ITALY[1]

Contents

Cases – First Decisions on the Crime of Torture under Article 613 bis of the Italian Criminal Code

- Supreme Court of Cassation, Fifth Criminal Section, Decision No. 47079, 8 July 2019 <https://www.sistemapenale.it/pdf_contenuti/1579119955_47079-2019-anonimizzata-tortura.pdf>
- Supreme Court of Cassation, Fifth Criminal Section, Decision No. 50208, 11 October 2019 <https://www.sistemapenale.it/pdf_contenuti/1579119955_cassazione-50208-2019-anonimizzata-tortura.pdf>

In 2017, for the first time, a special offense of torture was introduced into the Italian criminal legislation by Law No. 110 of 14 July 2017, as reported in the Correspondents' Reports 2017.[2] The enactment of such law is in compliance with Italy's international obligations such as Article 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),[3] Article 3 of the European Convention on Human Rights (ECHR),[4] Article 7 of the

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

[2] Legge n. 110, 14 July 2017, 'Introduzione del delitto di tortura nell'ordinamento italiano' [Introduction of the crime of torture into Italian law], entered into force 18 July 2017, *Gazzetta Ufficiale* No. 166 of 18 July 2017 <http://www.gazzettaufficiale.it/eli/id/2017/07/18/17G00126/sg> accessed 14 April 2020. See Rachele Cera et al., 'Correspondents' Reports 2017: Italy' <https://www.asser.nl/media/4967/yihl-2017-correspondents-reports-italy.pdf> accessed 14 April 2020, pp 1-6. For a comment on the new law, see Stefania Tunesi, 'Il delitto di tortura. Un'analisi critica' [The crime of torture. A critical analysis] <http://www.giurisprudenzapenale.com/wp-content/uploads/2017/11/Scarica-il-contributo.pdf> accessed 14 April 2020.

[3] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June1987) (CAT).

[4] Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature 4 November 1950, 213 UNTS 221 (entered into force 3 September 1953).

International Covenant on Civil and Political Rights,[5] and the Rome Statute of the International Criminal Court,[6] which qualifies torture as a crime against humanity (Article 7) and a war crime (Article 8).

In particular, Article 4 of the CAT requires States Parties to criminalise torture as well as any attempt to commit torture or any act committed by any person that constitutes complicity or participation in torture. Italy ratified the CAT in 1989,[7] but only in 2017 said provision was implemented in the domestic legal order following decisions by the European Court of Human Rights (ECtHR) that required Italy to fill its legislative gap.[8]

In the Italian domestic order, the Military Criminal Code of War, which is applicable during armed conflicts, already penalised torture,[9] while the crime of torture was lacking in the Italian Criminal Code. To this aim, Law No. 110/2017 introduced some new articles in the Italian Criminal Code, such as Articles 613 bis and 613 ter.

The new Article 613 bis of the Italian Criminal Code reads as follows:

> Anyone who causes, with repeated violence or serious threats or acting with cruelty, severe physical pain or a psychological trauma that can be verified, to a person deprived of personal freedom or who is under his custody, power, vigilance, control, care or assistance, or in another situation of reduced defence, shall be punished with imprisonment from 4 to 10 years, if the fact consists in more conducts, or implies a treatment inhuman and degrading for the dignity of this person.
> If the conduct described in the preceding paragraph is hold by a public official or a person acting in an official capacity, with an abuse of his powers or in breach of the obligations inherent to his public functions or official capacity, the penalty is imprisonment from five to 12 years.
> The preceding paragraph does not apply in case of pain deriving only from the execution of lawful measures that exclude or restrict personal rights.[10]

The decisions under scrutiny constitute the first instances in which the Court of Cassation applied the new norm. The Fifth Penal Section of the Supreme Court of Cassation issued two different decisions in relation to two different proceedings related to the same event. The first

[5] International Covenant on Civil and Political Rights, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976).
[6] Rome Statute of the International Criminal Court, opened for signature 17 July 1998, 2187 UNTS 3 (entered into force 1 July 2002).
[7] Under Article 4 of the CAT, above n 3:
1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person, which constitutes complicity or participation in torture.
2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.
[8] See, for all, ECtHR, *Cestaro v Italy*, Judgment, 7 April 2015, Application No. 6884/11 (*Cestaro* 2015).
[9] Article 185 bis of the Italian Military Criminal Code imposes imprisonment from 1 to 5 years on any member of the military forces who inflicts torture or inhuman treatment on prisoners of war, civilians or other persons protected under the relevant conventions of international humanitarian law.
[10] See Rachele Cera et al., 'Correspondents' Reports 2017: Italy' <https://www.asser.nl/media/4967/yihl-2017-correspondents-reports-italy.pdf> accessed 14 April 2020, p 5. This paragraph is in conformity with Article 1, paragraph 1 of the CAT which excludes from the legal notion of torture "pain or suffering arising only from, inherent in or incidental to lawful sanctions".

decision concerned the criminal responsibility of minors,[11] while the second decision concerned the criminal responsibility of adults for having committed the same criminal offence.[12]

The case in question happened in Manduria, 47 kilometres east of Taranto (Apulia), where six minors and two adults tortured and robbed a 65-year-old man who died in a hospital later. The eight perpetrators allegedly formed a 'baby gang' – Italian slang to identify a gang formed by teenagers – called the 'Orphanage Group' which also shared video clips of their assaults.

The six accused minors were 17 years old, the two adults were aged 19 and 22. The victim was Antonio Cosimo Stano, a person with a mental disability. On 5 April 2019, following his neighbours' request,[13] the police made an inspection of Mr. Stano's home and found that he was shabby, malnourished and lived in abject poverty. He had also been robbed. Doctors brought him food and water, but when the police officers returned the next day, they found he neither had eaten nor drank. Due to his poor health, he was taken to the hospital where he died on 23 April 2019. The coroner's reports mentioned that he was punched, beaten with sticks and kicked repeatedly on the street and in his own home. Police investigations established that the gang was responsible for these acts and that Mr. Stano was unable to defend himself and react because of his mental disability.[14] Moreover, the gang taunted the victim calling him "the madman of the village of the child", using the name of a youth club opposite his home.[15]

In its Judgement No. 47079 of 2019, the Court of Cassation ruled that such conducts fell within the new criminal offense of torture. The judgement is a landmark decision because for the first time the Supreme Court clarified certain elements of the newly introduced crime of torture. The Court qualified torture as a crime against personal liberty, i.e. the right of self-determination of the individual, who should not be subject to any form of coercion, including moral coercion. As far as the offender is concerned, it ruled that any individual, acting as a public official or acting as a private person, may commit torture. However, if the perpetrator is a public official or a person acting in an official capacity abusing his/her powers or breaching the obligations inherent to his/her public functions or official capacity, the penalty is aggravated.

The aforementioned definition extends the notion of torture beyond the strict definition of torture as a State crime. Following the legal reasoning of the Supreme Court, the crime of torture may also be committed by private individuals. Such definition corresponds with the one given by the ECtHR in its jurisprudence.[16]

---

[11] A pre-trial detention order of the Juvenile Court of Liberty of Taranto dated 20 May 2019 was contested by the applicants.

[12] In this case, the applicants contested an Order of the Review Court of Taranto dated 14 May 2019 which confirmed a previous pre-trial detention order.

[13] Angela Colella, 'La Cassazione si confronta, sia pure in fase cautelare, con la nuova fattispecie di 'tortura' (art. 613 bis c.p.)' [The Court of Cassation is confronted, albeit in the preliminary phase, with the new crime of torture (Art. 613 bis of the Criminal Code] <https://www.sistemapenale.it/it/scheda/colella-cassazione-tre-sentenze-nuova-fattispecie-di-tortura?out=print> accessed 16 April 2020.

[14] Ibid. Mr. Stano submitted a complaint to the police in which he declared that, for several years, he had been harassed by the gang and he was so scared that he never left home.

[15] Ibid.

[16] See, for all, *Cestaro* 2015, above n 8. See also Angela Colella, 'La Cassazione si confronta, sia pure in fase cautelare, con la nuova fattispecie di 'tortura' (art. 613 bis c.p.)' [The Court of Cassation is confronted, albeit in the preliminary phase, with the new crime of torture (Art. 613 bis of the Criminal Code] <https://www.sistemapenale.it/it/scheda/colella-cassazione-tre-sentenze-nuova-fattispecie-di-tortura?out=print> accessed 16 April 2020.

According to the mental element of Article 613 bis of the Italian Criminal Code, a criminal intent is required. Concerning the material element (*actus reus*), the act may consist of "more conducts" or involve "an inhuman treatment and degradation of the dignity of [the tortured] person". In any case, repeated violence, serious threats and cruelty constitute such conduct. Under Article 613 bis such conduct must result in physical pain or psychological trauma, which must be verified by the judge. The victim must be someone deprived of his/her personal freedom or a person who is under the offender's custody, power, vigilance, control, care or assistance, or in another situation of reduced defence.

With regard to the conducts, the Court of Cassation clarified that they must be repeated within a certain time frame. It also specified that the acts of violence may be directed against both the person and/or his/her goods, as it happened in this case. Cruelty, instead, does not need to be reiterated. It is qualified as a moral attitude of the perpetrator.

