

YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW — VOLUME 25
CORRESPONDENTS' REPORTS

ITALY¹

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Legislation – Draft Italian ‘Code of International Crimes’

- Ministry of Justice, Decree No. 22 of 22 March 2022 – Commission for the elaboration of the Italian ‘Code of International Crimes’
<https://www.giustizia.it/giustizia/it/mg_1_8_1.page?contentId=SDC372746&previousPage=mg_1_36_0>
- Draft ‘Code of International Crimes’
<https://www.giustizia.it/cmsresources/cms/documents/commissione_PALAZZO_POCAR_articolato_31mag22.pdf>

On 22 March 2022, the Italian Minister of Justice appointed a commission tasked with the elaboration of the Italian Code of International Crimes (CIC). It was composed by both academics and practitioners with relevant expertise in the fields of international law and criminal law and was presided over by professors Francesco Palazzo and Fausto Pocar.² The aim of the Commission was to formulate domestic legislation on international crimes in order to properly implement the Rome Statute of the International Criminal Court (hereinafter ICC Statute) into the domestic legal system.³

The Commission operated within the constraints of a notably tight timeline due to the pressing circumstances of the Russian Federation’s aggression against Ukraine and the related urgency of providing proper instruments to prosecute international crimes, by introducing the related legislation into the Italian legal order.

On 31 May 2022, the Commission of Experts completed its mandate and delivered the draft Italian ‘Code of International Crimes’ (draft CIC) to the Minister of Justice for final technical adjustments and the initiation of the legislative process for the adoption of the law. The draft CIC is accompanied by a corresponding Commentary (‘Relazione’) published on 21 June 2022.⁴

¹ This Report was prepared by Rachele Cera, Andrea Crescenzi, Valentina Della Fina and Valeria Eboli on behalf of the Institute for International Legal Studies of the National Research Council (CNR), Rome, Italy.

² For the full list of the members, see
<https://www.giustizia.it/giustizia/it/mg_1_8_1.page?contentId=SDC372746&previousPage=mg_1_36_0> accessed 19 July 2023.

³ Rome Statute of the International Criminal Court, opened for signature on 17 July 1998, 2187 UNTS 3 (entered into force on 1 July 2002).

⁴Text available at
<https://www.giustizia.it/cmsresources/cms/documents/commissione_PALAZZO_POCAR_relazione_finale_31mag22.pdf>, see also <<https://www.osservatoriosullefonti.it/rubriche/fonti-internazionali/4284-osf-2-2022-ue-3>> accessed 19 July 2023.

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The draft CIC includes over 70 Articles and is divided into three Sections. The first Section (the General Part) consists of special provisions (Articles 1-16) which take precedence over the general provisions of the Italian Penal Code, in accordance with the principle of specialty under Italian criminal law. The second Section (the Special Part) contains the definitions of the crimes (Articles 17-64). The third Section consists of norms on repeal and amendments of domestic provisions (Articles 65-70).

For the General Part, the approach followed was to intervene as little as possible in relation to the general provisions, making reference to the pre-existent Italian Penal Code (1930) and Italian Military Penal Codes of War and Peace (1941).⁵ This approach sought to safeguard as much as possible the coherence of the Italian criminal legal system.

The draft CIC aims at implementing the main part of the ICC Statute in the Italian domestic legal system, approximately 20 years after its ratification by Italy.⁶ By enacting Law No. 202 of 10 November 2021, Italy also ratified the Amendments adopted during the Rome Statute's first Review Conference held in Kampala (Uganda) in 2010. These amendments introduced *inter alia* the legal definition of aggression (new Article 8 *bis* of the Rome Statute), and specified the conditions and modalities for the ICC to exercise its jurisdiction over this crime (new Articles 15 *bis* and 15 *ter*).

One of the main general topics of the draft CIC is that of jurisdiction. Articles 2 and 3 mirror the provisions of the Italian Penal Code (Articles 6 et seq.) by extending Italian jurisdiction over international crimes committed abroad by foreigners. The Italian Penal Code introduces the principle of universal jurisdiction for international crimes into the Italian legal system, albeit with certain limitations to its application.

An ad hoc jurisdictional regime was adopted for international crimes, because of their gravity. These crimes are punishable according to the Italian law even when they are committed extraterritorially and by non-citizens, regardless of the nationality of the victims as well as of the protected goods. If a foreigner commits a crime abroad that does not target the Italian State or an Italian citizen, Article 3, para. 3 of the draft CIC only requires the presence of the suspect in Italy for the purpose of proceeding with the trial. The presence of the suspect on Italian soil is a procedural condition to proceed with the trial. However, it does not seem that the same is required to start the investigation. In contrast, some other States, like Germany, have adopted a 'pure universal jurisdiction' approach, which in principle allows the prosecution of international crimes regardless of the presence of the suspect on the territory of the prosecuting State.

In relation to the crime of aggression committed abroad, the request to proceed is required by the Minister of Justice 'in light of the peculiar political value' of this crime.⁷

In relation to the question of jurisdiction and of competence, consensus could not be achieved on one specific issue, i.e. with regard to the division between ordinary and military jurisdiction. Articles 4 and 5 of the draft CIC include three alternative proposals on this issue, leaving the choice

⁵ Available online (in Italian) at <<https://www.gazzettaufficiale.it/sommario/codici/penaleMilitare>> accessed 19 July 2023.

⁶ For the status of ratifications, see <<https://ihl-databases.icrc.org/en/ihl-treaties/icc-statute-1998/state-parties?activeTab=undefined>> accessed 19 May 2023. Italy ratified the Rome Statute through Law No. 232 of 12 July 1999. This Law also contained an implementation order, by virtue of which the Statute was implemented in the domestic legal order. See Giuliano Salberini et al., Correspondents' Report – Italy (2000) 3 *YIHL*, pp 535-536.

⁷ See "Relazione", at 4.1. See also Article 3, para. 3, of the Draft CIC.

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between them to the political authority.⁸ Specific provisions within the CIC are related to immunity. Article 7 of the draft CIC distinguishes between functional and personal immunities. Functional immunities do not operate with respect to crimes covered by the CIC (Article 7, para. 1), while personal immunities remain applicable. In accordance with Article 7, para. 2, Heads of State, Heads of Government, and Foreign Ministers while in office, as well as other persons to whom international law expressly recognises immunity in relation to their official position, enjoy their personal immunity at the domestic level, subject to the obligations of cooperation with the ICC, as provided for in Law No. 237 of 20 December 2012, and with other international criminal tribunals that may have jurisdiction.

