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Italy and International Criminal Justice: Mapping the Present and Charting the Path Ahead

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Abstract

The present article investigates Italy's posture on international criminal justice and identifies gaps and obstacles whose overcoming is essential to make the country effectively contribute to its efficient functioning. To this end, firstly, the Italian Government's attitude towards international criminal justice institutions is surveyed. Secondly, domestic legislation and case law on international crimes are carefully analysed. Thirdly, the public perception of international crimes in Italy is critically assessed. The author finds that a major legislative reform is urgently needed and cannot be postponed any longer, so as to remove any ambiguity about the Italian Government's commitment to ensuring accountability for all international crimes listed in the Rome Statute of the International Criminal Court. She also advises that such reform should be complemented with the assumption of additional international obligations bringing Italy at the forefront of the supporters of the Rome Statute system.

Keywords

domestic courts – international crimes – International Criminal Court – Italy – non-applicability of statutory limitations – universal jurisdiction – war crimes trials

1 Introduction

Italy has always expressed steadfast support for international criminal justice institutions.¹ However, it lags far behind other States in efforts to prosecute international crimes at the domestic level and, consequently, to contribute to the efficient functioning of the international criminal justice system created by the Rome Statute of the International Criminal Court (ICC). As is known, the primary jurisdiction over international crimes rests with the States Parties to the Rome Statute; the ICC may step in only where the relevant State is unable or unwilling to carry out investigations or prosecutions in accordance with the principle of complementarity.²

The present article scrutinizes Italy's posture on international criminal justice and identifies gaps and obstacles whose overcoming is essential to make Italian contribution effective. To this end, firstly, the Italian Government's attitude towards international criminal justice institutions is surveyed. Secondly, domestic legislation and case law on international crimes are carefully considered. Thirdly, the public perception of international crimes in Italy is critically assessed. It is submitted that a major reform of the existing legislation on international crimes is urgently needed, so as to remove any ambiguity about the Italian Government's commitment to ensuring accountability for those crimes. It is also suggested that such reform should be complemented with the assumption of additional international obligations bringing Italy at the forefront of the supporters of the international criminal justice system.

1 See the data for Italy provided to the EU COST Action CA18228 Scoping Survey on state encounters with international criminal justice. K. Aksamitowska, R. Andaya, I. Anosova, A. Aydın-Aitchison, J. Bernasol, P. Bhadra, E. Brandon, M. Buljubašić, I. Chakrabarty, M.J. Christensen, L. de León Agosto, M. Dobrovolskis, M. Emasealu, A. Gërdeci, S. Ghiasi, E. Gómez Alcorta, T. Hoffmann, N. Higgins, M.P. Hossain, C. Hronum, N. Jeiranashvili, I. Jusufi, T. Kirabira, C. Lingaas, K. Lohne, G. Maguire, A. Maljević, M. Mancini, U. Markevičiūtė, L. Martinaitytė, S. Matsiko, G. Mejía, M. Munivrana, T.A.Dalsgaard Nielsen, O. Oyewole, J. Radmanović, I.M. Ragaišytė, B. Ristivojević, S. Roksandić, S. Samardžić, K. Šestan, R. Steponavičiūtė, N. Stojanović, G. Švedas, C. Tamayo Gomez, V. Vegh Weis, A. Vosyliūtė, B. Holá, F. Rodrigues, S. Vasiliev, *States and International Criminal Justice: COST CA18228 Scoping Survey* (version 2) (University of Edinburgh, Edinburgh, 2023), DOI: 10.7488/ds/7536 (accessed 24 June 2024).