In Decision No. 50208 of 2019, the Court of Cassation likewise analysed the crime of torture in reference to the two adults. In its decision, the Court referred to international obligations of Italy and to several judgments by the ECtHR, in particular in the cases *Bartesaghi Gallo et al. v Italy* of 22 June 2017[17] and *Cestaro v Italy* of 7 April 2014.[18]

In the Court's view, torture may be committed not only when the conducts are repeated within a certain time but also when several different acts of violence take place at the same time. The Court of Cassation specified that multiple violent conducts could also have taken place at the same time and not necessarily within a certain time frame.

The Supreme Court also explored the notion of cruelty. In its view, cruelty occurs when the perpetrators took satisfaction in the infliction of suffering or humiliation on the victim, as in this case. It also clarified that conducts causing both physical and mental pain are included in Article 613 bis. Accordingly, conducts provoking suffering but not visible injuries to the body are also punishable.

The Court of Cassation ruled that the personal situation of the victim corresponded to the definition contained in Article 613 bis, i.e. "a person […] in another situation of reduced defence", due to Mr. Stano's mental disability, poor conditions he had been living in and his social isolation. The victim was deprived of any means of communication, including a telephone. The Supreme Court further observed that some contextual conditions also contributed to such a situation of reduced defence: the house was located in an isolated place and the offensive conducts took place at night.

In its decision, the Court of Cassation paid special attention to the Strasbourg case law. In particular the Supreme Court referred to Article 3 of the ECHR in order to draw a line between torture and inhuman and/or degrading treatment and to interpret the new Article 613 bis of the Italian Criminal Code in line with Article 3 of the ECHR. The Italian judges took into account the main elements of the definition of the crime of torture as identified by the ECtHR. In particular, in line with the international understanding, they decided that torture can be committed by both public officials and private individuals. The conduct consists of several acts of violence and their effect may be both a physical and moral suffering. In

[17] ECtHR, *Bartesaghi Gallo et al. v Italy*, Judgement, 22 June 2017, Application Nos. 12131/13 and 43390/13.
[18] *Cestaro* 2015, above n 8.

addition, the Court of Cassation ruled that torture could occur where more acts of violence take place in a single moment.

In 2019, this latter approach was followed by the Juvenile Court of Milan in a decision concerning acts of torture under Article 613 bis committed by minors in the town of Varese (Lombardy).[19] The Court convicted four teenagers for having tortured a peer.[20]

It is noteworthy that after quite a long time, Italian courts can now qualify certain conduct as torture and punish the perpetrators for this crime, even when committed in peacetime.

VALERIA EBOLI[21]

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

☛ Supreme Court of Cassation, III Civil Section, Judgment No. 21995, 25 June 2019 <http://www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verbo=attach&db=snciv&id=./20190903/snciv@s30@a2019@n21995@tS.clean.pdf>

With Judgment No. 21995 of 25 June 2019, the Supreme Court of Cassation returned to the issue of jurisdictional immunities of the State and *exequatur* of foreign judgments. This development in Italian case law concerned, in particular, the question of compensation for the Distomo massacre. The issue became controversial in the last decade when several Italian courts ruled that some Greek judgements awarding compensation for civil damages to the relatives of Greek victims of the massacre in the Greek village of Distomo committed by Nazi troops during their withdrawal in 1944 would be enforceable in Italy. The Distomo massacre is considered one of the most serious crimes against humanity perpetrated by German forces during the last months of World War II.

In particular, with this judgment, the Court of Cassation decided on the appeal submitted by the 'Deutsche Bahn Aktiengesellschaft' (DB AG), a German railway company, against the decision of the Tribunal of Rome of 20 May 2015 which allowed the foreclosure on DB AG's assets and credits from third parties.[22] In this case, the enforcement order did not concern the foreclosure against a real estate of Germany situated in Italy as in the Villa Vigoni cases,[23] but the garnishment by a

[19] Juvenile Court of Milan, Decision, 3 July 2019, unpublished. See ANSA, 'Condannati per tortura, è prima volta' [Convicted of torture, for the first time], 3 July 2019 <https://www.ansa.it/lombardia/notizie/2019/07/03/condannati-per-tortura-e-prima-volta_52d22c92-728c-4fdf-bc71-f7950a0cabff.html> accessed 16 April 2020.

[20] The defendants segregated and beat the peer in a garage. The victim was also threatened with a knife. All these acts were filmed and then posted on Instagram.

[21] Valeria Eboli is Professor of International Law at the Italian Naval Academy, Livorno, Italy. The views and opinions expressed are those of the author only.

[22] Tribunal of Rome Decision No. 11069, 20 May 2015, unpublished as of [see earlier remark on the previous page] 27 April 2020.

[23] It is worth to point out that Villa Vigoni was a property of the German State near Lake Como used for political and diplomatic meetings as well as for scientific, cultural and artistic events. In the last decade, Villa Vigoni gave rise to a contentious case before the ICJ and then before many Italian courts, which exercised their competence in respect of compensation claims brought against Germany by nationals who were victims of war crimes during World War II. With Judgment No. 14885 of 26 October 2017, the Court of Cassation found that a foreign State can be subject to civil jurisdiction, but not all of its assets may be the subject of execution. Accordingly, the Court of Cassation rejected the legal charge over Villa Vigoni. In this regard, see Rachele Cera et al., 'Correspondents' Reports 2018: Italy'

third-party, namely credits that are owed to the DB AG by the Italian railway network and Trenitalia s.p.a.[24]

The enforcement order was based on the judgment of the Court of First Instance of Livadia of 30 October 1997, in the *Prefecture of Voiotia v Federal Republic of Germany* case (Case No. 137/1997), which held Germany liable for the Distomo massacre and ordered it to pay compensation to victims' relatives. On 4 May 2000, the Supreme Court of Greece confirmed this decision. By an *exequatur* decision of the Court of Appeal of Florence of 13 June 2006, the 1997 *Livadia* judgment was declared enforceable in Italy.[25] Furthermore, on 21 October 2008, the Court of Appeal of Florence rejected Germany's objections against its 2006 decision. Subsequently, through Judgment No. 11163 of 12 January 2011, the Court of Cassation confirmed the ruling of the Court of Appeal of Florence, making the Greek decision enforceable in Italy definitively.[26]

Accordingly, the Court of Cassation with its Decision No. 21995/2019 held inadmissible the appeal of DB AG aimed revoking the enforcement order of the Tribunal of Rome, which imposed the foreclosure of its assets and credits. The legal reasoning was that in the enforcement phase of a dispute the judge could only ascertain the legitimacy of the executive order but not the jurisdiction.

The Court of Cassation therefore found the appeal inadmissible without analysing the reasons put forward by DB AG. It simply reiterated the conclusions reached by the Constitutional Court in Judgment No. 238/2014.

In this judgement, the Constitutional Court ruled that the decision of the International Court of Justice (ICJ) of 3 February 2012, in the *Jurisdictional Immunities of the State (Germany v Italy)* case, could not be applicable in Italy. This is because it was inconsistent with core Italian constitutional principles, such as the right of access to a Court (Article 24 of the Constitution) and the protection of fundamental human rights (Article 2 of the Constitution).[27] According to the Constitutional Court, these rights cannot be limited by absolute State immunity in cases of crimes committed in breach of inalienable human rights.[28]

<https://www.asser.nl/media/679452/yihl-2018-correspondents-reports-italy-final-copy-clean.pdf> accessed 30 March 2020, pp 3-5.

[24] 'Trenitalia s.p.a.' is an operating company for the management of passenger rail transport of 'Ferrovie dello Stato italiane', which is a public holding completely owned by the Ministry of Economy and Finance of Italy. Trenitalia controls operating companies in the four sectors of supply chain, transport, infrastructure, real estate services and other service.

[25] For an in-depth analysis of *exequatur* of foreign judgments and their relationship with jurisdictional immunity of States, see, among others, Nerina Boschiero, 'Jurisdictional Immunities of the State and Exequatur of Foreign Judgments: A Private International Law Evaluation of the Recent ICJ Judgment in Germany v. Italy', in Nerina Boschiero et al. (eds) *International Courts and the Development of International Law*, T.M.C. Asser Press, The Hague, 2013, pp 781-822.

[26] Supreme Court of Cassation, First Civil Section, Decision No. 11163, 20 May 2011 <http://www.europeanrights.eu/index.php?funzione=S&op=2&id=2242> accessed 8 April 2020.

[27] ICJ, *Jurisdictional Immunities of the State (Germany v Italy: Greece intervening)*, Judgment, 3 February 2012, [2012] ICJ Rep 99. The ICJ ruled that Italian courts had violated Germany's immunity from jurisdiction in upholding a 'request for *exequatur*' of judgments rendered by foreign courts. In this line, the ICJ denied that Italian courts could exercise their competence over compensation claims brought against Germany by nationals who suffered damages in consequence of international crimes committed by the Third Reich. See also Rachele Cera et al., 'Correspondents' Reports 2012: Italy' <https://www.asser.nl/media/1424/italy-yihl-15-2012.pdf> accessed 7 April 2020, pp 1-6.

[28] See Rachele Cera et al., Correspondents' Reports – Italy (2014) 17 *YIHL,* <https://www.asser.nl/media/2613/italy-yihl-17-2014.pdf>, accessed 27 March 2020, pp 1-12.

In the wake of these conclusions, the Court of Cassation ruled that all Italian judges have an institutional duty resulting from this judgment of the Constitutional Court to reject any appeal concerning the exemption from civil jurisdiction of a State for *acta iure imperii* committed in violation of international *jus cogens* rules such as crimes against humanity.

