



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3042/2017*, **, ***

<i>Communication submitted by:</i>	A.S., D.I., O.I. and G.D. (represented by counsel, Andrea Saccucci)
<i>Alleged victims:</i>	The authors and S.A. et al.
<i>State party:</i>	Italy
<i>Date of communication:</i>	19 May 2017 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 14 November 2017 (not issued in document form)
<i>Date of adoption of Views:</i>	4 November 2020
<i>Subject matter:</i>	Rescue operations at sea
<i>Procedural issues:</i>	Jurisdiction; exhaustion of domestic remedies
<i>Substantive issues:</i>	Right to life; inhuman and degrading treatment; right to an effective remedy
<i>Articles of the Covenant:</i>	2 (3), 6 and 7
<i>Articles of the Optional Protocol:</i>	1 and 5 (2) (b)

1.1 The authors of the communication are A.S., a national of the State of Palestine, born in 1958, and D.I., O.I. and G.D., nationals of the Syrian Arab Republic, born in 1983, 1988 and 1977, respectively. They are submitting the communication on their own behalf and on behalf of 13 of their relatives who, on 11 October 2013, were on board a vessel that shipwrecked in the Mediterranean Sea, 113 km south of the island of Lampedusa, Italy, and 218 km from Malta, which is estimated to have caused the death of more than 200 people. A.S. submits the communication on behalf of 11 members of his family: his brother, born in 1952; his son-in-law, born in 1977; his niece, born in 1983; his son, born in 1987; his daughter, born in 1987; his daughter-in-law, born in 1992; his son, born in 1997; his granddaughter,

* Adopted by the Committee at its 130th session (12 October–6 November 2020).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Furuya Shuichi, Christof Heyns, David H. Moore, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

*** A joint opinion by Committee members Yuval Shany, Christof Heyns and Photini Pazartzis (dissenting), and individual opinions by Committee members Andreas Zimmermann (dissenting), David H. Moore (dissenting), Gentian Zyberi (concurring), José Manuel Santos Pais (concurring), Vasilka Sancin (concurring) and Hélène Tigroudja (concurring) are annexed to the present Views.



born in 2004; his nephew, born in 2005; his nephew, born in 2007; and his grandson, born in 2008, all nationals of the Syrian Arab Republic. D.I. and O.I. submit the communication on behalf of their brother, a national of the Syrian Arab Republic, born in 1995. G.D. submits the communication on behalf of her brother, a national of the Syrian Arab Republic, born in 1992.

1.2 The authors allege that the State party authorities failed to take appropriate measures to render assistance to their relatives, who were in distress at sea, in violation of their relatives' rights under article 6 of the Covenant. The authors also claim that the State party authorities failed to carry out an effective investigation into the events of the shipwreck, in violation of their relatives' rights under article 6, read in conjunction with article 2 (3), of the Covenant. The authors further claim a violation of their rights under article 7 read in conjunction with article 2 (3) of the Covenant. The Optional Protocol entered into force for the State party on 15 December 1978. The authors are represented by counsel.

Facts as submitted by the authors

2.1 The authors, who are migrants seeking asylum, submitted complaints on behalf of their relatives who died after the vessel that they had been on board capsized.¹

2.2 The authors claim that there are no effective remedies available that would enable them to submit their claims to domestic authorities. They note that M.J. submitted a complaint to the Public Prosecutor at the Court of Agrigento, Italy, about the delayed responses of the Italian and Maltese authorities to his distress calls and the death or disappearance of two of his sons in the shipwreck. However, neither Italy nor Malta initiated any investigation into the circumstances of the shipwreck and the public prosecutor has discontinued the criminal proceedings. The authors further note that A.S. submitted a complaint to the Public Prosecutor of the Court of Syracuse, Italy, on 15 September 2014. He claimed that 11 relatives had disappeared in the immediate aftermath of the shipwreck that occurred on 11 October 2013. From the minutes of the complaint, it would seem that following a previous complaint by A.S. on 6 September 2014, criminal proceedings were opened against unknown persons. However, A.S. did not receive any information about the proceedings or their outcome. After the shipwreck, one of the authors, O.I., contacted the Red Cross of Malta, the First Secretary of the Italian Embassy in Abu Dhabi – where O.I. was residing at the time – the Italian Red Cross and the Office of the United Nations High Commissioner for Refugees, inquiring about the whereabouts of her brother, who had been on board the vessel. As she did not receive any information about her brother, she travelled to Italy and Malta to seek information. G.D. lives in Damascus; therefore, it would not be possible for her to file a complaint before the authorities of the State party. The authors also note that on 17 May 2017, the Government of Italy was called to answer questions in parliament on the facts that led to the shipwreck. However, the Government, represented by the Ministry of Defence, did not address the matter and only stated that the Maritime Rescue Coordination Centre in Rome (hereinafter, “the Italian rescue centre”) had acted in accordance with international regulations.

2.3 The authors argue that the failure to open an investigation into the facts that led to the shipwreck and the subsequent death or disappearance of persons on board the vessel, including the authors' relatives, means that they do not have at their disposal an effective remedy in the State party to challenge the authorities' shortcomings in their rescue activities. The authors further argue that they are not obliged to pursue civil remedies in order to exhaust domestic remedies as their aim is to ensure that those responsible for having put their relatives' lives at risk and for having caused their death or disappearance are prosecuted and punished. They claim that civil action would not satisfy that aim, as such action would only focus on compensatory damages and would not address the issue of the identification and punishment of those responsible. Even if civil remedies were to be exhausted, they would prove to be ineffective in the absence of any investigation ascertaining the facts surrounding the shipwreck and any related responsibility. The authors argue that without a proper investigation into the shipwreck and the failed rescue operation, they are de facto barred from seeking civil remedies. They also submit that there are special circumstances exempting them

¹ *A.S. et al. v. Malta* (CCPR/C/130/D/3042/2017), paras. 2.1–2.4.

from the obligation to exhaust domestic remedies, given the scale of the tragedy that gave rise to their complaint. They argue that the Optional Protocol should be applied with some flexibility and without excessive formalities, and they submit that they do not possess the cultural, linguistic and economic means to pursue legal remedies in the State party.