2 Articles 1 and 17 of the Rome Statute.

2 The Italian Government's Attitude Towards International Criminal Tribunals

Italy's commitment to international criminal justice dates back to the establishment of the International Criminal Tribunals for the Former Yugoslavia and Rwanda in the early 1990s. Italy was the first State to sign an agreement with the United Nations (UN) on the enforcement of sentences of the International Criminal Tribunal for the Former Yugoslavia (ICTY) on 6 February 1997.³ It also signed an agreement with the UN on the enforcement of sentences of the International Criminal Tribunal for Rwanda (ICTR) on 17 March 2004.⁴ Five persons convicted of international crimes by the ICTY and one by the ICTR served their sentences in Italian detention facilities.⁵

Moreover, Italy hosted the UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court. The Conference met at the headquarters of the Food and Agriculture Organization, in Rome, from 15 June to 17 July 1998. Italy was the fourth State to deposit its instrument of ratification of the Rome Statute of the ICC on 26 July 1999. It also deposited its instrument of ratification of the amendment to Article 124 on 13 April 2018 and of all the amendments adopted by the Kampala Review Conference on 26 January 2022.⁶

Furthermore, on 2 March 2022, soon after Russia's full-scale invasion of Ukraine, Italy referred the situation in Ukraine to the ICC Prosecutor jointly with other thirty-seven States. The referring States requested him to investigate

3 *Agreement between the Government of the Italian Republic and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for the Former Yugoslavia*, done at The Hague on 6 February 1997, available online at https://www.icty.org/x/file/Legal%20Library/Member_States_Cooperation/enforcement_agreement_italy_06_02_97_en.pdf (accessed 24 June 2024). See also ICTY, *Agreement with Italy on enforcement of sentences: a balanced compromise between international and domestic law*, Press Release, The Hague, 6 February 1997, available online at <https://www.icty.org/en/press/agreement-italy-enforcement-sentences-balanced-compromise-between-international-and-domestic> (accessed 24 June 2024).

4 *Agreement between the Italian Republic and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for Rwanda*, done at Rome on 17 March 2004, available online at <https://unictr.irmct.org/sites/unictr.org/files/legal-library/italy-en.pdf> (accessed 24 June 2024).

5 The following ICTY convicts served their sentence in Italy: Goran Jelisić; Milorad Krnojelac; Vinko Martinović; Mladen Naletilić; and Dragan Nikolić. The ICTR convict Georges Omar Ruggiu also was transferred to Italy. Information available online at <https://www.irmct.org/en/about/functions/enforcement-of-sentences> (accessed 24 June 2024).

6 Information available online at <https://treaties.un.org/> (accessed 24 June 2024).

any acts of war crimes, crimes against humanity and genocide alleged to have occurred on the Ukrainian territory from 21 November 2013 onwards.⁷

As of the time of writing (June 2024), however, Italy has not ratified either the amendments to Article 8 of the Rome Statute which were adopted by the Assembly of States Parties in 2017 or the amendment to the same Article which was adopted in 2019.⁸ Moreover, unlike other States Parties, Italy has not concluded with the ICC an agreement on the enforcement of sentences.⁹

3 The Italian Legislation on International Crimes

Most surprisingly, the Italian legislation does not yet provide an adequate legal basis for the prosecution domestically of the majority of international crimes listed in the Rome Statute.¹⁰ Current law provisions relating to each category of international crimes will be examined in turn. Thereafter, the failed attempts to amend such legislation will be considered.

3.1 *Crimes Against Humanity*

To begin with, crimes against humanity are not a discrete category of criminal offences in the Italian legal order. The Criminal Code¹¹ makes explicit reference to crimes against humanity in only two provisions: Article 414, para. 4, which criminalizes *inter alia* instigating the commission of such crimes and defending them, and Article 604 *bis*, para. 3, which sets the punishment *inter alia* for disseminating propaganda based on the denial or minimization of genocide,

7 See the letter of the British Ambassador in The Hague, Joanna Roger, to the ICC Prosecutor, Karim Khan, of 2 March 2022, available online at <https://www.icc-cpi.int/sites/default/files/2022-04/Article-14-letter.pdf> (accessed 24 June 2024), and the attached referral of the situation in Ukraine, available online at <https://www.icc-cpi.int/sites/default/files/2022-04/State-Party-Referral.pdf> (accessed 24 June 2024).

