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CRIMINAL LAW IN ITALY

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**ITALY AND THE INTERNATIONAL CRIMINAL COURT**

On 18 July 1998, Italy signed the Rome Statute of the International Criminal Court (Rome Statute) and ratified it following the adoption of Law No. 232 of 12 July 1999.[[1]](#footnote-1) Italy played a major role in the drafting of the Rome Statute, hosted the Rome Diplomatic Conference of Plenipotentiaries at which it was adopted and contributed significantly to the elaboration of the Elements of Crimes, an instrument designed to assist the International Criminal Court (Court) in the interpretation and application of the Rome Statute. On 1 July 2002, the Rome Statute entered into force, establishing the first permanent international court capable of investigating and bringing to justice individuals who commit some of the most serious violations of international law: genocide, crimes against humanity, war crimes and, eventually, aggression. However, despite numerous promises, nearly seven years after the adoption of the Rome Statute, Italy has failed to enact implementing legislation making it possible to investigate and prosecute these crimes under international law in its courts and providing for cooperation with the International Criminal Court in its investigations and prosecutions.

This paper is designed to encourage the Italian government to take prompt steps to draft, in a transparent manner involving close consultation at all stages with civil society, effective implementing legislation for the Rome Statute and other relevant international law. The prompt and effective implementation of the Rome Statute into domestic law is not only an obligation of Italy but it is also in its very interest: indeed, Article 17 of the Rome Statute provides that the Court has jurisdiction over a case whenever the state party which would have jurisdiction is “unwilling or unable genuinely to carry out the investigation or prosecution”. For the reasons explained below, if Italy does not implement the Rome Statute in domestic law, it will be impossible for Italian courts to apply it. Italy would thus be “unwilling or unable” to prosecute Italians and foreigners found in Italy suspected of crimes under the Rome Statute, and the Court could exercise its complementary jurisdiction and prosecute them.[[2]](#footnote-2) Such a removal of a case by the Court can be avoided only if Italy creates and enforces a legislative framework for effective investigation and prosecution for crimes under the Rome Statute.

Under the dualist approach followed in Italy to the relationship between international and national law, no treaty produces its effects in the domestic legal order if implementing legislation has not been adopted.[[3]](#footnote-3) In Italy, such legislation might assume one of two possible forms. It could be a law which simply contains one or two provisions ordering the domestic execution of a certain treaty, the text of which is usually annexed and which will be applied untransformed (*ordine di esecuzione*); or it could be a law which interprets and reformulates the provisions of the treaty and amends the national legislation if that this is necessary to implement them. The first method is usually preferred by the Italian Parliament and was followed also in the case of the Rome Statute. However, the *ordine di esecuzione* is an adequate way of implementing a treaty in the domestic legal order only to the extent that the treaty norms are self-executing. To the extent that they are not, additional implementing legislation needs to be formulated and adopted.[[4]](#footnote-4)

The Rome Statute is largely non self-executing: it does not provide for penalties and requires states parties to establish internal procedures for cooperation with the Court. Moreover, crimes under the Rome Statute must also be defined as crimes under the domestic law of the given state for them to be prosecuted before its national courts. Indeed, Italian courts and criminal lawyers have always supported the reformulation of international criminal law conventions in domestic laws in order to include crimes and specify penalties. The prevailing view is that, in the absence of such legislation and even if the state had ratified an international criminal law convention and ordered its domestic execution, its provisions could not be directly enforced before national courts without violating the principle of legality of crimes and penalties and the principle of specificity (i.e., criminal law provisions must be as specific and as clear as possible).[[5]](#footnote-5) Therefore, the mere *ordine di esecuzione* is not enough for the substantive provisions of the Rome Statute to be invoked before Italian courts: it is necessary that the crimes under the jurisdiction of the Court are also crimes in domestic law and that the relevant penalties are expressly determined by it. Further implementing legislation is also necessary to determine the national organs competent for cooperation with the Court and the relevant procedures.