2.4 The authors note that the shipwreck occurred outside the national territories of both Italy and Malta. They submit, however, that the complaint falls under the jurisdiction of both Italy and Malta for several reasons. First, both States are parties to the International Convention on Maritime Search and Rescue, 1979. Although the Maltese authorities were responsible for the search and rescue maritime area in which the vessel was located, the Italian authorities were exercising de facto control over the Maltese search and rescue area, as Italy is often the only State willing and able to carry out rescue operations in the area. In addition, both States parties were in continuous contact with the vessel in distress and activated rescue procedures. Therefore, notwithstanding the severe shortcomings of the operations, both States parties exercised control in the search and rescue area over the persons in distress. The authors argue that, as a result, a causal link exists between the lack of prompt rescue activities, the shipwreck and the loss of lives. By acting negligently, or by failing to act, the States parties established a crucial link in the causal chain that was responsible for the shipwreck. The authors note that, in that respect, it has been argued that a distress call creates a relationship between the State that receives it and the person who sends it, and that owing to that relationship, the jurisdictional link between the person in danger and the State authorities emerges as a result of the distress call, meaning that the authorities consequently have an obligation to provide emergency services.²

Complaint

3.1 The authors note that the duty to render assistance to those in distress at sea is a well-established international rule under the United Nations Convention on the Law of the Sea and the International Convention for the Safety of Life at Sea, 1974.³ They claim that the State party violated their relatives' rights under article 6 (1) of the Covenant owing to its negligent acts and omissions in the rescue activities at sea, which endangered their relatives' lives and resulted in their death or disappearance. Specifically, they claim that the State party authorities breached their duty to take all appropriate steps in order to safeguard the lives of their relatives by failing to promptly pass the distress calls from the vessel to the competent search and rescue authorities, i.e. the Rescue Coordination Centre of Malta (hereinafter, "the Maltese rescue centre"). They also claim that the State party authorities failed to promptly inform the alleged victims that they should contact the Maltese authorities, thereby delaying the rescue operation, and also failed to send the coast guard vessels from Lampedusa or the Italian naval ship located closest to the vessel to rescue the persons on board, despite a request from the Maltese authorities. The authors submit that by failing to promptly inform the Maltese authorities, the Italian authorities delayed the rescue operation by two hours. They further submit that, had the Italian authorities directed the Italian naval ship – the ITS Libra – and coast guard boats to rescue the persons on board the vessel, those boats would have reached the vessel at 3 p.m. at the latest, i.e. two hours before the vessel sank. They argue that the ITS Libra could have covered the distance to the vessel in distress in one hour. They further argue that as the vessel was in imminent danger and in dire need of assistance, and being aware that no other authority was taking action, the Italian authorities should have assumed responsibility for initiating suitable action and should have conferred with

² The authors refer to Seline Trevisanut, "Is there a right to be rescued at sea? A constructive view", *Questions of International Law*, 2014, p. 9.

³ The authors refer to article 98 (1) of the Convention on the Law of the Sea which stipulates that:
Every State shall require the master of a ship flying its flag, insofar as he can do so without serious danger to the ship, the crew or the passengers:
(a) to render assistance to any person found at sea in danger of being lost;
(b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, insofar as such action may reasonably be expected of him;
(c) after a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call.

neighbouring rescue centres, with the objective of designating one centre to assume responsibility, in accordance with chapter 5.3.4.1 of the International Convention on Maritime Search and Rescue, 1979.

3.2 The authors further allege a violation of their relatives' rights under article 6 (1) read in conjunction with article 2 (3) of the Covenant, as they claim that the authorities of the State party failed to undertake an official, independent and effective investigation into the shipwreck in order to ascertain the facts and identify and punish those responsible for it.

3.3 The authors also claim that their rights under article 7 read in conjunction with article 2 (3) of the Covenant have been violated, as the failure to investigate the death or disappearance of their relatives has caused and continues to cause them anguish, amounting to inhuman and degrading treatment.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 15 June 2018, the State party submitted its observations on the admissibility and the merits of the communication. The State party submits that the communication should be found inadmissible for lack of jurisdiction, as the shipwreck took place outside the State party's territory. It also notes that domestic judicial proceedings are currently pending.

4.2 The State party notes that, in recent years, a large number of migrants have arrived in Italy. It notes that according to the records of a parliamentary hearing held on 3 May 2017, a total of 23 rescue operations were carried out simultaneously on the day of the shipwreck in question.⁴

4.3 The State party further notes that from judicial investigations, telephone records and interviews with witnesses and defendants, the following facts have been established concerning the events of the shipwreck in question. Once the first inbound phone call to the Italian rescue centre was made from the vessel, recorded at 12.26 p.m., the Italian rescue centre started localizing the satellite telephone from which the call had been made. Following the second phone call from the vessel, and after having received basic information, the Italian rescue centre informed the Maltese rescue centre, at 1 p.m., about the incident, as the vessel was located in the Maltese search and rescue area. At 1.05 p.m., the Maltese rescue centre responded positively to the Italian rescue centre's request to formally coordinate the rescue operation. The Italian rescue centre requested the Maltese rescue centre to also provide the said confirmation in writing. That confirmation was received at 2.35 p.m. The Maltese rescue centre thus formalized its coordination role, and it informed the Italian rescue centre that it was sending a patrol boat to the area in which the vessel was reportedly located. In the meantime, the Italian rescue centre also collected information, tried to localize the vessel in distress, kept contact with the Maltese rescue centre, and informed the migrants to contact the Maltese rescue centre so as to ensure a more direct, immediate and effective rescue operation. Upon the Maltese rescue centre's request, the Italian rescue centre stated that it did not have coast guard vessels in the area concerned. However, it informed the Maltese rescue centre that an Italian naval vessel and two merchant ships were present in the area. At 5.07 p.m., the Maltese rescue centre reported that the vessel had capsized, and it requested the participation of Italian rescue assets. The Italian rescue centre informed the Italian naval vessel, the ITS Libra, which was already on its way towards the area concerned, about the shipwreck. It also informed another Italian vessel, the Espero, which headed towards the rescue area. At 6 p.m., the ITS Libra reached the rescue area and it actively participated in the rescue operation. At 6.30 p.m., the Maltese rescue centre appointed the ITS Libra as on-site coordinator of the rescue operation.