8 Information available online at <https://treaties.un.org/> (accessed 24 June 2024).

9 The following States parties have concluded with the ICC an agreement on the enforcement of sentences: Argentina, Austria, Belgium, Colombia, Denmark, France, Finland, Georgia, Mali, Norway, Serbia, Slovenia, Spain, Sweden and the United Kingdom. See International Criminal Court, *Cooperation Agreements*, 2023, available online at <https://www.icc-cpi.int/sites/default/files/2024-01/2023-cooperation-agreements-v.3-rgb.pdf> (accessed 24 June 2024).

10 On the implementation of the Rome Statute in the Italian legal system, see M. Mancini, 'Italy's Implementation of the Rome Statute of the International Criminal Court and its Amendments: Unresolved Issues', 31 *Italian Yearbook of International Law* (2021) 263–275.

11 *Royal Decree no. 1398 of 19 October 1930, as amended*, available online at <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:regio.decreto:1930-10-19:1398> (accessed 24 June 2024).

crimes against humanity or war crimes and for instigating the commission of offences based on those ideas.

The underlying acts of several crimes against humanity listed in Article 7, para. 1, of the Rome Statute are covered by Criminal Code provisions on ordinary offences. This is the case for the crimes against humanity of murder (Article 575), enslavement (Articles 600, 601 and 602), imprisonment or other severe deprivation of physical liberty (Articles 605, 606 and 607), torture (Article 613 *bis*), rape (Article 609 *bis*), sexual slavery (Article 600), enforced prostitution (Article 600) and sexual violence (Article 609 *bis*). However, the Criminal Code provisions fail to capture the essence of crimes against humanity, as they do not require that those acts be committed ‘as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack’, as set forth in the *chapeau* of Article 7, para. 1, of the ICC Statute. The absence of this contextual element in the relevant ordinary offences means that the potential penalties imposed on those responsible for the aforementioned crimes against humanity are totally inadequate.

What is more, the underlying acts of many crimes against humanity listed in Article 7, para. 1, of the Rome Statute are not covered by Criminal Code provisions on ordinary offences. Those crimes include: extermination; deportation or forcible transfer of population; forced pregnancy; enforced sterilization; persecution; enforced disappearance of persons; apartheid; and other inhumane acts.¹²

3.2 War Crimes

War crimes are mainly defined in Title IV of Book III of the Wartime Military Criminal Code (WMCC).¹³ This code was adopted in 1941, while the Second World War was raging, and it has been subject only to minor amendments since then. In particular, up until 2002, the WMCC only covered war crimes committed during a state of war between Italy and other States. In 2002 the scope of application of the WMCC war crimes provisions was extended to all cases of ‘armed conflict’ involving Italy, even if a state of war is not declared;¹⁴ and it was clarified that ‘armed conflict’ means ‘a conflict in which at least one of the parties makes use of arms against the other in a militarily organized and protracted manner for the conduct of military operations’.¹⁵ Hence, nowadays,

12 See M. Roscini, ‘Great Expectations: The Implementation of the Rome Statute in Italy’, 5(2) *Journal of International Criminal Justice* (2007) 493–512, at 500.

13 *Royal Decree no. 303 of 20 February 1941, as amended*, available online at <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:relazione.e.regio.decreto:1941-02-20;303> (accessed 24 June 2024).

14 Article 2 of Law no. 6 of 31 January 2002, in *Official Gazette no. 28 of 2 February 2002*.

15 Article 2 of Law no. 15 of 27 February 2002, in *Official Gazette no. 49 of 27 February 2002*.

the WMCC war crimes provisions in principle apply to both international and non-international armed conflicts involving Italy. In practice, however, the prosecution of war crimes committed in a non-international armed conflict would be extremely difficult, since those provisions were conceived with regard to international armed conflicts and worded accordingly and they have not been amended so far.¹⁶

