ITALY[1]

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Cases – Contouring the Crime of Torture

- Court of Cassation, Fifth Penal Section, Judgment No. 4755, 4 February 2020 < https://renatodisa.com/in-tema-di-tortura-anche-quando-il-reato-assuma-forma-abituale/>
- Court of Taranto, Judge for the Preliminary Hearing, Judgement No. 224, 29 May 2020[2]

The introduction of Article 613 bis of the Italian Criminal Code through the enactment of law No. 110 of 2017 was followed by Italian judges being confronted with the task of defining and identifying the contents of the provision that punishes the crime of torture.[3] As highlighted by many commentators, Article 613 bis did not fully meet the expectations of treaty-monitoring bodies[4] and Italian academics[5] stressing the need to penalise torture.

In this perspective, the two judgments discussed here, of 4 February 2020 and 29 May 2020, contribute to supersede ambiguities of the legal notion of torture under Article 613 bis of the Criminal Code, by focusing on the subjective element of the crime of torture, its objective

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

[2] Unpublished judgment. For extensive references to the judgment, see Lorena Marturano, La configurazione del reato di tortura [The Configuration of the Crime of Torture], available at <https://www.diritto.it/la-configurazione-del-reato-di-tortura/> accessed 17 April 2021.

[3] See Rachele Cera et al., 'Correspondents' Reports 2018: Italy' 21 *YIHL* <https://www.asser.nl/media/4967/yihl-2017-correspondents-reports-italy.pdf> accessed 17 April 2021, pp 1-7.

[4] European Court of Human Rights, Fourth Section, Cestaro v. Italy, judgment, 7 April 2015, Application 6884/11 available at <http://hudoc.echr.coe.int/eng?i=001-153901> accessed 17 April 2021. Human Rights Committee, Concluding observations on the sixth periodic report of Italy, CCPR/C/ITA/CO/6, 1 May 2017, paras 18-19. Committee against Torture, Sixty-second Session, Concluding observations on the combined fifth and sixth periodic reports of Italy, CAT/C/ITA/CO/5-6, 18 December 2017, para 10.

[5] See Flavia Lattanzi, La nozione di tortura nel codice penale italiano a confronto con le norme internazionali in materia [The Notion of Torture in the Italian Criminal Code in Comparison with the Relevant International Standards] (2018) 1 Rivista di diritto internazionale, pp 151-184. Antonio Marchesi, Delitto di tortura e obblighi internazionali di punizione [The Crime of Torture and International Obligations to Punish] (2018) 1 Rivista di diritto internazionale, pp 131-150.

characteristics, and the conditions for verifying the two alternative conducts to be qualified as torture.

Both judgments concern a case of multiple violent acts, qualified as torture by Italian judges, perpetrated for months by a youth gang against a person with intellectual disability from Manduria (Taranto), who eventually died on 23 April 2019 as a result of a perforated ulcer.

In judgement No. 4755, the Court of Cassation confirmed the precautionary measure of community placement issued by the Juvenile Court of Taranto against one of the minors accused of participating in the attacks. The defence counsel appealed against that order on the basis of two arguments. Firstly, they alleged the lack of a statement of reasons for the minor's criminal intent. Secondly, they contended that he was insufficiently aware of contributing to the crime since he participated, without an active role, in only two of the numerous night raids carried out by the group of peers at the victim's home.

The Court of Cassation recalled that, from a subjective point of view, the crime of torture requires a general intent or the consciousness and willingness to engage in the conduct as described by the law. Even when torture is habitually committed, criminal liability is attributed regardless of unitary wilful misconduct, consisting of the initial representation and deliberation of conduct to be carried out. It is enough that *mens rea* is imputable to the accused, from time to time, for every single conduct.

In response to the argument concerning the defendant's irrelevant contribution to the violent acts, the Court clarified that, for the purposes of wilful misconduct, the participation in crime pursuant to Article 110 of the Criminal Code consists not only in the realisation of the acts of violence and threats but also in facilitating them through any contribution, material or psychological, provided at any stage in the planning, organising and executing of the offence, including the encouragement or reinforcement of the will to commit it.

The interpretation of the structural elements of the crime of torture has been analysed in-depth by the Preliminary Hearing Judge (giudice dell'udienza preliminare - GUP) in the trial against the three adults in the group.

In Judgement No. 224, the GUP emphasised that under Article 613 bis of the Criminal Code, conduct amounts to torture in case of violence or serious threats or when the perpetrator acts with cruelty.[6] The judge pointed out that both violence and threats must be "serious". In fact, even though the adjective "serious" seems to refer only to threats, a correct interpretation cannot ignore that a particular event (verifiable psychological trauma or acute physical suffering) cannot plausibly be linked to minor violence.

Alternatively, the conduct must be characterised by its cruelty which is intended, according to the jurisprudential interpretation of Article 61, paragraph 4 of the Criminal Code, as the expression of a particularly reprehensible internal attitude or the infliction of additional malicious conduct, denoting the ruthlessness of the perpetrator.

On the basis of such premises, the judge concluded that all the defendants acted with cruelty because their behaviours were aimed at causing the victim additional suffering from which they got

[6] Article 613 bis of the Criminal Code punishes anyone who, "using serious violence or threats, or acting with cruelty, causes acute physical suffering or a verifiable psychological trauma to a person who is deprived of his freedom or is entrusted to the person's custody, parental authority, supervision, control, care, or assistance, or who is in a situation of diminished defence, if the action is committed with multiple behaviours or involves inhuman and degrading treatment for the dignity of the person".

a malevolent satisfaction (exemplified by the video-sharing), insensitive to any humanitarian appeal considering that the victim was disabled and helpless.

Another interpretative issue concerns the plurality of the violent conducts as foreseen in Article 613 bis of the Criminal Code.[7] In this regard, the judge clarified that various conducts could be committed in the same context, provided that multiple manifestations of violence or threats are distinguishable, or in a longer time span. As an alternative to the plurality of conducts, a single conduct can rise to "torture" if it involves inhuman and degrading treatment of the victim. In light of such considerations, the GUP found that a plurality of conducts carried out by the defendants was identifiable, both in each torture incident and even beyond the same space-time context.