While the obligation of the states parties to ensure that procedures for all forms of cooperation under Part 9 of the Rome Statute are available in national law is expressly contained in Article 88, the obligation to ensure that crimes under the jurisdiction of the Court are also crimes under national law must be considered implicit in the Rome Statute, which establishes the jurisdiction of the Court on the principle of complementarity.[[6]](#footnote-6) Indeed, if states parties fail to fulfil this obligation, the Court will be overwhelmed with cases and will not be able to function effectively: this would be contrary to the purpose of the Rome Statute, which is, according to the Preamble, to put an end to impunity for the perpetrators of genocide, crimes against humanity and war crimes and to contribute to the prevention of such crimes. States parties not fulfilling their responsibility to ensure that the Court is able to operate effectively will also breach the duty to perform treaties in good faith codified in Article 26 of the 1969 Vienna Convention on the Law of Treaties. In the national legal order, the obligation to fully and effectively implement the Rome Statute derives from the new wording of Article 117 (1) of the Italian Constitution according to which the legislative powers of the state and of the regions shall be exercised consistently with international law.[[7]](#footnote-7)

Italy decided to ratify the Rome Statute and to order its domestic execution, and to enact further legislation in order to fully implement it only subsequently. This was the result of a strong political commitment to demonstrate Italy’s support for the International Criminal Court and to the need to study in depth what modifications to national legislation were needed in order to adapt it to the requirements of the Rome Statute. The delegation of power from the Parliament to the government to enact promptly the specific implementing provisions was included in a separate draft law (*Atto del Senato* No. 3594-*bis*, *XIIIa Legislatura*, 9 February 1999), but it was felt in the relevant Parliamentary Committees that, in such a sensitive matter, guiding principles for the government to legislate would have to be discussed more thoroughly and defined more precisely than the draft did. [[8]](#footnote-8) However, although Italy played a major role in the establishment of the International Criminal Court, it has failed for nearly seven years to enact effective legislation implementing the Rome Statute and to ratify and implement the Agreement on Privileges and Immunities of the International Criminal Court, despite repeated promises to do so.

**RELEVANT SOURCES OF ITALIAN LAW**

No one should be acquitted of genocide, crimes against humanity or war crimes in an Italian court on the same facts that would lead to a conviction in the International Criminal Court. Each state that has ratified the Rome Statute and international human rights and humanitarian law treaties is required to bring its legislation fully into line with those treaty obligations. As far as the Rome Statute is concerned, each state party must enact national legislation which provides that crimes under the Rome Statute are also crimes under national law and which ensures full cooperation with the Court. In many instances, a state party may need to amend existing legislation to the extent of ensuring that it is consistent with the Rome Statute and other international law and standards.

***The Constitution***. The *ordine di esecuzione* of the Rome Statute was adopted by an ordinary law, without any previous substantive modifications to the Constitution. However, it has been suggested that some provisions of the Rome Statute might not be entirely consistent with the 1948 Constitution, in particular the irrelevance of official capacities (Article 27 (2) of the Rome Statute, with reference to Articles 68, 90, 96 and 122 of the Constitution and Article 3 (2) of Constitutional Law No. 1 of 9 February 1948), the obligation to surrender (Article 89 of the Rome Statute in relation to the prohibition of extradition for political crimes under Articles 10 and 26 of the Constitution), the exclusive competence of the International Criminal Court in the execution of sentences (Articles 105, 106 and 110 of the Rome Statute in relation to Article 87 (11) of the Constitution). The rank of a treaty in the domestic legal system depends on the rank of the incorporating legislation. Therefore, if the *ordine di esecuzione* is contained in an ordinary law (like Law No. 232 of 12 July 1999, which contains the *ordine di esecuzione* of the Rome Statute), it (and the incorporated treaty) may be challenged before the Italian courts by means of a constitutional complaint.[[9]](#footnote-9) However, as demonstrated below, in most instances the supposed conflict between the Italian Constitution and the Rome Statute is only apparent. In the other instances, reference can be made to Article 11 of the Constitution, according to which “Italy ... on conditions of parity with other states, agrees to the limitations of sovereignty necessary for an order that ensures peace and justice among Nations; promotes and encourages international organizations having such ends in view”. The International Criminal Court could be included among those organizations. Indeed, the Preamble of the Rome Statute provides that grave crimes within the jurisdiction of the Court threaten the peace, security and well-being of the world (para. 3) and that the aim of the Court is to put an end to impunity for the perpetrators of such crimes, to contribute to their prevention and to guarantee lasting respect for and the enforcement of international justice (paras. 5 and 11). Furthermore, the Court can be seen as an instrument which safeguards and affirms the fundamental human rights acknowledged by the Republic (Article 2 of the Constitution).

