




# Voluntary report on the implementation of international humanitarian law in Italy

edited by the Commission for the study and development of international humanitarian law



  
Ministero degli Affari Esteri  
e della Cooperazione Internazionale

With the support of the Italian Red Cross

 Croce Rossa Italiana



# Preface by the Vice President of the Council of Ministers and Minister of Foreign Affairs, Hon. Antonio Tajani

This Report is the result of a collective effort to explore the promotion and dissemination of International Humanitarian Law or the Law of Armed Conflicts in Italy, carried out by a dedicated inter-ministerial Commission and the Italian Red Cross, with which we have a long and fruitful collaboration. This is an area in which the Government has aimed, since its establishment, to play a leading role based on the traditional principles that make Italy a protagonist at the international level in the protection of the most vulnerable.

In line with our country's traditional and acknowledged attention to humanitarian issues, the relevance of this subject is even more fundamental as it aligns with the protection of the rights of the most vulnerable people, starting with women and minors, as well as those who do not take part in armed operations and those who have ended their participation in the conflict.

In compliance with the four Geneva Conventions and customary international law, which impose on States the obligation to respect and ensure respect for International Humanitarian Law, the Italian Government is firmly and actively committed to making International Humanitarian Law known and disseminated in all relevant multilateral fora, particularly within the United Nations and the European Union. Italy has also joined all major international treaties in this field, starting from the Hague Conventions and the Geneva Conventions, which form the core of the regulatory framework along with the Additional Protocols.

Given the domestic relevance of this obligation as well, the Italian Government has always taken measures to ensure that its armed forces and any other entity that supports their action respect International Humanitarian Law, including through substantial investments in training.

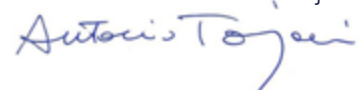
International Humanitarian Law is a constantly evolving legal reality, called upon to adapt to the challenges posed by increasingly insidious conflicts, often with ambiguous or not easily identifiable features, from armed clashes between opposing factions to the use of new and devastating technologies. Therefore, the Italian Government strongly advocates for an extensive application of International Humanitarian Law rules, aiming to limit the dramatic consequences of wars on the civilian population, often the defenceless victims of belligerent operations, and on military forces. Italy strongly supports the need for these norms to be respected and promoted by the entire international community.

Rejecting the use of force as a means of settling disputes among subjects of international law, Italy's commitment is also embodied in the numerous peacekeeping missions that see us present on various fronts and crisis areas: in the Balkans, in Africa, in the wider Mediterranean region, the Middle East and even the Asian continent. An all-around commitment, which also includes the protection of cultural heritage and the regulation of means and methods of warfare, contributing to Italy's increasing role in the international arena to promote International Humanitarian Law in all its operational facets.

The Report effectively reflects Italy's comprehensive approach to a complex, evolving, and particularly topical issue, even in contexts geographically and culturally close to us, as seen in the case of the Russo-Ukrainian crisis. The Report places Italy among the virtuous States that have chosen to scrutinise their actions in this field, giving visibility to the efforts made, the good practices developed, and the international commitment to support the most vulnerable segments of the civilian population, victims of armed conflicts worldwide.

Special thanks go to the President of the Commission, Filippo Formica, to the members of all State Administrations who took part in the project and to the Italian Red Cross for their work and for having been able to enhance the plurality of interventions that contribute to shaping Italy's action in the promotion and development of International Humanitarian Law.

Hon. Antonio Tajani



# Introduction

The Commission for the study and development of international humanitarian law, established by the Minister of Foreign Affairs and International Cooperation in September 2021, is composed of representatives of the Ministries of Foreign Affairs, Defence, Justice, and the Italian Red Cross, and is open to the contribution of other public authorities and civil society. Its tasks include, in addition to studying and conducting research on International Humanitarian Law (IHL) and its dissemination, the adaptation of the Italian legal system and coordination with other authorities and civil society. In accordance with its mandate, the Commission has drawn up the present Report, the first produced by Italy, which intends to offer an overview of the activities undertaken at the national level for the application of IHL rules and their dissemination. The Report describes the level of implementation of IHL in our legal system, including the rules, policies and good practices whose broad reach constitutes one of the significant aspects of the Italian experience, which this publication aims to disseminate.

The text highlights the overall coherence between the Italian legal system and its international obligations, ensured by the constant commitment of all public and private stakeholders and its high level of compliance with IHL. I would like to mention the adaptation to the main international treaties, the plurality of IHL dissemination initiatives, the quality of training both in the military and the civilian fields and its broad character. Particular reference is reserved for the protection of the most vulnerable categories, primarily women and minors, and for the protection of cultural heritage, all priorities of Italy's international action. New challenges for the application of IHL are also addressed: technological development, as in the case of

autonomous weapons, and the use of cyberspace and extra atmospheric space for military purposes. Italy is dedicating great attention to these aspects, which are, therefore, not neglected. In accordance with the Commission's mandate, the Report also examines potential areas requiring further action.

National implementation remains an essential step in strengthening compliance with IHL globally: this Report proves Italy's commitment to a rules-based system of international relations, of which IHL is a crucial component.

In drafting this Report, the Commission made use of the critical contribution of the Italian Red Cross, as well as of the collaboration of its members and of the other administrations which were consulted. To all, I extend my sincere thanks.

**Filippo Formica**

*Chairman of the Commission for the study and the development of international humanitarian law*

# Acronyms

CASD	Center for Defense Higher Studies ( <i>Centro Alti Studi della Difesa</i> ).
GC	Geneva Conventions
CIHL	Customary International Humanitarian Law
ICRC	International Committee of the Red Cross
CIDU	Interministerial Committee for Human Rights ( <i>Comitato Interministeriale per i diritti umani</i> )
CNAUMA	National Committee for Humanitarian Action against Personnel Landmines ( <i>Comitato Nazionale per l’Azione Umanitaria contro le Mine Antipersona</i> )
CoESPU	Center of Excellence for Stability Police Units
COVI	Italian Joint Operations Command ( <i>Comando Operativo di Vertice Interforze</i> )
ICC	International Criminal Court
CRI	Italian Red Cross ( <i>Croce Rossa Italiana</i> )
IHL	International Humanitarian Law
ECOSOC	Economic and Social Council (United Nations)
IFRC	International Federation of Red Cross and Red Crescent Societies
IASD	Defense Higher Studies Institute ( <i>Istituto Alti Studi per la Difesa</i> )
IIHL	International Institute of Humanitarian Law
ISSMI	Joint Services Staff College ( <i>Istituto Superiore di Stato Maggiore Interforze</i> )
LAWS	Lethal Autonomous Weapons Systems
MAECI	Ministry of Foreign Affairs and International Cooperation ( <i>Ministero degli Affari Esteri e della Cooperazione Internazionale</i> )
MOTAPM	Mines Other Than Anti-Personnel Mines
NATO	North Atlantic Treaty Organization
WHO	World Health Organization
UN	United Nations
OPCW	Organisation for the Prohibition of Chemical Weapons
OSCE	Organization for Security and Co-operation in Europe
AP	Additional Protocol
SMD	Defence General Staff ( <i>Stato Maggiore della Difesa</i> )
TFEU	Treaty on the Functioning of the European Union
TEU	Treaty on European Union
UAMA	Unit for Military Equipment Authorisations ( <i>Unità per le Autorizzazioni dei Materiali di Armamento</i> )
EU	European Union
UNGA	United Nations General Assembly
UNSC	United Nations Security Council

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1

# Introduction: Italy and International Humanitarian Law (IHL)





# 1. Introduction: Italy and International Humanitarian Law (IHL)

## a. Italy's participation in IHL treaties

International Humanitarian Law (IHL), sometimes also referred to as *jus in bello*, is the set of rules of international law that aim to limit the effects of armed conflicts by ensuring the protection and humane treatment of people who do not (or no longer) take direct part in hostilities, as well as by placing limits on the means and methods of warfare that the parties to a conflict may employ. IHL binds the warring parties in all circumstances and does so equally, without regard to their respective motivations or the nature and origin of the conflict.

Italy has historically contributed to the establishment of IHL rules since its origins: both as regards customary rules, by acting in accordance with what is commonly perceived as legally owed to the international community, and written rules, by actively taking part in drafting and adopting main treaties on the subject. This development is substantiated by Italy's accession to the first Geneva Convention of 22 August 1864, the subsequent Geneva Conventions (1906, 1929 and 1949) and the Hague Conventions (1899 and 1907)<sup>1</sup>. Historically, in

terms of internal adaptation, one can note the [Royal Decree of 1938 on the approval of the texts of the war law and the law of neutrality](#).

Since the end of the Second World War, with the adoption of the 'new' Geneva Conventions (1949)<sup>2</sup>, three additional Protocols (the first two in 1977 and the third in 2005)<sup>3</sup> and other relevant treaties, IHL has undergone a complex development in various fields, such as in relation to weapon systems and disarmament, the protection of cultural assets, or the prosecution of international crimes. As indicated in the subsequent sections of this Report, Italy has played a significant role in these processes through its constant commitment at the international and domestic

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1 Although considered as corresponding to customary law, the 1907 Hague Conventions were signed but not ratified by the Kingdom of Italy (with the exception of the X Convention approved by [Royal Decree 15 December 1936 n. 2233](#) and ratified on 15 February 1937).

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2 Ratification and implementation by Italy of the international conventions signed in Geneva on 8 December 1949 took place through [Law of 27 October 1951, n. 1739](#) (1. Convention for the amelioration of the condition of the wounded and sick in armed forces in the field; 2. Convention for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea; 3. Convention relative to the treatment of prisoners of war; 4. Convention relative to the protection of civilian persons in time of war).

3 The first two Protocols (1. Protocol relating to the protection of victims of international armed conflicts; 2. Protocol relating to the protection of victims of non-international armed conflicts) were ratified by Italy through [Law 11 December 1985, n. 762](#); the third Protocol (3. Protocol relating to the adoption of an additional distinctive emblem) through [Law 15 October 2008, n. 178](#).



levels, adapting its institutional and regulatory frameworks, Armed Forces, and strategic culture to the changed scenarios of reference. This attention is exemplified in the Military Code ([Legislative Decree 15 March 2010, n. 66](#)), which establishes that in the event of armed conflicts or during the participation in operations to maintain and re-establish peace, the 'commander of the Armed Forces oversees, in collaboration, if required, with the com-

petent international bodies, the observance of the norms of international humanitarian law' (art. 89.4). An even more direct reference is contained in the law relating to the participation of Italy in international missions ([Law 21 July 2016, n. 145](#)), in which compliance with IHL principles and international criminal law is a fundamental requirement (art. 1.1).