The judge also illustrated the consequences of the crime stipulated in Article 613 bis of the Criminal Code, namely acute physical suffering or a verifiable psychological trauma. The former involves pain of noticeable intensity. As for the traumatic experience, the judge analytically illustrated the relevant symptoms that may arise. They vary according to the severity of the psychological trauma while also depending on the subjective response of the victim. In this case, the victim suffered a psychological trauma that manifested itself in a profound state of fear, prostration and dissociation.

On the grounds of such findings, the judge recognised the crime of torture against the victim. However, the aggravating circumstance of personal injury and death were not confirmed (respectively paragraphs 4 and 5 of Article 613 bis of the Criminal Code) as a result of the torture suffered.

Despite the criticalities inherent in Article 613 bis of the Criminal Code, it can be considered that the introduction of the rule marked an epochal milestone in Italian law on protecting individuals from assaults on human dignity deriving from torture. However, the judgements discussed here demonstrate there is still a need to better trace the outlines of the crime of torture in order to guarantee the full compliance with international human rights obligations as recommended by treaty-monitoring bodies.[8]

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[7] See Ilaria Marchi, ll delitto di tortura: prime riflessioni a margine del nuovo art. 613-bis c.p. [The crime of Torture: Initial Reflections on the New Article 613 bis of the Criminal Code], available at <https://www.penalecontemporaneo.it/upload/8041-marchi7817.pdf > accessed 17 April 2021.

[8] See Committee against Torture, Sixty-second Session, Concluding observations on the combined fifth and sixth periodic reports of Italy, CAT/C/ITA/CO/5-6, 18 December 2017, para 11, above n. 4.

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Cases – Decision of the Court of Messina on the Crime of Torture and Kidnapping for Extortion against Migrants Detained in Libya

☛ Court of Messina, Judgment No. 149 of 28 May 2020 <https://www.sistemapenale.it/pdf_contenuti/1601584178_gip-messina-centri-detenzione-libia-tortura-migranti.pdf >

With judgment No. 149 of 28 May 2020, the Court of Messina sentenced three persons (M.C., H.A. and M.A) to twenty years' imprisonment for a set of crimes, including torture, carried out against migrants detained in the Zawiya camp, a former military base in Libya.[10] This decision is particularly relevant because Article 613 bis of the Italian Criminal Code on the crime of torture was applied to acts committed in a Libyan detention camp for the first time.[11]

With reference to the Italian jurisdiction for the facts committed in Libya, it should be noted that Article 10 of the Criminal Code was applied. This provision allows the submission of a foreigner who commits a crime abroad to Italian criminal law (even leading to foreign victims) if two requirements are met: firstly, the accused must be present on Italian territory (in this case, the three defendants were at the hotspot of Messina[12]); and secondly, the Minister of Justice must make a request of authorisation to proceed (this latter was received by the Tribunal of Messina on 11 September 2019). In the present case Italy exercised universal jurisdiction in order to try foreigners who committed the crime of torture abroad against other foreigners. In this respect, it should be recalled that according to a broad provision of the Italian Criminal Code (Article 7, paragraph 5), the foreigner who commits a crime abroad is punished under Italian law whenever this is provided for by special legislation or by international conventions.[13]

The judgment reported very detailed statements of six migrants (three men from Cameroon, a man from Ghana, and a couple whose nationalities were not specified) who described the inhumane conditions in which they lived in the Zawiya camp and the acts of violence and torture they suffered.[14] In this camp, about five hundred migrants, who were trying to reach the Italian coasts,

[10] Due to the serious crimes committed and the sentence of imprisonment to more than five years, the defendants were also declared in a state of legal disqualification, banned perpetually from public offices and ordered to pay court costs. These are additional penalties provided for in Articles 29 and 32 of the Italian Criminal Code. The witnesses said that the defendants did not wear military clothes but they were dressed as civilians. The defendants were neither policemen nor Libyan soldiers, therefore, they were not public officers. Under Italian criminal law, "banned perpetually from public offices" means losing the active and passive electorate, and every other political right, not being able to have public offices or perform public services, to have titles and honors, including academic ones. It is an ancillary penalty that applies to everyone regardless of being a public officer.

[11] For the crime of torture introduced in the Italian criminal legislation by Law No. 110/2017 see Rachele Cera et al., 'Correspondents' Reports 2017: Italy' 20 *YIHL* <https://www.asser.nl/media/4967/yihl-2017-correspondents-reports-italy.pdf> accessed 12 April 2021, pp 1-6.

[12] Until the end of 2020, in Messina there was a structure to identify, register and fingerprint incoming migrants. This structure was called "hotspot" because it was established under the European Agenda on Migration of 2015, which set up a new "Hotspot" approach. In 2015, the European Union Regional Task Force (EURTF) was set up in Sicily to implement this "Hotspot" approach <https://www.statewatch.org/media/documents/news/2015/jul/eu-com-hotsposts.pdf9> accessed 10 September 2021.

[13] See Articles 5 and 7, para. 1, of the 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 June 1987 [CAT]. As reported in a letter of the Permanent Mission of Italy to the UN, Italy exercises universal jurisdiction over crimes against international law and has pledged to co-operate in the suppression of all serious crimes by adopting multilateral conventions, bilateral and multilateral extradition treaties and treaties providing for mutual legal assistance in criminal matters <https://www.un.org/en/ga/sixth/66/ScopeAppUniJuri_StatesComments/Italy.pdf> accessed 7 September 2021.

[14] On 5 and 7 July 2019, fifty-nine people, previously rescued in the Italian SAR (Search and Rescue) area by the sailing boat *Alex & co.* working for the NGO "Mediterranea Saving Humans", landed on the island of Lampedusa. Once the rescue operations were completed, the Prosecutor's Office of Agrigento initiated an investigation aimed at identifying the smugglers. During these investigations, the testimonies of the six migrants reported in the judgment No. 149 were collected. They recognised the three defendants in some photos depicting migrants landing in Lampedusa on

were deprived of their personal freedom and subjected to systematic atrocities in order to obtain from their relatives the payment of the ransom for their liberation and/or for their departure towards Italy.[15] If they failed to pay, they were sold to other human traffickers for sexual and/or labour exploitation, or sometimes they were even killed.