As regards the modes of liability, Articles 110 et seq. of the Italian Penal Code remain applicable to international crimes under the draft CIC.⁹ This approach is slightly different from that of the Rome Statute, whose Article 25(3)(a)-(d) lists the different punishable modes of liability, including participatory conducts: from the direct commission to any contribution even by persons far from the scene of the crime. Both those who control the crime and the material perpetrators, i.e. those who commit the *actus reus*, can be liable. The Italian model disregards the distinction between perpetrators and participants, and between principal and accessory contributions. Of course, for each of them, the punishment will be determined by the judge according to the circumstances of the crime, in relation to the aggravating or mitigating factors provided by Articles 111, 112, 114 of the Italian Penal Code.¹⁰

The draft CIC also includes specific provisions on command and superior responsibility pursuant to Article 28 of the ICC Statute. One of the main novelties of the draft CIC is the introduction of the doctrine of command responsibility, according to which the superior is responsible in the first place, but the parallel responsibility of the person executing the criminal order under certain conditions is also affirmed (Article 11 of the draft CIC).¹¹ As a result, an individual retains responsibility when acting pursuant to an order, as an additional mode of liability for the crime committed, unless: the order was binding; the person did not know it was unlawful; and the order was not manifestly unlawful. According to Article 33 of the ICC Statute, orders to commit genocide and crimes against humanity are always deemed as manifestly unlawful.

⁸ The proposals were the following: (i) giving jurisdiction for all international crimes to the ordinary courts (the Court of Assizes and the General Prosecutor of Rome are competent for the crimes committed abroad); (ii) splitting the jurisdiction between ordinary and military and attributing jurisdiction to the military judicial authorities for all crimes under the CIC committed by Italian military personnel; (iii) attributing jurisdiction to the military judicial authorities for war crimes committed by Italian military personnel, unless they are connected to the commission of any other crime under the CIC for which the ordinary judge is competent (in which case only the ordinary judge remains competent). See Emanuela Fronza and Chantal Meloni, 'The Draft Italian Code of International Crimes', in *Journal of International Criminal Justice* 20 (2022), 1027–1048, at 1037.

⁹ Article 110 of the Italian Penal Code provides that participants in the same offence shall each be subject to the punishment prescribed pursuant to the offence.

¹⁰ Under Article 112 of the Italian Penal Code, the penalty shall be increased where certain aggravating circumstances are present, such as the participation of five or more persons in the offence; the promotion or organisation of collaboration in an offence or the direction of persons participating in the same offence; or the inducement of persons subject to the offender's authority to commit an offence, including a person under the age of 18 or a person in a state of mental illness or mental deficiency.

¹¹ This is in line with § 3 of the German Völkerstrafgesetzbuch (VStGB). Code of Crimes against International Law (CCAIL) of 26 June 2002 (Federal Law Gazette I, p. 2254), as last amended by Article 1 of the Act of 22 December 2016 (Federal Law Gazette I, p. 3150) at <https://www.gesetze-im-internet.de/englisch_vstgb/englisch_vstgb.html> accessed 19 July 2023.

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The draft CIC introduces three separate provisions regulating various forms of command responsibility, i.e. an intentional failure to prevent, a negligent failure to prevent, an intentional failure to punish and an intentional failure to report the subordinate's crime as separate offences of the superior. In the first case, the superior is held responsible for the same crime committed by the subordinate as if he/she had committed it (Article 8 of the draft CIC). Pursuant to the second case, the superior is held responsible for the same crime committed by the subordinate but with a diminished sentence (Article 9 of the draft CIC). Finally, the intentional failure to punish and the intentional failure to report the subordinate's crime are punished as separate offences of the superior. As for the intentional failure to prevent the commission of the crime, both the liability of the military commander and that of the civilian superior for failure to prevent the subordinate's crime are foreseen.¹² The commander/superior becomes liable due to their position of guarantee. It is a form of liability by omission, for failure to prevent an event that the superior has a legal obligation and the power to prevent, based on the existence of a corresponding position of guarantee in international law. As has been pointed out, 'the superior is not made responsible for the crime committed by the subordinate, but rather for a specific dereliction of duty offence, punishable only if committed intentionally, independently of the crimes committed by the subordinates'.¹³ According to Article 10 of the draft CIC, the responsibility of a military commander is based on her/his command and control powers, and he/she is responsible for his/her own negligent omission, consisting in the failure to exercise the necessary control in order to prevent crimes. Likewise, the civilian superior is required to have powers of authority and control over the subordinates for whose crime he or she may be held accountable.

As already mentioned, the second part of the draft CIC contains the definitions of the crimes. The new crimes arising from the ICC Statute were introduced in accordance with the principle of speciality, in order to avoid possible overlaps with already existing common crimes provided for in the Italian Penal Code. The Special Part of the draft Code on the definition of the crimes is in line with the structure of the ICC Statute. However, due to the state's margin of appreciation in implementing the relevant provisions at the national level, it is not just a mechanical reproduction of its provisions. As regards the criminal sanctions, efforts were made to ensure consistency between the proposed penalties and the domestic sanctioning system, bearing also in mind the legislative solutions adopted in other states. Furthermore, the Commission charged with drafting the text of the Code also considered customary law and domestic and international case law.

The draft CIC defines genocide, crimes against humanity, war crimes, and finally the crime of aggression. While for the crime of genocide some novelties are introduced, for the others the draft CIC remains basically in line with the ICC Statute.

As far as genocide is concerned, it is worth recalling that Italy is a contracting party of the 1948 Genocide Convention,¹⁴ ratified by Law No. 153/1952. A special law was also adopted, Law No. 962/1967 on 'Prevention and repression of the crime of genocide', which defines the crime of

¹² According to Article 9 of the draft CIC, for the negligent failure to prevent, the superior is held responsible for the same crime committed by the subordinate but with a diminished sentence.

¹³ Emanuela Fronza and Chantal Meloni, "The Draft Italian Code of International Crimes", in *Journal of International Criminal Justice* 20 (2022), pp 1027-1048.

¹⁴ Convention on the Prevention and Punishment of the Crime of Genocide opened for signature on 9 December 1948, 78 UNTS 277 (entered into force on 12 January 1951).

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genocide.¹⁵ This act which will be replaced by the provisions of the draft CIC, which defines this crime at Articles 17-18, once the Code enters into force.

The draft CIC in Article 18 introduces the crime of cultural genocide, which in addition to the typical acts that constitute genocide under the ICC Statute, is related to a number of specific conduct aimed at destroying the cultural heritage of the group, i.e. its cultural or religious characteristics that distinguish it, so that its identity is lost and assimilated into the dominant group. In this regard, it distinguishes two different kinds of offences: the most serious offences under paragraph a), and the less serious ones under paragraph b).

Crimes against humanity are dealt with in Section II, Title II, of the draft CIC. In this case, several different crimes were incorporated into different provisions in relation to the underlying acts (e.g., murder, persecution, reducing or keeping in slavery or servitude, rape and other crimes against sexual freedom and dignity, and others). The crime of apartheid, which previously did not exist in the domestic legal system, has been introduced into Article 32 and its definition mirrors that contained in the ICC Statute.