## b. Italy's participation in the International Conferences of the Red Cross and Red Crescent

Italy's commitment to fostering the progressive development of IHL is also reflected in its contribution to the adoption of 'soft-law' tools (such as non-binding resolutions, standards and guidelines). This has taken place, in particular, in the context of the International Conferences of the Red Cross and Red Crescent, held every 4 years with the participation of the 196 States party to the Geneva Conventions and the (currently 192) National Red Cross and Red Crescent Societies, the International Committee of the Red Cross (ICRC) and the International Federation of Red Cross and Red Crescent Societies (IFRC)<sup>4</sup>. IHL is one of the main issues addressed on these occasions, as evidenced by the topics of the non-binding resolutions or other documents that have been adopted. In this regard, it is worth noting the possibility of proposing and/or signing 'pledges' on specific issues or aspects of humanitarian relevance, a useful tool for promoting the activities that governments and National Societies intend to carry out at international and domestic levels.

On the occasion of the last two International Conferences (2015 and 2019), Italy proposed and/or signed 14 documents of this type (which can be consulted in the relative [database](#)), in some cases jointly with other States and the European Union (EU). Of the three pledges it submitted in 2019, the one aiming to 'Pro-

tect the rights of children affected by armed conflicts' presented by the Italian Ministry of Foreign Affairs and International Cooperation (MAECI), drew widespread interest, as detailed in section 4.a of this Report. The other two pledges were instead presented by the EU, its Member States and by a group of European National Red Cross Societies, including the Italian Red Cross (CRI), respectively about 'Strengthening compliance with international humanitarian law (IHL) through its promotion, dissemination and implementation' and 'Protecting humanitarian and medical personnel'.

Both documents pay particular attention to the dissemination of and respect for IHL as key components of the humanitarian commitment in the 2019-2023 period. The establishment of the National Commission for the study and development of IHL by the MAECI<sup>5</sup> (see section 2.a of this Report) and the drafting of this Report, respond to the commitment undertaken by Italy in favour of the implementation of IHL and the development and exchange of good practices at an international level, as recommended by resolution n. 1 adopted by the 33<sup>rd</sup> International Conference in 2019 ('Bringing IHL Home: A road map for better national implementation of international humanitarian law', point 13).

4 More recently, this event has also seen the involvement of an increasing number of external organizations as observers – therefore without the right to vote.

5 See the Ministerial Decree of 16 September 2021.

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# 2

## National bodies relevant to International Humanitarian Law (IHL)



## 2. National bodies relevant to International Humanitarian Law (IHL)

### a. The Commission for the study and development of international humanitarian law

In September 2021, the MAECI established the 'Commission for the study and development of international humanitarian law'<sup>6</sup>. This body, made up of representatives and experts of the MAECI, the Ministry of Justice, the Ministry of Defence, the Military Judiciary and the Italian Red Cross, performs the following tasks:

- a. Contributing to study and research in the IHL sector;
- b. Promoting initiatives aimed at the wider dissemination and application of IHL rules, stimulating the adaptation of the Italian legal system to them;
- c. Facilitating coordination between public authorities and other relevant civil society bodies for the planning of activities aimed at pursuing their institutional tasks.

The Commission aims to offer an institutional point of reference for IHL-related activities, including through collaboration with other bodies and civil society representatives, thus implementing the recommendation formulated in

the Resolution on 'Bringing IHL home: A road map for better national implementation of international humanitarian law' (point 5), adopted in 2019 by the 33<sup>rd</sup> International Conference of Red Cross and Red Crescent Societies (see also section 1.b of this Report).

With its establishment, the Commission is able to represent Italy in periodic international meetings of similar bodies, starting with the universal meetings of IHL Commissions organised by the ICRC, including the fifth universal meeting of 2021, where the Chairman of the Italian Commission was among the speakers<sup>7</sup>. These events are important opportunities for sharing good practices with other countries, with a view to strengthening international ties.

<sup>6</sup> Ministerial Decree of 16 September 2021, prot. No. 128283. A similar body was established in Italy in 1988, and later reorganized within the MAECI with Decree no. 215bis of 16 February 1998.

<sup>7</sup> A list of all similar bodies established in other countries - currently 117 - is available on the [ICRC website](#) (last update on 8 April 2022).

## b. Other relevant government bodies and institutions

**National Authority - Unit for Military Equipment Authorisations** (*Unità per le Autorizzazioni dei Materiali di Armamento - UAMA*)

Established in 2012 as a body under the aegis of the MAECI, the National Authority - UAMA is tasked with guaranteeing the implementation of Italian legislation on military equipment. In detail, the National Authority - UAMA issues authorisations and extensions for the export, import and transit operations of military equipment, following Italy's foreign and defence policies as defined by the government and the parliament in legislation, integrated by the related instruments adopted at a European and international level (see also section 5.d of this Report).

National legislation ([Law 9 July 1990, n.185](#)<sup>8</sup>, art 1.7) prohibits the manufacture, import, export, transit and transfer of military equipment prohibited by international law (e.g. antipersonnel land mines or certain cluster munitions). The Authority also takes into account the regulatory, policy and harmonisation acts adopted by the UN, the EU, and the OSCE, as well as the 'Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies'.

**National Committee for Humanitarian Action against Landmines (CNAUMA)**

Italy has always been strongly committed to ensuring the full application of the Conventions against antipersonnel mines and cluster munitions, to which it is a party (see also section 5.a of this Report). On an institutional level, this action takes place through the activity of the National Committee for Humanitarian Action against Landmines (CNAUMA), a permanent consultative body established in 1999 at the MAECI. In addition to the representatives of the Ministry and other administrations involved in the implementation of the ban on antipersonnel mines, the most important non-governmental and civil society organisations active in the field of humanitarian demining also participate in the Committee.

Among the main actions of the Committee,

<sup>8</sup> Subsequently integrated by the Implementing Regulation - D.M. 7 January 2013, n.19.

which usually meets once a year, is the assessment of the state of Italy's implementation of the main international treaties on the subject. In this regard, Italy completed – ahead of schedule – the destruction of national stockpiles of antipersonnel mines in 2002 and those of cluster munitions in 2015. The Committee is also responsible for assessing the implementation of programmes on humanitarian demining, assisting victims, informing and raise awareness among the civilian population, undertaken with the input of the Directorate General for Development Cooperation of the MAECI and financed through the Fund for humanitarian demining established in 2001 (see also the good practice in section 5.a of this Report)<sup>9</sup>.

**Center of Excellence for Stability Police Units (CoESPU)**

Established by the Carabinieri in 2005, the Center of Excellence for Stability Police Units (CoESPU) is a centre for advanced studies with the purpose of carrying out research, education, and training. Based in Vicenza, CoESPU is a component of the broader 'Action Plan of the International Community for Expanding Global Capability for Peace Support Operations', launched by the G8 in 2004 with particular reference to the African context. The Center of Excellence, supported by the US Department of State, works closely with international partners, including the United Nations Department of Peacekeeping Operations (UNDPO).

The main tasks of CoESPU include the integrated and cross-sectoral training of foreign and Italian personnel employed in peace missions (UN, OSCE, EU and UA), including through the sharing of theoretical models, operational procedures and good practices, within the framework of the relevant UN policy documents and guidelines<sup>10</sup>. On these bases, the CoESPU is engaged in providing assistance and 'external' training for third countries, according to a logic of 'training of trainers' and based on bilateral initiatives involving the Stability Police Units.

<sup>9</sup> The Fund for humanitarian demining was established by [Law of 7 March 2001, n. 58](#).

<sup>10</sup> It is estimated that about 13,000 people from 128 countries (mainly from the Asian and African continents) have received training since 2005.



The annual planning of IHL-related training and education activities is managed by a specific 'chair' and by an appointed officer, who benefits from the support of consultants specialised in issues relating to gender and the protection of children. Aspects of IHL are not only the subject of specific thematic modules but are also systematically integrated into all training programmes. Moreover, thanks to its cooperation with eighteen Italian and foreign universities, CoESPU carries out research on topics related to IHL.

#### NATO Security Force Assistance Centre of Excellence (NATO SFA CoE)

The NATO Security Force Assistance Center of Excellence (NATO SFA CoE) was created in 2017 at the initiative of the Italian Ministry of Defense and formalised with a Memorandum of Understanding involving Italy, Albania, Slovenia and the NATO Allied Command Transformation<sup>11</sup>. Located at the infantry school of the Italian Army in Cesano (Rome), the Center

<sup>11</sup> NATO SFA COE is not part of the NATO Command Structure (NCS) but of the wider support framework for the NATO Command Arrangements (NCA).

of Excellence represents a point of reference for the development of expertise and models to support Security Force Assistance (SFA) activities<sup>12</sup>.

Its training activities for instructors, tutors, and staff, in Italy and other partner countries, involve the dissemination of IHL in various ways, including the production of independent research. In 2021, for instance, the Center published a volume entitled [Promoting the Rule of Law and Good Governance](#) that fosters – among other things – the knowledge of IHL and international criminal law in SFA activities.

<sup>12</sup> In the framework of the NATO doctrines, Security Force Assistance activities mean the provision of 'military assistance' to local security forces in order to create, develop and maintain sustainable capabilities and strengthen the legitimacy of institutions, with the aim of prevent subsequent international interventions.



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## c. The Italian Red Cross (CRI): relevant IHL-related activities

The Italian Red Cross (CRI) is a voluntary organisation that supports, through its auxiliary role, public authorities in the humanitarian sector, carrying out tasks of public interest both in times of peace and armed conflict. The CRI, established on 15 June 1864 and reorganised in 2012 by legislative reform ([Legislative Decree 28 September 2012, n. 178](#)), is today placed under the high patronage of the President of the Republic. It is part of the International Red Cross and Red Crescent Movement, and it aims to respect and promote the seven fundamental Principles of the same<sup>13</sup>. In its international activities, the CRI coordinates with the ICRC in conflict-related situations and with the IFRC for other fields of activity, such as disaster relief or international cooperation projects. Together with Italy, it is also part of the International Conference of the Red Cross and Red Crescent, and it plays a leading role in the drafting of and commitment to IHL pledges (see section 1.b of this Report).