**Definition of crimes**

Unlike the International Criminal Tribunals for the former Yugoslavia (ICTY) and for Rwanda (ICTR), the International Criminal Court has no primacy over national courts. The Rome Statute makes clear that the Court may investigate and prosecute only when states parties are unable or unwilling to do so, and provided that the case is of sufficient gravity (Article 17 (1) (d) of the Rome Statute). The Court has limited human and financial resources and it will only be able to try a small number of those suspected of crimes under the Rome Statute. It is thus of paramount importance that all states ensure that they can fulfil their responsibility under international law and that national courts are able to bring those responsible for genocide, crimes against humanity and war crimes to justice. Therefore, Italian legislation implementing the Rome Statute should provide that all crimes in the Rome Statute are crimes under national law. However, crimes under international law include not only those listed in the Rome Statute but also other war crimes, which have not been included as part of the political compromise during the Rome Conference. The definitions of crimes should be as broad as the definitions in the Rome Statute, but whenever international treaties (such as the 1949 Geneva Conventions and their 1977 Additional Protocols, which Italy has ratified) or customary law contain stronger definitions than those in the Rome Statute, these definitions should be preferred.

**Genocide**

Italy ratified the 1948 Convention for the Prevention and Punishment of the Crime of Genocide (Genocide Convention) on 4 June 1952, but only implemented it by Law no. 962 of 9 October 1967 (1967 Genocide Law). The 1967 Genocide Law is largely consistent with Article 6 of the Rome Statute and Article II of the Genocide Convention, but is broader, since it also includes deportation and the obligation to wear distinguishing marks, which would have punished those implementing the German legislation requiring Jews to wear the Star of David, one of the first steps taken leading to the Holocaust. Article 1 (2) of the 1967 Genocide Law is broader than Article 6 (c) of the Rome Statute, since the infliction on the group of conditions of life calculated to bring about its physical destruction in whole or in part is not required to be “intentional”.[[10]](#footnote-10) However, Article 1 of the 1967 Genocide Law does not fully implement Article II of the Genocide Convention and Article 6 (b) of the Rome Statute, since it does not include *mental* harm. The failure of Italy to implement fully this *jus cogens* prohibition in national law is a serious flaw. Furthermore, Article 5 of the 1967 Genocide Law limits its scope to the transfer of children under age of 14 years, while neither Article II of the Genocide Convention nor Article 6 (e) of the Rome Statute contains such a limit, and in the Elements of Crimes the age limit is 18 years.

The 1967 Genocide Law also incorporates acts which are committed not only by the principal offender, but also - as in Article III of the Genocide Convention - those committed by others in the form of complicity, conspiracy and attempt, as well as public incitement to commit genocide, whether or not the principal crime has been committed. Unlike Article III of the Genocide Convention, Article 8 of the 1967 Genocide Law also criminalizes public defence (*apologia*) of genocide.[[11]](#footnote-11)

Article 1 of the 1967 Genocide Law criminalizes acts which are only *aimed* at causing injuries or the death of members of the group. This provision advances the threshold of criminal responsibility well beyond the attempted crime (which, under Article 56 of the Penal Code, requires the conduct intended to commit an offence to be able (“idoneo”) and unequivocal) and might include any act which is potentially aimed at genocide even if preliminary. In contrast, Article 6 of the Rome Statute requires the killing, the causing serious bodily or mental harm, the infliction of certain conditions of life, the imposition of measures intended to prevent births and the forcible transfer of children to take place for criminal responsibility to arise. It is widely accepted that if efforts to prevent genocide are to be effective, they must be taken at the earliest possible stages. However, these steps can be taken through the application of Article 56 of the Penal Code.