Moreover, numerous war crimes listed in Article 8 of the ICC Statute are not covered by any provision of the WMCC. They include the following: denying a fair trial to protected persons (Article 8, para. 2(a)(vi)); sentencing or execution without due process (Article 8, para. 2(c)(iv)); attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission (Article 8, para. 2(b)(iii) and (e)(iii)); launching an attack in the knowledge that it will cause excessive incidental death, injury, or damage (Article 8, para. 2(b)(iv)); attacking undefended places (Article 8, para. 2(b)(v)); depriving the nationals of the hostile power of rights or actions (Article 8, para. 2(b)(xiv)); using protected persons as shields (Article 8, para. 2(b)(xxiii)); attacking objects or persons using the distinctive emblems of the Geneva Conventions (Article 8, para. 2(b)(xxiv) and (e)(ii)); using, conscripting or enlisting children (Article 8, para. 2(b)(xxvi) and (e)(vii)).¹⁷ The war crime of attacking civilian objects (Article 8, para. 2(b)(ii)) falls within the scope of the WMCC only when the attack is directed against hospitals or other places where the sick and the wounded are treated, historic monuments or buildings dedicated to art, science, religion or charitable purposes.¹⁸

As to serious violations of the 1999 Additional Protocol II to the 1954 Hague Convention for the protection of cultural property in the event of armed conflict, corresponding military criminal offences are established in Articles 7–10 of Law no. 45/2009.¹⁹

3.3 Genocide

Italy became a party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) in 1952²⁰ and it enacted *ad hoc* legislation implementing such Convention only in 1967.²¹

16 See G. Bartolini, 'The Criminalization of War Crimes in Italy and the Shortcomings of the Domestic Legal Framework', 21(4) *Int. Crim. Law Rev.* (2021) 679–697, at 694.

17 See Roscini, *supra* note 12, p. 502 *et seq.*

18 See Article 179 of the WMCC.

19 Law no. 45 of 16 April 2009, in *Official Gazette no. 105 of 8 May 2009*.

20 Information available online on the website of the UN Treaty Collection at <https://treaties.un.org/> (accessed 24 June 2024).

21 See M. Miraglia, 'Genocide: The Italian Perspective', 5(3) *International Criminal Law Review* (2005) 351–362.

Law no. 962/1967²² criminalizes the following acts, when committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group: (a) acts aimed at causing serious personal harm to members of the group (Article 1, para. 1); (b) acts aimed at causing very serious personal harm or death to members of the group (Article 1, para. 2); (c) deportation of members of the group (Article 2); (d) imposing or carrying out measures intended to prevent or limit births within the group (Article 4); (e) forcibly transferring minors up to the age of 14 from the group to another group (Article 5).²³ As to the offences under letters (a), (b) and (c), the death of the victims is an aggravating circumstance (Article 3). The threshold of individual criminal responsibility is therefore lower than that established in Article 11(a) and (b) of the Genocide Convention, which requires, respectively, killing members of the group and causing serious bodily or mental harm to them. On the contrary, with regard to the forcible transfer of children, Law no. 962/1967 is more limited than the Genocide Convention, whose Article 11(e) does not set an age limit. Indeed, the Elements of Crimes, adopted by the Assembly of States Parties to the Rome Statute in 2002, expressly refer to persons under the age of 18 years (Article 6(e), para. 5).

Law no. 962/1967 also criminalizes the following acts: (f) inflicting on members of a national, ethnic, racial or religious group such conditions of life as to bring about the physical destruction, in whole or in part, of the group itself (Article 1, para. 2); (g) coercing members of the group to wear distinctive marks (Article 6, para. 1). As to the latter, the aim to bring about the destruction of the group is an aggravating circumstance (Article 6, para. 2).

Moreover, Law no. 962/1967 specifically proscribes conspiracy and direct and public incitement to commit the offences mentioned above under letters (a), (b), (c), (d), (e) and (f), as well as conspiracy to commit the offence under letter (g) (Articles 7 and 8, para. 1).²⁴ Attempt to commit any of those offences and complicity in them are covered by the general provisions on attempt and complicity in crimes, which are laid down respectively in Articles 56 and 110 of the Criminal Code.

Constitutional Law no. 1/1967 is also worth mentioning. It excludes the offences relating to genocide from the scope of application of Article 10, para. 4, and Article 26, para. 2, of the Italian Constitution, under which the extradition of foreigners and citizens, respectively, for political crimes is prohibited.²⁵

22 Law no. 962 of 9 October 1967, in *Official Gazette no. 272 of 30 October 1967*.

23 *Ibid.*

24 Article 8, para. 2, of Law no. 962/1967 also criminalizes defending any of the offences mentioned above under letters (a), (b), (c), (d), (e) and (f).