The statements of the six migrants, all similar in description, allowed the Court of Messina to reconstruct the living conditions in the Zawiya camp in which frequent cases of torture and different kinds of abuses took place against detained migrants from all over Africa.[16] These testimonies also made it possible to identify the three defendants as jailers of the Zawiya camp.[17]

According to the Court of Messina, the defendants belonged to a criminal and organised association which had the aim of kidnapping, with the help of accomplices (often belonging to corrupt local militias), persons coming from all over Africa who arrived in Libya in the hope of reaching Europe by sea. Kidnapped persons were taken to the Zawiya camp until a ransom had been paid.

The Court reconstructed in detail the life in the detention camp and the violence perpetrated inside. Upon arrival in the Zawiya camp, migrants were separated according to a strict criterion that divided men from women and children (thus separating couples and families). Then, the men were further divided according to nationality in order to avoid quarrels that could have given origin to riots, with a consequent risk of escape from the camp. All migrants, including children, were constantly guarded by armed jailers and lived in inhuman conditions. In addition to these already precarious living conditions, migrants suffered physical and psychological violence.[18]

In this context, the Court of Messina held that the three defendants committed a number of serious crimes, such as trafficking in human beings (Article 601 of the Criminal Code), sexual violence (Article 609 bis of the Criminal Code), torture (Article 613 bis of the Criminal Code), murder (Article 575 of the Criminal Code), kidnapping for the purpose of extortion (Article 630 of the Criminal Code), and aiding and abetting illegal immigration (Article 12 of Legislative Decree No. 286/1998[19]).[20]

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27 and 29 June 2019. At the end of the investigation, the competence passed to the Court of Messina as the defendants were arrested in the hotspot of that city.

[15] To this end, the criminal association was equipped with a special 'service phone', through which the inmates could contact their relatives, in the presence of the jailers, to induce them to pay the ransom necessary to end detention.

[16] Libya is neither a Party to the 1951 Convention relating to the Status of Refugees, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954) nor to its 1967 Protocol, opened for signature 31 January 1967, 606 UNTS 267 (entered into force 4 October 1967). To date, Libya has no national legislation or administrative procedures for an asylum and protection system. Illegal entry to Libya is penalised under Law 19 of 2010. All third country nationals, regardless of their status as asylum seekers, refugees or victims of trafficking, are subject to national immigration laws which consider illegal entry, stay (and exit) a crime punishable by indefinite detention and hard labour as well as expulsion once the sentence has been served. See UNHCR, 'Libya: Resettlement and humanitarian relocations/evacuations, April 2018 [EN/AR]' <https://reliefweb.int/report/libya/unhcr-libya-resettlement-and-humanitarian-relocationsevacuations-april-2018-enar#:~:text=Libya%20is%20neither%20a%20party,of%20Refugee%20Problems%20in%20Africa.&text=In%20the%20absence%20of%20a,by%20virtue%20of%20its%20Mandate> accessed 10 April 2021.

[17] According to the Court of Cassation, the statements, made to the judicial police during preliminary investigations by migrants rescued at sea and transported to Italy, are appropriate testimonial statements since the crime pursuant to Article 10 bis (Illegal entry and residence in the State's territory) of Legislative Decree No. 286 of 25 July 1998, the so-called Consolidated Immigration Act, cannot be applied against such migrants, given that they entered Italian territory through a rescue activity (see the decisions No. 40517/2016 and 53691/2016).

[18] Women were repeatedly raped while men were beaten daily with rubber tubes, electric cables, and sticks. Migrants described torture suffered with electrical cables and people killed because they complained about the living conditions in the detention camp.

[19] Article 12 of Legislative Decree No. 286/1998 contains a set of norms against illegal immigration. For an unofficial translation in English of this Act see <https://www.refworld.org/pdfid/54a2c23a4.pdf> accessed 14 April 2021.

With regard to the crime of torture, the Court observed that Article 613 bis of the Criminal Code punishes the use of repeated violence, serious threats, or cruel actions, which cause the victim severe physical pain or verifiable psychological trauma. As for the active and passive elements of this crime, the Court pointed out that under Article 613 bis of the Criminal Code, the offence must be committed against a person deprived of personal freedom, a person entrusted to the custody, power, vigilance, control, care or assistance of an agent, or a person who is in a particularly weak situation. In addition, under this provision, torture must consist of "more conducts" or must imply "an inhuman and degrading treatment for the dignity" of the tortured person.[21] Based on the full convergence of the testimonies of the six migrants, the acts of torture suffered in the Zawiya camp consisted of several actions, at different times, against a plurality of migrants deprived of their personal freedom. On this basis, the Court found that the defendants had committed torture.

As already mentioned, the Court of Messina also recognised the crime of kidnapping of a person for the purpose of extortion. From the migrants' testimonies, it was clear that in the Zawiya camp, the primary purpose of the criminal association was to induce the families of prisoners to pay a ransom in order to end the detention and the violence suffered by their relatives. In its reasoning, the Court recalled that according to the jurisprudence of the Court of Cassation, the basic element of the crime of kidnapping for the purpose of extortion is "the commodification of the human person in all its dimensions, including the emotional and patrimonial ones".[22] In the present case, the Court of Messina observed that the deprivation of personal freedom was clearly instrumental in obtaining an unlawful profit represented by the payment of a sort of "duty" by relatives, and torture was used as a means of psychological pressure to accelerate the payment. On that basis, the three defendants were convicted.

The decision confirms that the Italian jurisdiction on crimes committed abroad, even against foreigners, can be a useful instrument to punish those guilty of serious crimes such as torture.

VALENTINA DELLA FINA[23]

Cases – War Crimes as a Circumstance Excluding the Jurisdictional Immunity of Foreign States and the Recognition of the Refugee Status or Other Forms of International Protection for the Authors

- Decision of the Court of Cassation, Civil United Sections, No. 20442 of 7 July 2020<http://www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verbo=attach&db=snciv&id=./20200928/snciv@sU0@a2020@n20442@tS.clean.pdf>
- Order of the Court of Cassation, First Civil Section, No. 26376 of 23 September 2020< http://www.marinacastellaneta.it/blog/wp-content/uploads/2020/11/ordinanza.pdf>

[20] M.C., called 'Suarez', used to deal with ransoms providing migrants with a telephone to contact their families and ask money for ransom. He also used to beat and torture them. M.A. and H.A. tortured the detained migrants using sticks and guns. They also took care of the distribution of meals, a role that made them easily recognisable to the witnesses.

[21] See Article 613 bis, para. 1 of the Criminal Code.