As to the extradition of a person accused of genocide, Constitutional Law No. 1 of 21 June 1967 has amended Articles 10 and 26 of the Constitution, providing that the prohibition of extradition for political crimes does not apply to the crime of genocide. For the reasons explained below, restrictions in national law on extradition do not apply to surrender of a person to the International Criminal Court, but they impede or prevent states from fulfilling their obligations to enforce international law.

**Crimes against humanity**

Crimes against humanity are not codified as such in Italy. Most crimes contained in Article 7 of the Rome Statute are partially covered by domestic criminal provisions: murder by Article 575 of the Penal Code, rape and other forms of sexual violence by Articles 609-*bis et seq*., enslavement by Articles 600, 601 and 602 (as amended by Law No. 228 of 11 August 2003), imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law by Articles 605, 606 and 607, forced disappearances by Articles 606 and 607.[[12]](#footnote-12)

Although the crime of enslavement, as defined in the new text of Article 600, is broader than the corresponding definition in Article 7,[[13]](#footnote-13) other definitions in the Code fall short of those included in the Rome Statute and other international law and will require amendment. In particular, the crime of forced disappearances only includes arrest and detention performed by public officials, and not also those committed with the authorization, support or acquiescence of a State or a political organization. The above mentioned crimes are also subject to all the restrictions (statutes of limitation, immunities, defences, etc.) applicable to ordinary crimes, but impermissible with regard to crimes under international law.

Apartheid as a crime is not included in Italian legislation (Italy has not yet ratified the 1973 Convention on the Suppression and Punishment of the Crime of Apartheid). Furthermore, there is no provision in the Penal Code which provides for the crimes against humanity of extermination, deportation and forcible transfer of population, torture, persecution and other inhuman acts. The crime of murder does not reflect the enormity of the crime against humanity of extermination, which involves mass killing, as evidenced by the second element of this crime.[[14]](#footnote-14) Rape as an ordinary crime, as well as other forms of sexual violence, are covered by Articles 609-*bis et seq.* of the Penal Code. However, Article 609-*bis* does not fully appear to be consistent with the most recent international jurisprudence concerning the elements of this crime against humanity, because the definition of rape is based on the presence of violence, threats or abuse of authority rather than on the lack of consent of the victim. The crimes of sexual slavery and enforced prostitution are covered by the new text of Article 600 of the Penal Code. As to the other sexual crimes listed in Article 7 (1) (g) of the Rome Statute (forced pregnancy, enforced sterilisation), there are currently no corresponding provisions in the Penal Code or elsewhere in the Italian legislation. Given the enormous number of victims of crimes against humanity of sexual violence in past decades in neighbouring countries and around the world, the failure of the Penal Code to include all of the crimes of sexual violence in the Rome Statute or to define them as broadly is a matter of the deepest concern. As Amnesty International pointed out in its 2004 report, *It’ s in Our Hands - Stop Violence Against Women,* AI Index: ACT 77/001/2004, “states are under an obligation to take effective steps to end violence against women. ... If a state fails to act diligently to prevent violence against women - from whatever source - or fails to investigate and punish such violence after it occurs, the state can itself be held responsible for the violation”.

Implementing legislation should, therefore, include all crimes against humanity listed in Article 7 of the Rome Statute. Crimes against humanity are not codified as such in Italy. Most crimes contained in Article 7 of the Rome Statute are already addressed in part by domestic criminal provisions. Definitions should ensure that all crimes are defined consistently with the Rome Statute and, when other international law provides greater protection, with that law. The legislation should also contain a more general clause which defines as crimes all other inhuman acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health (Article 7 (1) (k) of the Rome Statute). Implementing legislation should ensure that national courts will use the generally accepted international definition of gender used by the United Nations (UN), rather than the definition in the Rome Statute, which, although consistent with this definition, is awkwardly worded and could be misinterpreted by national courts as more restrictive than the UN definition.