IHL is at the heart of the CRI's activities. The dissemination of IHL falls within the CRI's mandate and characterises a large part of its training programmes, especially those targeted at the Armed Forces (see section 3.e of this Report). Still, spreading knowledge of IHL is not limited to 'lectures' but is also carried out through practical activities, especially those aimed at younger people. Among these activities, one can mention the 'IHL competitions' and the role-playing game called 'RAID Cross', in which young participants are involved in practical exercises that simulate humanitarian issues in situations of armed conflict. The CRI also organises the two-year degree award 'Giuseppe Barile - Pietro Verri' (in its 15<sup>th</sup> edition in 2022) given to academic dissertations on IHL, human rights, refugee law and international disaster law topics.



In recent years, the CRI has also launched thematic campaigns related to IHL, including one on the [promotion and protection of cultural heritage](#) (see section 4.b of this Report); one called 'I am not a target' (in connection with the ICRC campaign on 'Health Care in Danger', aimed in particular at preventing violence against hospitals, medical personnel and rescue vehicles in areas of armed conflict); as well as the 'Nuclear Experience' campaign, created to raise public awareness about the humanitarian risks associated with the use of nuclear weapons. During the last International Conference of the Red Cross and Red Crescent in 2019, the CRI also presented a pledge entitled 'Youth and Humanitarian Perspectives for an Agenda on Nuclear Disarmament' signed by the ICRC and other National Red Cross and Red Crescent Societies.

On an institutional level, the CRI collaborates on an ongoing basis with numerous Italian universities in IHL dissemination programmes and other issues related to humanitarian action. The CRI is also an *ex officio* member of the Council of the International Institute of Humanitarian Law of Sanremo (see section d. below), in light of the stable financial support it provides to it. The CRI is part of the Commission for the study and development of international humanitarian law and participates in the meetings of the National Committee for Humanitarian Action against Antipersonnel Mines (CNAUMA).

<sup>13</sup> The [Seven Fundamental Principles](#) of the International Movement of the Red Cross and Red Crescent, which sum up its ethics and are at the core of its approach to helping people in need during armed conflict, natural disasters and other emergencies are: Humanity, Impartiality, Neutrality, Independence, Voluntary Service, Unity and Universality.



## d. Other relevant IHL institutions

### International Institute of Humanitarian Law of Sanremo (IIHL)

Founded in 1970, the International Institute of Humanitarian Law of Sanremo (IIHL) is an independent, non-profit humanitarian organisation that carries out research, training and dissemination activities in the IHL sector. As part of this mission, it makes use of a Military Department mainly engaged in the organisation of seminars and training courses for officers of the Armed Forces from all over the world, as well as an annual Round Table, organised jointly with the ICRC.

The courses organised by the Institute (basic, advanced and specialised) are mainly intended for members of the Armed Forces, government officials, non-governmental organisation representatives, journalists, and academics. The courses are taught in various languages (English, French, Spanish, Arabic, Russian and Chinese) by qualified teachers of various nationalities, and are held at the Institute's headquarters, at foreign institutions or online, sometimes with the support of the MAECI. In addition to lectures, the courses include exercises, simulations and exchange of experiences. Annually, these activities are attended by about 1500-1600 participants. Since the first IHL course in 1976, it is estimated that around 800 officers of the Italian Armed Forces have been trained at the Institute.

The Institute also manages the publication of essays, manuals and proceedings of the Round Table. Among these, the [Sanremo Manual on International Law applicable to Armed Conflict at Sea](#), developed between 1988 and 1994, remains the most used Manual in Naval Military Academies and is considered a foundational text worldwide.

**Italian section of the 'Société internationale de Droit militaire et de Droit de la guerre'**  
The 'Société internationale de Droit militaire et de Droit de la guerre' is an international non-profit association, created in 1956 with its headquarters in Brussels. Its goal is to study and disseminate IHL, military criminal

law and peace operations law, through the organisation of congresses, seminars, and other events in different countries. Its approximately 700 members include military and civilian legal advisers, military and academic judges and prosecutors. The important activities of the Société include the organisation of a four-yearly award for the best scientific publications on IHL (*Premio Ciardi*).

The Société also acts as a link among the 22 'national groups' (or 'sections'), distinct and independent entities that organise their activities in accordance with its general objectives. Although it has already been active for many years, the Italian section of the Société was formalised in 2022 as the 'Italian Group of the International Society for Military Law and the Law of War', with headquarters in Rome. The 'Italian Group' was created to study issues relating to IHL, military law and the law of military operations, as well as to arrange workshops and publish research. The 'Italian Group' has signed a Memorandum of Understanding with the Ministry of Defence to promote the further development of topics of common interest and to identify strategies for the study and dissemination of IHL.

### International Research Institute - 'Archivio Disarmo' (IRIAD)

The Institute for International Research – 'Archivio Disarmo' (IRIAD) – is a non-profit organisation founded in 1982 to promote scientific knowledge about the subject of security, disarmament, human rights, conflict management and non-violent conflict resolution. To this end, the IRIAD carries out technical and scientific activities (analysis, research, writing of articles and reviews) and provides consultations for various institutions (e.g., Presidency of the Council of Ministers, MAECI, Ministry of Defence, Ministry of Culture), NGOs, and private companies. Furthermore, the Institute organises and promotes training courses, prizes, scholarships and information events (such as the 'IRIAD Review', conferences, exhibitions, and shows).

### Interest group 'International law and armed conflicts' of the Italian Society of International and European Union Law (SIDI)

The Italian Society of International and European Union Law (SIDI) is a non-profit scientific association

established in 1995 to promote the study and dissemination of international and European legal disciplines. As part of its mission, the SIDI promotes the establishment of thematic interest groups, including one on 'International law and armed conflicts' in 2021, also to promote the development of a network between academia, institutions, and the professional sectors.

#### **Italian Society for the Protection of Cultural Heritage (SIPBC)**

The Italian Society for the Protection of Cultural Heritage (SIPBC) was founded in 1996 as a non-profit cultural association, with headquarters at the IIHL in Sanremo. Its members (both institutional and individual) voluntarily undertake to disseminate the principles and rules contained in the conventions for the respect and protection of cultural heritage, with particular regard to the Convention for the Protection of Cultural Heritage in the Event of Armed Conflict of 1954 and its subsequent protocols (see section 4.b of this Report). The SIPBC organises conferences, seminars, training courses and meetings aimed at raising public awareness on relevant issues. Since 2010, the SIPBC has been associated with ICOMOS, an international NGO dedicated to the protection of the world's monuments and sites.

#### **Syracuse International Institute for Criminal Justice and Human Rights**

The Syracuse International Institute for Criminal Justice and Human Rights is a non-governmental organisation recognised in 2006 by a Decree of the MAECI. The Institute has special consultative status with the United Nations (ECOSOC) and is today one of the nineteen research and study centres of the United Nations Crime Prevention and Criminal Justice Programme. As part of its mandate to, among other things, strengthen international criminal justice and end impunity for international crimes, the Institute carries out training activities that also address issues related to IHL.



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# 3

## IHL dissemination activities in Italy



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### 3. IHL dissemination activities in Italy

#### Legal framework of reference

The Italian legal system complies with the obligations regarding IHL dissemination following Articles 82 and 83 of the 1977 First Additional Protocol to the Geneva Conventions<sup>14</sup>. According to art. 83, '[t]he High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate the Conventions and this Protocol as widely as possible in their respective countries and, in particular, to include the study thereof in their programmes of military instruction and to encourage the study thereof by the civilian population, so that those instruments may become known to the armed forces and to the civilian population<sup>15</sup>'. Art. 82 refers instead to the role of the 'legal adviser', i.e. a figure that the Parties have undertaken to establish and put at the disposal of 'military commanders at the appropriate level' in order to assist them in the application of the Conventions and the Protocol, as well as on 'the appropriate instruction to be imparted to the armed forces on this subject'.

IHL dissemination in peacetime is also one of the main institutional tasks of the Italian Red Cross (CRI). According to its [Statute](#), IHL foundational principles guide its work and must be respected, promoted and disseminated at all times, in cooperation with relevant public entities (art. 1.2; 6.2 (g) and (j); 7.1 (l)). In its capacity of 'auxiliary to public authorities', the CRI is authorised to conduct activities of public relevance, including the organisation of dissemination and training courses on IHL, addressed both internally (volunteers and staff), and externally, primarily towards the Italian Armed Forces (see section [3.e](#) below).

<sup>14</sup> Adopted in Geneva on 8 June 1977, ratified by Italy through [Law 11 December 1985, n. 762](#).

<sup>15</sup> A more general obligation of dissemination is also stated in the 2<sup>nd</sup> Additional Protocol to the Geneva Conventions (1977) relating to non-international armed conflicts (art. 19).



## a. IHL training of the Italian Armed Forces

The training of the Italian Armed Forces has undergone a process of gradual evolution and specialisation corresponding to the different types of deployment of military personnel in national and international operational scenarios. The organisation of training programs by the various components (the Army; the Navy; the Air Force; and the Carabinieri) is today arranged by respective military academies and institutes present on the national territory, within the framework of the general directives provided by the Defence General Staff (*Stato Maggiore della Difesa*, SMD<sup>16</sup>). These training activities are often provided in collaboration with civil entities, such as universities and the CRI.

As part of this process, legal topics of both international and domestic nature, although since ever a key component of military teaching in Italy, have acquired increasing importance over time. IHL is today a teaching subject of primary interest, as demonstrated by the numerous training sessions and modules dedicated to it.

Under the Ministry of Defense, acting as coordinator for joint training, the apical reference body is the 'Center for Defense Higher Studies' (*Centro Alti Studi della Difesa*, CASD). The 'Defense Higher Studies Institute' (*Istituto di Alti Studi per la Difesa*, IASD) embedded in the CASD, pursue the objectives of advanced training and professionalisation of the military and civilian leadership, as well as of the Finance Police (*Guardia di Finanza*), of both Italian and foreign officers (Colonels and Generals), through specific IHL training modules. The 'Joint Services Staff College' (*Istituto Superiore di Stato Maggiore Interforze*, ISSMI) also operates within the context of the CASD, providing IHL training modules carried out by academics and military and civilian experts<sup>17</sup>.