With this ruling, the Court of Cassation took the opportunity to reaffirm the core principles established by the Italian Constitutional Court in 2014 in order to guarantee the full satisfaction of the right to compensation for the victims of the Distomo massacre.

ROSITA FORASTIERO[29]

Cases – Further Decisions of the Court of Cassation Concerning the Offense of Participation in International Terrorist Associations

- Court of Cassation, Fifth Penal Section, Judgment No. 1970, 26 September 2018 <http://www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verbo=attach&db=snpen&id=./20190116/snpen@s50@a2019@n01970@ts.clean.pdf>
- Court of Cassation, Fifth Penal Section, Judgment No. 10380, 7 February 2019 <http://www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verbo=attach&db=snpen&id=./20190308/snpen@s50@a2019@n10380@tS.clean.pdf>
- Court of Cassation, Second Penal Section, Judgment No. 22163, 21 February 2019 <http://www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verbo=attach&db=snpen&id=./20190521/snpen@s20@a2019@n22163@ts.clean.pdf>

The Supreme Court of Cassation delivered further decisions concerning Article 270 bis of the Criminal Code, which criminalises the participation in associations for the purpose of international terrorism or for subverting the democratic order. In conjunction with Article 270 sexies, which sets forth the legal definition of 'conducts for the purpose of terrorism', Article 270 bis aims to prevent a wide range of conducts, including the preparation, or otherwise supporting, of terrorist attacks, which are punishable irrespective of the actual occurrence of an attack. The new judgments have confirmed the interpretive criteria that emerged from previous Supreme Court jurisprudence.[30] These should assist lower courts to apply Article 270 bis in such a manner as to prevent the offenses of 'alleged danger', while respecting the principle that no one should be prosecuted for his or her political, religious or other opinions (Article 25 of the Constitution).

With Judgment No. 1970 of 26 September 2018,[31] the Fifth Penal Section of the Supreme Court decided on the case of a foreign national (Halili El Mahadi), in respect of whom the Court of Turin had confirmed provisional detention for participating in the self-proclaimed Islamic State in Iraq

[29] Rosita Forastiero is Researcher at the Institute for International Legal Studies of the National Research Council of Italy (CNR), Rome, Italy.

[30] See Rachele Cera et al., 'Correspondents' Reports 2018: Italy' <https://www.asser.nl/media/679452/yihl-2018-correspondents-reports-italy-final-copy-clean.pdf> accessed 12 April 2020, pp 6-12.

[31] Court of Cassation, Fifth Penal Section, Judgment No. 1970, 26 September 2018 <http://www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verbo=attach&db=snpen&id=./20190116/snpen@s50@a2019@n01970@ts.clean.pdf> (*Judgement No. 1970)* accessed 12 April 2020.

and the Levant (ISIS). Moreover, the applicant was accused of glorifying the Paris and Brussels attacks as well as summary executions and other atrocities perpetrated by ISIS in territories under its control. The measure of provisional custody had therefore a twofold substantive basis in the Criminal Code: Article 270 bis on terrorist associations and Article 414 on the offenses of instigation to commit crimes and glorification of crime. In challenging the order of the Court of Turin before the Supreme Court, the applicant claimed that that there was no evidence that he had engaged in the conducts of public instigation or apologia, which is a requirement for criminalisation and prosecution according to Article 414. However, the Supreme Court ruled:

> This Court already ruled that the offense of instigation covers also the dissemination, through one's own Facebook profile, of communications concerning military activities relating to the Syrian-Iraqi conflict and participation in it from the ISIS, if it is possible to infer from said communications an appeal – even indirect – to *jihad* and martyrdom. The reasons are, on the one hand, the criminal nature inherent in the terrorist organisations to which refers Article 270 bis […] and, on the other hand, possible unlimited dissemination of instigation speech via the above social channel.[32]

The applicant also claimed that Article 270 bis was not applicable in the case, because there were no concrete links between him and ISIS' operational structure. Despite the relation of the applicant with persons pertaining to the same radical milieu, there was no evidence that they had pursued common terrorist projects. On the other hand, proselytising others and glorifying ISIS activity does not *per se* demonstrate affiliation to ISIS and, thus, justify provisional detention.

The Supreme Court did not upheld these arguments. In its view, the interpretation given to Article 270 bis by the Court of Turin was correct and in line with Supreme Court jurisprudence. Accordingly, when assessing participation in ISIS, the judge must take into consideration the peculiar characteristics of this criminal organisation. ISIS could be described by its extreme flexibility and its functioning as a network, whose cells can operate simultaneously or at different moments in any country. Contacts between the participating groups – be they physical, by phone or via Internet – are discontinued or sporadic in many cases. Consequently, in the presence of a solidarity link, any conduct that is functional to the activity of ISIS or other transnational organisations known as terrorist falls within the sphere of Article 270 bis. These conducts include proselytising, disseminating propagandistic documents, financing or otherwise supporting the organisation, preparing or acquiring weapons, enrolling, training, and so on. Prosecution further requires that one's adherence to ISIS be substantiated in some concrete activity, an ideological adherence being criminally irrelevant. As the Supreme Court observed, the principle that some concrete activity is necessary for substantiating the offense ("*principio di materialità*") plays an important role, especially if so-called 'lone wolves' are involved.[33] On this particular aspect, the Court ruled:

[32] Ibid., p 3.
[33] Ibid., pp 3-5.

> Regarding so-called 'lone wolves', it has been stated in a judgment mentioned in the application[34] that participation in ISIS or similar transnational organisations, which allow participation in flexible form, may be inferred from the will to leave for fighting against the 'infidels', or proclaimed vocation to martyrdom, or indoctrination; and this especially in the precautionary phase of proceedings. It is further required, however, that the individual conduct be inserted in the structure of an organisation; and that some operational contact, or at least a concrete (even weak) link exists between the agent and the organisation, so that the latter can be aware, not necessarily in direct manner, of the agent's adherence to it.[35]

The applicant's adherence to ISIS not only was proven by proselytizing and indoctrination, "but also had as manifestation self-training to commit terrorist acts of violence […] and the establishment of co-operative relation with other persons pertaining to the same international network".[36] On these grounds, the Supreme Court declared the application inadmissible.[37]

On 7 February 2019, the same Section of the Court of Cassation delivered Judgment No. 10380.[38] This judgment sheds light on the relevance the Supreme Court gives to principles and norms of international law for qualifying certain associations as terrorist under Article 270 bis. The case concerned four foreign nationals (Koraichi Wafa, Moutaharrik Abderrahim, Khachia Abderrahmane and Bencharki Salma) found guilty of participating in ISIS. The Assizes Court of Appeal of Turin had confirmed the first instance conviction, because the accused "had established an association between them and, thus, giving birth to a cell of the international terrorist organisation that has named itself *Islamic State* (IS); and their aim was actively contributing to the realization of its objectives".[39] In fact, the convicted had engaged in concrete activity giving support to the organisation by enrolment, indoctrination and by proclaiming their readiness to commit terrorist acts in territories occupied by ISIS or in Europe, notably Italy.

All convicted persons challenged this decision before the Supreme Court, with various arguments. A preliminary one was that the Assizes Court of Appeal had completely neglected to demonstrate the existence of ISIS, the terrorist character of this organisation and the applicants' participation in it. Allegedly, the Assize Court of Appel had grounded its qualification of ISIS as a terrorist association "on documents having no legal effects (United Nations (UN) Resolutions)"; the Court even seemed to have regarded this qualification as a "known fact", which did not require further demonstration.[40]

The Supreme Court rejected these arguments by ruling:

> The allegation that the Court has grounded its decision on a sort of 'journalistic discussion' on the factual circumstances concerning the so-called *Islamic State* is completely dismantled by the Court's wide and well documented review of the pertinent international and national law sources, and relevant

[34] The Supreme Court refers to its Judgment No. 14503 of 19 December 2017 (*Messaoudi*) already reported in Rachele Cera et al., 'Correspondents' Reports 2018: Italy' <https://www.asser.nl/media/679452/yihl-2018-correspondents-reports-italy-final-copy-clean.pdf> accessed 14 April 2020, pp 6-12.
[35] *Judgement No. 1970*, above n 32, p 6.
[36] Ibid., p 9.
[37] Ibid.
[38] Court of Cassation, Fifth Penal Section, Judgment No. 10380, 7 February 2019 <http://www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verbo=attach&db=snpen&id=./20190308/snpen@s50@a2019@n10380@tS.clean.pdf> accessed 12 April 2020 (*Judgement No. 10380)*.
[39] Ibid., p 1.
[40] Ibid., p 2.