[22] See the judgment of the Court of Cassation, Fifth Criminal Section, No. 14673 of 3 April 2019, para. 2.1 <https://canestrinilex.com/risorse/sequestro-di-persona-quando-e-a-scopo-di-estorsione-cass-1467319> accessed 10 September 2021.

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With judgment No. 20442 of 7 July 2020,[24] the United Sections of the Supreme Court of Cassation decided on a recourse filed by the son and heir of General Michele Toldo against the decision of the Court of Appeal of Florence that had declared the lack of jurisdiction of Italy over a compensation claim brought by him against the Federal Republic of Germany (as the Third Reich successor state).

The proceeding was one of many similar ones pending before Italian courts and concerned compensation for damages suffered by Italian nationals during the Second World War as a consequence of Nazi war crimes and crimes against humanity, such as deportation, forced labour, and, in many cases, the killing of civilians, war prisoners and military internees. The conduct of these proceedings was marked, in an early phase, with the exercise of Italy's jurisdiction, based on the principle affirmed by the United Sections of the Court of Cassation that foreign states do not enjoy immunity for acts that qualify as crimes under peremptory norms of international law (*Ferrini*, in 2004, was the leading case).[25] In 2012, the International Court of Justice (ICJ), to which Germany had submitted the dispute, ruled that no such derogation is provided by the international customary norm concerning the jurisdictional immunities of states. Hence, Italy had breached its obligations by exercising its civil jurisdiction over Germany.[26] However, the need to implement the ICJ decision raised doubts about its compatibility with the Constitution, which the Constitutional Court resolved by judgment No. 238 of 2014.[27] It ruled in the judgment that the ICJ decision of 2012 is not enforceable in Italy because it is incompatible with two supreme values of the constitutional order: the protection of inviolable human rights and the individual right to an effective judicial remedy in case of a violation (Articles 2 and 24 of the Constitution, respectively).

From the case law after judgment No. 238 of the Constitutional Court, it can be deduced that almost the totality of Italian courts no longer accepts the plea of lack of jurisdiction, which Germany has continued to raise.[28] This was not the case, however, for the decision of the Court of Appeal of Florence in the *Toldo* case. The proceeding had started before the Court of Florence in 2004 and had given rise to an incidental ruling of the Supreme Court on whether Italy had jurisdiction over the claim. Similar to the *Ferrini* case, it was held that Germany could not be exempted from domestic jurisdiction because of the gravity of the crimes involved, as those kinds of acts are not covered under state immunity.[29] The proceeding was still pending before the Court of Florence when the ICJ judgment of 2012 was issued. This led the Court of Florence to declare itself incompetent, in compliance with the ICJ ruling, a conclusion later confirmed by judgment No. 2945 of 17 December 2018 of the Court of Appeal of Florence.[30]

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[24] Decision of the Court of Cassation, Civil United Sections, No. 20442, 7 July 2020, <http://www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verbo=attach&db=snciv&id=./20200928/snciv@sU0@a2020@n20442@tS.clean.pdf> accessed 10 April 2021.

[25] Decision of the Court of Cassation, Civil United Sections, No. 5044, 11 March 2004, in *Rivista di diritto internazionale*, 2004, p 540 ff. For a comment of the judgment, Alessandra Gianelli, 'Crimini internazionali ed immunità degli Stati dalla giurisdizione nella sentenza *Ferrini*' [International crimes and state jurisdictional immunity in the *Ferrini* case], ibid., p 643 ff.

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

[27] See Rachele Cera et al., 'Correspondents' Reports 2014: Italy' 17 *YIHL* <https://www.asser.nl/media/2613/italy-yihl-17-2014.pdf> accessed 10 April 2021, pp 1-12.

[28] See Rachele Cera et al., 'Correspondents' Reports 2015: Italy' 18 *YIHL* <https://www.asser.nl/media/3308/italy-yihl-18-2015.pdf> accessed 10 April 2021, pp 1-10.

[29] *Judgment No. 20442*, above n 24, p 3.

[30] Ibid., pp 3 and 6-7.

As the United Sections observed, the Court of Appeal had grounded its conclusions in a line of reasoning which the Supreme Court had also taken for a short time in the aftermath of the ICJ judgment. This is because of, inter alia, an *ad hoc* implementing norm passed by Parliament when authorising the ratification and execution of the UN Convention on Jurisdictional Immunities of States and Their Property[31] (Law No. 5 of 2013).[32] However, judgment No. 238 of 2014 of the Constitutional Court then intervened and declared unconstitutional or non-existent in the domestic legal order, the norms (including Article 3 of Law No. 5 of 2013) from which a duty of Italian judges to comply with the ICJ ruling of 2012 is derived. It led to a decisive and ultimate return of the Supreme Court to the principles firstly affirmed in the *Ferrini* case.[33]

The United Sections further observed:

> …After the judgment of the Constitutional Court, the Supreme Court returned to its early interpretation, and thus recognising that respect for inviolable human rights is a principle and a super-legal value that prevails over *delicta imperii*. The latter are state acts in breach of international *ius cogens*, i.e. done outside the exercise of sovereign powers as commonly understood. From this, a restriction on jurisdictional immunities of the states must derive […]. The principle of sovereign equality does not apply when crimes against humanity are involved, because acts of this kind […] infringe upon those universal values that transcend the particular interests of each state community. Said acts result, indeed, in an *abuse* of state sovereignty (Court of Cassation, United Sections, No. 21946 of 28 December 2015, No. 15812 of 29 July 2016, No. 762 of 13 January 2017; Court of Cassation, First Criminal Section, No. 43696 of 14 September 2015).
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> The Court of Appeal of Florence did not take into consideration the above interpretation, which is well established in the Supreme Court's jurisprudence, nor did it consider the judgment of the Constitutional Court that had meanwhile supervened. The reasons for its decision are no longer acceptable. Moreover, the Appeal Court limited itself to express non-agreement with regard to the constitutionality issues [raised by the domestic implementation of the ICJ ruling of 2012]. It further neglected the decision of the Constitutional Court – taken four years earlier – that upheld those arguments.[34]

In light of the above, the Supreme Court upheld the recourse and declared the competence of Italian courts over the claim. It, therefore, annulled the challenged decision and deferred the case to the Court of Florence, in a different composition, for re-consideration.[35] This decision has been regarded in the literature as 'a seal' affixed by the Supreme Court to judgment No. 238 of the

