



Permanent Mission of Italy  
UN - New York

Prot. n. 972

The Permanent Mission of Italy to the United Nations presents its compliments to the Office of Legal Affairs (OLA) and has the honor to refer to OLA'S Note Verbale of 10 January 2022 inviting Member States to submit information and observations on the scope and application of the principle of universal jurisdiction in accordance with paragraph 4 of GA Resolution 76/118.

In accordance with paragraph 4 of GA Resolution 76/118 the Permanent Mission of Italy is hereby submitting Italy's written observations.

The Permanent Mission of Italy to the United Nations avails itself of this opportunity to renew to OLA the assurances of its highest consideration.

New York, **MAY - 5 2022**



Ministero degli Affari Esteri  
e della Cooperazione Internazionale

## Italy's observations pursuant to GA Res. 76/118

The observations herein are submitted pursuant to para. 4 of GA res. 76/118 and complement and update the relevant information previously submitted by the Government of Italy under the agenda item allocated to the Sixth Committee, "The Scope and Application of the Principle of Universal Jurisdiction".

The rationale behind the concept of universal jurisdiction lies in the need to prosecute international crimes, regardless of a territorial link between the State, the author of the crime and the *locus commissi delicti*. That in relation to the gravity of the crimes, which are in breach of fundamental norms and values of the international community as a whole.

Academic studies have identified seven categories of crimes, which may fall under the purview of universal jurisdiction: piracy; slavery; war crimes; crimes against peace; crimes against humanity; genocide; and torture<sup>1</sup>.

International treaty law, to which Italy is a party, provides for the obligation of States to apprehend the alleged perpetrators of core international crimes, who are present on their territory, regardless of their alleged nationality. The 1949 Geneva Conventions and 1977 Additional Protocol I are considered examples of treaties providing for compulsory universal jurisdiction<sup>2</sup>. Under the mentioned conventions, national authorities have an obligation to prosecute the alleged perpetrators of war crimes, even if the text does not explicitly refer to crimes committed abroad. Other international treaties provide for the s.c. *aut dedere aut judicare* obligation, leaving the State the option of either prosecuting or extraditing to another State that can prosecute the alleged perpetrator<sup>3</sup>.

Less clear is the existence of such an obligation under customary international law. The first international crime, for which the principle of universal jurisdiction has emerged, is the crime of piracy, with a view to safeguarding the freedom of the seas. In the case of piracy, however, national authorities have the *right under international law* to arrest and prosecute pirates regardless of any harm suffered as a result of

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<sup>1</sup> Cfr. *Princeton Principles on Universal Jurisdiction* [Rebuilt 1-22 \(princeton.edu\)](#)

<sup>2</sup> Cfr. respectively Arts. 49, 50, 129, 146, of the four 1949 Geneva Conventions: *Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts.* Cfr. Art. 85(1), Prot. I: *The provisions of the Conventions relating to the repression of breaches and grave breaches, supplemented by this Section, shall apply to the repression of breaches and grave breaches of this Protocol.*

<sup>3</sup> 2006 International Convention for the Protection of Persons from Enforced Disappearance [Art. 9(2)]; 1984 Convention against Torture and other Cruel Inhuman and Degrading Treatment [Art. 7(1)]; 1971 Convention for the Suppression of Unlawful Acts against Civil Aviation Security [Art. 5(2)]; 1979 International Convention against the Capture of Hostages [Art. 8(1)]. Added to these are the following Conventions of the Council of Europe: 2005 Convention on the Prevention of Terrorism [Art. 14(3)]; 2005 Convention on Action against Trafficking in Human Beings [Art. 31(3)]; 2001 Convention on Cybercrime [Art. 22(3)].

their activities or any link of nationality concerning the perpetrators or the victims. This has been confirmed by both UNCLOS and, more recently, by the UN Security Council<sup>4</sup>. Even with reference to international humanitarian law, the study of the ICRC on customary international humanitarian law recognizes *the right to prosecute and punish war crimes*, and not the obligation<sup>5</sup>. At the same time, international case law has identified an obligation for States to prosecute and punish the crime of genocide, as a result of the *jus cogens* nature of the prohibition of genocide and the resulting application of the principle of universal jurisdiction<sup>6</sup>.

As a rule, the Italian Criminal Code provides that national authorities have jurisdiction over crimes committed in the territory of Italy (Art. 6). Arts. 7 to 10 provide for certain exceptions to the above rule. Art. 7 provides for four categories of crimes for which prosecution and punishment are applicable in Italy, despite being committed abroad. The purpose is to defend the State against conduct harmful to the State itself, regardless of the nationality of the alleged perpetrator. A fifth category under Art. 7.5 is, instead, aimed at the protection of universal values, including those reflected in special legislation and international treaties, and fully incorporates the principle of universal jurisdiction. Art. 8 provides for punishment of political crimes, including those committed abroad by foreign citizens: national tribunals have included war crimes committed abroad in this category<sup>7</sup>. Arts. 9 and 10 go as far as providing for jurisdiction for ordinary crimes committed abroad against the Italian State and Italian nationals, but also against foreign countries and nationals. Art. 10 specifically relates to the commission of crimes abroad by foreign nationals; criminal prosecution presupposes the presence of the alleged perpetrator on Italian territory.

The sentencing of the *Corte d'Assise (Criminal Court)* of Milan n. 10/2017 (as confirmed in appeals proceeding n. 31/2020 and by the Court of Cassation in proceeding n. 480/2020) is based on the above-mentioned Art. 10. A Somali national – reported to the Italian Authorities by victims hosted in a refugee center in Milan where he was temporarily staying – was convicted and sentenced for participation in the activities of a transnational criminal organization outside the territory of Italy, on counts of kidnapping, killing, sexual violence and different forms of torture, such as intentional electric shock, burnings, whipping, beating with wooden and iron sticks and dehydration under the sun.

More in general, one must observe that, in line with Art. 1 of the Criminal Code and Art. 25.2 and 25.3 of the Italian Constitution, the criminalization of conducts, even when deriving from international legal obligations, must be based on specific norms adopted by the Parliament (*principio della riserva di legge*)<sup>8</sup>. Whereas judicial cooperation with the International Criminal Court has been regulated by Law 237/2012 implementing the Rome Statute, the substantive part of the Statute is still subject to a less systematic and coherent legal framework (some war crimes, for instance, are to be found under the Military Penal Code applicable in times of war; crimes against humanity lack a specific normative framework).

In this respect, one can note that in March 2022, the Minister of Justice established an Expert Committee, presided by the former President of the ICTY, Prof. Fausto Pocar, who was entrusted with the task of reviewing draft legislation on international crimes in the light of international treaty obligations (and above all, the Rome Statute of the ICC) and preparing a draft code of international crimes, which might eventually

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<sup>4</sup> Cfr. art. 105(1) United Nations Convention on the Law of the Sea, 1982.: *Tout Etat peut, en haute mer ou en tout autre lieu ne relevant de la juridiction d'aucun Etat, saisir un navire ou un aéronef pirate* [...]. SC res. n. 1976/2011.

<sup>5</sup> Rule 157, *Jurisdiction over war crimes: States have the right to vest universal jurisdiction in their national courts over war crimes*.

<sup>6</sup> cfr. ECtHR, judgment 12 July 2007.

<sup>7</sup> Cfr. Cass. Pen., Sez. I, judgment n. 24795/2018.

<sup>8</sup> Cfr. Cass. Pen., Sez. V, judgment n. 48250/2019.

include, *inter alia*, provisions on universal jurisdiction regarding "core crimes" (i.e. war crimes, crimes against humanity, genocide and aggression).