> jurisprudence. These are unanimous in recognizing that ISIS is not a political entity whose constitutive elements are 'sovereignty-people-territory'. It is, rather, a global organisation, which makes use of cells in territories other than those occupied by the self-proclaimed state, and is aimed at committing terrorist acts of violence. Said acts qualify as 'terrorist' under Article 270 bis, which, after describing the relevant conducts […], explicitly refers to "any other conduct that is defined as terrorist, or aimed at terrorism by treaties and other norms of international law binding upon Italy" […].[41]

Consequently, the Assize Court of Appel's line of reasoning was correct. The fact that ISIS is a terrorist association does not require further demonstration because it results from a number of international documents, including binding ones. Among them are UN Security Council Resolutions 1373 (2001), 2178 (2014) and 2249 (2015)[42] as well as European Union (EU) Council Decision 2005/671/JHA of 2005 and EU Directive 2017/541 of 2017.[43] The Supreme Court further recalled that Italy is a party to global and European treaties on terrorism, which entered the national legal order through Law No. 153 of 2016.[44] More importantly, looking at the effectiveness of its activity

> ISIS should be described as an entity that pursues the global *jihad* making recourse to violence and massacres for weakening the foundations of the state constitutional order, and attempting the life and physical integrity of people in an indiscriminate and unpredictable way. This brings to qualify it as an international terrorist organisation under Italian criminal law. Most precisely, said qualification results from Article 270 bis, paragraph 3, of the Criminal Code in conjunction with Article 270 sexies, which set out the legal definition of 'conducts for the purpose of terrorism'. This, in addition to the relevant international legal instruments.[45]

The Supreme Court then turned to the questions whether the association between the applicants was 'for the purpose of international terrorism' or 'for subverting the democratic order' as contained in Article 270 bis of the Criminal Code. The Supreme Court again stressed the interplay

---

[41] Ibid.

[42] UN Security Council, 'Resolution 1373 (2001)', UN Doc. S/RES/1373; UN Security Council, 'Resolution 2178 (2014)', UN Doc. S/RES/2178; UN Security Council, 'Resolution 2249 (2015), UN Doc. S/RES/2249.

[43] Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences, OJ L/253, 29 September 2005, pp 22 ff., and Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, OJ L/88, 31 March 2017, pp 6 ff.

[44] Legge n. 153, 28 July 2016, 'Norme per il contrasto al terrorismo, nonché ratifica ed esecuzione: a) della Convenzione del Consiglio d'Europa per la prevenzione del terrorismo, fatta a Varsavia il 16 maggio 2005; b) della Convenzione internazionale per la soppressione di atti di terrorismo nucleare, fatta a New York il 14 settembre 2005; c) del Protocollo di Emendamento alla Convenzione europea per la repressione del terrorismo, fatto a Strasburgo il 15 maggio 2003; d) della Convenzione del Consiglio d'Europa sul riciclaggio, la ricerca, il sequestro e la confisca dei proventi di reato e sul finanziamento del terrorismo, fatta a Varsavia il 16 maggio 2005; e) del Protocollo addizionale alla Convenzione del Consiglio d'Europa per la prevenzione del terrorismo, fatto a Riga il 22 ottobre 2015' [Counter-terrorism regulations, as well as ratification and execution: (a) the Council of Europe Convention on the Prevention of Terrorism, concluded at Warsaw on 16 May 2005; (b) the International Convention for the Suppression of Acts of Nuclear Terrorism, concluded at New York on 14 September 2005; (c) the Protocol of Amendment to the European Convention for the Suppression of Terrorism, concluded at Strasbourg on 15 May 2003; (d) the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, concluded at Warsaw on 16 May 2005; (e) the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, concluded at Riga on 22 October 2015], entered into force 24 August 2016, *Gazzetta Ufficiale* No. 185 of 9 August 2016 <https://www.gazzettaufficiale.it/eli/id/2016/08/09/16G00165/sg> accessed 12 April 2020.

[45] *Judgement No. 10380*, above n 39, pp 2-3.

between national and international law. It observed that the Italian constitutional order comprises the customary norms of international law (Article 10, paragraph 1 of the Constitution)[46] and provides for Parliament and the Regions to take into account the obligations of Italy resulting from EU legislation or treaties, when performing their legislative functions (Article 117, paragraph 1 of the Constitution).[47] One might infer from these circumstances that the rationale behind Article 270 bis is protecting the emerging value of 'global public security', because the targeted associations "put at risk the socio-political stability all over the world, and are a threat for the international public order".[48] Having said this, the Supreme Court concluded, however, that the legislative reform of 2001,[49] which introduced the special offense of association for the purpose of international terrorism into the Criminal Code, envisaged this offense as being distinct and autonomous in respect to the already existing one of 'establishing or participating in subversive associations'.

Based on this, the Supreme Court ruled that the Assize Court of Appeal had motivated its decision adequately. It reiterated that the legitimacy control, which is the task of the Supreme Court, does not comprise reconsidering or reinterpreting the factual or legal circumstances of the case. The Supreme Court must only check whether lower courts have delivered decisions in breach of law or have failed in motivating the grounds of their ruling. Any judgments must contain rational and clear explanation of the courts' line of reasoning so as to justify the conclusions. In this case, the Assize Court of Appeal's explanation of the reasons for its decision was in no way illogical or unreasonable. The applications were therefore declared inadmissible.[50]

The Second Penal Section of the Court of Cassation followed the above criteria in a further case, which involved, for most part, the same legal issues and was decided by Judgment No. 22163 of 21 February 2019.[51] The case concerned two Egyptian brothers (Antar Hakim Moustafa Abdelhakim and Antar Hossameldin Moustafa Abdelhakim) and a Tunisian (Sakher Tarek), all found guilty and convicted by the Judge for Preliminary Investigation at the Assizes Court of Genova, for participating in ISIS. Subsequently, the Assizes Court of Appeal of Genova re-described the relevant conducts as instigation and apologia *ex* Article 414 of the Criminal Code and, thus, reduced the penalties. This decision was challenged before the Supreme Court of Cassation by both the accused and the General Attorney ('*Procuratore generale*') at the Assize Court of Appeal.

---

[46] Article 10 paragraph 1 of the Constitution states: "The Italian legal system shall conform to the generally recognised principles of international law." An English translation of the Italian Constitution can be found on the Senate's official website: <https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf>.

[47] According to Article 117 paragraph 1 of the Constitution, "Legislative powers shall be vested in the State and the Regions in compliance with the Constitution and the constraints deriving from EU legislation and international obligations."

[48] *Judgement No. 10380*, above n 39, p 10.

[49] Ibid., p 11. Mentioned reform was enacted through Law No. 438 of 2001 (Legge n. 438, 15 December 2001, 'Conversione in legge, con modificazioni, del decreto-legge 18 ottobre 2001, n. 374, recante disposizioni urgenti per contrastare il terrorismo internazionale' [Conversion into law, with amendments, of Decree Law No. 374 of 18 October 2001, containing urgent provisions to combat international terrorism], entered into force 19 December 2001, *Gazzetta Ufficiale* No. 293 of 18 December 2001 <https://www.gazzettaufficiale.it/eli/id/2001/12/18/001G0496/sg> accessed 12 April 2020.

[50] *Judgement No. 10380*, above n 39, pp 13-14.

[51] Court of Cassation, Second Penal Section, Judgment No. 22163, 21 February 2019 <http://www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verbo=attach&db=snpen&id=./20190521/snpen@s20@a2019@n22163@ts.clean.pdf> accessed 15 April 2020.

The accused claimed that the Assizes Court of Appeal, though qualifying their conduct as a less serious offense than participation in terrorist associations, had failed to demonstrate the existence of ISIS and its criminal nature, a preliminary requirement for applying both Article 270 bis and Article 414. The principal argument was, once again, that the Assize Court of Appeal had grounded its decision on certain UN or EU documents "that should not be regarded as law sources in the domestic legal order".[52] The Supreme Court declared the application unfounded, however, because the *occasio legis* for Article 270 bis was precisely to adapt Italian legislation on terrorism to developments of international law; in fact, the provision utilizes certain legal concepts that are internationally accepted and, thus, making these concepts part of the Italian legislation.[53]

The Supreme Court endorsed, on the contrary, the arguments put forward in the General Attorney's application. It was true that the Assizes Court of Appeal had lessened the criminal relevance of the conducts of the accused by considering them in isolation and not as a whole. Moreover, the Court had not taken into consideration the context of the activity carried out by the accused, another important parameter for applying Article 270 bis. These are criteria well established in the Supreme Court jurisprudence. Further, the challenged judgment did not provide a coherent and clear explanation of the reasons for the Assizes Court of Appeal's ruling.[54] Hence, the judgement had to be regarded as being in breach of the law, being erroneous in application of criminal provisions, and being affected with a serious deficit of motivation. The Supreme Court therefore annulled the judgment, and deferred the case to the Assizes Court of Appeal of another district for reconsidering the proceeding.[55]

ORNELLA FERRAJOLO[56]

Cases – Decisions of the Court of Cassation on Proselytism and Recruitment for Terrorist Purposes

☛ Court of Cassation, Sixth Penal Section, Judgment No. 43830, 25 September 2019
<http://www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verbo=attach&db=snpen&id=./20191028/snpen@s10@a2019@n43830@tS.clean.pdf >

☛ Court of Cassation, Second Penal Section, Judgment No. 23168, 14 March 2019
<http://www.marinacastellaneta.it/blog/wp-content/uploads/2019/05/23168.pdf >

In the last decades, international terrorism is a recurrent theme in the case law of the Italian courts which are confronted with a variety of individual conducts having terrorist purposes, including proselytising activity and recruitment aimed at strengthening the Islamic terrorist network in Italy.[57]

In this regard, it is worth recalling that the Italian legislator avoided an excessive 'typification' of terrorist conducts in order to leave a greater discretion to the lower courts in framing individual

[52] Ibid., pp 3-4.
[53] Ibid., pp 5-6.
[54] Ibid., pp 7-16.
[55] Ibid., p 17.
[56] Ornella Ferrajolo is Senior Researcher at the Institute for International Legal Studies of the National Research Council of Italy (CNR), Rome, Italy.
[57] Cf. Kent Roach (ed) *Comparative Counter-Terrorism Law*, Cambridge University Press, Cambridge, 2015, pp 271 ff.

conducts and in identifying the norms to be applied in each case under examination.[58] As a result, many first instance judgments are appealed and the Court of Cassation is often called to interpret the scope of the Criminal Code's provisions on international terrorism, and to clarify the criminal profiles of the conducts related to this typology of terrorism.