[31] United Nations Convention on Jurisdictional Immunities of States and Their Property, adopted 2 December 2004 (not yet in force), UN document A/59/508 <https://undocs.org/A/59/508> accessed 10 April 2021.
[32] Legge n. 5, 14 January 2013, 'Adesione della Repubblica italiana alla Convenzione delle Nazioni Unite sulle immunità giurisdizionali degli Stati e dei loro beni, fatta a New York il 2 dicembre 2004, nonché norme di adeguamento all'ordinamento interno' [Participation of the Republic of Italy to the UN Convention on Jurisdictional Immunities of States and Their Property done in New York on 2 December 2004, and norms on adaptation of the domestic legal order], entered into force 30 January 2013, *Gazzetta Ufficiale* No. 24 of 29 January 2013 <http://95.110.157.84/gazzettaufficiale.biz/atti/2013/20130024/sommario.htm> accessed 10 April 2020. According to Article 3 of Law No. 5, when the ICJ has excluded – in deciding a dispute of which Italy is party – that a given conduct of foreign states is not subject to national jurisdiction, Italian courts before which cases concerning that conduct are pending must declare their lack of jurisdiction *ex officio* and in any phase of the proceeding.
[33] *Judgment No. 20442*, above n 24, pp 8-12.
[34] Ibid., p 13.
[35] Ibid., p 15.

Constitutional Court and its own jurisprudence on the subject.[36] Further, the decision has called for attention to be paid to the legal concept of 'crimes', which, according to the United Sections' interpretation, includes, in addition to the crimes described by the relevant international instruments, any further conduct infringing upon fundamental values of the international community.

Two months later, the First Civil Section of the Supreme Court referred to the aforementioned interpretation in its Order No. 26376 of 23 September 2020.[37] This time, war crimes and crimes against humanity came to relevance as a circumstance that prevents state authorities from recognising the refugee status of perpetrators or granting them other forms of international protection. The applicable norms are set in Legislative Decree No. 251 of 19 November 2007,[38] which implemented Directive 2004/83/EC of 2004[39] domestically on the minimum requirements for EU member states to qualify third-country nationals or stateless persons as refugees or persons otherwise in need of international protection. Directive 2011/95/EU of 13 December 2011, which repealed and substituted the previous one, did not substantially modify the said provisions.[40]

The case decided by Order No. 26376 concerned the recourse of an Ivorian national who had participated in the Ivory Coast armed conflict of 2011, following post-electoral unrest. The recourse challenged Order No. 8784/2018 of 31 December 2018 of the Special Immigration Section of the Court of Naples, which had rejected the claimant's application for subsidiary protection and, thus, confirmed a decision of the Territorial Commission for the Recognition of the International Protection in Salerno.[41] The claimant admitted that he had participated in the Ivory Coast internal conflict as head of the youth wing of the Ivorian Popular Front (Front Populaire Ivorien-FPI) supporting President Gbagbo; however, his role was limited to ensuring security supervision of a town district and involved no participation in firefights and killings. Nonetheless, the Territorial

[36] Chiara Venturini, 'Sezioni Unite, sentenza n. 20442 del 2020: il «contrappunto fugato» della sent. 238/2014 Corte cost.' [United Sections, Judgment No. 20442 of 2020: a Counterpoint to Judgment No. 238 of 2014 of the Constitutional Court], SIDIBlog – il blog della Società Italiana di Diritto Internazionale e dell'Unione Europea (SIDI) [SIDIBlog – the blog of the Italian Society of International and European Union Law], 18 December 2020, <http://www.sidiblog.org/2020/12/18/sezioni-unite-sentenza-n-20442-del-2020-il-contrappunto-fugato-della-sent-238-2014-corte-cost/> accessed 10 April 2021.

[37] Order of the Court of Cassation, First Civil Section, No. 26376, 23 September 2020, <http://www.marinacastellaneta.it/blog/wp-content/uploads/2020/11/ordinanza.pdf> accessed 10 April 2021.

[38] Decreto legislativo n. 251, 19 November 2007, 'Attuazione della direttiva 2004/83/CE recante norme minime sull'attribuzione, a cittadini di Paesi terzi o apolidi, della qualifica del rifugiato o di persona altrimenti bisognosa di protezione internazionale, nonché norme minime sul contenuto della protezione riconosciuta' [Implementation of Directive 2004/83/EC of 29 April 2004 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], entered into force 19 January 2008, *Gazzetta Ufficiale* No. 3 of 4 January 2008, <https://www.gazzettaufficiale.it/gazzetta/serie_generale/caricaDettaglio?dataPubblicazioneGazzetta=2008-01-04&numeroGazzetta=3> accessed 10 April 2021.

[39] Council Directive 2004/83/EC of 29 April 2004 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, (no longer in force) *EC Official Journal* L/304 of 30 September 2004, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32004L0083&from=EN> accessed 10 April 2021.

[40] Cf. Articles 12.2.a and 17.1.a of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, *EU Official Journal* L/337 of 20 December 2011, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2011.337.01.0009.01.ENG&toc=OJ%3AL%3A2011%3A337%3AFULL> accessed 10 April 2021.

[41] *Order No. 26376*, above n 37, p 2.

Commission of Salerno and, later, the Special Immigration Section of the Court of Naples had held him responsible for 'moral contribution' to war crimes allegedly committed by the FPI; for this reason, he was not entitled to subsidiary protection in Italy, but only to humanitarian protection on the ground of the non-refoulement principle.[42]

The First Civil Section of the Supreme Court observed that the legal basis for the challenged decision was Article 10.2 (a) of Legislative Decree No. 251. This Article states that a foreigner (or a stateless person) must not be granted refugee status if there are serious reasons for believing that he or she has committed a crime against peace, a war crime, or a crime against humanity as defined in the relevant international instruments.[43] Paragraph 3 of the Article provides the same exclusion in case of incitement to, or participation in the commission of, any such crimes, while Article 16 extends these provisions to the granting of subsidiary protection. Having said this, the First Civil Section of the Supreme Court distinguished three sets of legal issues relevant to decide on the recourse. One was which individual conducts qualify as war crimes; the second was which courts are competent to ascertain that a war crime has been committed, and the third was whether, and to what extent, Italian judges involved in immigration and international protection matters, have the authority to ascertain if, in a given case, war crimes have been committed.[44]

Concerning the definition of war crimes, the Supreme Court recalled that the relevant sources are found in treaty law, most particularly the Genocide Convention of 1948[45] and the Four Geneva Conventions of 1949 for the protection of the victims of war.[46] In addition to these instruments, the Statutes of the International Criminal Tribunals for the Former Yugoslavia and for Rwanda,[47] the Statute of the International Criminal Court,[48] and those of so-called 'hybrid' or 'mixed' tribunals established for prosecuting serious crimes under international law and/or national legislation are also relevant.[49]

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[42] Ibid., pp 2-3.