**Torture**

The crime of torture has been recognized by the international community as a separate crime under international law under the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), independently of the crime against humanity of torture and the war crime of torture (see discussion above). As a state party to this Convention since 12 January 1989, if Italy chooses not to extradite an alleged torturer found on its territory, it is required to investigate and prosecute the alleged offender itself.[[15]](#footnote-15) However, although Italy is a party to the Convention against Torture, to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms and to the 1966 International Covenant on Civil and Political Rights (all of which prohibit torture), at present Italy expressly and specifically criminalizes torture only if it is committed in the context of an armed conflict (Article 185-*bis* of the Military Penal Code of War).

Some conduct amounting to torture, but far from all such conduct,[[16]](#footnote-16) could be covered by various articles of the Penal Code, including Articles 581 (beating), 582- 583 (bodily harm), 610 (criminal coercion), 606 (illegal arrest), 607 (unlawful restriction of personal freedom), 608 (abuse of authority against people arrested or detained), 609 (arbitrary search and personal inspection), 612 (threatening) and 605 (kidnapping). However, such provisions do not adequately take into account the gravity of the crime of torture, the mental element and the circumstances under which it is committed.[[17]](#footnote-17) Amnesty International is pleased to note that a draft law to include the crime of torture in the Penal Code is currently under discussion in the Italian Parliament. Amnesty International recommends, however, that Italian law should also define cruel, inhuman and degrading treatment as crimes. Italy should adopt the definition of torture as set forth in Article 1 of the Convention against Torture for all instances of torture that are not also crimes against humanity or war crimes.

In addition, Amnesty International would draw the Italian government’s attention to the ICTY ruling in the *Furundžija* case, which stated that “international rules prohibit not only torture but also (i) the failure to adopt the national measures necessary for implementing the prohibition and (ii) the maintenance in force or passage of laws which are contrary to the prohibition”, and that, accordingly, “in the case of torture, the requirement that States expeditiously institute national implementing measures is an integral part of the international obligation to prohibit this practice.”[[18]](#footnote-18) Amnesty International recommends that Italy fulfils its obligations under international law by immediately defining torture in accordance with Article 1 of the Convention against Torture, as well as ancillary crimes of torture, as required by Article 4 of the Convention, for all instances not also amounting to a crime against humanity or a war crime. In addition, as recent events have demonstrated, it is essential to define cruel, inhuman or degrading treatment as crimes under national law as well.

**Offences against the administration of justice**

The offences against the administration of justice contained in Article 70 (1) of the Rome Statute are already included in the Penal Code (Articles 317-322 and 367-379) However, Amnesty International is concerned that such provisions do not make specific reference to the International Criminal Court, its members or witnesses who appear before it.[[19]](#footnote-19) The implementing legislation should include a provision which, as provided for in Article 70 (4) of the Rome Statute, extends domestic criminal provisions criminalizing offences against the integrity of national investigative or judicial process to offences against the administration of justice by the Court, when these are committed in Italy or by its nationals. There should be no statute of limitation for such offences. The legislation should also provide effective assistance to the Court by applying also to offences against the administration of justice by the Court when committed outside Italy by non-nationals so that Italy will not continue to be a safe haven for persons who have impeded bringing to justice persons responsible for genocide, crimes against humanity or war crimes.