In the two decisions under examination, the Supreme Court ruled on proselytism and recruitment, two conducts on which Italian courts are often called upon to rule.

Judgment No. 43830 of September 2019 concerned the appeal of Saber Hmidi, found guilty of crimes under Articles 270 bis of the Criminal Code, which punishes the participation in a terrorist organisation. In 2017, the Judge of Preliminary Investigations of the Court of Rome sentenced him to four years and eight months imprisonment. In 2018, the Court of Assizes of Appeal of Rome confirmed the penalty but changed the charge establishing that Hmidi's conduct fell under Article 302 of the Criminal Code ('crime of incitement').

Both decisions ruled that the defendant had carried out activities of incitement targeting at affiliating people to the terrorist association known as ISIS to which the defendant was linked through the terrorist organisation Ansar al-Shari'a. Saber Hmidi's link to radical Islamic extremism resulted from the analysis of his personal computer where several files demonstrated his relationship with jihadist terrorism. Moreover, Skype interviews of the defendant with people who played a decisive role in his process of religious radicalization further confirmed Hmidi's strong ties with Islamic religious extremism.

In the appeal submitted to the Court of Cassation, Hmidi's lawyers contested the application of Article 302 of the Criminal Code arguing that the religious proselytism carried out by the defendant did not result in any concrete danger. Therefore, it did not constitute a crime as in the meaning of Article 302. Moreover, the lawyers underlined that a provision punishing activities aimed at promoting religious radicalism was missing in the Criminal Code and, as a result, the applicant could not be sentenced.

It is worth recalling that Article 302 punishes instigation to commit one of the terrorist offences envisaged under Chapters 1 and 2, Title 1, Book II of the Criminal Code even when these offences are not committed.[59] The offences that can be object of instigation include the following: promoting, directing or supporting an association which pursues terrorist objectives and providing assistance to those involved in the association (Articles 270 bis and ter), carrying out attacks motivated by terrorist aims (Article 280), kidnapping as a means of pursuing terrorist objectives (Article 289 bis) and offences of recruiting and training terrorists (articles 270 quater and quinquies).[60] Under Article 302 instigation carried out by computer or telematic tools is a specific aggravating circumstance.

The Supreme Court dismissed the appeal as it was considered unfounded. With regard to the criminal provisions, the Court of Cassation clarified that the defendant's activities of incitement

[58] Vicente Valiente-Ivañez et al., 'Legal Analysis of Counter-Radicalisation in a Selected European Union Member States Report', <https://ec.europa.eu/research/participants/documents/downloadPublic?documentIds=080166e5c3b17c4b&appId=PPGMS > accessed 20 April 2020, p 76.

[59] Chapter I concerns the crimes against the international personality of the State, while Chapter II lists the crimes against the internal personality of the State.

[60] See Salvatore Di Centonze, Ludovica Giovedì, *Terrorismo e legislazione d'emergenza* [Terrorism and emergency legislation], Key, Milano, 2016, pp 140-141.

under Article 302 should have been framed in Article 270 sexies of the Criminal Code ('conduct for terrorist purposes').[61] According to the Supreme Court, the Court of Assizes of Appeal of Rome had sufficiently demonstrated that Hmidi's proselytism did not have merely theoretical or ideological connotations but it pursued the aim of convincing other people to apply the Koranic precepts with the idea to impose them with violence, even using religious militancy. The evidence collected during the trial of first instance showed that the defendant expressed opinions on the Internet in line with Islamic radicalism and carried out proselytism in favour of the jihadist armed struggle. Hmidi was also willing to carry out attacks or to travel to places where people were fighting in the name of jihad, urging those, with whom he came into contact, to join him in committing these crimes. The Court of Cassation held that the crime of incitement under Article 302 of the Criminal Code was, therefore, well substantiated. It further clarified that when proselytism is related to Islamic radicalism and incites to violence it constitutes a conduct for terrorist purposes under the terms of Article 270 sexies of the Criminal Code.

Judgment No. 23168 of 14 March 2019 concerned the appeal against the decision of the Court of Appeal of Milan that confirmed the applicant's conviction for the crime provided for in Article 270 quarter ('recruitment for terrorist purposes, including international terrorism') of the Criminal Code. The defendant was recruited into the terrorist organisation Jabhat Al Nusra belonging to the Al Qaeda network.[62]

Article 270 quarter, paragraph 1 establishes that

> apart from the cases referred to in Article 270 bis, anyone who recruits one or more people to carry out acts of violence or sabotage of essential public services for terrorist purposes, even if they are directed against a foreign state, an international institution or organisation is punished with imprisonment for seven to fifteen years.

Para. 2 of the same provision states that "[e]xcept for the cases referred to in Article 270 bis, and except in case of training, the recruited person is punished with a prison sentence of five to eight years".

The defendant's lawyers appealed the decision because there was no evidence of an agreement between the recruited person and the organisation that recruited him but there was only the applicant's desire to share the ideology of Islamic fundamentalism and his willingness to support it.

On the merits, the Court of Cassation declared the appeal unfounded and clarified the scope of Article 270 quater, paragraph 2 of the Criminal Code. The Supreme Court observed that under Article 270 quater the recruitment of potential terrorists is considered a criminal offence regardless of whether a specific association agreement exists among its affiliates. Furthermore, it ruled that

---

[61] Under Article 270 sexies a "conduct for terrorist purposes" is a conduct that, by its nature or context, is capable of causing serious harm to a State or an international organisation, provided that such conduct is carried out with one of the following purposes: to frighten the population, to compel public bodies or an international organisation to act or to refrain from acting, to destabilize or destroy the fundamental political, constitutional, economic and social structures of a State or of an international organisation. The provision covers any further conduct that is defined as 'terrorist' or "committed with the purpose of terrorism" under Conventions or other norms of international law that are binding for Italy. See Rachele Cera et al., 'Correspondents' Reports 2018: Italy' <https://www.asser.nl/media/679452/yihl-2018-correspondents-reports-italy-final-copy-clean.pdf> accessed 20 April 2020, pp 6-11.

[62] See Rachele Cera et al., 'Correspondents' Reports 2016: Italy' <http://www.isgi.cnr.it/wp-content/uploads/2018/07/italy-yihl-19-2016.pdf > accessed 24 April 2020, pp 22-24.

this norm punishes the mere individual "adherence" to a terrorist network and for its application it is not necessary to have committed specific terrorist acts that make militancy clear, such as training punished by Article 270 quinquies of the Criminal Code. However, the Supreme Court ruled that the sanctioned "recruitment" under Article 270 quater, paragraph 2 presupposes the sharing of the jihadist ideology and the acceptance of its subversive message associated with a concrete manifestation of the willingness to carry out all the actions necessary to achieve the terrorist purposes pursued by Al Qaeda. On the latter, the Court of Cassation observed that this terrorist organisation has several delocalised cells and it is characterised by the recruitment of individuals who share the jihadist subversive project and are available to carry out acts for terrorist purposes, even by individually planning such acts.

The Court also recalled that Article 270 quater, paragraph 2 was introduced into the Italian Criminal Code in conformity with UN Security Council Resolution 2178 (2014) which required UN Member States to also punish so-called 'preparatory acts', namely those acts which precede terrorist acts.

According to the Court of Cassation, the lower courts produced all the necessary evidence (including the defendant's trip to Syria to practice with Jabhat Al Nusra's militias as established from telephone intercepts) that showed the defendant's radicalisation to extremism and his full availability to carry out terrorist actions demonstrating his 'recruitment' that fell under Article 270 quater, paragraph 2 of the Criminal Code.

VALENTINA DELLA FINA[63]

Cases – Serious Crimes against Italian Citizens in Latin America: Follow-up of Judgment of 17 January 2017 of III Court of Assizes of Rome

☛ I Court of Assizes of Appeal of Rome, Judgment, 8 July 2019, Criminal proceedings No. 40/17 R.G.
<http://www.24marzo.it/index.php?module=pagemaster&PAGE_user_op=view_printable&PAGE_id=500&lay_quiet=1>

With decision of 8 July 2019, the Court of Assizes of Appeal of Rome ruled on the appeal lodged against the 2017 ruling of the Court of Assizes of Rome in the so-called *Plan Condor* case.[64]

The appeal was filed by the Public Prosecutor's Office at the Court of Rome, the General Attorney at the Court of Appeal of Rome, family members of the victims and the Presidency of the Council of Ministers as civil parties in order to affirm the guilt of the defendants acquitted at first

[63] Valentina Della Fina is Senior Researcher at the Institute for International Legal Studies of the National Research Council of Italy (CNR), Rome, Italy and coordinates the Institute's team of researchers which prepares the Italian Report.