[43] The formula echoes Article 1.F.a of the Convention relating to the Status of Refugees, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954), which Italy ratified through Law No. 722, 24 July 1954, *Gazzetta Ufficiale* No. 196 of 27 August 1954 <https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=1954-08-27&atto.codiceRedazionale=054U0722&elenco30giorni=false> accessed 10 April 2021.

[44] *Order No. 26376*, above n 37, p 4.

[45] Convention on the Prevention and Punishment of the Crime of Genocide, opened for signature 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951), <https://treaties.un.org/doc/Treaties/1951/01/19510112%2008-12%20PM/Ch_IV_1p.pdf> accessed 10 April 2021.

[46] Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, opened for signature 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950); Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, opened for signature 12 August 1949, 75 U.N.T.S. 85 (entered into force 21 October 1950); Convention (III) relative to the Treatment of Prisoners of War, opened for signature 12 August 1949, 75 U.N.T.S. 135 (entered into force 21 October 1950); Convention (IV) relative to the Protection of Civilian Persons in Time of War, opened for signature 12 August 1949, 75 U.N.T.S. 135 (entered into force 21 October 1950), <https://www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm> accessed 10 April 2021.

[47] Statute of the International Criminal Tribunal for the Former Yugoslavia adopted by Security Council resolution 827 (1993) of 25 May 1993, <https://www.icty.org/en/documents/statute-tribunal> accessed 10 April 2021. Statute of the International Criminal Tribunal for Rwanda adopted by Security Council resolution 955 (1994) of 8 November 1994, <https://unictr.irmct.org/sites/unictr.org/files/legal-library/941108_res955_en.pdf> accessed 10 April 2021.

[48] Rome Statute of the International Criminal Court, opened for signature 17 July 1998, 2187 UNTS 3 (entered into force 1 July 2002), <https://treaties.un.org/doc/Treaties/1998/07/19980717%2006-33%20PM/volume-2187-I-38544-English.pdf> accessed 10 April 2021.

[49] *Order No. 26376*, above n 37, p 5.

Referring to previous rulings of the Supreme Court, including judgment No. 20442 of 2020, the First Civil Section further observed:

> War crimes as internationally described are conducts that prejudice the fundamental values of the international community. These values are universal and thus transcend the community of each belligerent state (Court of Cassation, United Sections, No. 20442 of 28 September 2020; Court of Cassation, First Criminal Section, No. 43696 of 14 September 2015). For such conducts, the authors bear criminal responsibility according to the law of armed conflicts.
>
> Most in particular, war crimes are serious violations of a wide *corpus iuris* composed of laws and customs of war, as well as treaty law, which apply in both international and non-international armed conflicts. The aim is safeguarding the fundamental values of the international community concerning warfare and the protection of war victims. Criminal responsibility of the perpetrators derives if it is ascertained, on a case-by-case basis, that there is a functional link between the individual conduct and the armed conflict.[50]

The Supreme Court further underlined that war crimes, while occurring during armed conflicts, must be obviously distinguished from mere participation in the hostilities. The relevant legal instruments make a distinction between lawful and unlawful acts of war, according to various criteria. Certain conducts qualify as war crimes because of affecting protected persons or assets, or for their unlawful modalities, such as using prohibited means or methods of war, and – the First Civil Section observed – "in any other case in which a given conduct is in breach of fundamental values of the international community".[51] These norms also apply in non-international armed conflicts, vis-à-vis legitimate combatants. Under these circumstances, the authors bear criminal responsibility and must be sanctioned and excluded from the refugee status or subsidiary protection, in accordance with national legislation.[52]

The order of the Court of Naples did not comply with the above principles because the Court had failed to ascertain whether the applicant had committed any crimes, a conclusion that could not automatically be deduced from being a member of FPI and participating in the internal conflict. For these reasons, the First Civil Section upheld the recourse and deferred to the Special Immigration Section of the Court of Naples, in different composition, to determine whether or not the applicant was responsible for war crimes in order to grant or deny him the subsidiary protection.[53]

ORNELLA FERRAJOLO[54]

Cases - Award in the case The Italian Republic v. the Republic of India concerning the 'Enrica Lexie' incident

- PCA Case No. 2015-28 in the matter of an arbitration before an Arbitral Tribunal constituted under Annex VII to the 1982 United Nations Convention on the Law of the Sea, The Italian

[50] Ibid.
[51] Ibid., p 6.
[52] Ibid.
[53] Ibid., pp 7-8.
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Republic v. the Republic of India concerning the 'Enrica Lexie' incident*, Award* 21 May 2020*,* <https://pcacases.com/web/sendAttach/16500>

- ☛ Declaration of the Italian Ministry of Foreign Affairs and International Cooperation regarding the Enrica Lexie Case, 7 February 2020 <https://www.esteri.it/mae/en/sala_stampa/archivionotizie/comunicati/caso-enrica-lexie.html>

The 'Enrica Lexie' incident, which occurred on 15 February 2012 in the Indian Ocean, gave rise to a dispute between Italy and India.[55] In short, the MV Enrica Lexie, an oil tanker flying the Italian flag, reported that a pirate attack had occurred in an International Maritime Organization (IMO) designated high-risk area in international waters along the Indian coast and outside the Indian territorial waters. On the same day, criminal investigations started in India for the alleged killing of two fishermen onboard an Indian vessel named the 'St. Antony'.

Upon request for cooperation by Indian authorities, the MV Enrica Lexie entered the Indian Port of Kochi in Kerala, and two Italian marines, belonging to a Vessel Protection Detachment (VPD) deployed onboard (Chief Master Sergeant Massimiliano Latorre and Sergeant Salvatore Girone) were taken into custody by the Indian Authorities.[56] According to the latter, the two Italian marines had killed the fishermen.