4.4 The State party notes that the International Convention on Maritime Search and Rescue, 1979, provides for the obligation to rescue and assist persons at sea, regardless of nationality or legal status. It notes that the Convention sets delimitations between States and

⁴ The State party refers to hearing No. 44 before the bicameral parliamentary Committee to Oversee Schengen Agreements, held on 3 May 2017. Available at http://documenti.camera.it/leg17/resoconti/commissioni/stenografici/html/30/indag/c30_confini/2017/05/03/indice_stenografico.0044.html (in Italian).

their respective search and rescue areas, so as to include, in addition to the respective territorial waters of each State, portions of the high seas, with the identification of a single competent search and rescue authority for said area. As a result, in all circumstances, a single rescue centre, which is responsible for coordinating operations in its own area and to which operational choices reserved must be identifiable. Under the Convention, only one authority is responsible for the coordination of rescue interventions in each search and rescue area. The choice of the most suitable naval vessels and aircrafts mandated to carry out search and rescue operations is the prerogative of the responsible rescue centre. The State party notes that in the present case, the shipwreck occurred outside its search and rescue area.

4.5 The State party submits that as the alleged violation of the duty to protect the lives of the alleged victims took place outside Italian territorial waters and outside its search and rescue area, the facts under review do not fall within its jurisdiction under article 2 of the Covenant and article 1 of the Optional Protocol. It notes that under the International Convention on Maritime Search and Rescue, 1979, the responsibility for protecting the lives of persons on board a vessel on the high seas belongs to the competent rescue centre of the State responsible for that search and rescue area. The State party argues that in the present case, that responsibility belonged to the Maltese rescue centre, and it submits that it cannot be argued that Italy would have *de facto* responsibility over the area concerned merely due to the fact that Italian authorities organize rescue interventions, in an autonomous and non-obligatory manner, in the Maltese search and rescue area. The State party argues that by establishing its own search and rescue area, Malta has assumed the power and responsibility to fulfil its own obligations in its own area, and it submits that the vessel carrying the migrants was not under the jurisdiction, understood as power and control, of Italy. The State party further notes that the Maltese authorities had made a formal undertaking of coordinating the rescue operation. Although the Italian rescue centre informed Malta that there was an Italian naval ship in the area, Malta also sent rescue assets to intercept the vessel in distress. The State party argues that Malta had therefore formalized its intention to exercise its jurisdiction of the rescue operation, and had in fact exercised it. The State party notes that the ITS *Libra* also intervened in the rescue operation, even prior to a formal request from Malta, and it became the focal point of the rescue operations, thereby saving many lives.

4.6 As concerns the merits of the communication, the State party notes that a very complex judicial investigative procedure has been opened into the incident. It notes that the process has involved different tribunals and has been carried out with the aim of verifying the *modus operandi* of all the assets involved in the general international scenario, including over the six months before the tragic events and thus, not only with specific regard to the case under reference. The intervention at the level of the Supreme Court has also been necessary, in order to establish whether the investigation should fall under the competence of military or ordinary courts. The Supreme Court has determined that the investigation falls under ordinary jurisdiction before the Ordinary Tribunal of Rome.

4.7 The State party notes that investigations into the events of the shipwreck were initiated after a complaint was filed on 11 April 2014, at the Consulate of Italy in Frankfurt, Germany, which was transmitted to the Palermo Public Prosecutor's Office in Italy. Additional complaints have subsequently been lodged by family members of victims of the shipwreck and by some of the persons who had survived the shipwreck. The Syracuse Public Attorney's Office filed a motion of dismissal with regard to one complaint on 27 February 2017. Following the transfer of proceedings from the Agrigento and Palermo Public Attorney's Offices to Rome, the Rome Public Attorney's Office has filed motions of dismissal concerning two complaints, on 3 April and 18 July 2017. Following an additional complaint, a third criminal proceeding has been initiated in Rome. This proceeding is ongoing and the complainants were notified about their right to participate in a pretrial hearing that, at the time of the submission of the present observations, was to take place on 29 October 2018. In the course of the proceedings, charges have been brought against officers from the Italian Navy, the Harbour Master Corps-Coast Guard and personnel on duty at the Italian rescue centre. The charges include the criminal offences of failure to provide assistance and negligent homicide. The State party notes that the authors of the present communication are not parties to the pending proceeding as they did not file the complaint. It notes that the investigation into the shipwreck has been complex owing to the high number of stakeholders involved and the difficult reconstruction of facts. The State party argues that the

investigations undertaken by the domestic authorities have been thorough, prompt and effective, and it notes that the aim of the ongoing proceeding is to determine the responsibility, if any, of persons involved in the events of the shipwreck.

Authors' comments on the State party's observations on admissibility and the merits

5.1 On 15 October 2018, the authors submitted their comments on the State party's observations. They maintain that the communication is admissible. They reiterate their argument that the Italian authorities are exercising de facto control over the Maltese search and rescue maritime area and that Italy therefore bears responsibility for the failed rescue operation that occurred on 11 October 2013. Regarding the State party's submission that judicial proceedings are ongoing, the authors argue that those proceedings have been unduly delayed. At the time of the submission of their comments, five years had passed and the investigations had not yet been completed. They also argue that the State party authorities have failed to involve them, as next of kin, in the criminal proceedings. The authors note that the initial complaints regarding the incident were dismissed by the State party's authorities, and they claim that it was only after a newspaper published information on the events of the incident that two officers were charged with criminal offences.