[64] See Rachele Cera et al., 'Correspondents' Reports 2017: Italy' <https://www.asser.nl/media/4967/yihl-2017-correspondents-reports-italy.pdf> accessed 10 April 2020, pp 20-23. For other criminal proceedings conducted in South America against the perpetrators of grave crimes in the context of *Plan Condor*, see Francesca Lessa, *Memory and Transitional Justice in Argentina and Uruguay: Against Impunity*, Palgrave Macmillan, New York, 2013; Francesca Lessa, 'Operation Condor on Trial: Justice for Transnational Human Rights Crimes in South America', 51 *Journal of Latin American Studies* 2, 409-439.

instance for lack of evidence relating to their direct involvement in the victims' deaths. In addition, six convicted defendants (Ahumada Valderrama Rafael, Blanco Juan Carlos, Bermudez Francisco Morales, Figueroa German Ruiz, Gomez Luis Arce, and Ramirez Ramirez Hernán Jerónimo) lodged the appeal to render void the first judgment. Their lawyers put forth grounds of appeal that were almost identical. They requested the nullity of the first instance proceedings alleging procedural irregularities as the victims did not have Italian citizenship and the parties, who initiated the proceedings, involved third parties who had no direct relationship with the victims.[65] As to the merit, they requested the acquittal as the defendants had not de facto contributed to the commission of crimes they were charged but they were sentenced only for their leading role.

At the civil parties and public prosecutors' request, the Court of Assizes of Appeal agreed to partially reopen investigations in the case acquiring new evidence from Argentina and Uruguay, including declassified records of the United States Central Intelligence Agency (CIA). The newly acquired evidence, above all documentation of the Uruguayan Navy archives, was used to demonstrate the key role the defendants played in planning and conducting the *Plan Condor*, and their role in the victims' murders.

Through this new documentation, the lawyers of family members of the victims produced evidence of the active involvement of the defendants in the kidnappings, illegal detention, torture and murder or disappearance of twenty-three Italian victims. Furthermore, the new evidence also highlighted the different roles of the accused in the structures of repression of the *Plan Condor* and their awareness that the plan's final goal was the physical elimination of all political opponents illegally seized.

In the first instance proceedings, only eight political and military leaders of Chile, Bolivia and Peru were sentenced to life imprisonment, while nineteen defendants belonging to the intermediate civilian, military and political ranks of the involved States (Argentina, Chile, Bolivia, Brazil, Peru and Uruguay) were acquitted because it was not possible to establish a direct link with the victims' death. The civil parties' lawyers and the public prosecutors contested the distinction between high-ranking and intermediate-rank defendants in order to establish the individual criminal responsibility. As a result, they asked the Court of Assizes of Appeal to find the defendants, who did not play a leading role in the framework of *Plan Condor,* also guilty of voluntary murder because they contributed with their conduct to the victims' killing as part of the same repressive system aimed at exterminating political opponents. Moreover, the defendants acquitted at first instance had to be found guilty of kidnapping, a crime that was not subject to a statute of limitations because of its aggravated nature.[66]

In its judgment of 2019, the Court of Assizes of Appeal reconstructed the role played by each defendant in *Plan Condor* based on the new evidence provided by the appellants and held that the

[65] The political movement Frente Amplia was among the parties that initiated the first proceedings because twenty-six of its members of Italian origin were kidnapped and killed.

[66] In 2017, the Court of Assizes held that the crime of kidnapping was covered by statute of limitations and for this reason several defendants were acquitted. However, for the appellants' lawyers unlawful kidnappings in the framework of *Plan Condor* could not be subject to a statute of limitations because of their massive and aggravated nature and they should have been more investigated. For the appellants' requests see the website where the CONDOR Appeal Judgment is published <http://www.24marzo.it/index.php?module=pagemaster&PAGE_user_op=view_page&PAGE_id=578&MMN_position=200:200 >, accessed 10 April 2020, pp 3-5.

victims' killings were the result of an accurate and criminal planning. Moreover, the evidence showed that the plan had lasted for a long time and had a wide territorial extension.[67]

On these grounds, the Court confirmed the life sentences decided in January 2017 against Ahumada Valderrama Rafael (Chile), Blanco Juan Carlos (Uruguay), Bermudez Francisco Morales (Peru), Figueroa German Ruiz (Peru), Gomez Luis Arce (Bolivia) and Ramirez Ramirez Hernán Jerónimo (Chile).

Furthermore, the Court condemned eighteen defendants, who had been acquitted in the first instance, to the same penalty. These include twelve Uruguayans, namely Arab Fernandez José Ricardo, Gavazzo Pereira José Horacio, Larcebeau Aguirregaray Juan Carlos, Mato Narbondo Pedro Antonio, Maurente Mata Luis Alfredo, Medina Blanco Ricardo José, Ramas Pereira Ernesto Avelino, Sande Lima José, Silveira Quesada Jorge Alberto, Soca Ernesto, Vázquez Bissio Gilberto and Troccoli Fernández Jorge Néstor; five Chileans, namely Aguirre Mora Daniel, Espinoza Bravo Pedro Octavio, Luco Astroza Carlos, Moreno Vázquez Orlando and Vásquez Chauan Manuel Abraham, and one Peruvian, Martínez Garay Martín. Chávez Dominguez was the only defendant whose acquittal was confirmed.[68]

The Court held all convicted persons responsible for the crime of continuous and aggravated voluntary homicide under Articles 575, 576 and 577 of the Criminal code.[69] Among the defendants, Troccoli Fernández Jorge Néstorde has to be mentioned specifically as he was the only defendant not to be tried *in absentia* as he had been living in Italy since 2007. In 2008, Italy rejected the extradition request from Uruguay which had initiated criminal proceedings against Troccoli. Italy, therefore, prosecuted Troccoli who was acquitted by the Court of Assizes of Rome in 2017.[70]

However, by its judgment of 2019, the Court of Assizes of Appeal held him responsible for a number of acts (torture, kidnappings, and illegal arrests) aimed at killing an undetermined number of political opponents of the Uruguayan and Argentine military regimes. As a result, he was sentenced to life imprisonment with daytime solitary confinement for two years, passport seizure and travel ban.[71] However, Troccoli's judicial case is not completed yet as his lawyers declared to appeal the sentence to the Court of Cassation.

It is worth remembering that the 2019 ruling of the Court of Assizes of Appeal also decided to compensate the forty-seven civil parties involved in the proceedings by establishing an immediately

[67] For the role of each defendant see the website where the CONDOR Appeal Judgment is published <http://www.24marzo.it/index.php?module=pagemaster&PAGE_user_op=view_page&PAGE_id=578&MMN_position=200:200 >, accessed 10 April 2020.

[68] Luis Garcia Meza Tejada (former President of Bolivia) and Pedro Richter Prada (former Prime Minister of Peru) who were sentenced to life imprisonment died before the conclusion of the proceedings. See 24 Marzo, Sentenza d'Appello CONDOR [CONDOR Appeal Judgment] <http://www.24marzo.it/index.php?module=pagemaster&PAGE_user_op=view_page&PAGE_id=578&MMN_position=200:200> accessed 15 April 2020. For a comment to this sentence, see Francesca Lessa, 'Rome Court of Appeals Condemns 24 to Life Imprisonment for Murders during Operation Condor' <https://impakter.com/court-condemns-24-to-imprisonment-for-operation-condor/> accessed 10 April 2020.

[69] Article 575 governs the crime of murder, Articles 576 and 577 identify the aggravating circumstances, in the presence of which the crime of murder is punished with life imprisonment. The use of torture, cruelty and premeditation are among these circumstances.

[70] See Rachele Cera et al., 'Correspondents' Reports 2017: Italy' <https://www.asser.nl/media/4967/yihl-2017-correspondents-reports-italy.pdf> accessed 10 April 2020, pp 20-21.

[71] See <file:///C:/Users/Amministratore/Downloads/Condor-Motivazioni-Appello-Intestazione%20(1).pdf>, accessed 10 April 2020, pp 33-34.

executive provisional amount of EUR one million for the Presidency of the Council of Ministers and a compensation in the amounts between EUR 250,000 and EUR 100,000 for the remaining civil parties.

VALENTINA DELLA FINA

Cases – Vos Thalassa and Sea-Watch 3 Affairs: the Interdiction of 'Boat Migrants' and the Illegitimacy of Pushback to Libya

- ☛ Court of Trapani, Preliminary Investigation Judge, Judgment, 23 May 2019 <https://archiviodpc.dirittopenaleuomo.org/upload/4095-sentenza-gip-trapani-con-omissis.pdf>
- ☛ Court of Agrigento, Preliminary Investigation Judge, Order No. 14885, 2 July 2019 <https://www.penalecontemporaneo.it/upload/9218-gip-agrigento-2-luglio-2019-seawatch.pdf>

The commented jurisprudential rulings took a decisive stance in defence of the rights of rescued migrants against the background of systematic attempts to criminalise civil sea rescue. They also enriched, with new elements, the dense strand of case law directed to strengthen the principles of the rule of law and the primacy of fundamental rights over the control needs of territorial borders.

The *Vos Thalassa* case refers to the rescue of migrants by the tugboat Vos Thalassa in the Sicilian Channel in July 2018. When it was known that the ship was directed to the African coast following the order of the Libyan coast guard, a group of migrants on board threatened to use force against the crew with the aim of preventing their return to Libya and inducing the ship to reverse its route towards Italy. Two individuals were arrested upon disembarkation in Italy, accused of having led the revolt and charged with the aggravated crimes of violence or threat and resistance to public officials (Articles 336, 337 and 339 of the Italian Criminal Code) and for aggravated facilitation of irregular immigration (Article 12, paragraph 3 of Legislative Decree No. 286 of 1998).[72]

On 23 May 2019, the Judge for Preliminary Investigations of the Court of Trapani acquitted the accused, ruling that their actions were legitimate as they constituted acts of self-defence.

