Presentation of the applicant social initiatives*

Pasqua de Candia, CISS, Cooperazione Internazionale Sud Sud

*Institutional welcome*

Leoluca Orlando, Mayor of Palermo

**09:30 – 10:00**

*Introduction on the PPT and the Session on migrants and refugees*

Gianni Tognoni, PPT, Secretary-General

**10:00 – 11:00**

*The general Indictment presented in the opening Session in Barcelona*

Brid Brennan, Transnational Institute of Amsterdam

*The Indictment of the Palermo hearing*

Alessandra Sciarba, CLEDU, Clinica Legale per i Diritti Umani, University of Palermo

Daniele Papa, Asgi (Associazione per gli Studi Giuridici sull'Immigrazione)

**11:00 – 14:00**

*The Mediterranean yesterday and today: from the crossroads of meeting cultures and civilizations to border*

Maurizio Albahari, University of Notre Dame, USA

*The dead and desaparecidos of the Mediterranean*

Flore Murard-Yovanovitch, journalist and writer, Comitato verità e giustizia per i Nuovi Desaparecidos

*The violation of refugees' fundamental rights: the role of national states between European policies to counter immigration and the ECHR's guarantees*

Antonello Ciervo, Asgi

Alessandra Algostino, University of Torino

Chiara Favilli, University of Firenze

*Governance of borders and migrations, in Europe and in Italy: analysis of the "form" that contains inhumanity*

Iside Gjergji, Centro de Estudos Sociais, University of Coimbra

*African migrants and containment policies. The Libyan case*

Antonio Maria Morone, University of Pavia

*Funding for the management of migration flows: the Emergency Trust Fund for Africa*

Ludovica Jona, journalist

*Funding for the management of migration flows: the Italy-Africa Fund*

Sara Prestianni, Arci

**14:00- 15:00**

Lunch break

**Second part**

**15:00 – 19:00**

*Cases and testimonies*

Charles Heller, co-author of the report *Blaming the Rescuers*

Testimonies provided by Oxfam/Borderline Sicilia

Adriana Zega, Oxfam

Paola Ottaviano, Borderline Sicilia, with a direct witness account

Testimonies provided by MEDU: *Report on the condition of violation of human rights of migrants in Lybia (2014-2017)*

Alberto Barbieri, Mariarita Peca, with a direct witness account

**Tuesday, 19 December 2017**

**Parte terza**

**09:00 - 13:00**

***Cases and testimonies***

Testimonies provided by Sea-Watch

Johannes Bayer

Ingolf Werth

Testimony by Cornelia Toelgyes, freelance journalist

Testimony by Giacomo Zandonini, freelance journalist

Testimony provided by Fausto Melluso, Sportello sans-papiers Arci Porco Rosso with two direct witness accounts

Testimony provided by Baobab Experience

Andrea Costa, Giampiero Obiso

Testimony by Nancy Porsia, freelance journalist

Testimony by Alessandra Ballerini, lawyer

**13:00 – 14:00**

**Lunch break**

**Fourth part**

**14:00-18:30**

14:30 – 15:00

*The mass media's role*

Serena Termini, journalist, Redattore Sociale

15:00-16:30

*Current obstacles and prospects for the rights of migrants*

Luca Masera, University of Brescia

Lorenzo Trucco, Asgi, President

Gaetano Azzariti, University of Roma La Sapienza

16:30 – 17:30

*Final prosecution's charge*

Fulvio Vassallo Paleologo, ADIF, Associazione diritti e frontiere, President

Serena Romano, CLEDU

17:30 – 18:00

*Defence*

**Mercoledì, 20 dicembre 2017**

**9:30 – 16:00**

The Panel of the judges meets in its chamber

**16:30**

**Presentation of the decision by the Panel of the Judges of the Peoples' Permanent Tribunal**

**17:30**

**Press conference**

**19.30 – 23.00**

*Party for solidarity between peoples*

Venue: the Centro Salesiano Santa Chiara, in Piazzetta Santa Chiara 11, Palermo