5.2 The authors note the State party's claim that the first distress call was received by the Italian rescue centre at 12.26 p.m. on 11 October 2013. They reiterate their claim that the first call from the vessel in distress was made at 11 a.m. They note, however, that in any event, it is undisputed that the Italian rescue centre received the first distress call from the vessel and that under section 3.6.1 of the International Aeronautical and Maritime Search and Rescue Manual, it was under the duty to immediately notify the appropriate rescue coordination centre about the incident and to take all necessary action to coordinate the response until the responsible rescue coordination centre had assumed responsibility. The authors note that the Maltese rescue centre did not formally assume the duty to coordinate the rescue operation until 2.35 p.m. The authors further claim that the coordinates of the vessel in distress had already been provided to the Italian rescue centre in the first distress call at 11 a.m., and that therefore, the Italian authorities did not need to spend any time localizing the vessel.

5.3 The authors reiterate their claims that the Italian rescue centre failed to promptly inform the Maltese rescue centre of the vessel in distress and that it failed to provide the Maltese rescue centre with assistance as it only informed the centre of the presence of an Italian naval ship and two commercial ships in the area, but failed to provide the Maltese rescue centre with the name and position of the naval ship. The authors also reiterate their claim that the naval ship was ordered to move away from its position in order to avoid participating in the rescue operations.⁵ When the Maltese authorities identified the presence of the naval ship in the area and sent a request to the Italian rescue centre for the ship to proceed towards the vessel in distress, the request was refused by the Italian rescue centre, which informed the Maltese authorities that the naval ship was conducting surveillance operations in another area and was therefore unable to reach the requested area. Radio calls made minutes before the shipwreck from the Armed Forces of Malta to the naval ship also remained unanswered. The authors submit that the State party authorities therefore failed in their duty to cooperate with Maltese authorities in order to save lives in distress at sea.

5.4 The authors note that they do not claim that the Italian authorities should have assumed coordination of the rescue operations. Rather, their complaint is focused on the failure of the Italian authorities to provide assistance to the Maltese coordinating authorities by refusing to put the ITS Libra immediately at the disposal of the rescue operation, thereby failing to provide prompt aid to persons in distress at sea.

State party's further observations

6. On 4 July 2019, the State party submitted further observations on the communication. It referred to its submission of 15 June 2018 and reported that the judicial proceeding

⁵ The authors refer to recordings between the Italian Navy Command and the Libra, published in an article in L'Espresso, "La legge del mare: così la Marina ha lasciato affondare il barcone dei bambini", 5 June 2017.

concerning the events of 11 October 2013 were still ongoing. It noted that the latest pretrial hearing was held on 24 June 2019, and that the next one had been scheduled for 9 July 2019.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

7.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 The Committee notes the State party's submission that the communication is inadmissible under article 1 of the Optional Protocol for lack of jurisdiction as the events occurred outside the territorial waters of the State party. It notes the authors' submission that the complaint falls under the State party's jurisdiction as State party authorities were exercising de facto control over the Maltese search and rescue area; were in continuous contact with the vessel in distress; and had activated rescue procedures, thus exercising control over the persons in distress.

7.4 The committee recalls that under article 1 of the Optional Protocol, it has competency to receive and consider communications from individuals subject to the jurisdiction of States parties. It also recalls that in paragraph 10 of its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, it stated that States parties were required by article 2 (1) of the Covenant to respect and to ensure the Covenant rights to all persons who might be within their territory and to all persons subject to their jurisdiction. That means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State party, even if not situated within the territory of the State party. As indicated in general comment No. 15 (1986) on the position of aliens under the Covenant, the enjoyment of Covenant rights is not limited to citizens of States parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons who may find themselves in the territory or subject to the jurisdiction of the State party. The principle also applies to those within the power or effective control of the forces of a State party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent of a State party assigned to an international peacekeeping or peace-enforcement operation.

7.5 The Committee further recalls paragraph 63 of its general comment No. 36 (2018) on the right to life, in which it observed that in the light of article 2, paragraph 1, of the Covenant, a State party has an obligation to respect and ensure the rights under article 6 of all persons who are within its territory and all persons subject to its jurisdiction, that is, all persons over whose enjoyment of the right to life it exercises power or effective control. That includes persons located outside any territory effectively controlled by the State, whose right to life is nonetheless affected by its military or other activities in a direct and reasonably foreseeable manner. States parties must respect and protect the lives of individuals located in places that are under their effective control, such as occupied territories, and in territories over which they have assumed an international obligation to apply the Covenant. States parties are also required to respect and protect the lives of all individuals located on marine vessels and aircraft registered by them or flying their flag, and of those individuals who find themselves in a situation of distress at sea, in accordance with their international obligations on rescue at sea.⁶ The Committee further recalls its jurisprudence that a State party may be responsible for extraterritorial violations of the Covenant in cases such as those involving extradition or deportation, if it is a link in the causal chain that would make possible violations in another

⁶ CCPR/C/MLT/CO/2, para. 17; United Nations Convention on the Law of the Sea, art. 98; International Convention for the Safety of Life at Sea, 1974, chap. V, regulation 10.

jurisdiction, where the risk of an extraterritorial violation is a necessary and foreseeable consequence judged on the knowledge the State party had at the time.⁷

7.6 The Committee further notes that according to article 98 of the United Nations Convention on the Law of the Sea, each State is to require the master of a ship flying its flag to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, insofar as such action may reasonably be expected, and that coastal States are to promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements cooperate with neighbouring States for that purpose. In addition, it notes that specific arrangements concerning the provision and coordination of search and rescue services are found in the International Convention on Maritime Search and Rescue, 1979, and in the regulations adopted pursuant to the International Convention for the Safety of Life at Sea, 1974, including on coordination of search and rescue operations of ships from different States by the regional coordination centre, and the duty of States to cooperate in search and rescue activities upon receiving information on situations of distress at sea.⁸

7.7 In the present case, the Committee notes that it is undisputed between the parties that the shipwreck occurred outside the State party's territory, and that none of the alleged violations occurred when the authors' relatives were on board a vessel hoisting an Italian flag. The question before the Committee is therefore whether the alleged victims could be considered to have been within the power or effective control of the State party, even though the incident took place outside its territory. The Committee notes that, in the present case, initial contact was made between the vessel in distress and State party authorities in Rome on 11 October 2013, sometime between 11 a.m. and 12.26 p.m., and that the authors' claim that in one of the distress calls, the persons on board the vessel had been reassured by the Italian authorities that they would be rescued. The Committee also notes that it is uncontested that only after 1 p.m. did Malta inform the Italian rescue centre that it had accepted to coordinate the rescue operation and that such acceptance was formally confirmed in writing at 2.35 p.m. Furthermore, even after Malta accepted responsibility, the Italian authorities remained involved in the rescue operation, owing to the close location of the ITS Libra to the vessel in distress. Between 1 p.m. and 5 p.m., consultations took place between the Italian Air Force and Navy as to whether to dispatch the ITS Libra to assist in the rescue operation, and such dispatch was requested by the Maltese authorities on more than one occasion. At 5.07 p.m., after having been informed that the vessel had capsized, the Italian rescue centre confirmed that the ITS Libra had been dispatched towards the vessel in distress. It arrived at the scene at 6 p.m. and assumed an on-site coordination role at 6.30 p.m.