Amnesty International welcomes the fact that Italy has signed and ratified most of the treaties and conventions on human rights protection and international humanitarian law. These signatures and ratifications demonstrate a commitment by Italy as a part of the international community to put an end to impunity of the perpetrators of the most serious crimes. However, as the refusal to surrender Father Athenase Seromba to the ICTR demonstrates, this goal can only be achieved where effective implementing legislation for the Rome Statute with the strongest international legal standards derived from the treaties that Italy has signed and ratified, as well as from customary international law, is put in place. Effective implementing legislation would assist the Italian government in promoting the rule of law and the new system of international justice by ensuring that its territory cannot be used as a safe haven for people accused of the worst crimes known to humanity. It is thus a matter of concern that Italy, which played a leading role in the establishment of the International Criminal Court, has failed for nearly seven years to enact effective implementing legislation for the Rome Statute or to ratify and implement the Agreement on Privileges and Immunities of the Court.

T o ensure that implement ing legislat ion is as effective as possible, the implementation process should take place in consultation with civil society. This approach was followed in Benin, the Republic of the Congo (Brazzaville), the Democratic Republic of the Congo, Senegal and the United Kingdom, all of which involved civil society at the earliest possible stage of drafting and invited comments from civil society during the drafting process, leading to significant improvements in the text. The involvement of lawyers groups and other non-governmental organizations concerned with criminal justice issues, women’s issues, rights of children and victims, as well as members of the general public, will not only help guarantee that all obligations are properly included in the legislation, but will help build public support for the state’s commitment to international justice.

Amnesty International hopes that the Italian government’s draft implementing legislation will incorporate the above recommendations and that it will be submitted promptly to Parliament for consideration and adoption. Alternatively, Amnesty International strongly recommends that the seriously flawed Opposition bills now pending in Parliament be amended in line with the recommendations contained in this paper.

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*Furundžija* (IT-95-17/1), Judgment, Trial Chamber II, 10 December 1998, paras. 148-149.