25 Constitutional Law no. 1 of 21 June 1967, in *Official Gazette no. 164 of 3 July 1967*.

Hence, extradition for such offences cannot be refused based on any purported political nature of the crimes, in accordance with Article VII, para. 1, of the Genocide Convention.

3.4 *Crime of Aggression*

Italy's legislation contains no provision whatsoever on the crime of aggression. The 1947 Peace Treaty between the Allied and Associated Powers and Italy only bound the latter to take all necessary measures to arrest and surrender to the former for trial 'persons accused of having committed, ordered or abetted war crimes and *crimes against peace or humanity*' (Article 45, para. 1).²⁶ It did not establish any obligation to introduce such crimes into the Italian legal system. In fact, neither crimes against peace nor crimes against humanity have been proscribed domestically.

3.5 *Failed Attempts to Amend Italian Legislation*

In the years following the ratification of the Rome Statute, several draft laws were introduced in the Parliament substantially incorporating the Statute's provisions on genocide, crimes against humanity and war crimes.²⁷ None of them, however, were passed into law. In 2012, Law no. 237/2012²⁸ only introduced offences against the ICC's administration of justice into the Criminal Code and supplemented the Code of Criminal Procedure by setting out rules on cooperation with the Court.²⁹

Ten years later, soon after Russian Federation's full-scale invasion of Ukraine, the Government headed by Mario Draghi considered the issue of the deficiencies of the Italian legislation relating to international crimes. In March 2022, the then Minister of Justice, Marta Cartabia, set up a commission of experts to draft a code of international crimes, with the ultimate objective

26 Treaty of Peace with Italy, signed at Paris on 10 February 1947, in 49 *UN Treaty Series* (1950) 3 *et seq.*

27 See in particular the following draft laws: Draft Law no. 2724 submitted to the Chamber of Deputies on 9 June 2002, on the initiative of Hon. Giovanni Kessler *et al.* (14th Legislature); Draft Law no. 1638 submitted to the Senate on 24 July 2002, on the initiative of Sen. Nuccio Iovene *et al.* (14th Legislature); Draft Law no. 3574 submitted to the Senate on 28 July 2005, on the initiative of Sen. Enrico Pianetta *et al.* (14th Legislature); Draft Law no. 1089 submitted to the Senate on 16 October 2006, on the initiative of Sen. Francesco Martone *et al.* (15th Legislature). All of them are available online at <https://www.senato.it/> (accessed 24 June 2024).

28 Law no. 237 of 20 December 2012, in *Official Gazette* no. 6 of 8 January 2013.

29 See F. Lattanzi, 'Un piccolo passo sulla via dell'adeguamento allo Statuto della Corte penale internazionale', 96(2) *Rivista di diritto internazionale* (2013) 492–512.

to ensure full alignment of domestic law with the ICC Statute.³⁰ At the end of May 2022, the Cartabia commission submitted a draft code of international crimes, which was to replace the existing legislation on war crimes and genocide and proscribe crimes against humanity as well as the crime of aggression.³¹ The non-applicability of statutory limitations to all those crimes was laid down, in conformity with Article 29 of the Rome Statute.³² Moreover, universal jurisdiction over all the aforementioned crimes was provided for, on condition that the alleged perpetrator were present in Italian territory and, for the crime of aggression only, that prosecution were requested by the Minister of Justice.³³ Unfortunately, the fall of the Draghi Government in July 2022 prevented further developments.³⁴

At the beginning of 2023, the newly elected Government, headed by Giorgia Meloni, took the draft code into consideration. An *ad hoc* working group was tasked by the Minister of Justice Carlo Nordio with examining and refining the

30 Decree of the Minister of Justice of 22 March 2022, available online at https://www.giustizia.it/giustizia/it/mg_1_8_1.page?contentId=SDC372746&previousPage=mg_1_8 (accessed 24 June 2024).