7.8 The Committee considers that in the particular circumstances of the case, a special relationship of dependency had been established between the individuals on the vessel in distress and Italy. That relationship comprised factual elements – in particular, the initial contact made by the vessel in distress with the Italian rescue centre, the close proximity of the ITS Libra to the vessel in distress and the ongoing involvement of the Italian rescue centre in the rescue operation – and relevant legal obligations incurred by Italy under the international law of the sea, including a duty to respond in a reasonable manner to calls of distress pursuant to regulations of the International Convention for the Safety of Life at Sea, 1974, in particular chapter V, regulation 33, and a duty to appropriately cooperate with other States undertaking rescue operations pursuant to the International Convention on Maritime Search and Rescue, 1979, in particular its chapter 5.6. As a result, the Committee considers that the individuals on the vessel in distress were directly affected by the decisions taken by the Italian authorities in a manner that was reasonably foreseeable in the light of the relevant legal obligations of Italy, and that they were thus subject to the State party's jurisdiction for the purposes of the Covenant, notwithstanding the fact that they were within the Maltese search and rescue region and thus concurrently subject to the jurisdiction of Malta.⁹ The carrying out of criminal investigations in Italy regarding the conduct of various naval officers

⁷ *Munaf v. Romania* (CCPR/C/96/D/1539/2006), para. 14.2.

⁸ International Convention on Maritime Search and Rescue, 1979, chap. 5.6.

⁹ *A.S. et al. v. Malta* (CCPR/C/128/D/3043/2017), para. 6.7.

involved in the incident further underscores the potential legal responsibility – albeit under domestic law – of Italian officials vis-à-vis the victims of the incident. Consequently, the Committee finds that it is not precluded by article 1 of the Optional Protocol from considering the present communication.

7.9 The Committee notes the claims of the authors about the long duration of the domestic investigation in Italy, and it observes that it has not been contested by the State party that no further domestic remedies are available to the authors. Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from considering the communication.

7.10 The Committee considers that the authors have sufficiently substantiated the claims under articles 6 and 7, read alone and in conjunction with article 2 (3), of the Covenant for the purposes of admissibility. It therefore declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

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

8.3 The Committee notes that the right to life includes an obligation for States parties to adopt any appropriate laws or other measures in order to protect life from all reasonably foreseeable threats.¹⁰ It also notes that such due diligence requires taking reasonable, positive measures that do not impose disproportionate burdens on States parties in response to reasonably foreseeable threats to life.¹¹

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

8.5 The Committee notes that the principal responsibility for the rescue operation lies with Malta, since the vessel capsized in its search and rescue area, and since it undertook in writing responsibility for the search and rescue operation. The Committee, however, considers that the State party has not provided a clear explanation for what appears to be a failure to promptly respond to the distress call, prior to the assumption of responsibility for the search and rescue operation by the Maltese authorities. It also notes that the State party has not provided any information about measures taken by State party authorities to ascertain that the Maltese rescue centre was informed of the exact location of the vessel in distress and that

¹⁰ Human Rights Committee, general comment No. 36, para. 18.

¹¹ *Ibid.*, para. 21.

it was effectively responding to the incident, despite the information about the deteriorating situation and the need for assistance from Italy. In addition, the State party failed to explain the delay in dispatching the ITS Libra towards the vessel in distress, even though the ITS Libra was located only one hour away from the vessel and even after having been formally requested to do so by the Maltese rescue centre. Finally, the Committee notes that the State party has not clearly explained or refuted the authors' claim that intercepted phone calls indicate that the ITS Libra was ordered to sail away from the vessel in distress. In the light of these facts, the Committee considers that Italy has failed to show that it has met its due diligence obligations under article 6 (1) of the Covenant.

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

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

8.8 Having concluded that, in the present case, there has been a violation of article 6, read alone and in conjunction with article 2 (3), of the Covenant, the Committee decides not to examine separately the authors' claim under article 7 read in conjunction with article 2 (3).

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of article 6, read alone and in conjunction with article 2 (3), of the Covenant.

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

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official language of the State party.

Annex I

Joint opinion of Committee members Yuval Shany, Christof Heyns and Photini Pazartzis (dissenting)