In parallel with the centralised and joint training,

each component of the Armed Forces organises internally specific training courses provided by the respective 'academies', 'schools' or 'institutes', which include IHL training modules, as well as, in some cases, specific classes preparing for the deployment in operational theatres, including in-depth analysis of IHL-related issues. The teaching of IHL basic principles and norms is at times associated with those on human rights law, military criminal law, and international criminal law. Furthermore, officers often take part in specialised courses abroad, such as the NATO Legal Advisor courses at the NATO School in Oberammergau or the one in International and Operational Law at the United Kingdom Navy in Portsmouth.

At the level of non-commissioned officers, graduates and soldiers, a preeminent training contribution is represented by the IHL Course for International Operators held by the CRI at various locations (see section 3.e of this Report), among which are the Air Force and Army School for Marshals in Viterbo and, since 2022, the Carabinieri School for Marshals and Brigadiers in Florence. Further training and in-depth analysis for Armed Forces officers are then provided by the International Institute of Humanitarian Law of Sanremo (see section 2.d of this Report).

**Good practices:** *The training system of the Italian Armed Forces takes advantage of a successful collaboration with academia and the CRI. This synergy allows the militaries to benefit from the contribution of scholars specialised in IHL, while academics can enrich their expertise thanks to the interaction with militaries involved in the operational theatres. Each Armed Force establishes its collaboration agreements, among which one can mention:*

**Air Force** - *at the Air Force Academy in Pozzuoli (Naples) it is possible to attend the Master's degree course in law necessary to assume the role of Officers of the Aeronautical Commissariat Corps. This course, provided by the Federico II University of Naples, provides for the teaching of international law, military operations*

16 See, in particular, the 2004 Directive for joint personnel training (SMD-FORM 001).

17 The course is also open to civilian attendees coming from universities for the achievement of a second level post-graduation course.

law and criminal law. Advanced courses on IHL are also provided by the Institute of Military Aeronautical Sciences of Florence, in cooperation with the University of Florence, both for officers of the normal role as part of the II level Postgraduate Course in 'Leadership and strategic analysis', and for officers of the special role within the legal sciences module.

**Carabinieri** - Carabinieri Officers are required to follow a university course of study to obtain a master's degree in law, in which professors from the University of Modena and Reggio Emilia teach international law courses over the first two years. This path is then completed within the Carabinieri Officers School of Rome, in coordination with the University of Tor Vergata, in which attendees deepen their knowledge of IHL in a one-week training module - including exercises and simulations - at the CoESPU in Vicenza (see section 2.b of this Report).

**Army** - in addition to the basic courses in international law and IHL held at the Military School of Turin, in collaboration with the Uni-

versity of Turin, and the course for international operators held at the Marshals School of Viterbo in cooperation with the CRI, the Italian Army participates with a team of three cadets in the international competition on the law of armed conflicts among the students of military academies of various nations organised by the International Institute of Humanitarian Law in Sanremo. This competition is based on a military exercise designed to engage participants in IHL-related issues that may arise in multinational operations.

**Navy** - the Naval Academy of Livorno trains Navy officers on the basis of a specific framework agreement with the University of Pisa, which provides for the teaching of IHL among international subjects. For those attending the Institute of Maritime Military Studies of Venice, it is then possible to obtain the II level postgraduate degree in 'Strategic studies and international security' at the Ca' Foscari University of Venice, during which the basic elements of international law of armed conflicts are taught.

## b. Legal advisers and their operational role in the national command structures and international theatres

Starting in 1999, Italian Armed Forces officers can attend the Course for Legal Adviser at the CASD (in coordination with the ISSMI) according to the instructions provided by the Defence General Staff (SMD). This training activity is mainly aimed at members of the Armed Forces and Defense administrative personnel who for professional or service reasons, need to be qualified to provide support functions and legal advice in favour of Commanders.

In compliance with the dissemination duties stated in art. 83 of the 1977 First Additional Protocol to the Geneva Conventions, the course is aimed at training officers who have the 'technical-legal' skills functional to support the planning, organisation and conduct of international and/or multinational missions, both in conflict and post-conflict scenarios, in accordance with relevant national and international normative standards. In addition to the role of adviser to the military commander, legal advisers are responsible for further dis-

seminating IHL within the Armed Forces. External civilian participants may also be admitted to the course to facilitate this objective<sup>18</sup>.

Since 1992, on the basis of specific agreements between the CRI and the single military headquarters and institutes (see section 3.e of this Report), around eighty courses for 'Qualified Adviser for Armed Forces officers' have also been held to train Advisers to support military commanders in the application of the Geneva Conventions and related Protocols, as envisaged by Article 82. Furthermore, the Armed Forces can favour the participation of their personnel in other specialised training courses within the IHL and military operations, such as in the context of the NATO School in Oberammergau.

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<sup>18</sup> The Course is currently associated with a II level Postgraduate Degree in 'International Humanitarian Law of Armed Conflicts' (DIUCA) based on agreement between the University of Turin and the CASD.



The effective use of legal advisers in the military operations in which Italy is engaged has progressively expanded, especially starting from the operations in Iraq and Afghanistan. This is also thanks to a structural reform that led to the creation of a Legal Office at the Italian Joint Operations Command (Comando Operativo Vertice Interforze, COVI), with the task of – among others – advising Commanders in operational theatres so that the activities of planning, preparation and conduct of international military missions are consistent with the interpretation and application of international legal standards.

The COVI Legal Office also provides continuous support to the Legal Advisors (LegAd), or the officers in the role of Commissariat with specialised legal training, including on IHL, normally deployed in operational theatres<sup>19</sup>. These always take part in tactical planning alongside the Commander, after an ‘indoctrination’ phase at the COVI on the applicable legal framework preliminary to the launch

of a specific mission. Thus, a direct link is established between the COVI Legal Office and the LegAd, functional to the future remote support provided during the mission.

**Good practices:** *The Air Force has established a training process for obtaining and maintaining the specialist qualification of ‘Legal Advisor for Air Operations’. Dedicated to those who have already obtained the qualification of Legal Advisor of the Armed Forces at the CASD, this training course, delivered in collaboration with the University of Ferrara, includes modules dedicated to IHL, as well as international military criminal law and air navigation law.*

*In the framework of the air military operations conducted by NATO in Libya in 2011, the LegAd of the Italian Air Force specially qualified at ISSMI, in Sanremo, in Oberammergau (NATO School) and trained at the Poggio Renatico Air Operations Command, were directly involved in national and international legal consultancy contexts. They contributed to the targeting process, giving due consideration to IHL principles and standards.*

<sup>19</sup> The training processes and requirements relating to the establishment of this role are determined independently by the various components of the Italian Armed Forces.



© Italian Army

## c. Military manuals and other relevant instruments for IHL training

The education, training and subsequent conduct of Italian military personnel concerning IHL rules take advantage of specific 'military manuals'. Among these is the 1991 Manual of Humanitarian Law, drafted and published by the SMD Training and Regulations Office (SMD-G-014). The Manual is divided into five volumes, of which only the first two have subject-specific nature and are respectively dedicated to the 'Customs and treaties of war' and to the 'Instructions concerning enemy prisoners of war'<sup>20</sup>. The two volumes contain a synthetic handbook of the relevant international provisions and are supplemented by the related domestic laws in force at the time of publication.

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20 Defence General Staff (SMD), I Department, Training and Regulations Office, *Manuale di diritto umanitario* (Manual of Humanitarian Law), 1991, Rome. The remaining three volumes respectively collect the international conventions relating to armed conflicts (Vol. III), the national laws relating to armed conflicts and neutrality (Vol. IV), and the analytical index of IHL regulations in force in Italy (Vol. V).

The relevance of the IHL Manual in the training courses of the Italian Armed Forces appears limited today, given that its publication dates back to thirty years ago. The same consideration applies to other materials published by the Armed Forces between the end of the 1980s and the 1990s (including, for example, 'Humanitarian law in armed conflicts', Military Academy, 1988; 'Elementary rules of the right to war', SMD-G-012 of 1991; 'Instructions on the Law of Armed Conflicts at Sea for Naval Commands', SMM-9 of 1998).

**Good practices:** *In 2021, the Army General Staff (Stato Maggiore dell'Esercito - SME) drafted and circulated the 'Guidelines on the training of Army personnel' (Directive 7047-2021). The Guidelines provide an overall and systematised array of instructions on the training to be followed to consolidate and continuously improve the Army's features in light of the evolutions in the strategic scenarios. This also includes the need to pay 'maximum attention' to certain topics, including the 'law of armed conflict' and 'humanitarian law' in their both practical and theoretical aspects, also in terms of civil-military cooperation.*

## d. Activities in support of IHL dissemination abroad

With particular regard to the operational theatres where Italy is present (e.g., Afghanistan; Balkans; Iraq; Lebanon), the Italian Armed Forces have often been engaged in training, assistance and consultancy activities in favour of local institutions, militaries and security forces in foreign countries. In some cases, these

training activities also addressed IHL-related topics, as a significant element of the ongoing peace and stabilisation processes, both through dedicated courses and as part of the overall training activities. In the context of bilateral or multilateral cooperation activities, senior officers from foreign Armed Forces participate in training activities carried out in Italy.



## e. IHL dissemination by the Italian Red Cross towards the Armed Forces and civil society

IHL dissemination is one of the statutory purposes of the CRI. CRI organises introductory and specialised training courses on IHL through its voluntary component, supported by the identification of technical delegates operating on different levels (national, regional, and local). There are around 200 'IHL Instructors', namely CRI volunteers trained with a dedicated two-week course, and in charge of contributing to the capillary dissemination of IHL rules on the national territory.

This activity is coordinated by a 'IHL National Commission<sup>21</sup>', supported by a 'Scientific Committee, IHL Section<sup>22</sup>', made up of experts from Italian universities, responsible for annually updating the IHL Instructors on specific topics. The administrative offices in charge provide support.

The CRI dissemination activities aim at two directions: 'internally', it is directed at its staff and volunteers and 'externally', it is aimed at the Italian Armed Forces as well as other profes-

sional categories and civil society representatives. External training is arranged on an ad-hoc basis through the organisation of courses upon the request of military commands, which also provides the logistic structures. The course for 'Qualified Adviser for officers of the Armed Forces', established in the 1990s on the impulse and supervision of the IHL National Commission, has always occupied a prominent role. This two-week course (72 hours in total) is now in its 80<sup>th</sup> edition and has, over time, trained over two thousand Armed Forces and Police Officers.