31 The draft code of international crimes and the accompanying report are available online at https://www.giustizia.it/giustizia/page/it/scheda_di_sintesi_dei_lavori?contentId=COS372730 (accessed 24 June 2024). For a comment, see: E. Fronza and C. Meloni, 'The Draft Italian Code of International Crimes', 20(4) *Journal of International Criminal Justice* (2022) 1027–1048; N. Selvaggi, 'The Way Forward: An Overview on the Draft "Palazzo-Pocar" of 2022', in F. Jeßberger, C. Meloni and M. Crippa (eds.), *Domesticating International Criminal Law: Reflections on the Italian and German Experience* (Routledge, London, 2023), pp. 53–62.

32 Under Article 157, para. 8, of the Criminal Code, only criminal offences punishable with life imprisonment are not subject to any statute of limitations.

33 As of today, the principle of universal jurisdiction over international crimes is not incorporated into the Italian legal system. Article 7, no. 5, of the Criminal Code provides for the punishment of offences committed by foreigners abroad without any connection to Italy, whenever special legislation or international conventions make the Italian law applicable to such offences. Grave breaches of the 1949 Geneva Conventions and Additional Protocol I might fall within this provision. However, no one has ever been prosecuted for any of them under Article 7, no. 5. Moreover, over time, divergent views have been expressed by the Court of Cassation on the self-executing character of Article 7, no. 5, as to the offences to which the Italian law is made applicable by international conventions. See in particular: Court of Cassation, 1st Criminal Section, *Judgement no. 19762 of 1 July 2020*; Court of Cassation, 1st Criminal Section, *Judgment no. 31652 of 13 August 2021*. On the above-mentioned provision, see: Roscini, *supra* note 12, p. 511; Fronza and Meloni, *supra* note 31, p. 1035.

34 A. Dell'Anna, *Italian PM Mario Draghi resigns after his government collapses* (20 July 2022), available online at <https://www.euronews.com/2022/07/20/italy-braces-for-new-elections-as-pm-draghi-loses-support-from-key-allies> (accessed 24 June 2024).

draft code.³⁵ It made limited changes, without amending the list of crimes. The provisions on non-applicability of statutory limitations and universal jurisdiction were left untouched. On 17 March 2023, the Meloni Government adopted the final draft code to be submitted to the Parliament, but surprisingly decided to expunge the crimes against humanity from it, asserting the need for further reflection on them.³⁶ Afterwards, however, it refrained from submitting such abridged draft code to the Parliament and undertaking the allegedly necessary reflection on crimes against humanity.

The Cartabia Commission's draft code of international crimes, as revised by the Nordio working group, was a commendable effort to provide a unitary and coherent set of rules on all core crimes, following the example of the German Code of Crimes Against International Law. The Meloni Government's decision to delete crimes against humanity from it is difficult to understand. Even less understandable is the subsequent removal of the adoption of such long overdue piece of legislation from the Government's agenda.

4 The Italian Case Law on International Crimes

Given the above mentioned deficient legislative framework, the Italian case law on international crimes is limited. Up until the time of writing, only war crimes have been prosecuted in the domestic courts. No criminal proceedings have ever been instituted for the crime of genocide. The same is true for crimes against humanity and the crime of aggression, which – as already said – are not incorporated into the domestic legal system. Moreover, the lack of legislation on universal jurisdiction has prevented the investigation and prosecution of international crimes having no jurisdictional link to Italy.

Most of the war crimes cases concerned offences committed against Italian nationals in the Italian territory, during the Second World War.³⁷ The great

35 See Ministero della giustizia, *Crimini internazionali, gruppo di lavoro per proposta legislativa* (12 January 2023), available online at <https://www.gnewsonline.it/crimini-internazionali-un-gruppo-di-lavoro-per-una-proposta-legislativa-al-piu-presto/> (accessed 24 June 2024).