1. We do not agree with the majority's decision that the tragic events described in the communication fell within the jurisdiction of Italy for the purposes of establishing its obligations under the Covenant and admissibility under the Optional Protocol.
2. In paragraph 7.8 of the Views, it is explained that a special relationship of dependency had been established between the victims on the vessel in distress and Italy, which engaged the State party's obligations under the international law of the sea pursuant to the regulations of the International Convention for Safety of Life at Sea, 1974, in particular, chapter V, regulation 33, and the International Convention on Maritime Search and Rescue, 1979, in particular chapter 5.6. As a result, the majority considered that the individuals on the vessel in distress were directly affected by the decisions taken by the Italian authorities in a manner that was reasonably foreseeable in the light of the relevant legal obligations of Italy, and that those on board the vessel were thus subject to the State party's jurisdiction for the purposes of the Covenant, notwithstanding the fact that they were within the Maltese search and rescue region and thus concurrently subject to the jurisdiction of Malta. We are of the opinion that the majority Views fail to distinguish between (a) situations in which States have the potential to place under their effective control individuals who are found outside their territory or areas already subject to their effective control, and (b) situations involving the actual placement of individuals under effective State control. Only the latter situations establish jurisdiction for the purposes of the Covenant and the Optional Protocol.
3. As explained in paragraphs 7.7–7.8 of the Views, the vessel in distress was located throughout the relevant period of time – that is, between the time of the initial call for rescue and when the vessel capsized – outside the territorial waters of Italy and inside the search and rescue area of Malta. The preliminary question before the Committee in the case at hand was whether the victims on the vessel could be considered to have been within the power or effective control of Italy, even though the incident took place on the high seas, in an area for which Malta assumed search and rescue legal responsibilities. It has not been claimed before the Committee that Italy formally accepted legal responsibility for the search and rescue mission before the vessel capsized, nor that it assumed de facto control over the operation.
4. Although initial contact was made between the vessel in distress and the Italian rescue centre, this fact alone, in the absence of additional information showing acceptance of legal responsibility, is not sufficient to conclude that the State actually exercised jurisdiction over the individuals on board the vessel from that moment onwards or was legally obliged to do so. In particular, it is significant that Italy did not actually coordinate the search and rescue operation, but rather referred the distress call to the competent authorities in Malta, and that the latter confirmed in writing the coordinating role of Malta with respect to the search and rescue operation undertaken. While the Italian authorities supported the search and rescue efforts of the Maltese authorities by sending, albeit too late, an Italian Navy vessel – the ITS *Libra* – to the area, the vessel in distress did not come under the effective control of the Italian Navy party before 6.30 p.m. on the day of the sinking. That was more than an hour after the vessel in distress had capsized, at which time the ITS *Libra* arrived at the scene and became the on-site coordinator of the rescue operation.
5. While there may have been critical failures in the response of the Italian rescue centre and the Italian Navy to the distress calls and to the Maltese requests for assistance that contributed to the tragic loss of life of large numbers of victims, such failures do not establish in and of themselves effective control by Italy over the individuals on the vessel in distress, regardless of whether or not such failures entail criminal responsibility under Italian law or a violation of the State party's law of the sea obligations vis-a-vis Malta and other States. This is especially the case in circumstances where the said individuals are located in an area for which another State has assumed legal responsibility – and by implication, jurisdiction – under the law of the sea for search and rescue operations. Since Malta, and not Italy, was

responsible de jure or de facto for the overall conduct of the operation, we do not consider it appropriate to hold Italy accountable under the Covenant for failing to deploy more quickly Italian vessels that would enable it to assume earlier de facto responsibility over the search and rescue operation.

6. We further consider that the approach taken by the majority of equating the ability to engage in a maritime operation in search and rescue areas for which another State is internationally responsible with the notion of jurisdiction over the individuals on vessels in distress might disrupt the legal order that the International Convention for the Safety of Life at Sea, 1974, and International Convention on Maritime Search and Rescue, 1979, attempted to introduce, with a view to minimizing the “tragedy of the global commons”, generated by the lack of a clear division of labour between coastal States over search and rescue operations. Therefore, while the approach taken by the majority could be suitable to govern the obligations of States in areas for which no State is internationally responsible for search and rescue operations, so as to avoid “negative” jurisdictional conflicts, it is inappropriate for areas where such a responsible State is available and is in fact assuming its responsibilities, and which might generate “positive” jurisdictional conflicts.

7. As a result, we are of the view that given the primary responsibility of Malta for the search and rescue operations in the relevant maritime area and the mere supportive role of the State party, the Committee should not have concluded that the victims on board the capsized vessel fell under the jurisdiction of Italy for the purposes of the Covenant and the Optional Protocol, neither before or at the time at which the vessel capsized, and that the Committee should have therefore considered the communication to be inadmissible pursuant to article 1 of the Optional Protocol.

Annex II

Individual opinion of Committee member Andreas Zimmermann (dissenting)

1. This dissenting opinion has to be read in conjunction with my separate opinion in the parallel case against Malta involving the same facts.¹ The contents of said separate opinion are therefore to be considered incorporated hereinafter unless otherwise stated. At the outset it must be reiterated, however, that the mere fact that a person did find himself or herself in a search and rescue zone administered by a given State party of the Covenant does not bring that person within the jurisdiction of such State party for purposes of article 2 (1) of the Covenant. This result must then *a fortiori* be reached even in the absence of such a legal bond which, in the perspective of the majority, had triggered the applicability of the Covenant vis-à-vis Malta at the first place.

2. It is my clear understanding that Italy, by refusing to have its naval ship – the ITS *Libra* – undertake a rescue operation to save the lives of the persons in distress at sea, was violating its obligations under applicable rules of the law of the sea. Yet, this was not the question that was before the Committee, nor what the Committee had to decide. Nor indeed could the Committee have decided that very issue. Contrary to what the majority seems to at least imply, it is of even less legal relevance for purposes of article 2 (1) of the Covenant whether Italy is exercising criminal jurisdiction on the basis of the Italian nationality of the naval officers on board the ITS *Libra* or any other Italian officials.

3. Adding to the problematique of the majority decision is the fact that the majority also finds in the case against Italy that the authors were concurrently subject to the jurisdiction of Malta, despite having found the complaint against Malta inadmissible. At the same time, Italy is now required to provide full reparation to individuals whose Covenant rights have been violated, despite the fact that another State may have caused the tragic loss of lives and despite the fact that, as the majority also finds, the principal responsibility for the rescue operation – and hence, in the majority’s view, also the violation of the rights protected by the Covenant – fell on Malta rather than Italy. Apart from that, the determination as to the obligation of Italy to pay compensation further leaves open the difficult issue of which form of responsibility is incurred by each State, if any – i.e., whether it is proportionate liability only or rather joint and several liability.