Unlike the course for Legal Advisers provided by the CASD, the course for Qualified Advisers is focused on IHL-related issues, starting from its foundational principles up to issues related to critical dynamics in contemporary armed conflict. This includes the involvement of participants in guided exercises and thematic working groups. In the period 2012-2021, the courses for qualified advisors were held an average of four times per year.

The CRI also organises special IHL courses for 'International Operators', namely Marshals, non-commissioned officers, and graduates potentially involved in military missions in operational theatres. These one-week courses are now in their 185<sup>th</sup> edition and have trained around five thousand Italian soldiers over the years. In order to respond to the hi-

21 Established through Resolution No. 64 of 25 July 2020 of the National Directive Council of the Italian Red Cross ([link](#)).

22 Established through Resolution no. 60 of 25 July 2020 of the National Directive Council of the Italian Red Cross ([link](#)).



gher demand from the military commands, the frequency of this course has been increasing, and in the period 2012-2021, an average of 15-20 courses were held per year. These structured activities are accompanied by numerous other training and dissemination events, organised by the CRI for the benefit of the Italian Armed Forces and civil society. The CRI also regularly launches thematic campaigns of direct relevance to the IHL, including one on the [promotion and protection of cultural heritage](#) (see section 4.b of this Report).

**Good practices:** *In recent years, the IHL dissemination activities conducted by the CRI towards the Armed Forces have also been held internationally on the basis of specific agreements reached with the Italian contin-*

*gents deployed abroad. These concerned in particular Lebanon and Niger. In the first case, thirty Italian and foreign soldiers employed in the Western Sector of the United Nations Interim Force in Lebanon (UNIFIL) participated in 2021 in the 150<sup>th</sup> IHL Course for International Operators carried out by CRI Instructors and academics (fourth edition in that operational theatre) with equal participation of female and male staff ([link](#)). This was arranged into 40 hours of study divided between 'remote' and frontal lessons, as well as exercises and working groups. The same year, a similar initiative was activated as part of the Bilateral Support Mission in Niger (MISIN) towards Italian and foreign military personnel (Nigerien Security Forces - FDS) operating in the area ([link](#)).*

## f. IHL in Italian Universities

The majority of Italian universities provide courses in public international law within which the fundamental notions on IHL are occasionally provided. In some cases, and with increasing prominence in recent years, universities provide specific IHL modules as part of academic courses in law, political science, international relations and linguistic-cultural mediation (see [Table 1](#) below). IHL courses aimed at training both civilian and military personnel are also organised based on an agreement between universities and the Italian Armed Forces.

IHL academic courses in Italy sometimes make use of external lecturers, such as representatives of the Italian Armed Forces and the CRI, and are usually accompanied by practical exercises, working groups, up to the more structured involvement of students in the context of 'legal clinics', who provide pro bono support and advice to public entities and non-governmental organisations.

**Good practices:** *Since 2016, the Roma Tre University (Department of Law) has established an [International Humanitarian Law Legal Clinic](#), open to both Italian and foreign students. Its activities are carried out pro bono and in cooperation with various relevant organisations, including the ICRC, the NATO Allied Command Operations Office of Legal Affairs at SHAPE, Amnesty International, the CoESPU, the CRI, and the European Legal Support Center. As a matter of example, the Legal Clinic participated in the ICRC project '[IHL in action: Respect for the law on the battlefield](#)', aimed at documenting real examples of proper application of IHL rules in armed conflicts, to represent a reference tool for IHL analysis and dissemination activities. In May 2018, in a statement before the UN Security Council, ICRC Director-General Yves Daccord expressed his appreciation for this academic project and brought it to the attention of UN members as an example of best practice contributing to IHL dissemination.*

Table 1. IHL training activities provided by Italian Universities from 2010 to 2022 (not necessarily continuously)

University	Course	Degree	Teaching hours
Catania	Winter School 'Human Rights and International Humanitarian Law'	<i>Post lauream</i>	60
Ferrara	Human Rights and International Humanitarian Law [In cooperation with the Air Force Command for Aerospace Operations (COA-AM)]	Law	40 (6 CFU)
Genova	International law of armed conflicts (in English)	International Relations	30-40 (6 CFU)
Milano – Bicocca	International Law of Armed Conflicts	Law	42 (6 CFU)
Milano – Bicocca	International Humanitarian Law (in English)	Law	42 (6 CFU)
Milano – Statale	International Humanitarian Law	Languages and cultures for international communication and cooperation	60 (9 CFU)
Milano – Statale	International Law of Armed Conflict (in English)	International Relations	60 (9 CFU)
Milano – Statale	International human rights and humanitarian law advocacy clinic (in English)	International Relations	60 (9 CFU)
Padova	International human rights and humanitarian law advocacy clinic (in English)	International Relations	60 (9 CFU)
Padova	International Humanitarian and Criminal Law	Institutions and policies for human rights and peace	65 (9 CFU)
Perugia	Human Rights, International Crimes, and International Humanitarian Law	International Relations	42 (6 CFU)
Pisa	International Law of Armed Conflicts	Law	48 (5 CFU)
Roma – LUISS	International Humanitarian Law (in English)	International Relations – Political Science	48 (6 CFU)
Roma Tre	International Humanitarian Law (in English)	Law	56 (7 CFU)
Roma Tre	International Humanitarian Law Legal Clinic (in English)	Law and Global Legal Studies	56 (7 CFU)
Roma – Sapienza	Humanitarian Affairs (in English)	Development studies and international cooperation	30 (6 CFU)
Siena	International Humanitarian Law	International Studies	40 (6 CFU)

University	Course	Degree	Teaching hours
Teramo	Human Rights and International Humanitarian Law	Political Science	30 (6 CFU)
Torino	International Humanitarian Law	Law	40 (6 CFU)
Torino Torino - SUISS	Postgraduate Degree in International Humanitarian Law and Law of Armed Conflicts [In cooperation with SMD and CASD]  Postgraduate Degree in Cultural Property Protection in Crisis Response	<i>Post lauream</i>	50 (16 CFU) Related to the IHL module
Trento	International Law of Armed Conflicts	Law – International Studies	42 (6CFU)



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# 4

Protection of specific categories  
of civilians and civilian objects



## 4. Protection of specific categories of civilians and civilian objects

### Legal framework of reference

One of the basic tenets of IHL is the obligation of parties to a conflict to ensure the civilian population, property and infrastructure the maximum protection from the dangers deriving from military operations<sup>23</sup>. This obligation finds expression, inter alia, in the principle of distinction<sup>24</sup>;

<sup>23</sup> 1° AP, arts. 51 and 52.

<sup>24</sup> According to the principle of distinction, the parties to the conflict are obliged to distinguish at all times between the civilian population and combatants, as well as civilian objects and military objectives, and consequently to direct operations only against military objectives. In the case of international armed conflicts, this prin-

iple is enshrined in art. 48 of the 1° AP and by the rules 1 and 7 of the CIHL, while in the case of non-international armed conflicts by art. 13(2) of the 2° AP, and by CIHL rules 1 and 2.

in the duty to ensure the humane and adequate treatment of those in the power of the enemy; in the rules aimed at guaranteeing humanitarian assistance to the civilian population, the protection of medical and health personnel, and the respect to be granted to protective emblems of the Red Cross and Red Crescent. IHL also establishes special protection for some particularly vulnerable categories of individuals (such as women and minors) and objects (such as cultural property).

ple is enshrined in art. 48 of the 1° AP and by the rules 1 and 7 of the CIHL, while in the case of non-international armed conflicts by art. 13(2) of the 2° AP, and by CIHL rules 1 and 2.

### a. The protection of specific categories of individuals

**Women** - Armed conflict have extremely negative repercussions on the condition of women of all ages, who may find themselves in situations of particular vulnerability, especially as a result of the lack of public and social security, and the resulting risks of discrimination, sexual violence and other types of abuses, forced prostitution, and violations of their rights.

Italy has ratified the main IHL treaties guaranteeing respect and protection of women,

with particular regard to pregnant women and mothers having dependent infants<sup>25</sup>. Italy is also a party to the 1979 Convention on the elimination of all forms of discrimination against women<sup>26</sup>, and has broadly implemented the UN Security Council resolution on 'Women,

<sup>25</sup> 4a GC IV, art. 27(2); 1° AP, art. 76; CIHL, rules 93 and 134.

<sup>26</sup> Ratified by Italy through [Law 14 March 1985, n. 132](#).

Peace and Security’ (UNSC Res. 1325 of 2000) covering situations of armed conflict (see in particular paras 9-12). Over the years, based on the UNSC Res. 1325, the Security Council has approved several follow-up resolutions and initiated a series of international initiatives in which Italy has constantly participated<sup>27</sup>.

The application in Italy of the UNSC Res. 1325 – and of the related international agenda – is coordinated by the [Interministerial Human Rights Committee \(CIDU\)](#) set up at the MAECI. The CIDU has, over the years, supervised the implementation of subsequent National Action Plans, also in cooperation with the Ministry of Defence<sup>28</sup>. The main novelty in the [2020-2024 Action Plan](#) is represented by a specific focus on the protection of women and minors, especially girls, in conflict and post-conflict areas. This aspect is considered an essential goal by the Italian government (Objective No. 3). Notably, the Plan states the intention to develop and intensify the collaboration between the MAECI and the Ministry of Defense through the establishment of a joint table on the topic (Action 2.9).

In this perspective, with the joint action of the MAECI, the Ministries of Defense and Justice and with the support of civil society, the Plan envisages that Italy will support ‘international diplomatic and political processes aimed at strengthening the repressive action against sexual violence and other forms of violence in situations of conflict [with particular reference to [UNSC Res. 2467 \(2019\)](#), ed.] and to ensure accountability for IHL violations, including those amounting to international crimes – such as war crimes and crimes against humanity – of which women and minors, especially girls, are victims’ (Action 3.4).

At the same time, the implementation of the International Agenda through the [2020-2024 Action Plan](#) provides for joint information and training activities at all levels, especially within the Armed Forces, due to greater synergy with civil society and universities (Objective n. 4). Therefore, Italy is engaged in the specific trai-

ning of military personnel to be employed in conflict zones, focused on the legal aspects of ‘sexual and gender-based violence, especially for staff of all levels, including those employed abroad’. This includes training modules relating to the differential impact of armed conflicts on women and minors, especially girls, and the related codes of conduct on the subject (Actions 4.8 and 4.9), also thanks to the establishment of an inter-university network ([Universities Network for Children in Armed Conflict](#)).