36 See Ministero della giustizia, *Codice dei crimini internazionali, via libera dal Cdm* (17 March 2023), available online at <https://www.gnewsonline.it/codice-dei-crimini-internazionali-via-libera-dal-cdm/> (accessed 24 June 2024). As of the time of writing, the abridged draft code adopted by the Meloni Government is not publicly available.

37 See M. De Paolis, 'La punizione dei crimini di guerra in Italia', in S. Buzzelli, M. De Paolis and A. Speranzoni, *La ricostruzione giudiziale dei crimini nazifascisti in Italia* (Giappichelli, Turin, 2012), pp. 63–155.

majority of trials were held against Nazi soldiers for massacres of civilians and other war crimes committed in the areas occupied by Germany in central and northern Italy, between 1943 and 1945. A few Nazi soldiers were tried before Italian military courts in the years immediately following the end of the Second World War. After a long standstill, prosecutions of war crimes resumed in the Nineties, when the former SS captain Erik Priebke was extradited from Argentina and tried for helping to organize the massacre of Ardeatine Caves (Rome) in March 1944. In 1998, the Military Court of Appeals sentenced him to life imprisonment.³⁸ During the investigation of the Priebke case, hundreds of files documenting Nazi war crimes were discovered, which had been illegally concealed in the Sixties. On the basis of them, numerous trials were held *in absentia* before Italian military courts against those allegedly responsible who were still alive at the time. Most of such trials were held before the Military Tribunal of La Spezia. Only one case concerned war crimes committed against Italian nationals abroad. In 2013, the Military Tribunal of Rome found the former German corporal Alfred Störk guilty of having participated in the execution of Italian prisoners of war, in the Greek island of Kefalonia, in September 1943.³⁹ In total, 57 Nazi war criminals were sentenced *in absentia* to life imprisonment in the period 2002–2013.⁴⁰ None of them has served his sentence.⁴¹

As for war crimes allegedly committed after the Second World War, in 2007 the preliminary hearing judge of the Military Tribunal of Rome dropped the charge of using weapons against ambulances under Article 191 of WMCC against two former members of the Italian contingent in Iraq, Raffaele Allocca and Fabio Stival, who on 6 August 2004, in Nasiriyah, amid armed clashes between Italian soldiers and Iraqi insurgents, had fired on an ambulance, killing four civilians.⁴² One year later, the Court of Cassation ruled on the case of Mario Luiz Lozano, a US soldier who on 4 March 2005, in Baghdad, had fired on a car which was approaching the checkpoint where he stationed on duty, killing an

38 Military Court of Appeals, *Judgement of 7 March 1998*, available online at <https://ihl-databases.icrc.org/en/national-practice/hass-priebke-case-military-appeals-court-7-march-1998> (accessed 24 June 2024).

39 Military Tribunal of Rome, *Judgement no. 28 of 18 October 2013*, available online at <http://www.fondazioneeuropapeacefalonio.eu/pdf/sentenza.pdf> (accessed 24 June 2024).

40 P. Caroli, 'German Crimes and Italian Money? Observations on the Sad Saga of Compensation to the Victims of Nazi Atrocities in Italy', 21(1) *Journal of International Criminal Justice* (2023) 211–231, at 214 *et seq.*

41 M. De Paolis, *Caccia ai nazisti* (Milan, Rizzoli, 2023), p. 264 *et seq.*

42 Preliminary Hearing Judge, Military Tribunal of Rome, *Judgement no. 33 of 9 May 2007*, available online at <https://www.senato.it/service/PDF/PDFServer/BGT/00737210.pdf> (accessed 24 June 2024).