4. Finally, the Committee attempts to limit its findings when stating that in the particular circumstances of the case, a special relationship of dependency had been established between the individuals on the vessel in distress and Italy (para. 7.8), which then triggered, in the majority’s view, the applicability of the Covenant. It is safe to assume, however, that the outcomes of both the Maltese and the Italian case, when read together, will be perceived as providing for a general applicability of the Covenant with regard to persons that find themselves in distress at sea either in the search and rescue zone of a State party or close to a ship flying the flag of a State party. This might, as I have already mentioned, eventually have the very unfortunate effect of States parties of the Covenant no longer being willing to undertake such obligations, or rather even trying to avoid coming into close contact with boats in distress so as to avoid any impressions of a “special relationship of dependency” having been created.

¹ *A.S. et al. v. Malta* (CCPR/C/128/D/3043/2017).

Annex III

Individual opinion of Committee member David H. Moore (dissenting)

1. The admissibility determination in the present case presents two key questions. The first and primary one concerns the scope of States party Covenant obligations. Under article 2 (1) of the Covenant, a State party's obligations extend to individuals within its territory and subject to its jurisdiction. The Committee has interpreted this phrase in the disjunctive.¹ While strong arguments exist for a conjunctive interpretation, it is unnecessary to revisit those to resolve the present case. No one contends that the territory of Italy extends to the high seas. The question thus becomes whether those shipwrecked were within the State party's jurisdiction.
2. That question raises a secondary issue: the propriety of relying on international instruments beyond the Covenant in its interpretation. Policy reasons, such as harmonization, support interpreting the Covenant consistently with other sources of international law. Yet the Committee's jurisdiction only extends to interpreting a particular treaty to which States have consented. In my view, the principles of the Vienna Convention on the Law of Treaties, whether as treaty or customary international law, should inform the Committee's use of non-Covenant sources in Covenant interpretation.
3. According to article 31 (3) (c) of the Vienna Convention, any relevant rules of international law applicable in the relations between the parties are to be taken into account. Many States parties to the Covenant, including Italy and Malta, are also parties to the International Convention on Maritime Search and Rescue, 1979, which provides for division of the high seas into search and rescue regions assigned to particular States. This arrangement, specifically focusing on the division of responsibility and control, suggests that the Covenant jurisdiction of Italy should extend, at most, to individuals within its region.
4. The Committee's decision to find jurisdiction outside that region in this tragic case reflects noble intent, particularly given the State party's questionable actions. Yet I fear the decision adds a layer of uncertainty, and even apprehension, regarding responsibility on the high seas that may hinder, rather than sharpen, the response to future emergencies. I would find the communication inadmissible.

¹ See Human Right Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant.

Annex IV

Individual opinion of Committee member Gentian Zyberi (concurring)

1. While agreeing with the decision of the Committee, I want to clarify the jurisdictional link and the legal obligations on the part of States regarding search and rescue operations at sea, especially concerning refugees and migrants.
2. This specific case and the relevant legal framework demonstrate the shared responsibility among States for such search and rescue operations. While a State has primary responsibility for its search and rescue area, there is a residual responsibility on all States to provide assistance, especially to those States with limited capacities of their own.
3. The jurisdictional link in search and rescue operations is generally based on the international legal obligations of States to render assistance to persons in distress at sea, read in the light of article 6 of the Covenant. In paragraph 3 of its general comment No. 36 (2018), the Committee states that the right to life concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death. The concepts of “power and control”, which are commonly used with regard to extraterritorial jurisdiction, have to be construed and interpreted in the light of the specific circumstances at sea. When assessing issues of State responsibility concerning search and rescue operations aimed at saving persons in distress at sea, the due diligence requirement is an obligation of conduct, requiring a State to make the best efforts within the means available.
4. In failed search and rescue operations that result in lives lost, the State has a procedural obligation under article 6 of the Covenant to start *ex officio* a prompt and effective investigation to find out what happened and, where necessary, hold those responsible to account.

Annex V

Individual opinion of Committee member José Manuel Santos Pais (concurring)

1. I agree with the decision reached by the Committee, finding a violation by Italy of article 6 (1) read in conjunction with article 2 (3) of the Covenant.
2. This is a complex case, involving concurring and shared international jurisdiction by several States: Italy and Malta, and possibly Libya. However, the main question is whether victims were within the power or effective control of Italy, even though the incident took place outside its territory (para. 7.7), and whether, under relevant international instruments,¹ Italy failed to provide assistance to rescue of persons in distress at sea.
3. The vessel in distress was 61 miles south of Lampedusa and 118 miles south-west of Malta, and therefore closest to the Italian shore. According to the Italian Minister of Defence,² the Italian Navy ship ITS Libra was just 15 miles from the vessel in distress, or less than one hour away. Therefore, the ITS Libra was the closest ship, but instead of offering to provide direct assistance or to place itself at the disposal of the Maltese rescue centre, it omitted to do so.³
4. The Italian rescue centre received the first call at 12.26 p.m. and a second at 12.39 p.m., and was then informed that the vessel was sinking, that there were children on board and that there was a need for urgent intervention. The exact position of the vessel was given to the Italian authorities. Several other contacts ensued, with increasingly more urgent requests, at 1.17 p.m., 1.38 p.m., 2.22 p.m. and 3.37 p.m.
5. Contact with the Maltese rescue centre by the Italian rescue centre was established at 1 p.m. but no information was given about the dangerous situation of the vessel, its exact location or the close proximity of the ITS Libra and its contacts. The Maltese authorities first located the vessel around 4 p.m.
6. At 1.34 p.m., the Italian rescue centre issued a navigational warning to all shipping in the vicinity to assist. At 2.30 p.m., the Maltese rescue centre did the same. The ITS Libra did not respond to either warning.
7. The Italian Navy command was informed at 1.35 p.m. of the position of the vessel and of the number of people on board. However, at 3.34 p.m., the naval command instructed the ITS Libra not to get close to the vessel and to avoid being spotted in the area. The same order was repeated at 3.41 p.m.
8. Following the identification of the ITS Libra by the aircraft of the Armed Forces of Malta, after 4 p.m., the Maltese rescue centre requested the ITS Libra to proceed and assist, since the vessel in distress had been observed to be overcrowded and unstable. The ITS Libra, however, did not answer emergency calls made by the Maltese aircraft, which continued for two minutes.
9. At 4.38 p.m., the Italian rescue centre requested the Command of Italian Navy to put the ITS Libra in direct contact with Maltese authorities. The request was authorized at 4.41 p.m. At 4.44 p.m., the Maltese rescue centre again requested the Italian rescue centre to put the ITS Libra at the disposal of the rescue operation. The Italian rescue centre denied authorization. It was only at 5.07 p.m., after the vessel had capsized, that the ITS Libra was ordered to intervene, 4 hours and 40 minutes after the first emergency call. The ITS Libra

¹ The United Nations Convention on the Law of the Sea, the International Convention on Maritime Search and Rescue, 1979, and the regulations adopted pursuant to the International Convention for the Safety of Life at Sea, 1974.

