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ICJ Intervention in the Interactive Dialogue with the Special Rapporteur on the Human Rights of Migrants

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Distinguished Special Rapporteur,

The ICJ would like to bring to your attention the fact that between 6 and 10 May 2009 the Italian authorities intercepted in international waters some 500 migrants, who were trying to reach Italy in small boats, and escorted them back to Libya.

We are concerned that these operations took place without taking due account of Italy's obligations in relation to potential asylum-seekers or others who may not be transferred to Libya for reasons of *non-refoulement*. As you know, Article 33 of the 1951 *Geneva Convention Relating to the Status of Refugees*, to which Italy is a party, prohibits the expulsion or return of a refugee or asylum-seeker “in any manner whatsoever” without reference to his or her entrance onto the territory of the State. Human rights law also imposes obligations of *non-refoulement* of persons who would be at risk of serious human rights violations. Article 3(1) of the Convention against torture, to which Italy and Libya are parties, contains an obligation against non-refoulement where there is a real risk of torture. These obligations apply from the moment when the State's authorities exercise effective control over the people concerned, including in international waters. The ICJ recalls that in 2007 the Human Rights Committee highlighted reports of torture and ill-treatment of migrants and asylum-seekers in Libya, despite Libya being party to the *OUA Convention governing the specific aspects of refugee problems in Africa*, though not to the 1951 *Geneva Convention Relating to the Status of Refugees*.

The ICJ shares the concerns of the Office of the UN High Commissioner for Refugees and of the Council of Europe's Commissioner for Human Rights as to the unlawfulness of these practices under international human rights law and international refugee law. The ICJ deplores the fact that following their statements on this matter these institutions have been subject to inappropriate verbal attacks by members of the Italian Government.

Mr. Rapporteur, what is your view of the situation of forced return by Italy of boats carrying migrants and potential asylum seekers, from international waters and your view of Italy's legal obligations in this regard?

In light of the announcements by both the Italian President of the Council of Ministers and the Minister of the Interior that these practices will continue and will constitute a major element of Italy's policy against irregular migration, how do you intend to engage on this question with the respective Italian and Libyan authorities?

I thank you.