**Good practices:** *The effective implementation of the [2020-2024 Action Plan](#) is addressed in an annual report produced by the CIDU within the framework of the ‘Open-ended Working Group 1325’ in which both the Ministries and representatives of civil society in the sector participate, including universities and trade unions. This activity is furthermore favoured by the provision of resources expressly dedicated to it in the public budget (currently one million euros per year). Furthermore, the identification in the abovementioned Action Plan of specific qualitative and quantitative indicators can facilitate a more accurate measurement of the progress achieved in the period of reference. These indicators include, for example, the number and percentage of men and women at all levels, employed in peacekeeping missions and/or development cooperation projects and programmes, trained on the subject of ‘Women, Peace and Security’ and related issues, as well as the ‘proportion of staff trained in conduct and discipline that includes references to sexual exploitation and abuse, among the military staff participating in peacekeeping missions and/or development cooperation projects and programs’ (Indicator 5). In this regard, the Defense General Staff, through its ‘Gender Policies’ section, provides training courses for Gender Advisors and Gender Focal Points aimed at officers, non-commissioned officers, and civilian personnel of the Defense administration. IHL modules are an integral part of the aforementioned training courses.*

**Minors** – Minors are among the most vulnerable category of people in conflict scenarios, being constantly exposed to the risk of losing the protection of their family members, and consequentially losing access to essential support, such as food and medical care. Armed conflicts have serious psychosocial repercussions on children, ranging from the development of mental disorders to the consequen-

27 See in particular the UNSC Res. 1820 (2008), UNSC Res. 1888 (2009), UNSC Res. 1889 (2009), UNSC Res. 1960 (2010), UNSC Res. 2106 (2013), UNSC Res. 2122 (2013), UNSC Res. 2242 (2015), UNSC Res. 2467 (2019), UNSC Res. 2493 (2019), all available [here](#).

28 As foreseen by the UNSC itself in the [Presidential Statement of 28 October 2004](#).





ces of interrupted schooling and the violation of fundamental rights<sup>29</sup>. Minors can also be subjected to forced recruitment into Armed Forces and organised armed groups, as well as exploitation, including sexual exploitation.

According to IHL, the parties to the conflict must assist minors in the territory they control, encourage their education and religious practices, and protect them from 'any form of indecent assault'<sup>30</sup>. Also, states must, by all means, prevent the recruitment of minors under the age of 15 and give priority to older minors aged 15 to 18<sup>31</sup>.

Italy is a party to the IHL treaties establishing these obligations and has also ratified the 1989 UN Convention on the Rights of the Child, as well as the Statute of the International Criminal Court (ICC), which classifies the recruitment of minors under the age of 15 as an international crime<sup>32</sup>. Italy also ratified the 2000 Optional Protocol to the UN Convention concerning the involvement of minors in armed conflicts, which prohibits the compulsory recruitment of minors under the age of 18 (art. 2), discourages their voluntary recruit-

ment (art. 3), and asks member States to take 'all feasible measures' – including those criminalising the practice – to prevent their recruitment and use by armed groups not belonging to the Armed Forces of a State (art. 4)<sup>33</sup>. In adopting the Protocol, Italy presented a **declaration** aimed at clarifying that the Italian legislation provides that the minimum age of 17 years shall be required with respect to requests for early recruitment for compulsory military service or voluntary recruitment (military duty on a short-term and yearly basis). The reorganisation of the Military Code in 2010 (**Legislative Decree March 15, 2010, n. 66 and Presidential Decree March 15, 2010, n. 90**) regulates the call to military service and addresses this point. Indeed, even if currently suspended, the call can be reinstated by the government only in the event of a shortage of military personnel or in case of a declaration of a 'state of war' or 'serious international crisis'<sup>34</sup>. In any case, male citizens are registered on the 'conscription lists' when they turn 17<sup>35</sup>, and, in the event of a reinstatement of compulsory conscription, they are liable to be called for a visit when they turn 18<sup>36</sup>.

**Good practices:** *In the 33<sup>rd</sup> International Conference of the Red Cross and Red Crescent (Geneva, 2019), the MAECI promoted a **pledge** dedicated to the protection of the rights of children affected by armed conflicts. Together with the other signatories of the pledge, a commitment was made to strengthen*

29 See articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights (1966); art. 28 of the International Convention on the Rights of the Child (1989); art. 2 of the First Protocol to the European Convention on Human Rights; and articles 33 and 34 of the Italian Constitution.

30 4a GC, art 24(1); 1° AP, art 77(1); CIHL, rules 104 and 135.

31 1° AP, art 77(2).

32 Statute of the International Criminal Court (1998) art 8.b (xxvi) and 8.e (vii). The Statute was ratified by Italy through **Law 12 July 1999, n. 232**.

33 Ratified by Italy through **Law 11 March 2002, n. 46**.

34 **Legislative Decree 66/2010**, art. 1929.2.

35 *Ibid.*

36 *Ibid.*

the protection of children both during and after the cessation of hostilities, thus including the assessment of responsibilities and social reintegration activities. The related 'Action plan' includes some general commitments as that to ensure access to children by humanitarian actors in contexts of armed conflict. Other commitments have a more legal nature, such as the encouragement to sign and ratify the First Optional Protocol to the Convention on the Rights of the Child (2000), and to support its application and universalisation.

This is the pledge that saw the largest number of signatories of the entire International Conference: thirty States, thirteen National Red Cross and Red Crescent Societies, and three observers (the Order of Malta, Save the Children and the International Institute of Humanitarian Law of Sanremo). The signatories underlined the importance of adopting, developing and implementing the necessary legislative and administrative measures to ensure that violations of children's rights in the context of armed conflict (including all forms of violence, in particular, sexual violence) are duly crimina-

lised and those responsible prosecuted. At the intergovernmental level, States are encouraged to sign and promote the '[Safe School Declaration](#)', an instrument dedicated to the protection of education in the event of armed conflicts.

Furthermore, the commitment of the Italian government to these issues is highlighted by the support provided to the initiatives undertaken by civil society organisations, including the '[Universities Network for Children in Armed Conflict](#)' (UNETCHAC), the first international inter-university network aimed at enhancing the protection of the rights and safety of minors directly and indirectly involved in armed conflicts. Launched in November 2020 with the support of MAECI, the UNETCHAC sees the participation of over 50 universities and research centres from different geographical areas (Europe, Africa, the Middle East and the Americas), some of which are located in conflict zones. Since its creation, the UNETCHAC has promoted several relevant international activities and events to foster cooperation among its members, including international conferences, training courses, awareness campaigns, and thematic publications.

## b. The cultural property

IHL rules protecting civilian objects and infrastructures provide particular attention to artistic and cultural property. In recognising the seriousness of indiscriminate attacks on objects falling into this category and the universal relevance of cultural heritage, the international community adopted the 1954 Hague Convention for the protection of cultural property in the event of armed conflict, including its Implementing Regulation and its first Additional Protocol. In 1999, States adopted a second Protocol<sup>37</sup> to the Convention to establish a 'strengthened protection' of cultural property (articles 10-14), to complement the 'general' (arts. 3-4) and the 'special' protections (arts. 8-11) provided for by the 1954 Convention<sup>38</sup>.

37 The First Additional Protocol contains some additional provisions, including the prohibition of illicit transfer of cultural property, the obligation to safeguard them until the end of hostilities, and the prohibition to keep them as war indemnity. Convention, Regulation and Protocol were ratified by Italy through [Law 7 February 1958, n. 279](#).

38 Italy ratified this Second Protocol through [Law 16 April 2009, n. 45](#).

The 1954 Convention, applicable to international and non-international armed conflicts, identifies the 'Blue Shield' as the emblem to be used to protect the cultural property (arts. 6, 16 and 17). In any case, failure to display the emblem does not justify IHL violations. Some of the rules contained in the two Additional Protocols of 1977, considered part of customary IHL, protect cultural assets too<sup>39</sup>.

Italy has signed all the treaties on the subject. Upon ratifying the Second Protocol to the Hague Convention, Italy adapted its domestic legal system to fit the relevant IHL provisions. [Law 16 April 2009, n. 45](#), for example, establishes a preventive duty to catalogue cultural property and identify the bodies and structures responsible for safeguarding the assets in the event of armed conflict (art. 4). In assigning 'enhanced protection' of a cultural property, the Ministry of Culture is called to consult

39 1° AP, arts. 38, 53 and 85; 2° AP, art. 16; CIHL, rules 38-41.

with the Ministry of Defense to exclude that the asset is used for military purposes or as a shield for military posts, and ascertain that the required declaration that such assets will never be used for military purposes has been issued (art. 5)<sup>40</sup>.

Law n. 45/2009 also introduces specific criminal offences relevant for the protection of cultural property (including 'attack and destruction', 'illegal use', 'devastation and looting', etc.), identifying them as military offences. Art. 15 considers the possibility of a joint application with the wartime military criminal code, which in art. 187 provides a penalty of no less than fifteen years imprisonment for anyone who, in an enemy country, without being compelled by the necessity of military operations, destroys, or causes serious damage to cultural property.

Regarding disseminating the national and international standards on the protection of cultural heritage within the Italian Armed Forces, the abovementioned subjects were addressed in 2012 through a specific Directive by the Defence General Staff (SMD-UGAG-002/2012). This Directive, providing a compendium of the relevant IHL rules, summarises the elements of individual responsibility in the light of the sanctioning rules in force in the Italian legal system, as well as the military duties and the precautionary measures to be applied. Since 2018, a university Master's degree in '[Cultural Property Protection in Crisis Response](#)' has been organised by the University of Turin (Interdepartmental University School in Strategic Studies - SUISS), in partnership (among others) with the Italian Army Education and Training Command and School of Applied Military Studies in Turin and the [Carabinieri Command for the Protection of Cultural Heritage - TPC](#).