War crimes are defined in Section II, Title III, of the draft CIC. Article 34 provides for the definition of armed conflict and Article 35 for that of protected persons. Definitions provided by international humanitarian law are transposed. The draft CIC also removes the distinction between crimes committed in international and non-international armed conflicts, even though some provisions can only apply to international armed conflicts, e.g. Article 45 related to the transfer of a population to occupied territories.

War crimes have been divided into two categories, depending on whether the acts offend protected persons or are relating to prohibited means and methods of warfare. There was a need to harmonise these provisions as the Italian Military Penal Codes of Peace and War already contained the notion of war crimes, the four Geneva Conventions of 1949, and the laws or customs of war.

A new offence relating to attacks against cultural heritage was introduced, also bearing in mind Law No. 45/2009 by which Italy ratified the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict of 1999.¹⁶

Finally, the crime of aggression is introduced. Article 62 of the draft CIC reproduces Article 8 bis of the ICC Statute, according to which the 'crime of aggression means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations'. Article 62 mirrors the contents of Article 8 bis with regard to both the constitutive elements and the underlying acts of the crime of aggression. The crime of aggression is a 'leadership crime', i.e. committed by persons who are in a position effectively to exercise control over or to direct the political or military action of a state, as recalled by Article 8 bis (1) of the ICC Statute. Since it entails some political challenges, the procedural requirement of an authorisation by the Minister of Justice was requested to proceed. The introduction of the crime of aggression at the domestic level is particularly significant given that in

¹⁵ Legge 9 ottobre 1967, n. 962 'Prevenzione e repressione del delitto di genocidio', published in *Gazzetta Ufficiale* No. 272 of 30 October 1967.

¹⁶ Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict opened for signature from 17 May to 31 December 1999, 2253 UNTS 172 (entered into force on 9 March 2004).

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some circumstances the jurisdiction of the ICC over it could be limited, e.g. under Articles 15 and 15 bis of the ICC Statute.

One of the most relevant novelties of the draft CIC is the introduction of a form of corporate responsibility for international crimes. According to Italian law, entities, companies, and associations may be held liable for crimes committed in the interest or to the benefit of the organisation, as provided by Legislative Decree No. 231 of 8 June 2001.¹⁷ Consequently, the responsibility of the legal person can be established when a criminal offence is the result of an organisational fault of the legal entity.

Such offences may be committed by individuals who hold executive/managerial positions, and by employees 'managed or supervised' by the former. In some cases, corporate responsibility can be excluded. For instance, in the case of individuals who hold executive/managerial positions, if the absence of an 'organisational fault' is proved or in the case of supervised employees, if the corporation proves that it has complied with and effectively implemented its organizational models.

In this regard it should be recalled that Article 25(1) of the ICC Statute limits the criminal responsibility for international crimes to natural persons, while in the Italian legal framework the corporate liability model is already well developed. Nevertheless, the draft CIC criminalises the legal person's contribution when the crime is caused by *severe* organisational shortcomings.

Other provisions of the draft CIC regard penalties, i.e. the sanctioning regime for the new crimes. Efforts were made to harmonise them with the criteria of the Italian criminal legal system and avoid any disproportion. In line with the principle of legality, penalties were provided for in relation to each crime under the draft CIC, providing minimum and maximum penalties for each of them fully in compliance with the general well-known principle *nullum crimen sine lege, nulla poena sine lege*.

The Commission decided to adopt imprisonment as the main penalty for any international crime and not pecuniary sanctions, as opposed to what is provided with regard to common offences under the Italian Penal Code. In some cases, life imprisonment was provided as a penalty for reasons of internal coherence, proportionality and consistency in sanctioning, in particular with regard to the punishment of murder. Besides imprisonment, the draft CIC also provides for confiscation as a mandatory measure. It can be an indirect confiscation or a direct confiscation. The latter concerns the confiscation of the proceeds of the crime themselves. The former is by equivalent, i.e. targets money, goods or other utilities available to the offender for a value corresponding to the proceeds of the crime. Any form of confiscation aims at depriving the offender of any advantages that may derive from his/her illicit activity.

The legislative process for the adoption of such draft CIC is still in progress at the time of writing. Nevertheless it has to be noticed that, after a long time lapse following the ratification of the Rome Statute, in a few months the Commission of experts set up by the Ministry of Justice produced an appreciable set of Draft Articles, mainly in line with the ICC Statute as well as with international humanitarian law, taking into account both the Italian treaty obligations and international customary law.

¹⁷ Decreto Legislativo 8 Giugno 2001, n. 231, 'Disciplina della responsabilità amministrativa delle persone giuridiche, delle società e delle associazioni anche prive di personalità giuridica, a norma dell'articolo 11 della legge 29 settembre 2000, n. 300', published in *Gazzetta Ufficiale* No. 140 of 19 June 2001 [Legislative Decree No. 231 of 8 June 2001 on direct liability of legal entities, companies and associations for certain crimes committed by their representatives, pursuant to Article 11 of Law 29 September 2000 No. 300].

Legislation – Urgent Provisions on the Crisis in Ukraine

- Decree-Law No. 14 of 25 February 2022 ‘Urgent Provisions on the Crisis in Ukraine’¹⁹
<<https://www.gazzettaufficiale.it/eli/id/2022/02/25/22G00024/sg>>
- Deliberation of the Council of Ministers of 28 February 2022 ‘Declaration of a state of emergency in relation to the need to ensure relief and assistance to the Ukrainian population on the national territory as a result of the serious international crisis underway’²⁰
<<https://www.gazzettaufficiale.it/eli/id/2022/03/10/22A01599/sg>>
- Deliberation of the Council of Ministers of 12 May 2022 ‘Extension of the state of emergency for intervention abroad as a result of the events taking place in the territory of Ukraine’²¹
<<https://www.protezionecivile.gov.it/it/normativa/delibera-cdm-del-12-maggio-2022-0/>>

During 2022, the Italian response to the Russian Federation’s (‘Russia’) aggression against Ukraine has been characterised by: 1) the adoption of economic sanctions against Russia and later, as the war progressed, in agreement with the other EU member states, against Belarus; 2) the support for the defence of Ukraine by the adoption of six significant military aid packages to Ukraine during 2022; 3) the economic and humanitarian assistance to the Ukrainian people and government as well as; and 4) the reception in Italy of Ukrainian people fleeing the war.²² In this regard, it should be pointed out that, in continuity with the Draghi administration, the new Italian government led by Prime Minister Giorgia Meloni, which has been in power since October 2022, confirmed Italy’s commitment to Ukraine.