On the basis of the facts reconstructed throughout the investigation, the Court held that it was indisputable that the criminal actions indicated in the charges had been carried out by the accused. Therefore, it focused on the question of whether the accused's conduct could be justified, under Article 52 of the Criminal Code, as brought about by the state of necessity.

Arguing that the rights endangered by the return of migrants to Libya (namely, the right to life and the right to physical integrity) belong to the person as such, the judge assessed that international rules related to search and rescue operations, contained in the 1982 Convention on the Law of the Sea (UNCLOS),[73] the 1974 International Convention for the Safety of Life at Sea (SOLAS

[72] Decreto Legislativo n. 286, 25 July 1998, 'Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero' [Consolidated text of the provisions concerning immigration regulations and rules on the status of aliens], entered into force 2 September 1998, *Gazzetta Ufficiale* No. 191 of 18 August 1998 <https://www.camera.it/parlam/leggi/deleghe/98286dl.htm> accessed 20 April 2020.

[73] United Nations Convention on the Law of the Sea, opened for signature 10 December 1982, 1833 UNTS 397 (entered into force 16 November 1994).

Convention),[74] and especially in the 1979 Convention on the Search and Rescue at Sea (SAR Convention),[75] envisage an obligation to save human life at sea which entails the duty of identifying a 'safe harbour'. On such notion, the Court put a special emphasis. It underlined that, with reference to people rescued at sea who are also migrants/refugees/asylum seekers, other requirements are applicable aimed at preventing landings in 'unsafe' places, which would result in open violations of the principle of *non-refoulement*, the ban of collective expulsions, and, more generally, the rights accorded to refugees and asylum seekers. Concerning the principle of *non-refoulement*, the judge cited rules of international law, starting from Article 3 of the ECHR, as interpreted by the ECtHR in its case law, under which States cannot return individuals to a State where there is a real and concrete risk of an individual being subject to inhuman or degrading treatment. The judge also referred to Articles 4 and 19 of the Charter of Fundamental Rights of the European Union, which prohibit in an absolute and imperative manner the return to a country where the individual faces a risk of torture.

Being in violation with the *non-refoulement* principle, qualified as a *jus cogens* rule, the judge deemed invalid the Memorandum of Understanding (MoU) between Italy and Libya of 2017,[76] by which Italy undertook to cooperate with the Libyan authorities in combating irregular migration. The MoU regulates the operating procedures, also followed in the present case, in which the Maritime Rescue Coordination Centre (MRCC) of Rome warns and involves the Libyan coast guard when requests for help coming from boats located in the vicinity of Libyan territorial waters are received, in order to ensure that Libyan authorities intervene and bring back migrants to African coasts. The judge held also that the MoU was concluded between the Prime Minister of Italy and the Head of the Libyan Government of National Accord without prior authorisation from the Italian Parliament. As a result, the judge ruled that the agreement did not have legal effects and, therefore, was not binding.

In this regard, the judge disagreed that in the period when the case occurred, Libya could be considered a safe place in accordance with the SAR Convention. The judge emphasised that the situation in Libya was characterised by serious and systematic violations of human rights. Libya did not ratify the 1951 Refugee Convention[77] and did not meet the requirements laid down in Article 6.12 of the International Maritime Organization (IMO) Guidelines on the Treatment of Persons Rescued at Sea regarding a place of safety. [78] The judge extensively cited United Nations High

[74] International Convention for the Safety of Life at Sea, opened for signature 1 November 1974, 1184 UNTS 278 (entered into force 25 May 1980).
[75] International Convention on Maritime Search and Rescue, opened for signature 1 November 1979, 1405 UNTS 97 (entered into force 22 June 1985).
[76] Memorandum d'intesa sulla cooperazione nel campo dello sviluppo, del contrasto all'immigrazione illegale, al traffico di esseri umani, al contrabbando e sul rafforzamento della sicurezza delle frontiere tra lo Stato della Libia e la Repubblica Italiana of 2 February 2017 [Memorandum of Understanding on cooperation in the field of development, combating illegal immigration, trafficking in human beings, smuggling and strengthening border security between the State of Libya and the Italian Republic of 2 February 2017], concluded 2 February 2017 <http://www.governo.it/sites/governo.it/files/Libia.pdf> accessed 19 April 2020.
[77] Convention relating to the Status of Refugees, opened for signature 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954).
[78] International Maritime Organization (Maritime Safety Committee), 'Resolution MSC.167(78), Guidelines on the Treatment of Persons Rescued at Sea, adopted on 24 May 2004' <http://www.imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Maritime-Safety-Committee-(MSC)/Documents/MSC.167(78).pdf> accessed 19 April 2020.

Commissioner for Refugees reports to describe the living conditions of migrants in Libya, in particular torture, lack of food and education, concluding that returning individuals to such conditions would have been a grave violation of their fundamental rights.

In light of the above, the judge recognised that the offenses of the two applicants had not been disproportionate in the context of the circumstances of the case.[79] Given that the defendants' fundamental rights were at stake, including their right to life and to not be exposed to inhuman or degrading treatments or torture, he acquitted the two defendants.

The *Sea-Watch 3* case concerned the rescue on 12 June 2019, by the ship of the German non-governmental organisation Sea-Watch flying the Dutch flag, of 53 migrants in international waters (47 miles from the Libyan coast). Contrary to the instructions received from the Libyan coast guard to take turn towards the port of Tripoli, the ship directed towards Lampedusa asking Italy in vain for an allocation of a port landing. However, *Sea-Watch 3* was prohibited to enter both Italian territorial waters and Italian ports and it stayed at the borders of Italian waters for over ten days, during which 11 migrants were brought to the mainland by Italian military units for medical treatment.

On 19 June, an urgent application to the Regional Administrative Court asking for an authorisation to sail into port was rejected. The ship captain Carola Rackete and others onboard then filed an application with the ECtHR requesting provisional measures to authorise the entry into an Italian port and landing. On 25 June, while requiring the Italian authorities to continue to provide all necessary assistance to those persons onboard who were in a vulnerable situation on account of their age or state of health, the ECtHR decided not to indicate to the Italian Government the interim measures requested by the applicants.[80] On 26 June, despite the still valid entry ban, the ship, invoking a state of necessity, entered the Italian territorial sea; and finally, on the night of 28 and 29 June, despite the express verbal refusal from the Italian Finance Police, the *Sea-Watch 3* moored in the port of Lampedusa. During docking manoeuvres, a vessel from the Italian Finance Police tried to stop the *Sea-Watch 3* from entering the port and came in contact with the passing ship. After disembarking, Captain Rackete was immediately taken into custody by police and put under house arrest. She was charged with the offenses of resistance or violence against a warship (Article 1100 of the Italian Code of Navigation) and resistance to a public official (Article 337 of the Italian Criminal Code).

On 2 July, the Judge for Preliminary Investigations of Agrigento rejected both the request for validation of the arrest warrant issued by the Italian Finance Police and the request of the Public Prosecutor to impose the precautionary measure of the prohibition of residence in the province of Agrigento.

As for the offense under Article 1100 of the Code of Navigation, the judge, in line with the Constitutional Court (Judgment No. 35 of 2000), ruled that naval units of the Italian Finance Police are to be considered 'warships' only "when they operate outside territorial waters or in foreign ports

[79] An extensive analysis of each element justifying legitimate self-defence can be found in Luca Masera, La legittima difesa dei migranti e l'illegittimità dei respingimenti verso la Libia (Caso Vos-Thalassa*)* [The legitimate rescue of migrants and the illegitimacy of refoulement to Libya (Vos-Thalassa case)] <https://archiviodpc.dirittopenaleuomo.org/d/6754-la-legittima-difesa-dei-migranti-e-lillegittimita-dei-respingimenti-verso-la-libia-caso-vos-thalassa> accessed 20 April 2020.

[80] ECtHR, 'The Court decides not to indicate an interim measure requiring that the applicants be authorised to disembark in Italy from the ship Sea-Watch 3' <http://hudoc.echr.coe.int/eng-press?i=003-6443361-8477507> accessed 20 April 2020.

where there is no consular authority." This had not been the case as the ship of the Italian Finance Police had been operating within Italian territorial waters.

Well articulated is the reasoning of the judge with regard to the offense under Article 337 of the Criminal Code, leading to justify the conduct of the accused for the fulfilment of the duty to rescue shipwrecked and to exempt her from punishment under Article 51 of the Criminal Code.

In this regard, the judge focused on the relevant regulatory framework, starting from the international agreements ratified by Italy. First of all, it was recalled that Article 98, paragraph 1 UNCLOS gives rise to the obligation for a ship's captain to provide assistance to people found at sea in conditions of danger, and that the 1974 SOLAS Convention requires a captain to provide assistance to people in danger. Then, the judge clarified that under Article 10 of the 1979 SAR Convention landings of shipwrecked people rescued at sea had to take place in a safe harbour that is closest to the place of rescue. This excluded the harbours of Malta, because they were too distant, as well as those of Tunisia, as they could not be considered safe which was stated by captain Rackete and confirmed by organisations such as Amnesty International. Furthermore, Tunisia did not have legislation to protect refugees.