The Carabinieri Command TPC has been operating in Italy since 1969 and, over the years, has been very active in numerous activities to protect cultural heritage in post-conflict situations. In addition to the establishment of the 'Blue Helmets of Culture' (see below),

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40 To date, Italy has registered the following three assets in the list of assets subject to enhanced protection: Castel Del Monte (Puglia) in 2010, the National Central Library of Florence (Tuscany) and Villa Adriana (Lazio) in 2018.

the Command has carried out various activities abroad in support of local authorities. In Kosovo (2002-2003), Command Officers monitored and documented the cultural assets most at risk. In Iraq, the Command operated within the Ancient Babylon operation (2003-2006), engaging in services such as the census of archaeological areas at risk, the fight against clandestine excavations and the identification of archaeological assets looted from the Baghdad museum, also through the use of a '[Database of illicitly stolen cultural assets](#)'. The same was done for artefacts stolen during other armed conflicts, for example, in Libya. The Command also carries out specific training activities abroad for local civilian and police personnel involved in the protection of cultural heritage as experienced, for example, in Iraq, Lebanon and Jordan..

**Good practices:** *The Italian government - thanks to the joint action of various ministries, including the Ministry of Culture (MIC), the MA-ECl, the Ministry of Defense and the Ministry of Education, University and Research – promoted in 2016 the establishment of the '[Blue Helmets of Culture](#)': a task force made up of experts from the MIC and soldiers belonging to the Carabinieri Command for the Protection of Cultural Heritage (TPC). According to the [Memorandum of Understanding](#) concluded between the Italian Government and UNESCO, the task force was created to intervene in areas affected by serious emergencies, including post-conflict situations and human-made disasters as well as those originated by natural hazards. Its tasks include damage- and risk-assessment for the cultural and natural heritage, combating the trafficking of illicitly stolen cultural goods, elaboration of safeguard measures, technical supervision, training and assistance to national authorities also in the transfer of movable goods to safe places. It was the first initiative of this nature ever carried out in the world, which represented a reference model for the entire international community.*

*The conclusions of the G20 Culture Ministers Meeting, held in Rome on 29-30 July 2021 under the presidency of Italy, welcomed the activation of international mechanisms for rapid intervention in emergencies, aimed at protecting and preserving cultural heritage damaged or endangered by conflicts and disasters, including*



in the context of United Nations peacekeeping operations, based on the UNSC Res. 2347, with the participation of National Task Forces on invitation from UNESCO (point 14). On these premises, the Italian Ministry of Culture, recognising the opportunity to continue the positive experience of the MiBACT Unite4Heritage Task Force, also extending its operational scope, set up the 'Blue Helmets of Culture' Task Force in 2022 as a permanent operational structure within the Ministry to manage the activities related to the protection of cultural heritage at national and international level in relation to crisis situations ([Ministerial Decree of 31 March 2022](#)).

Additionally, in order to support the Italian authorities in displaying the 'Blue Shield' for the benefit of the cultural property to be protected

in accordance to articles 16 and 17 of the 1954 Convention, the CRI has signed a Memorandum of Understanding with the National Association of Italian Municipalities (ANCI). In 2022, on the basis of this agreement, the campaign '[The future has a long history. Let's protect it](#)' was launched to raise the attention of public opinion and institutions at all territorial levels on IHL rules applicable in this sector and to increase the number of 'Blue Shields' affixed to Italian cultural properties. On 2 April 2022, the first two 'Blue Shields' of the campaign were displayed. This initiative makes use of the CRI IHL Instructors with specific training on this subject. The CRI, in agreement with relevant administrations, is also developing guidelines for the displaying of the 'Blue Shield' by the Municipalities interested in the campaign.





### c. The Red Cross emblem

The protection of the Red Cross emblem was originally established by the first Geneva Convention (1864), which identified it as a symbol of neutrality. In particular, the Convention referred to emblems identifying the structures, equipment and personnel involved in assisting the sick and the wounded on the battlefield. Subsequent IHL sources then expanded this regulation, and today, the Red Cross, the Red Crescent and the Red Crystal on a white background are recognised as the three protective emblems equally usable for this purpose<sup>41</sup>. The emblems can also be used in the logos of the National Red Cross and Red Crescent Societies for indicative purposes only, in the activities they carry out in peacetime and under certain conditions established by national laws<sup>42</sup>. Specific IHL rules prohibit the deliberately improper use of the emblem for protective purposes<sup>43</sup>, and, in some cases, it constitutes

an act of perfidy and, therefore, a war crime<sup>44</sup>. Furthermore, its imitation, or use for private or commercial purposes, is equally prohibited.<sup>45</sup>

Italian legislation complies with the legal obligations and normative standards on the use of the distinctive emblem and prevents and punishes its misuse. Already, Italy regulates the use of the Red Cross emblem by [Law 30 June 1912, n. 740](#). This law concerns the protection of the wounded and sick in war and the protection of international signs of neutrality, providing for sanctions for those who, without authorisation from the Government, use the Red Cross on a white field as an emblem, or make use of the denomination of 'Red Cross' or 'Geneva Cross' (art. 1). The sanctions also apply in the event of counterfeiting or alteration of the emblem or any use that generates 'confusion or deception'. They intensify if the emblem is used as a trademark or for commercial purposes; in such cases, the confiscation of the assets is foreseen<sup>46</sup>.

41 1a GC, art. 38; 2a GC, art. 41, and the 3rd Additional Protocol of 2005, which established a third protective emblem to be added to those already envisaged (the so-called 'Red Crystal'). Italy ratified the Third Protocol through [Law 15 October 2008, n. 178](#), but to date, healthcare or humanitarian workers and religious personnel of the Italian Armed Forces have never used it.

42 1a GC, art. 44.

43 IV Hague Convention 1907, art. 23(f); 1a GC, art. 53; 1st PA, art. 38(1); CIHL, rule 59. In non-international armed conflicts, reference is made to the 2nd AP, art. 12; and CIHL, Rule 30.

44 1° AP, arts. 37(1)(d) and 85(3)(f).

45 1a GC, art. 53(1).

46 The rule was subsequently decriminalised with [Legislative Decree 30 December 1999, n. 507](#), article 62.

The 1941 [wartime military criminal code](#) establishes imprisonment of up to seven years for anyone who unduly uses the distinctive signs of the Red Cross as well as boats and vessels used for such services (art. 180). The contempt of the 'international protection badges' is also punished with imprisonment of up to three years (art. 181). Finally, the 1991 Military Manual (SMD-G-014), recalls in paragraph 9.2 that it is forbidden to unduly use the distinctive international signs relating to protected persons and places, including the distinctive signs of the Red Cross and Red Crescent, and other authorised assistance organisations.

**Good practices:** *The CRI has dedicated increasing attention to the protection of the Red Cross emblem on the national territory, in relation to which it approved its own [regulation](#) in 2018. For this purpose, it created an*

*Observatory consisting of a voluntary national Focal Point assisted by CRI staff (legal area), to whom all reports of improper or illegal use of the emblem are addressed (with an average of about one hundred reports per year).*

*The reporting activity by the volunteers is facilitated by the creation of an application called '[CRI Emblem](#)', which allows users to collect photos to be sent directly to the CRI Territorial Committee of reference for the appropriate checks and potential notices. In cases of particularly serious offences, the matter is referred to the CRI National Committee, which can take legal action. The National Focal Point also coordinates the work of specialised volunteers involved at the regional and territorial level in the organisation of training and informational events on the protection of the emblem.*



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# 5

## Means and methods of warfare





## 5. Means and methods of warfare

### Legal framework of reference

The need to balance the principles of humanity and military necessity is closely linked both to the prohibition of acts aimed at causing unnecessary suffering to persons involved in armed conflicts<sup>47</sup> and to the protection of the principle of distinction<sup>48</sup>. Consequently, some IHL treat-

47 The Hague Conventions (1907), art. 23; 1° AP, art. 35(2); CIHL, rule 70.

48 1° AP, art. 35.2, 48 and 51.1; CIHL, rules 1 and 7. A duty to protect the civilian population from the effects of

ties prohibit the use of certain types of weapons, including on some occasions their production, stockpile, transfer and trade in accordance with disarmament treaties. In addition to specific 'means' of combat, IHL also prohibits certain conducts of warfare (or 'methods'), such as attacks aimed at starving the population and depriving them of the basic means of subsistence.

non-international armed conflicts is also established by the 2° AP, arts. 1.1 and 13.

### a. The regulation of specific means and methods of warfare

Italy has progressively aligned its legal system with IHL obligations prohibiting certain means and methods of warfare. This occurred upon ratifying the 1977 First Additional Protocol and adopting the main treaties on the subject. Similarly, Italy has implemented relevant international obligations in the field of disarmament and non-proliferation. Certain conducts violating international obligations in this field are sanctioned on a criminal level: the [1941 wartime military criminal code](#) punishes any

military commander that ordered or authorized the use of means or methods prohibited by Italian law and international treaties or, in any case, contrary to military orders. In these cases, the penalty is a prison sentence of not less than five years, or not less than ten years if a massacre results from such criminal conduct (art. 174). These penalties also apply to persons other than the commander who engages in such conduct autonomously (art. 175).

In terms of training, the 1991 Manual of Humanitarian Law recalls that there is no 'unlimited right to choose the means and methods of warfare' and prohibits the use of means of combat which cause superfluous harm and unnecessary suffering to achieve military objectives.

#### Norms and practices relating to specific weapon systems:

**Certain conventional weapons** – Italy is a party to the 1980 'Convention on the prohibition or restriction of the use of certain conventional weapons that may be considered harmful or having indiscriminate effects' (CCW), as well as the five related additional protocols on specific types of armaments<sup>49</sup>. With the laws authorising the ratification of these treaties, they were given full legal force in the domestic legal system in consideration of their self-executing nature. Only in the case of the 5th Protocol relating to explosive remnants of war (2003) some modifications to the pre-existing legislation were approved to extend the scope of the previously established 'Fund for humanitarian demining' (see the Good Practices below) also to this type of explosive (Law 12 November 2009, n. 173, art. 3), as well as to ensure the necessary financial coverage for the envisaged implementation activities (art. 4).

As a party to the Convention, Italy participates in the annual meetings and the five-yearly review conferences, aimed at examining the implementation of the treaties. These conferences host the activities of the [Group of Governmental Experts \(GGE\)](#) regarding issues and challenges inherent in emerging technologies in the field of lethal autonomous weapon systems (LAWS), and provide recommendations on the evolution of the related regulatory framework, including the possible development of legally binding instruments.