Since the full-scale invasion began on 24 February 2022, the Italian government has considered the Russian aggression as a brutal attack to European peace and security. On the same day, the President of the Italian Republic, Sergio Mattarella, convened the Defence Supreme Council to condemn the military aggression of the Russian Federation against Ukraine and to pointed out that the aggression on the part of Russia was a serious violation of international law, and a real threat to global security and stability.²³

The then-Italian Prime Minister Mario Draghi reported to Parliament on 25 February 2022 regarding Russia’s invasion and war against Ukraine. During his speech, the Prime Minister condemned the attack against Ukraine by the Russian Federation and expressed full solidarity to the Ukrainian population. He also stressed the commitment of Italy to an immediate and determined response in favour of the Ukrainian people and government. At the same time, the President stressed the commitment of Italy, together with the other European States and NATO, to an immediate and determined response, and to the adoption of economic sanctions against Russia.

¹⁸ Valeria Eboli is Professor of International Law at the Italian Naval Academy. The views and opinions expressed are those of the author only.

¹⁹ Decreto-Legge 25 febbraio 2022, n. 14 ‘Disposizioni urgenti sulla crisi in Ucraina’, published in *Gazzetta Ufficiale* No. 47 of 25 February 2022.

²⁰ Delibera del Consiglio dei Ministri del 28 febbraio 2022, ‘Dichiarazione dello stato di emergenza in relazione all’esigenza di assicurare soccorso ed assistenza alla popolazione ucraina sul territorio nazionale in conseguenza della grave crisi internazionale in atto’, published in *Gazzetta Ufficiale* No. 58 of 10 March 2022.

²¹ Delibera del Consiglio dei Ministri 12 maggio 2022, ‘Proroga dello stato di emergenza per intervento all’estero in conseguenza degli accadimenti in atto nel territorio dell’Ucraina’, published in *Gazzetta Ufficiale* No. 122 of 26 May 2022.

²² As of the end of August 2022, approximately 160,000 people arrived in Italy from Ukraine. Most of them were women (81,710) and minors (59,908). See <https://ec.europa.eu/migrant-integration/news/italy-update-reception-those-fleeing-ukraine_en> accessed 27 July 2023.

²³ Statement of the President of the Republic, Sergio Mattarella of 24 February 2022. See <<https://www.quirinale.it/elementi/63388>> accessed 27 July 2023.

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In addition, during the meeting of the Council of Ministers of 25 February 2022, the Government approved Decree-Law No. 14 concerning urgent provisions on the crisis in Ukraine. The Decree-Law No. 14 was then converted into Law No. 28 on 5 April 2022.²⁴

The Decree-Law regulated the participation of Italian military personnel in NATO's Very High Readiness Joint Task Force until 30 September 2022 and in NATO assets for the surveillance of the Alliance's airspace, the maritime surveillance of the Alliance's southern flank, and presence in Latvia (Article 1) throughout 2022.

Moreover, the Decree-Law No. 14 established free provision of on-lethal military equipment and vehicles (Article 2) and materials (Article 2-bis) to Ukraine, and the possibility of adopting simplified procedures regarding assistance to and/or cooperation with the Ukrainian government and population until 31 December 2022 (Article 3). Concerning military aid, the following Decree-Law No. 16 of 28 February 2022 established the transfer of military assets, materials and equipment, including weapons, to the Government of Ukraine until 31 December 2022.²⁵ This measure has been extended until the end of December 2023 with the Decree-Law No. 185 of 2 December 2022.²⁶

Law No. 28 of 5 April 2022 also provided that Ukrainian citizens could be hosted not only in local facilities of the Reception and Integration System for asylum seekers and beneficiaries of international protection,²⁷ but also in Governmental first-response and temporary reception centres (Article 5-quater). Moreover, it established that people fleeing from Ukraine could access the reception system even without having submitted an asylum request.

With a view to providing help and assistance to the Ukrainian population on Italian soil, on 28 February 2022 the Council of Ministers also passed a deliberation declaring a state of emergency until 31 May 2022. It established that, by way of derogation from any provisions in force, help and assistance interventions could be directly decided by the Head of the Civil Protection Department, provided that these were not inconsistent with the general principles of the Italian legal system. The state of emergency was then extended until 31 December 2022 with the deliberation of the Council of Ministers of 12 May 2022. This measure ensured the contribution of the Italian state to civil protection initiatives to support the Ukrainian population, also through extraordinary and urgent interventions.

ANDREA CRESCENZI²⁸

²⁴ Legge 28 aprile 2022, n. 46, 'Norme sull'esercizio della libertà sindacale del personale delle Forze armate e delle Forze di polizia a ordinamento militare, nonché delega al Governo per il coordinamento normativo', published in *Gazzetta Ufficiale* No. 110 of 12 May 2022.

²⁵ Decreto-Legge n. 16, 28 febbraio 2022, 'Ulteriori misure urgenti per la crisi in Ucraina', published in *Gazzetta Ufficiale* No. 49 of 28 February 2022. The Decree-Law No. 16 of 2022 was repealed by Law No. 28 of 2022, which nevertheless preserved the legal effects arising in the meantime on the basis of that Decree-Law.

²⁶ Decreto-Legge 2 dicembre 2022, n. 185 'Disposizioni urgenti per la proroga dell'autorizzazione alla cessione di mezzi, materiali ed equipaggiamenti militari in favore delle Autorità governative dell'Ucraina', published in *Gazzetta Ufficiale* No. 282 of 2 December 2022. The Decree-Law No. 185/2022 was converted into Law No. 8 of 27 January 2023, published in *Gazzetta Ufficiale* No. 31 January 2023.

²⁷ The Italian reception system for asylum seekers and beneficiaries of international protection is governed by the Legislative Decree 142/2015. However, since 2015 the text has undergone several amendments. With Decree-Law No.130 of 21 October 2020, enacted as Law No.173 of 18 December 2020, the system was renamed the Reception and Integration System (in Italian 'Sistema Accoglienza Integrazione'-SAI). The new legislation sets out that access to SAI's integrated reception services can be provided to refugees, asylum seekers, unaccompanied foreign minors, and foreigners entrusted to the social services on reaching majority age. SAI can also accommodate victims of disasters, migrants whose special civil value is recognised, holders of a residence permit for medical treatment, holders of a special-protection residence permit (recipients of social protection, victims of domestic violence and victims of labour exploitation).

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Cases — International Protection for Ukrainian Conscientious Objectors

- Supreme Court of Cassation, First Civil Section, Order No. 7047, 3 March 2022
<<https://www.misterlex.it/cassazione-civile/2022/7047/>>
- Supreme Court of Cassation, First Civil Section, Order No. 18626, 9 June 2022
<<https://www.avvocatocivilista.net/contenuto.php?id=19621&redirected=120dd5b97959d9ac8b1dd598234b7b6e>>

By two commented cases, the Supreme Court of Cassation outlined the conditions under which the conscientious objection of Ukrainian citizens constitutes a prerequisite for the recognition of international protection in the two forms of refugee status and subsidiary protection.