When the Libyan coast guard instructed to dock in the port of Tripoli, the accused refused to follow such instruction in consideration of the several violations of human rights reported in Libya. For the judge Rackete's decision was taken in accordance with the recommendations of the Commissioner for Human Rights of the Council of Europe[81] and the recent ruling of the Judge for Preliminary Investigations of the Court of Trapani commented above. In addition, it was supported by Article 18 UNCLOS, which authorises the passage, stopping and anchoring of a foreign ship in territorial waters when this is necessary to provide aid to people in danger. Furthermore, the docking by the *Sea-Watch 3* at the quay of the port of Lampedusa was also in line with national legislation, where it provides for the obligation of a captain or the national authorities to provide first aid and assistance to foreigners traced during the irregular crossing of an internal or external border or at the arrival in national territory following rescue operations at sea (Article 10 ter of Legislative Decree No. 286).

It is worth to recall that in the midst of the events concerning the *Sea-Watch 3* Decree Law No. 53 of 2019, the so-called 'Security Decree bis', came into force, which introduced Article 11, paragraph 1 ter into the Legislative Decree No. 286 giving the Ministry of Interior the power to deny entrance into Italian territorial waters for reasons of public security or for preventing illegal immigration.[82] Based on this decree, an inter-ministerial directive signed by the Ministers of the

[81] Commissioner for Human Rights of the Council of Europe, 'Recommendation: Lives saved. Rights protected. Bridging the protection gap for refugees and migrants in the Mediterranean' <https://rm.coe.int/lives-saved-rights-protected-bridging-the-protection-gap-for-refugees-/168094eb87.> accessed 20 April 2020.

[82] Decreto Legislativo n. 53, 14 June 2019, 'Disposizioni urgenti in materia di ordine pubblico e sicurezza pubblica' [Urgent provisions on public order and public security], entered into force 15 June 2019, *Gazzetta Ufficiale* No. 138 of 14 June 2019 <https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2019-06-14&atto.codiceRedazionale=19G00063> accessed 20 April 2020. Converted with modifications into Legge n. 77, 8 August 2019, 'Conversione in legge, con modificazioni, del decreto-legge 14 giugno 2019, n. 53, recante disposizioni urgenti in materia di ordine e sicurezza pubblica' [Conversion into law, with amendments, of Decree Law No. 53 of 14 June 2019, containing urgent provisions on public order and safety], entered into force 10 August 2019, *Gazzetta Ufficiale* No. 186 of 9 August 2019 < https://www.gazzettaufficiale.it/eli/id/2019/08/09/19G00089/sg > accessed 20 April 2020.

Interior, Transport and Defence was adopted to prohibit the entry, transit and landing of the *Sea-Watch 3* in Italian national waters. Notwithstanding, the judge deemed that, in light of the superordinate nature of the international treaties referred to, no ministerial directives or policy on 'closed ports' for rescue vessels could invalidate the obligations imposed on the captain of the *Sea-Watch 3* as well as on the national authorities in the context of rescue at sea. The Court of Cassation with its judgment No. 6626 of 20 February 2020 confirmed this ruling.

RACHELE CERA[83]

Legislation – Italian Participation in International Missions

☛ Decision of 23 April 2019, 'Italy's participation to international missions 2019'[84] <http://www.senato.it/leg/18/BGT/Schede/docnonleg/38382.htm>

☛ Law No. 115 of 4 October 2019, 'Ratification and implementation of the Exchange of Notes between the Government of the Italian Republic and the Multinational Force and Observers (MFO), signed in Rome on 7-8 June 2017, amending the Headquarters Agreement of 12 June 1982'[85] <https://www.gazzettaufficiale.it/eli/id/2019/10/17/19G00121/sg>

On 23 April 2019, the Italian Council of Ministers adopted a decision enabling Italy's participation in a new bilateral cooperation mission in Tunisia as well as an analytical report detailing on-going international missions and the progress of development cooperation interventions aimed at supporting peace, and the relevant extensions. Pursuant to Law No. 145 of 21 July 2016, the decision was sent to Parliament for approval, which took place on 13 May 2019. The decision contains two annexes and a technical report.

Annex 1 covers a new bilateral cooperation mission in Tunisia (for the period 1 March 2019 – 31 December 2019)[86]. This mission, with a planned participation of 15 Italian military personnel, is intended to support the formation of three Regional Commands (in Jendouba, Kasserine and south of Tunis) and a Central Command (in Tunis). The Regional Commands are required to control the territory, whereas the Central Command has the task to plan and implement joint counter-terrorism operations. This new bilateral mission replaced the Italian participation in the NATO support mission in Tunisia.

Annex 2 contains an analytical report covering ongoing international missions as well as the progress of development cooperation interventions aimed at supporting peace, and mission

[83] Rachele Cera is Researcher at the Institute for International Legal Studies of the National Research Council (CNR), Rome, Italy.

[84] 'Deliberazione del Consiglio dei ministri in merito alla partecipazione dell'Italia a ulteriori missioni internazionali, adottata il 23 aprile 2019' [Deliberation of the Council of Ministers regarding Italy's participation in additional international missions, adopted on 23 April 2019].

[85] Legge n. 115, 4 October 2019, 'Ratifica ed esecuzione dello Scambio di note tra il Governo della Repubblica italiana e la Multinational Force and Observers (MFO) emendativo dell'Accordo di sede del 12 giugno 1982, fatto a Roma il 7 e 8 giugno 2017' [Ratification and implementation of the Exchange of Notes between the Government of the Italian Republic and the Multinational Force and Observers (MFO), signed in Rome on 7-8 June 2017, amending the Headquarters Agreement of 12 June 1982], entered into force on 18 October 2019, *Gazzetta Ufficiale* No. 244 of 17 October 2019 <https://www.gazzettaufficiale.it/eli/id/2019/10/17/19G00121/sg> accessed 20 April 2020.

[86] Ibid., Doc. XXV, No. 2.

extensions (for the period 1 January 2019 – 31 December 2019)[87]. The analytical report includes an information sheet for each mission, specifying the legal basis, intervention area, objectives, composition of the assets to be sent (including the number of personnel), mission length and financial requirements for 2019.

In 2019, Italy participated in 43 international missions, 18 of which were conducted in Africa. The average number of Italian troops engaged in international missions was 6,290 (6,309 in 2018), whereas the highest number was 7,343 (7,967 in 2018); hence 2019 saw a slight reduction compared to 2018.The continent on which the highest number of Italian troops was deployed was Asia (3,308).

In 2019, the Italian authorities decided to reduce the number of contingents in Afghanistan and Iraq and to increase them in the Mediterranean area in order to better control migration routes and to prevent terrorist attacks.

In Asia, Italy's most significant participation was in the UN Interim Force in Lebanon (UNIFIL) mission (1,076 military personnel, 278 land vehicles and 6 air assets),[88] the mission aimed at fighting the terrorist threat of Daesh (1,100 personnel, 305 land vehicles and 12 air assets),[89] and the mission *Resolute Support* in Afghanistan (initially 800 and later 700 personnel).

In Europe, the missions that involved the highest number of Italian military personnel were NATO's Joint Enterprise in the Balkans (538 military personnel and 204 land vehicle)[90] and the EU's mission EUNAVFORMED Sophia in the Mediterranean (520 personnel and 3 air assets).[91]

As regards the central Mediterranean area and Africa, Italy's largest presence was in the following missions: Operation *Mare Sicuro* (Safe Sea) (754 personnel, 6 naval assets and 5 air assets),[92] the bilateral assistance and support mission in Libya (400 personnel and 130 assets),[93] mission EUNAVFOR ATALANTA in Somalia (407 personnel, 2 air assets and 2 naval assets)[94] and the bilateral support mission in the Republic of Niger (290 personnel, 160 land vehicles, and 5 air assets).[95]

The Council of Ministers' decision provided for an allocation of EUR 1,428,554,211 for 2019 – of which EUR 1,426,481,331 were foreseen for the extension of international missions and cooperation interventions and EUR 2,072,880 were reserved for the new bilateral cooperation mission in Tunisia.

Moreover, the Italian Parliament enacted Law No. 115 of 4 October 2019 on the ratification and implementation of the exchange of notes between the Government of the Italian Republic and the Multinational Force and Observers (MFO). Law No. 115 consists of four articles: ratification authorisation (Article 1), implementation order (Article 2), financial coverage (Article 3), and entry into force (Article 4).

[87] Ibid., Doc. XXVI, No. 2.
[88] Ibid., Sheet 11.
[89] Ibid., Sheet 17.
[90] Ibid., Sheet 10
[91] Ibid., Sheet 1.
[92] Ibid., Sheet 38.
[93] Ibid.
[94] Ibid., Sheet 33.
[95] Ibid., Sheet 29.

The 2017 exchange of notes amended Article 12.2 of the Headquarters Agreement concluded with Italy on 12 June 1982, extending the immunity and prerogatives of diplomatic mission representatives to up to fourteen officials and their family members. Originally, the Agreement afforded immunity and privileges to two officials only; this number was increased to seven in 1995.

The MFO is a multinational peace-keeping operation in the Sinai set up by the 1979 Peace Treaty between Israel and Egypt. The MFO has its main headquarters in Rome. It consists of 1,700 military and civilian personnel from 12 States. Italy is the fourth largest contributor in terms of human resources (75), after the United States, Colombia, and Fiji. In 2019, the financial requirements for Italy's participation in the mission amounted to EUR 6,392,575.

ANDREA CRESCENZI[96]

[96] Andrea Crescenzi is Researcher at the Institute for International Legal Studies of the National Research Council of Italy (CNR), Rome, Italy.