1. Law No. 232 includes four articles: the first two contain the authorization for the President of the Republic to ratify and the *ordine di esecuzione*, while the third and fourth regulate financial aspects and the entry into force. [↑](#footnote-ref-1)
2. **See G. Werle & S. Manacorda, L’adaptation des systèmes penaux nationaux au Statut de Rome: le paradigme du “Völkerstrafgesetzbuch” allemand, 58 Revue de science criminelle et de droit pénal comparé (2003), 506-507.** [↑](#footnote-ref-2)
3. **See, e.g., Cassazione civile (Sezioni Unite), 22 March 1972, No. 867, 56 Rivista di diritto internazionale (1973), 586-589.**  [↑](#footnote-ref-3)
4. In 1963, the Court of Appeal of Bologna ruled that a German national accused of genocide could not be extradited to the Federal Republic of Germany because the 1948 Convention for the Prevention and Punishment of the Crime of Genocide had not yet been implemented in Italy, although an *ordine di esecuzione* had been passed by the Parliament (*Kröger* case, 11 January 1963, 86 *Foro italiano* (1963), Parte seconda, 151-154). *See* M. Pisani, *Tutela penale e processo* (Bologna: Patròn Editore, 1978), 228-230). Again, in 1979 the Italian Constitutional Court ruled that, without the adoption of further implementing legislation, Article 14 (5) of the International Covenant on Civil and Political Rights, guaranteeing the right to appeal to a higher court, was not directly enforceable in trials of the Prime Minister and other ministers (order of 6 February 1979, 24 *Giurisprudenza costituzionale* (1979-I), Supplement, 94-95). [↑](#footnote-ref-4)
5. *See* F. Antolisei, *Manuale di diritto penale,* Parte generale (Milano: Giuffrè, 2003), 77; M. Pisani, *La “penetrazione” del diritto internazionale penale nel diritto penale italiano*, 13 *Indice penale* (1979), 8; F. Ramacci, *Corso di diritto penale* (Torino: Giappichelli, 2001), 84; R. Riz, *Lineamenti di diritto penale,* Parte generale (Milano: Giuffrè, 2001), 34-36. [↑](#footnote-ref-5)
6. Moreover, Article 70 (4) expressly requires the parties to “extend their criminal laws penalizing offences against the integrity of its own investigative or judicial process to offences against the administration of justice referred to in this article, committed in its territory, or by one of its nationals.” [↑](#footnote-ref-6)
7. *See* P. Ivaldi, *L’adattamento del diritto interno al diritto internazionale*, in S. Carbone, R. Luzzatto & A. Santa Maria (eds), *Istituzioni di diritto internazionale* (Torino: Giappichelli, 2003), 122-123. Article 117 of the Constitution has been amended by Constitutional Law No. 3 of 18 October 2001, Article 3.  [↑](#footnote-ref-7)
8. R. Bellelli, *Come adattare l’ordinamento giuridico italiano allo Statuto della Corte dell’Aja*, 10 *Diritto penale e processo* (2003), 1302. [↑](#footnote-ref-8)
9. A. Cassese, *Diritto internazionale*, vol. I (Bologna: Il Mulino, 2003), 279; B. Conforti, *Diritto internazionale* (Napoli: Editoriale Scientifica, 2002), 324-325. This conclusion remains valid even after the enactment of Constitutional Law No. 3 of 18 October 2001, which has amended Article 117 (1) of the Constitution. T. Treves, *Diritto internazionale. Problemi fondamentali* (Milano: Giuffrè, 2005), 691-698. [↑](#footnote-ref-9)
10. *See* N. Ronzitti, *Genocidio*, XVIII *Enciclopedia del diritto* (Milano: Giuffrè, 1969), at 587. [↑](#footnote-ref-10)
11. On the scope of the crime of public defence of genocide in Italian law, *see Cassazione penale (Sezione I)*, 29 March 1985 (109 *Foro italiano* (1986), Parte seconda, 19-23). [↑](#footnote-ref-11)
12. For the scope of these crimes, *see* A. Cassese, *Crimes Against Humanity*, in A. Cassese, P. Gaeta & J.R.W.D. Jones (eds), *Rome Statute of the International Criminal Court: A Commentary* (Oxford: Oxford University Press 2002), 353-377; M. Boot, R. Dixon & C.K. Hall, *Article 7 (Crimes Against Humanity)*, in O. Triffterer (ed), *Commentary on the Rome Statute of the International Criminal Court: Observers’ Notes, Article by Article* (Baden-Baden: Nomos, 1999), 117-172 (second edition forthcoming). [↑](#footnote-ref-12)
13. Apart from the exercise of the powers attaching to the right of ownership over a person, Article 600 (as amended by Law No. 228 of 11 August 2003) also forbids keeping someone in a state of continuing subjection by means of violence, threat, deception, abuse of authority or by taking advantage of a situation of physical or mental inferiority or of a state of necessity, or by means of promising or giving an amount of money or other advantages to those who have authority over the person. [↑](#footnote-ref-13)
14. Elements of the crime against humanity of extermination: 1. The perpetrator killed one or more persons, including by inflicting conditions of life calculated to bring about the destruction of part of the population. 2. The conduct constituted, or took place as part of, a mass killing of members of a civilian population. 3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population. 4. The perpetrator knew the that conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population. [↑](#footnote-ref-14)
15. Article 5 (2) of the Convention against Torture states that “[e]ach State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article.” Article 7 (1) of the Convention provides: “The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution”. [↑](#footnote-ref-15)
16. For example, psychological and moral torture are not covered. A. Marchesi, *L’attuazione in Italia degli obblighi internazionali di repressione della tortura*, 82 *Rivista di diritto internazionale* (1999), 467-468).  [↑](#footnote-ref-16)
17. Committee against Torture, Considerations of Reports Submitted by States Parties under Article 19 of the Convention, Second periodic reports, 1994, Italy, UN Doc. A/50/44 no. 157. [↑](#footnote-ref-17)
18. *Furundžija* (IT-95-17/1), Judgment, Trial Chamber II, 10 December 1998, paras. 148-149.  [↑](#footnote-ref-18)
19. Article 322-*bis* of the Penal Code (introduced by Article 3 of Law no. 300 of 29 September 2000) has extended to officials of “public international organizations” the scope of application of Articles 321 (Penalties for the corrupter) and 322 (Incitement to corruption) only. [↑](#footnote-ref-19)