As for the refugee status, by Order No. 18626 the Supreme Court of Cassation affirmed that, according to its established case law, the status of political refugee is recognised to the conscientious objector who refuses to provide military service in the country of origin, where enlistment implies the risk of involvement, even indirectly, in a conflict characterised by the commission or high probability of committing war crimes and crimes against humanity. In this regard, the criminal sanction provided for by the foreign law for refusal of military enlistment is to be considered as an act of persecution, any consideration regarding the proportionality of the penalty being irrelevant for the determination of refugee status according with Article 9, para. 2, lett. e), of the EU Directive 2004/83/CE.²⁹ Therefore, the Court quashed the contested sentence refusing the request of recognition of international protection and decided, in the merits, to accept the request of refugee status.

With order N. 7047, the Court of Cassation considered the request for international and humanitarian protection presented by another Ukrainian conscientious objector. The Court premised its reasoning on the arguments that: firstly, all international sources agree on the existence of an armed conflict in Ukraine in which the parties did not respect the 2015-2016 ceasefire agreements and continued to fight despite the truce; secondly, the same sources highlight the presence of serious violations of international law and the commission of war crimes by both sides in the conflict; and thirdly, on 7 September 2019, an exchange of prisoners was concluded between the parties, which is notoriously and clearly a typical act of armed conflict scenarios. In light of such considerations, according to the Court of Cassation, the commission of war crimes appeared plausible in the event of the applicant providing the military service.

In this regard, the Court made reference to the “reasonable plausibility” criterion stated by the European Court of Justice in its judgment in the case *Andre Lawrence Shepherd v Bundesrepublik Deutschland* of 2015, according to which there must exist a body of evidence capable of credibly establishing that under the situation of the specific military service a person will commit war crimes and, in this case, desertion is the only way to avoid participation in war crimes.³⁰ The Court reiterated its jurisprudence³¹ by which under the “reasonable plausibility” criterion international protection must be recognised to the individual who risks, due to his conscientious objection, being subjected at home to a sanction for evasion of the draft. Given that since the beginning of the conflict involving the Donbas region over 26,000 Ukrainian citizens have been subjected to legal action in their country

²⁹ Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ L304, 30 September 2004, pp. 12 ff.

³⁰ See Judgment of the European Court of Justice (Second Chamber) of 26 February 2015, Case C-472/13, <<https://curia.europa.eu/juris/document/document.jsf?jsessionid=C76E6684A18C899A212C024D46FCECB6?text=&docid=162544&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=913314>> accessed 23 July 2023.

³¹ See Court of Cassation, Sixth Civil Section, Order No. 13461, 23 February 2021.

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for having avoided, in various ways, military service, the Court rejected the sentence refusing subsidiary protection.

RACHELE CERA³²

Cases – War Crimes and State Immunity from Jurisdiction: Follow-Up of Decision No. 238/2014 of the Constitutional Court

- Court of Novara, Judgment No. 50, 31 January 2022, Text not available online
- Civil Court of Bologna, III Civil Section, Judgment No. 1516-2022 of 1 June 2022 <<https://blog.ticosoci.it/file/news/165/tribunale-di-bologna-sentenza-1516-2022-del-8-6-22.pdf>>
- Court of Rome, IV Civil Section, Real Estate Enforcement Office, Order No. 154, 1 December 2022 <https://www.sistemapenale.it/pdf_contenuti/1673820179_gazzettaufficiale-ord-nazisti-15422.pdf>

The three judgments under discussion concern the issue of immunity from civil jurisdiction of Germany for war crimes and crimes against humanity committed in Italy during the Second World War. This issue has long been the subject of rulings by Italian courts and resulted in a judgement of the International Court of Justice (ICJ) in 2012 where the ICJ held ‘that the Italian Republic has violated its obligation to respect the immunity which the Federal Republic of Germany enjoys under international law allowing civil claims to be brought against it based on violations of international humanitarian law by the Third Reich between 1943 and 1945’.³³

Notwithstanding the ICJ judgment, Italian courts entertained several claims against Germany ordering the State to pay compensation for violations of international humanitarian law committed by the Third Reich in conformity with the Constitutional Court’s judgment No. 238/2014.³⁴ Moreover, in some cases Italian courts took measures of constraint against German properties located in Italy in order to enforce earlier judgments which provided for compensations.³⁵ In particular, on 12 July 2021 the Court of Rome established 25 May 2022 as the date to take a decision to authorise the forced sale of four German State-owned properties located in Rome in a public auction.³⁶ This led Germany to institute new proceedings before the ICJ against Italy for allegedly failing to respect its jurisdictional immunity as a sovereign State.³⁷ With this application, Germany asked the ICJ to

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³³ Jurisdictional Immunities of the State (Germany v. Italy) (Judgment) [2012] ICJ Rep 2012, pp. 154 *et seq.*, para. 139 (1).

³⁴ See Rachele Cera et al., Correspondents’ Report – Italy (2014) 17 *YIHL*, <<https://www.asser.nl/media/2613/italy-yihl-17-2014.pdf>> accessed 12 July 2023, pp 1-12.

³⁵ On these judgements, see Rachele Cera et al., Correspondents’ Report – Italy (2020) 23 *YIHL*, <https://www.asser.nl/media/795343/italy-report_2020.pdf> accessed 12 July 2023, pp 6-11; Rachele Cera et al., Correspondents’ Report – Italy (2018) 21 *YIHL*, <<https://www.asser.nl/media/679452/yihl-2018-correspondents-reports-italy-final-copy-clean.pdf>> accessed 12 July 2023, pp 3-5.

³⁶ The properties are the German Archaeological Institute, the German Cultural Institute, the German Historical Institute, and the German School.

³⁷ See ICJ, *Application instituting proceedings containing a request for provisional measures. Questions of Jurisdictional Immunities of the State and Measures of Constraint Against State-Owned Property (Germany v. Italy)*, 29 April 2022 <<https://www.icj-cij.org/public/files/case-related/183/183-20220429-APP-01-00-EN.pdf>> accessed 12 July 2023. On 5 May 2022, the Court was informed that, following judicial developments in Italy and discussions between the representatives of the two Parties between 2 and 4 May 2022, “Germany withdraws its request for the indication of provisional measures” <<https://www.icj-cij.org/sites/default/files/case-related/183/183-20220506-PRE-01-00-EN.pdf>> accessed 12 July 2023.

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adjudge and declare, *inter alia*, that Italy has violated, and continues to violate, the obligation to respect Germany's sovereign immunity by allowing civil claims to be brought against Germany, and by taking, or threatening to take, measures of constraint against German State-owned properties situated in Rome.³⁸

Pending the ICJ decision on this new dispute between Italy and Germany, the 2022 rulings of the Courts of Novara, Bologna, and Rome follow previous case law on the subject and confirm the well-established Italian jurisprudence that does not recognise Germany's jurisdictional immunity for the crimes committed between 1943 and 1945, during which time Italy was under German occupation.