The dispute was initially pending before the Indian courts. Then, Italy questioned the exercise of criminal jurisdiction by Indian judges over the vessel and the two Italian marines from the Italian Navy in respect of the incident. On 26 June 2015, Italy sued India before the International Tribunal on the Law of the Sea, under Article 287, Annex VII and Article 1 of the United Nations Convention on the Law of the Sea (UNCLOS).[57] After that, arbitral proceedings were instituted, resulting in the Award on 2 July 2020 published by the Arbitral Tribunal constituted in The Hague pursuant to Annex VII to the UNCLOS.[58]

According to the aforementioned Award, the Italian marines Latorre and Girone are entitled to immunity from the jurisdiction of Indian courts in relation to the incident of 15 February 2012 as they are members of the Italian armed forces in the official exercise of their duties; India is therefore precluded from exercising its jurisdiction over the marines.[59]

Then, bearing in mind the commitment expressed during the proceedings, Italy was ordered to resume its criminal investigation into the Enrica Lexie incident that the Rome Public Prosecutor had opened; India, on its part, was required to cease exercising its jurisdiction over the marines.[60]

Finally, the Arbitral Tribunal retained that Italy had breached the freedom of navigation provisions (Articles 87 and 90) of the UNCLOS. As a result of the breach, India was entitled to a payment of compensation in connection with loss of life, physical harm, material damage to

[55] See Rachele Cera et al., 'Correspondents' Reports 2014: Italy' above n 27, pp 19-21 and 'Correspondents' Reports 2015: Italy' above n 28, pp 22-24.
[56] See Rachele Cera et al., 'Correspondents' Reports 2015: Italy' above n 28, pp 22-24.
[57] Both Italy and India are States Parties to UNCLOS, opened for signature 10 December 1982, 1833 UNTS 3 (entered into force 16 November 1994). Both State Parties having ratified it respectively on 13 January 1995 and 29 June 1995.
[58] In accordance with the Rules of Procedure, as amended by Procedural Order No. 7, the Parties were provided with the opportunity to consider whether any Parts of the Award should be designated as containing "confidential information". On 10 August 2020, the Award, with certain redactions made at the request of the Parties, was published on the PCA Case Repository. See <https://pca-cpa.org/en/cases/117/> accessed 11 April 2021.
[59] The 'Enrica Lexie' Incident (Italy v. India), Award, PCA Case No 2015-28, 21 May 2020 <https://pca-cpa.org/en/cases/117/> accessed 11 April 2021.
[60] Ibid.

property and moral harm suffered by the captain and other crew members of the Indian fishing boat "St. Antony". The Arbitral Tribunal invites the two Parties to consult with a view to reaching an agreement on the amount of compensation due.[61]

The position of the Italian Ministry of Foreign Affairs and International Cooperation (MFA) expressed in the Statement of 7 February 2020 was that the Arbitral Tribunal was called upon to rule on the allocation of criminal jurisdiction after the return from India to their country of the Italian marines Latorre and Girone, respectively, on 13 September 2014 and 28 May 2016. The Arbitral Tribunal was not called to rule on the merit of the events that occurred on 15 February 2012 for purposes of ascertaining criminal responsibility. Italy and India committed themselves to exercise criminal jurisdiction, accepting the related allocation established by the Tribunal. The Ministry stressed that the Arbitral Tribunal did not make any determination of criminal responsibility in connection with the incident, which will now be for the Italian judicial authorities alone to ascertain. The MFA reaffirmed that "Italy stands ready to fulfil the decision taken by the Arbitral Tribunal, in a spirit of cooperation".[62] The Ministry of Defence also expressed its satisfaction with the decisions contained in the Award.[63]

As regards the core issue of functional immunity,[64] the Arbitral Tribunal confirmed the Italian position according to which, at the time of the Enrica Lexie incident, the arrested servicemen were performing official functions, which are the expression of the sovereign rights and prerogatives of the sending state. The official duties of the VPDs in question encompassed the protection of Italian-flagged vessels from pirates and armed robbers – if necessary with the use of weapons – as well as law enforcement tasks. Such official duties were performed under guidance, instructions and rules of engagement issued by the Italian Ministry of Defence. Accordingly, such official duties may entail the need to grant 'functional immunity' to them.[65]

Italy submitted that immunity *ratione materiae* is "an integral part of the body of international legal rules on State immunity". The Tribunal confirmed this position, bearing in mind that the Parties appear to accept the existence of the customary international law rule of functional immunity for State officials in respect of acts performed in an official capacity.[66] On this point, the ruling of the Tribunal was not uncontroversial, because, as pointed out also in some dissenting opinions,[67] it could be doubted whether the two marines were performing an act in the exercise of State authority or just as private contractors.

In his dissenting opinion,[68] Judge Patrick Robinson recalled that the immunity of a State official is in large measure a reflection of the immunity of the state, and "the functional immunity of

[61] Ibid.
[62] Ministero degli Esteri e della Cooperazione internazionale, "Caso Enrica Lexie", Press Release, 2nd July 2020, <https://www.esteri.it/mae/en/sala_stampa/archivionotizie/comunicati/caso-enrica-lexie.html> accessed 11 April 2021.
[63] Ministero della Difesa, "Marò: soddisfazione per la decisione del Tribunale dell'AJA", Press Release, 2nd July 2020, <https://www.difesa.it/Primo_Piano/Pagine/Mar%C3%93_soddisfazione_per_decisione_Tribunale_dell_AIA.aspx> accessed 11 April 2021.
[64] See Valeria Eboli, "Diplomatic and Consular Immunity under Italian Law", in *Yearbook of Diplomatic and Consular Immunity*, No. 3/2020 and the bibliography quoted therein.
[65] See Jean Paul Pierini and Valeria Eboli, 'Coastal State Jurisdiction over Vessel Protection Detachments and Immunity Issues: the 'Enrica Lexie' Case' (2012) 51 *Military Law and Law of War Review,* pp 117-148, p. 138.
[66] The 'Enrica Lexie' Incident, n 59, at 240.
[67] See below.
[68] Dissenting opinion of Judge Patrick Robinson in The 'Enrica Lexie' Incident, PCA Case No 2015-28, 21 May 2020 <https://pcacases.com/web/sendAttach/16774> accessed 11 April 2021.