² At a hearing before the Camera dei deputati, on 17 May 2017.

³ See available public information (in Italian) at: <https://video.espresso.repubblica.it/inchieste/cosi-l-italia-ha-lasciato-annegare-60-bambini-in-esclusiva-le-telefonate-del-naufragio/10267/10368>; and <https://espresso.repubblica.it/attualita/2017/09/13/news/indagine-negli-abissi-1.309437>.

arrived at the scene at 5.57 p.m., after the patrol boat of the Armed Forces of Malta, which arrived six minutes earlier.

10. Not only therefore did Italian naval authorities refuse to act when they were still the first rescue centre responsible for coordinating the case, and issued the first navigational warning. They also consistently omitted valuable information when communicating with Maltese authorities and deliberately prevented the ITS *Libra*, which was the closest ship to the vessel in distress, from intervening in rescue operations until after the shipwreck.

11. I therefore consider that the individuals on the vessel in distress were under the jurisdiction of Italy for the purposes of the Covenant (paras. 7.5–7.8). Furthermore, there was a failure by Italian authorities to explain convincingly the motives for not providing timely assistance under such pressing circumstances, thus affecting the lives of so many people (para. 8.5).

12. Charges were brought against officers from the Italian Navy, the Italian Coast Guard and the Italian rescue centre, involving at least seven officers, for failure to provide assistance and for negligent homicide. Seven years after the events, the trial before the domestic courts has yet to be completed, an excessive time delay for effective and prompt justice. The State party has provided no clear explanation for the delay, other than a general reference to the complexity of the case, and it gave no anticipated timeline for its completion (paras. 8.6–8.7).

Annex VI

Individual opinion of Committee member Vasilka Sancin (concurring)

1. I agree with the Views of the Committee that the individuals on the vessel in distress were directly affected by the decisions of Italy in a manner that was reasonably foreseeable in the light of the relevant legal obligations of Italy, and that they were thus subject to the State party's jurisdiction, concurrently to the jurisdiction of Malta, for the purposes of the Covenant, and that the Committee was therefore not precluded by article 1 of the Optional Protocol from considering the present communication. I also fully agree with the Committee's finding of a violation of article 6, read alone and in conjunction with article 2 (3), of the Covenant.
2. However, I wish to emphasize that in my view, since the tragic events took place on the high seas, where, according to the law of the sea, neither Italy nor Malta may exercise any territorial jurisdiction, other than over the vessels flying their flags, and in circumstances exhaustively envisaged in the United Nations Convention on the Law of the Sea – e.g., in a case of piracy – the issue of compatibility of the communication under article 1 of the Optional Protocol *ratione loci*, establishing whether the individuals were subject to State party's jurisdiction, applying the maxim of "power or effective control", is intrinsically linked to the right engaged, that is, the right to life. The Committee emphasized (para. 7.5), referring to its general comment No. 36 (2018), that States parties must respect and protect the lives of individuals who find themselves in a situation of distress at sea, *in accordance with their international obligations on rescue at sea* (emphasis added).
3. It is for this reason that I find, after considering the facts and particular circumstances of the case (para. 7.7), that the communication is admissible, although events occurred in the area of the high seas. The authors sufficiently demonstrated (a) that Italy had a power to act upon its international duties, that is, to render assistance to a vessel in distress in accordance with article 98 of the United Nations Convention on the Law of the Sea, and to assist Maltese authorities in its search and rescue area; (b) that Italy led the victims to believe, in particular within the first hour(s) after contact had been made, that it would comply with those duties; and (c) that such necessary activities could have directly, and in a reasonably foreseeable manner, affected the events. By this assumption of its obligation to exercise the existing power in the concrete case, in my view, Italy subjected the victims to its jurisdiction, but owing to its omission to act accordingly, failed to protect their lives and, after the fact, to properly investigate the incident, which resulted in a violation of the authors' rights.

Annex VII

Individual opinion of Committee member H el ene Tigroudja (concurring)

1. I fully support the solution reached by the majority. The Views are the first contribution of the Committee that are aimed at addressing some maritime legal black holes.¹ They may provide some substance to a new “right to be rescued at sea”.² However, as developed in my concurring opinion of the communication pertaining to Malta,³ the legal reasoning followed by the majority is not perfectly rigorous. I will not repeat what I have written on the unreasoned decision to split the two cases and on the use of a body of law that is not updated. My main remark on the present Views is focused on the question of the extraterritorial jurisdiction exercised by Italy (para. 7.8). I am not fully convinced by the manner in which the majority solved the question. There is a mix up between substantive obligations and the existence of a jurisdictional link with Italy. More importantly, the grounds for establishing that jurisdictional link are unclear, and I regret that the majority did not respond clearly to the arguments presented by the authors in their complaint, based on the *Munaf v. Romania* jurisprudence, which were more convincing than what has been retained in paragraph 7.8.

¹ Itamar Mann, “Maritime legal black holes: migration and rightlessness in international law”, *European Journal of International Law*, vol. 29, No. 2 (May 2018), pp. 347–372. See also the recommendations adopted by the Council of Europe Commissioner for Human Rights, in Council of Europe, “Lives saved. Rights protected. Bridging the protection gap for refugees and migrants in the Mediterranean”, June 2019.

² Seline Tr evisanut, “Recognizing the right to be rescued at sea”, *Ocean Yearbook Online*, vol. 31, No. 1 (1 January 2017): 137–154.

³ *A.S. et al. v. Malta* (CCPR/C/128/D/3043/2017).