On 31 January 2022, in decision No. 50, the Court of Novara ordered Germany to pay compensation for non-pecuniary damages resulting from the massacre of twelve men between 17 and 29 years old committed in Borgo Ticino by the members of the Third Reich Navy's Assault Unit on 13 August 1944.³⁹ These people were shot in the town square in the presence of family members and the entire community. The Court of Novara held that Italian jurisdiction on the case should be recognised based on the Constitutional Court's judgment no. 238/2014.⁴⁰

For the identification of the perpetrators, the Court made use of the evidence produced before the military Court of Turin against W. K., commander of the German Assault Unit that committed the massacre, as well as testimonies in other trials.⁴¹ These testimonies enabled the Novara Court to reconstruct how the massacre took place and to understand the dynamics of the retaliation following the wounding of four German soldiers in an ambush near the village of Borgo Ticino.

On the merits, the Court held that the massacre was a war crime and a crime against humanity pursuant to Article 6 (b) (c) of the Charter of the International Military Tribunal of 8 August 1945,⁴² Article 147 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949,⁴³ and Articles 7 and 9 of the Rome Statute of the International Criminal Court of 1998.⁴⁴

The Court of Novara attributed the responsibility of these crimes to the Third Reich as they were committed by a Unit that was part of the German army. The Court also awarded compensation of EUR 400.000,00 to the municipality of Borgo Ticino because, according to the Court, 'there is no doubt that a war crime, such as the one being prosecuted, caused pain, suffering and bewilderment in the community'. In addition, a compensation of EUR 50.000,00 was awarded to one of the victim's

³⁸ See Lorenzo Gradoni, 'Is the Dispute between Germany and Italy over State Immunities Coming to an End (Despite Being Back at the ICJ)?' <<https://www.ejiltalk.org/is-the-dispute-between-germany-and-italy-over-state-immunities-coming-to-an-end-despite-being-back-at-the-icj/>> accessed 14 July 2023.

³⁹ In addition to the killing of three civilians for each wounded soldier, the population of Borgo Ticino had to pay 300,000 lire, and the Germans requisitioned every means of transport and communication. As with all other civil proceedings against Germany, the lawsuit had been initiated by descendants of the victims, in this case together with the municipality of Borgo Ticino which is an Italian village of 5,135 inhabitants in the province of Novara in Piedmont.

⁴⁰ Germany had not entered an appearance and was declared in default.

⁴¹ See, among others, Military Court of Turin, sentence of 31 March 1949 against Waldemar Krumhaar; Military Court of Verona judgment of 17 October 2012 against Ernst Wadenpfuhl.

⁴² Charter of the International Military Tribunal - Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis (London Agreement) opened for signature 8 August 1945, 82 UNTC 280 (entered into force 8 August 1945).

⁴³ Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949 opened for signature 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950). Article 147 qualifies as grave breaches 'those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly'.

⁴⁴ Rome Statute of the International Criminal Court of 1998 opened for signature 17 July 1998, 2187 UNTS 3 (entered into force 1 July 2002).

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relatives who was eight years old at the time of the massacre and had witnessed the killing of her uncle, with whom she lived at the time.

In line with the well-established Italian case law that does not recognise Germany's immunity from civil jurisdiction in cases brought by victims or parents of victims concerning war crimes and crimes against humanity committed by German armed forces during the Second World War in Italy, the Court of Novara ordered Germany to pay the above-mentioned sums in addition to legal costs.⁴⁵

The same approach was followed by the Court of Bologna with the judgment No. 1516 of 8 June 2022 which ordered Germany to pay compensation to the victims' heirs of the massacres perpetrated in Monte Sole (known as the 'Marzabotto massacre') by the battalion of the 16th 'Panzer Grenadier' Division of the 'Waffen-SS' from 29 September to 5 October 1944.⁴⁶ The massacres took place in the many villages and hamlets around the municipalities of Marzabotto, Grizzana Morandi and Monzuno, during the German retreat that began in Tuscany when Marshal Albert Kesselring, out of fear of the partisans, ordered a scorched earth policy through killing men, women, and children (about 1,700 people were killed) even if they were unrelated to partisan activities.⁴⁷

The Court of Bologna recalled that the La Spezia Military Court found in its ruling of 13 January 2007 that the SS members acted in execution of an order given to them to 'kill everyone and destroy everything'.⁴⁸ These massacres therefore were not carried out on the basis of individual choices of the German soldiers but they were part of a strategic design conceived by the Third Reich and implemented by the members of the 'Panzer Grenadiern' Division under the command of Major Walter Reder.

Based on the findings of the La Spezia Military Court, the legal representatives of the applicants argued that the Third Reich was responsible for the massacre of Marzabotto, and should be framed as war crimes and crimes against humanity as defined under Article 6 of the Charter of the International Military Tribunal. Under this approach, the applicants claimed compensation for non-pecuniary losses from Germany as the successor State to the Third Reich. Germany, in turn, stated that it did not intend to challenge the historical reality concerning the crimes perpetrated by the German soldiers against the civilian population in Italy but it objected to the exercise of jurisdiction of the Court of Bologna contrary to the 2012 ICJ ruling. According to Germany, no relevance could be attributed to the Italian Constitutional Court judgment No. 238/2014 as the issue should continue to be regulated by the ICJ decision of 2012.

Concerning the question of jurisdiction, the Court of Bologna recalled all domestic case law and legislation following the 2012 ICJ ruling, with particular emphasis on the 2014 Constitutional Court judgment and the subsequent Italian case law which reaffirmed the jurisdiction of the Italian courts in relation to compensation claims for war crimes and crimes against humanity.⁴⁹ In conformity with this well-established domestic jurisprudence, the Court of Bologna ruled that Germany was

⁴⁵ For a comment on this judgment see Giorgia Berrino 'Considerazioni a margine della condanna della Repubblica federale tedesca per l'eccidio di Borgo Ticino (nota a Tribunale di Novara, sentenza del 31 gennaio 2022, n. 50)' [Considerations in the margin of the condemnation of the Federal Republic of Germany for the Borgo Ticino massacre (note to Court of Novara, judgment of 31 January 2022, no. 50)] <<https://www.piemonteautonomie.it/considerazioni-a-margine-della-condanna-della-repubblica-federale-tesca-per-leccidio-di-borgo-ticino-nota-a-tribunale-di-novara-sentenza-del-31-gennaio-2022-n-50/>> accessed 12 July 2023.

⁴⁶ The civil suit was brought by thirty-three family members and heirs of some of the victims of the Marzabotto massacre.