Italian intelligence officer and injuring two other Italian nationals.⁴³ The Court of Cassation held that Lozano enjoyed immunity from Italian jurisdiction, since he acted in his official capacity and his conduct did not amount to a war crime. The Court took the view that the Lozano's conduct did not qualify as a war crime, because of 'the isolated and individual nature of the act' [*sic*] and 'the specific historical and factual dimension of the episode' (the high speed of the car, the location of the checkpoint at the intersection of two roads which had already been targeted by terrorists, the situation of maximum alert of the soldiers at the checkpoint who were awaiting the US Ambassador to Iraq motorcade, and the night-time).⁴⁴

5 The Public Perception of International Crimes in Italy

In the Nineties, the Priebke case and the discovery of the illegally concealed files on Nazi war crimes aroused much interest in Italy. In the following years, the interest in the trials against German war criminals decreased, owing *inter alia* to the absence of the defendants and the slight chance that, in case of conviction, they would have served their sentence. The memory of international crimes committed by the German forces during the Second World War, however, is kept alive through numerous memorials erected to the victims as well as dedicated museums and temporary exhibitions on the topic throughout Italy.⁴⁵ Moreover, the atrocities perpetrated by the Third Reich forces are a recurrent theme in books, films and TV documentaries.⁴⁶

43 Court of Cassation, 1st Criminal Section, *Judgement no. 31171 of 24 July 2008*, available online at <https://ihl-databases.icrc.org/en/national-practice/lozano-case-court-cassation-24-july-2008> (accessed 24 June 2024).

44 *Ibid.*, para. 7. See critically A. Cassese, 'The Italian Court of Cassation Misapprehends the Notion of War Crimes. The Lozano Case', 6(5) *Journal of International Criminal Justice* (2008) 1077–1089.

45 The most recent one is the itinerant exhibition 'Nonostante il lungo tempo trascorso ... Le stragi nazifasciste nella guerra di liberazione 1943-1945'. Information on the exhibition are available online at <https://www.difesa.it/area-storica-html/nonostanteillungotempotrascorso/index/26604.html> (accessed 24 June 2024). A short video of this exhibition is also available online at <https://www.quirinale.it/elementi/107156> (accessed 24 June 2024).

46 See e.g. the TV documentary 'Via Rasella: L'attacco e le fosse ardeatine', aired on La7 on 29 November 2023, available online at <https://www.la7.it/una-giornata-particolare/rivedila7/una-giornata-particolare-via-rasella-lattacco-e-le-fosse-ardeatine-30-11-2023-516339> (accessed 24 June 2024).

Apart from that, accountability for international crimes has never been an issue in the Italian society. In 2022 the elaboration of the aforementioned draft code of international crimes under the Draghi Government received some media attention, in connection with the widespread public outrage over the international crimes committed by the Russian forces in Ukraine. However, the subsequent Meloni Government's decision to remove the adoption of such code from its agenda was completely ignored by the media. Indeed, the lack of public awareness about the urgency of reforming the existing legislation probably favoured that decision.

6 Conclusion

The analysis above reveals a wide discrepancy between Italy's commitment to international criminal justice and its domestic action to contribute to the efficient functioning of the Rome Statute system, in which the State Parties retain the primary responsibility for prosecuting international crimes. As shown in para. 3, a major legislative reform is urgently needed and cannot be postponed any longer, in order to make all international crimes listed in Articles 6, 7, 8 and 8 *bis* of the Rome Statute prosecutable before the domestic courts. The perpetrators of any of those crimes should be denied the prospect of a safe haven in Italy. For this purpose, a comprehensive and systematic piece of legislation would be preferable to multiple amendments to the laws in force. The Cartabia Commission's draft code of international crimes, as revised by the Nordio working group, was a commendable effort to provide an organic set of rules on all core crimes, stipulating the non-applicability of statutory limitations and providing for universal jurisdiction over them. It is recommended that the Government retrace its steps and submit it to the Parliament, so as to ensure the long-awaited alignment of domestic law with the Rome Statute. Greater public awareness of the importance of such code might help pressuring the Government into reversing its decision.

It is also advised that the aforementioned reform be complemented with the assumption of additional international obligations bringing the country at the forefront of the supporters of the international criminal justice system. Firstly, Italy should ratify the amendments to Article 8 of the Rome Statute which were adopted by the Assembly of States Parties in 2017 and 2019. All the war crimes included in those amendments would be covered by the provisions of the Cartabia Commission's draft code of international crimes, as revised by the Nordio working group. Secondly, Italy should conclude with the ICC an

agreement on the enforcement of sentences, so that persons convicted by the Court may serve their sentence in its detention facilities.

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