(former) foreign State official [*sic*] is often approached as a corollary of the rule of State immunity".[69] Nevertheless, he pointed out that in the *Enrica Lexie* Case, the services of the deployed marines essentially concerned commercial matters, on the basis of Article 5 of the Law Decree of 12 July 2011 enabling the Ministry of Defence of Italy to enter into framework agreements with ship owners for the protection of ships flying the Italian flag. So there was an onerous obligation imposed by the Italian Government for its provision of the services of the marines and, therefore, a contractual relationship between the Italian Government and the ship owners of the 'Enrica Lexie'. Furthermore, he highlighted that in the Agreement between the Ministry of Defence of Italy and the ship owners (intending to avail themselves of the services of the marines of 11 October 2011), the services of the marines to protect the vessels from piracy and armed robbery was classified as a "service supply" in the form of VPDs.

Also, in the doctrine, it was highlighted that even if the functional immunity is recognised on the ground of customary law, it could be questionable whether the marines were entitled to it due to their status as members of the armed forces acting onboard a merchant vessel.[70]

VALERIA EBOLI[71]

Legislation — Italian Participation in International Missions

☛ Decision of 21 May 2020, 'Italy's participation to international missions 2020'[72] <http://www.senato.it/leg/18/BGT/Schede/docnonleg/40481.htm>

On 21 May 2020, following the proposal of the President of the Council, the Italian Council of Ministers No. 47 adopted a decision enabling Italy's participation in five new international missions (Annex 1).[73] It also adopted an analytical report detailing international missions carried out in 2019, with a view to extending them in 2020 (Annex 2).[74] Pursuant to Law No. 145 of 21 July 2016, the decision was sent to Parliament for approval, which was provided on 16 July 2020.

[69] Ibid., para. 60, referring to UN Doc. A/CN.41/631, International Law Commission, Second Report on Immunity of State Officials from Foreign Criminal Jurisdiction, 2010, p. 13, footnote 51 citing R. van Alebeek, The Immunity of States and their Officials in the light of International Criminal Law and International Human Rights Law, 2006, p. 153. [However, it should be noted that Van Alebeek's book is from 2008 and that the quotation can be found on p. 103 rather than p. 153, see UN Doc. A/CN.41/631, Second report on immunity of State officials from foreign criminal jurisdiction, by Mr. Roman Anatolevich Kolodkin, Special Rapporteur, 10 June 2010, available at: <https://legal.un.org/ilc/documentation/english/a_cn4_631.pdf> accessed 11 April 2021, p 403, n. 49].

[70] See Roberta Barberini, 'Marò: il capitolo conclusivo sul caso della Enrica Lexie' [Marines: The Final Chapter of the Enrica Lexie Case], in Questione Giustizia, <https://www.questionegiustizia.it/articolo/maro-il-capitolo-conclusivo-sul-caso-della-enrica-lexie> accessed 11 April 2021.

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[72] Deliberazione del Consiglio dei ministri in merito alla partecipazione dell'Italia a ulteriori missioni internazionali, adottata il 21 maggio 2020 [Deliberation of the Council of Ministers regarding Italy's participation in additional international missions 2020, adopted on 21 May 2020].

[73] Autorizzazione e proroga missioni internazionali 2020. Esame della deliberazione del Consiglio dei ministri del 21 maggio 2020, Dossier dei Servizi e degli Uffici del Senato della Repubblica e della Camera dei deputati del 10 giugno 2020, Roma, Doc. XXV, No 3., pp 15-31.

[74] Autorizzazione e proroga missioni internazionali 2020. Esame della deliberazione del Consiglio dei ministri del 21 maggio 2020, Dossier dei Servizi e degli Uffici del Senato della Repubblica e della Camera dei deputati del 10 giugno 2020, Roma, Doc. XXVI, No 3., pp 35-97.

In the decision sent to the Chambers, the Government specified the intervention area, legal basis, objectives, the composition of assets (including the maximum number of personnel), mission length, and financial requirements for each mission.

In particular, Annex 1 deals with the participation of Italian contingents in five new international missions (1 January 2020–31 December 2020): in Europe (European Union Military Operation in the Mediterranean – EUNAVFOR MED Irini, Sheet 9-bis); in Asia (European Union Advisory Mission in support of Security Sector Reform in Iraq – EUAM Iraq, Sheet 17-bis); in Africa (Task Force TAKUBA aimed at tackling the terrorist threat in the Sahel, Sheet 29-bis); deployment of a national naval group maintaining a presence, patrol activities, and security in the Gulf of Guinea (Sheet 38-bis); and NATO Implementation of the Enhancement of the Framework for the South (Sheet 41-bis). For these missions, a maximum presence of 1125 and an average of 494 Italian personnel were allocated alongside a sum of EUR 7,417,373.

Annex 2 contains the decision of the Council of Ministers concerning an analytical report on current international missions as well as the progress of development cooperation interventions aimed at supporting peace and stabilisation, and mission extensions (for the period 1 January 2019–31 December 2020).

In 2020, Italy participated in 49 international missions. The largest number of missions were conducted in Africa (18), whereas the largest number of Italian military personnel were deployed in Asia (3604).

The average number of Italian military personnel engaged in international missions in 2020 was 6000 (down compared to 6290 in 2019), whereas the highest number was 7488 (up compared to 7343 in 2019).

Regarding Africa, the largest number of Italian military personnel were deployed in the EU anti-piracy mission ATALANTA (407 personnel) and the bilateral assistance and support mission in Libya (400 personnel). Italy participated in Operation *Mare Sicuro* (Safe Sea) with 754 personnel in the Central Mediterranean area. In Asia, the majority of Italian personnel participated in the international coalition against the terrorist threat of Daesh (1100 personnel), the UNIFIL mission in Lebanon (1076 personnel), and the Resolute Support mission in Afghanistan (800 personnel). Finally, in Europe, the missions that engaged the largest number of Italian military personnel were the NATO mission Joint Enterprise in the Balkans (626 personnel) and the new European Union mission EUNAVFORMED Irini (517 personnel).

Concerning financial aspects, the decision of the Council of Ministers allocated EUR 1,113,940,450 for 2020 (down compared to EUR 1,130,481,331 in 2019).

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