⁴⁷ The massacres took place during the German military operation aimed at opposing the Italian partisan formation called 'Stella Rossa' (Red Star), between 29 and 30 September 1944 and between 1 October and 5 October 1944, in the area of the municipalities of Marzabotto, Monzuno and Grizzana Morandi (see Court of Bologna, judgment No. 1516 of 8 June 2022, p. 1).

⁴⁸ ICJ, *Jurisdictional Immunities of the State (Germany v Italy: Greece intervening)*, Judgment, 3 February 2012, [2012] ICJ Rep 99.

⁴⁹ See Rachele Cera et al., Correspondents' Report – Italy (2020) 23 *YIHL*, <https://www.asser.nl/media/795343/italy-report_2020.pdf> accessed 12 July 2023, pp 6-11.

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responsible for the crimes committed by the Third Reich via the presumption of continuity of the personality of the State and granted the compensation claims by mandating an accounting consultant to calculate the compensation due to each plaintiff.⁵⁰ The Court made this choice because the amount had to be calculated based on specific factors including the degree of relationship with the victim, the plaintiff's age, and the tragic circumstances that led to the death and others.

The Court of Bologna also clarified that in the Italian jurisprudence the principle concerning the non-applicability of statutory limitations to international crimes is a well-established principle. It emphasised that this approach was in line with the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity of 1968⁵¹ and the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes of 1974.⁵² According to the Court, the above-mentioned Conventions, the numerous rulings issued by domestic courts in different States and the various laws that affirmed the principle of the non-applicability of statutory limitations to international crimes contributed to the establishment of a general rule of public international law in this field which binds all States.⁵³ Moreover, the Court of Bologna found that this rule has retroactive effects as it arose to prevent war crimes and crimes against humanity committed by the Nazis during the Second World War from going unpunished.⁵⁴

Finally, the Court of Rome, with Order No. 154 of 1 December 2022, raised the issue of the constitutionality of Article 43, para. 3, of the Decree-Law No. 36 of 30 April 2022 converted into law, with amendments, by Law No. 79 of 29 June 2022.⁵⁵ Article 43 established the Fund for the compensation of damages suffered by victims of war crimes and crimes against humanity carried out on Italian territory or to the detriment of Italian citizens by the forces of the Third Reich in the period between 1 September 1939 and 8 May 1945. This special Fund has the purpose to grant compensation to the victims who have obtained or will obtain a final judgment against Germany as a result of a claim filed by 28 June 2023.⁵⁶

With the establishment of this Fund, enforcement proceedings may not be initiated and any enforcement proceedings that were initiated had to be extinguished. This legislative measure, therefore, prevents the continuation or initiation of enforcement proceedings seeking to require Germany to compensate Italian victims of Nazi crimes.

The Court of Rome was set to rule on a foreclosure of German assets placed in Italy by virtue of a final judgment which recognised a compensation to the heirs of a victim of Nazi crimes but, with the enactment of Article 43 of the Decree-Law No. 36/2022, Germany had requested the extinction of the procedure before the Court. Pursuant to this provision, the Court of Rome should have declared the extinction of the real estate enforcement proceeding. However, the Court questioned the compatibility of Article 43 of the Decree-Law No. 36/2022 with Articles 2 and 24 of the Italian Constitution, as this new provision undermines the right to judicial protection, which includes the

⁵⁰ See Court of Bologna, judgment No. 1516 of 8 June 2022, p. 34.

⁵¹ The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity of 1968 opened for signature 16 December 1968, 754 UNTS 73 (entered into force 11 November 1970).

⁵² The European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes of 1974 opened for signature 25 January 1974 (entered into force 27 June 2003), ETS No. 82.

⁵³ The Court recalled the judgment of the French Court of Cassation of 26 January 1984, *case B.*, stating that the French law on the non-statutory limitations of crimes against humanity confirm a general customary rule of international law.

⁵⁴ See Court of Bologna, judgment No. 1516 of 8 June 2022, p. 13.

⁵⁵ Legge 29 giugno 2022, n. 79, Conversione in legge, con modificazioni, del decreto-legge 30 aprile 2022, n. 36, recante ulteriori misure urgenti per l'attuazione del Piano nazionale di ripresa e resilienza (PNRR), published in *Gazzetta Ufficiale* No. 150 of 29 June 2022.

⁵⁶ Initially, claims should have been brought within 180 days from the publication of the Decree-Law (by the end of November 2022) but this time-limit was extended by Article 11-ter of Law No. 14 of 24 February 2023. See Alessandro Bufalini, 'The Italian Fund for the Victims of Nazi Crimes and the International Court of Justice: Between Compliance and Dispute Settlement', available at <http://www.sidiblog.org/2023/05/16/the-italian-fund-for-the-victims-of-nazi-crimes-and-the-international-court-of-justice-between-compliance-and-dispute-settlement/> accessed 12 July 2023.

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right to the enforcement guardianship that is considered a fundamental human right.⁵⁷ In this respect, it should be recalled that under the Italian Code of Civil Procedure enforcement procedures are not considered administrative proceedings but legal procedures, enjoying the same dignity and prerogatives as the ordinary proceedings.⁵⁸

The Court of Rome also found that the establishment of the Fund was not a way to satisfy creditors because Article 43, para. 3, by providing the termination of the enforcement proceedings and preventing the possibility to institute new enforcement proceedings, deprives the creditor of the right to take legal action. In addition, the Court observed that the ministerial decree which should have regulated the forms of access to the Fund, the amount (whether total or partial) of the compensation and the arrangements for the payment of the amount due, was still deficient. This lacuna introduces an element of uncertainty and provides no guarantee to creditors. In addition, according to the Court, the present and future impossibility of starting an enforcement process imposed on creditors is not proportionate to the purpose proclaimed in the first part of Article 43, namely, “Establishment of the Fund for the compensation of damages suffered by victims of war crimes and crimes against humanity for the infringement of inviolable rights of the person”.

Moreover, in the proceedings before the Court of Rome, the Greek Region Sterea Ellada also intervened through an enforcement action against Germany for damages arising from crimes committed during the Second World War.⁵⁹ As the Greek Region was prevented from accessing the Fund, it urged the Court to raise the question of the constitutional legitimacy of Article 43 of the Decree-Law No. 36/2022 with reference to Articles 3 and 24 of the Italian Constitution. On these aspects, the Court of Rome observed that the doubt as to the conformity of Article 43 with the principle of equality under Article 3 of the Italian Constitution could be well-founded insofar as this new provision excludes from its scope creditors who are not Italian and those who suffered damages for war crimes and crimes against humanity in a territory other than Italy, such as the case of the Greek Region.⁶⁰ Moreover, according to the Court, the creditors' right to satisfaction in the context of an enforcement proceeding constitutes an essential component of the right of access to the court enshrined in Article 24 of the Italian Constitution. Therefore, Article 43 of the Decree-Law No. 36/2022 could violate this constitutional norm as it extinguishes the proceedings that have been initiated and prevents new ones from being started. Finally, according to the Court of Rome, Article 43 could also violate Article 111 of the Italian Constitution which safeguards the equality of the parties in the trial ‘thorough due process regulated by law’.

⁵⁷ Article 2 concerns the protection of the inviolable rights, while Article 24 protects the right of access to justice which is an inalienable right; the two norms are therefore strictly interrelated. The Italian Constitutional Court in the judgment No. 238 of 22 October 2014 clarified the relationship between these provisions and the international customary norm on state immunity see Rachele Cera et al., Correspondents' Report – Italy (2014) 17 *YIHL*, <<https://www.asser.nl/media/2613/italy-yihl-17-2014.pdf>> accessed 12 July 2023, pp 1-12.

⁵⁸ The Italian Code of Civil Procedure deals with the enforcement proceedings in its third book (Articles 474–632). These proceedings must be based on judgments or other legal instruments known as *titoli esecutivi* (authorities to execute, or enforceable instruments). According to Article 474 of the Italian Code of Civil Procedure ‘Enforcement can be effected only where there is a valid authority to execute in relation to an obligation which is certain, the quantum of which has been fixed and which has fallen due’. The following constitute valid authority to execute: a) judgments and measures to which the law expressly accords executory effect; b) promissory notes, as well as other negotiable instruments to which the law expressly accords executory effect (e.g. checks); and c) private law instruments including contracts, deeds, and other private law instruments executed before a notary, but only as far as pecuniary credits are concerned. See Giacomo Oberto, ‘An Outline of the Italian System of Enforcement Proceedings in Civil Matters’, <<https://www.giacomooberto.com/enforcement/reportoberto.htm>> accessed 12 July 2023.

⁵⁹ On the question of compensation for the Distomo massacre see Rachele Cera et al., Correspondents' Report – Italy (2019) 22 *YIHL*, <https://www.asser.nl/media/680347/italy-report_2019.pdf> accessed 12 July 2023, pp 5-7.

⁶⁰ Article 3 of the Italian Constitution enshrines formal and substantive equality of all citizens.

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For all these reasons, the Court of Rome raised the question of the constitutionality of Article 43, para. 3, referring the matter to the Constitutional Court. Pending the judgment of the latter, the Court of Rome stayed the enforcement proceedings.

VALENTINA DELLA FINA⁶¹

Legislation – Participation in International Missions

- Decision of 15 June 2022, ‘Italy’s participation in international missions 2022’⁶²
<<https://www.senato.it/leg/18/BGT/Schede/docnonleg/44956.htm>>

On 15 June 2022, the Italian Council of Ministers adopted a decision enabling Italy’s participation in six new international missions (Document XXV, No. 5) as well as an analytical report detailing international missions carried out in 2021, with a view to extending them in 2022 (Document XXVI, No. 5). The decision was approved by the Foreign Affairs and Defence Committee of the Lower House on 27 July 2022.

In particular, Document XXV, No. 5 deals with the launching of three new international missions: 1) a bilateral mission supporting Qatar’s Armed Forces on occasion of the 2022 World Cup (1 January – 31 December 2022, 560 military personnel, Sheet 14-bis); 2) a EU military training mission in Mozambique – EUTM Mozambique (1 January – 31 December 2022, 15 military personnel, Sheet 28-bis); and 3) a mission aimed at strengthening NATO’s presence in the south-eastern part of the Alliance (1 April – 31 December 2022, 1000 personnel, Sheet 38-bis). The financial requirements of these three missions as planned amounted to € 33,123,377.

Document XXVI, No. 5 includes a) a report covering ongoing international missions as well as the progress of development cooperation interventions in 2021, with a view to extending them in 2022, and b) an analytical sheet about the legal basis, objectives, mission length, geographical area, composition of the assets, and financial requirements for each mission.

As regards Europe, extensions were requested for six missions. The mission that engaged the largest number of Italian military personnel was the NATO Joint Enterprise mission in the Balkans with 1490 personnel (852 more than in 2021, Sheet 1).

In Asia, extensions were requested for eight international missions. The largest number of Italian personnel participated in the UNIFIL mission in Lebanon, with 1169 personnel (132 fewer than in 2021, Sheet 7) and in the international coalition against the terrorist threat of Daesh, with 650 personnel (250 fewer than in 2021, Sheet 10).

Regarding the African continent, extensions were requested for 18 international missions. The largest number of Italian personnel was engaged in Libya, in a bilateral assistance and support mission (400 personnel, Sheet 16) and in a navy support mission (774 personnel, Sheet 33).

Overall, in 2022 the Italian contingents that engaged in 40 international operations amounted to 12,183 personnel, mainly from the armed forces (12,060), which was an increase compared to 8613 in 2020 and 9449 in 2021.

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⁶² Deliberazione del Consiglio dei ministri in merito alla prosecuzione delle missioni internazionali in corso e alla partecipazione dell’Italia a ulteriori missioni internazionali per l’anno 2022, adottata il 15 giugno 2022 [Deliberation of the Council of Ministers regarding extension on-going international missions and the progress of development cooperation interventions and Italy’s participation in additional international missions, adopted on 15 June 2022].

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It should be pointed out that, even though the largest number of Italian missions took place in Africa, the largest presence of Italian military personnel was recorded in Europe (6500, i.e. 55% of all military personnel – a 22% increase compared to 2021).

Lastly, the participation of Italian military personnel in the Very High Readiness Joint Task Force – VJTF was initially envisaged until 30 September 2022 (Legislative Decree No 14/ 2022).⁶³ It was then extended until 31 December 2022 (Legislative Decree No 169 of 8 November 2022).⁶⁴

From a financial perspective, the overall expenditure for the participation of civilian and military personnel in international missions in 2022 amounted to €1,855,788,608.

ANDREA CRESCENZI⁶⁵

⁶³ NATO Allies decided at the 2014 Wales Summit to enhance the NATO Response Force (NRF) by creating a “spearhead force” within it, known as the Very High Readiness Joint Task Force (VJTF). In response to Russia’s full-scale invasion of Ukraine in February 2022, NATO deployed high-readiness elements of the NRF for the first time in a deterrence and defence role, <https://www.nato.int/cps/en/natolive/topics_49755.htm> accessed 27 July 2023.

⁶⁴ Decreto Legge n. 169, 8 novembre 2022, ‘Disposizioni urgenti di proroga della partecipazione di personale militare al potenziamento di iniziative della NATO, delle misure per il servizio sanitario della regione Calabria, nonché di Commissioni presso l’AIFA, published in *Gazzetta Ufficiale* No. 261 of 8 November 2022, <<https://www.gazzettaufficiale.it/eli/id/2022/11/08/22G00182/sg>>.

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