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49 The Framework Convention containing only general provisions is completed by five Protocols which establish prohibitions or limitations on the use of specific types of weapons. These concern respectively: 'Non-detectable Fragments' (1), 'Mines, Booby Traps and Other Devices' (2), 'Incendiary Weapons' (3), 'Blinding Laser Weapons' (4), and 'Explosive Remnants of War' (5). These instruments have been progressively ratified through [Law 14 December 1994, n. 715](#); [Law 30 July 1998, n. 290](#); [Law 12 November 2009, n. 173](#).

Italy has consistently drawn the attention of the Parties to the need to monitor the development and use of military technologies. Among these, it repeatedly called for greater attention to the Mines Other Than Anti-Personnel Mines – (MOTAPM), the improvised explosive devices (IEDs) and the LAWS of which Italy requires that decisions relating to the lethal use of force are under human control ('in the hands of human beings').

**Antipersonnel mines** - Italy participated in the process that led to the adoption of the 1997 Ottawa Convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction (also known as the Anti-Personnel Mine Ban Convention) – this Convention also regulates assistance to the victims<sup>50</sup>. The Italian law ratifying the Convention in giving full execution to the treaty, contains some provisions aimed at strengthening its application in the domestic legal system. These include, for example, the rule which makes Italy's involvement in military activities carried out in an international context subject to compliance with the Convention (art. 5), and the provision that identifies the Ministry of Defense as the competent national authority ensuring compliance with the transparency and reporting obligations upon the implementation of the Convention (art. 7).

Other domestic norms connect and harmonise with the pre-existing internal legislation, primarily [Law of 29 October 1997, n. 374](#). Indeed, this piece of legislation had established an overall prohibition of the use of any type of anti-personnel landmine (art. 1<sup>51</sup>), including the obligation for anyone (private individual or company) to report their possession to the Carabinieri territorial commands and provide for their delivery to the Ministry of Defense within ninety days (art. 3). It also established a system of sanctions in the event of violations (art. 7), resulting in the complete destruction of the national assets in 2002, earlier than the deadline set by the Convention. More recently, Italy adopted [Law 9 December 2021, n. 220](#), aimed at sanctioning the financing of manufacturing

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50 Ratified by Italy through [Law 26 March 1999, n. 106](#).

51 With the exception, as per art. 5 of the Convention, of a limited quantity intended exclusively for training in demining operations.



companies (see the Good Practices below). Italy participates in the relevant fora where the Ottawa process continues, and where it has repeatedly expressed concern about the widespread use of these types of weapons, including improvised explosive devices (IEDs), with respect to which it has urged both non-party State and non-State actors to follow a non-use policy<sup>52</sup>. On an operational level, Italy has set up a Humanitarian Demining Fund for demining interventions, assisting victims, and undertaking awareness-raising activities for civi-

lian populations. These aspects are considered of primary importance and addressed on the basis of a so-called 'integrated approach', as described in the Good Practices of this section.

**Cluster Munitions** – A similar process to that relating to antipersonnel mines led to the 2008 Convention on the Prohibition of Cluster Munitions (or Oslo Convention<sup>53</sup>). The Italian law that ratified the Oslo Convention authorises the direct application of the Convention in Italy, and contains further provisions to ensure its full effectiveness. Among these provisions

52 See the [General Debate](#) at the 18th Meeting of the States Parties (16-20 November 2020).

53 Ratified by Italy through [Law 14 June 2011, n. 95](#).



is the storage and subsequent destruction of stocks of cluster munitions by the Ministry of Defense (which were never produced on Italian territory), then completed in 2015<sup>54</sup>.

The Law identifies the MAECI as the national authority for international compliance, including communications to the UN Secretary-General, and the compilation of national reports based on data provided by the Ministries of Defense and Economic Development. In line with the requirements included in the Convention, the law also provides for the introduction

of a specific sanctioning regime (art. 7) and the relative financial coverage of the envisaged activities (art. 8), including clearance and risk education, assistance to victims, international cooperation, and transparency measures. Italy has invested significantly in international assistance programs that have focused particularly on the clearance of mines and unexploded ordnances, including cluster munitions, the destruction of existing stockpiles and assistance to victims. Italy has also worked towards universalising the Convention, which currently has 107 States parties. Yet, this number is far from the objective of 130 identified by the Parties in 2016 in the [Dubrovnik Action Plan](#).

54 See [Permanent Representation of Italy to the UN \(Geneva\)](#).

**Biological Weapons** – Italy has ratified and fully implemented the 1972 Biological Weapons Convention (BWC), which prohibits the development, production and possession of biological and toxin weapons and requires the destruction of existing stockpiles<sup>55</sup>. Italy has actively supported the universalisation and strengthening of the Convention, through the exchange of voluntarily information aimed at promoting transparency on compliance with the relevant obligations, starting with the annual transmission of national reports.

Regarding the periodic review conferences of the Convention (the last of which, held under the Italian presidency, ended in December 2022), Italy has concentrated on cooperation and assistance mechanisms, on strengthening the capacity to prepare for and respond to threats of a biological nature, including the examination of mechanisms for the review of scientific and technical progress within the framework of the Convention. Italy has repeatedly emphasised the importance of involving NGOs, international institutions, universities and research centres in implementing the Convention. As part of this effort, particular attention has been given to the involvement of the scientific community, for example, by supporting the development of a voluntary Code of Conduct for scientists intended to prevent the misuse of bioscience, as well as to the greater involvement of the main international institutions, including the WHO and the ICRC, in the review processes of the Convention.

**Chemical weapons** – An even greater commitment to internal adaptation has characterised the Italian action in the field of chemical weapons, as evidenced by the introduction of a system of relevant implementing rules through the law ratifying the 1993 Chemical Weapons Convention (CWC<sup>56</sup>). The law reaffirms the prohibition of production, transfer, purchase, import, export, transit, possession and use of chemical compounds (listed in a dedicated Annex to the Convention) as well as ‘any other compound that can be used exclusively for the purpose of manufacture of chemical weapons’ (art. 1).

<sup>55</sup> Ratified by Italy through [Law 8 October 1974, n. 618](#).

<sup>56</sup> Ratified by Italy through [Law 18 November 1995, n. 496](#).

Other relevant implementing rules include those which oblige individuals, entities or companies to allow control inspections (art. 8) and establish a related sanction regime in case of violation (arts. 10-13). A [National Authority](#) established at the MAECI is responsible for promoting and coordinating the implementation of the Convention and, to this end, managing contacts with the Organization for the Prohibition of Chemical Weapons (OPCW). The Authority prepares an annual report to the Italian Parliament on the state of implementation of the Convention and related activities. In addition, an Advisory Committee made up of representatives of the Ministries and the interested industrial associations in the implementation of the Convention was established at the MAECI.

Italy is also engaged in identifying and prosecuting those responsible for violations and, at an international level, participates in the [International Partnership against impunity for the use of chemical weapons](#) launched in January 2018.

**Nuclear Weapons** – Italy is a party to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT<sup>57</sup>). In this context, it has always supported the system of safeguards and the related monitoring activities carried out by the International Atomic Energy Agency (IAEA). Together with 25 other countries, Italy supported the [statement](#) presented by Australia during the 2015 Review Conference, which focused on the humanitarian consequences of the use of nuclear weapons<sup>58</sup>.

**Good practices:** *Italy's commitment in this sector is evidenced by the numerous initiatives of assistance in third States concerning the removal of mines and unexploded ordnances, including those deriving from cluster bombs. These initiatives also include support in the destruction of related stockpiles, the provision of assistance to victims and the dissemination of good practices on risk reduction among the civilian population. In particular,*

<sup>57</sup> Ratified by Italy through [Law 24 April 1975 n. 131](#).

<sup>58</sup> According to this Statement, ‘[p]ractical contributions [...] would be to unblock the world's key disarmament negotiating forum, the Conference on Disarmament; begin negotiations for a Fissile Material Cut-off Treaty; and bring into force the Comprehensive Nuclear Test Ban Treaty as part of a series of steps aimed at achieving the total elimination of nuclear weapons’.



through the [Law 7 March 2001, n. 58](#), a ‘Fund for humanitarian demining and the clearing of areas with explosive remnants of war’ was established to annually finance activities related to demining for humanitarian purposes.

To date, Italy has allocated around 60 million euros to these activities, and in 2021, it has allocated 8 million euros to mine action programs (double compared to the previous year) in numerous countries, including the Democratic Republic of the Congo, Libya, Somalia, Sudan, Iraq, Syria, Palestine, Yemen, Afghanistan and Colombia. The identification of the projects to be financed takes into account three requirements: (i) to finance projects in countries party to the Ottawa Convention; (ii) to support projects in countries and geographical areas of strategic interest for Italy; (iii) to identify initiatives in line with the evolution of the Ottawa process, aimed at favouring assistance for victims (and their families) and risk education over traditional demining. This ‘integrated’ approach, i.e. not limited to the clearing of landmines, is considered a virtuous model as it takes into account the social and medium-long term dimension of the financed interventions.

In 2021, Italy adopted new legislation which provides for a total ban on financing companies producing anti-personnel mines, cluster

munitions and submunitions ([Law 9 December 2021, n. 220](#)). The broad scope of application of this law in terms of the definition of armaments producers, the activities of non-financial private companies, and the preparation of effective enforcement mechanisms (including supervisory, inspection and financial market surveillance powers by the Bank of Italy and other regulators), constitutes a virtuous model on how to fulfil international obligations in this field.

More recently, Italy acceded to the [“Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences arising from the Use of Explosive Weapons in Populated Areas”](#) (EWIPA). The Declaration was signed by 82 States in November 2022 as part of an international conference convened following nearly three years of Irish-led consultations involving the United Nations, member States and the ICRC. A consultative and advocacy role has also been played by civil society organisations, including the International Network on Explosive Weapons (INEW) and National Red Cross and Red Crescent Societies, as in the case of the CRI which encouraged Italy to sign the final text of the Declaration. The aim of the document is to address the devastating and lasting humanitarian impact of the use of explosive weapons in populated areas.

## b. The procedure for evaluating new types of weapons

According to art. 36 of the 1977 First Additional Protocol to the Geneva Conventions, States parties have an obligation to determine whether a new weapon under development, acquisition or adoption process could violate IHL<sup>59</sup>. This obligation applies both in times of peace and armed conflicts and must consider not only the intrinsic characteristics of the armament, but also how, when and where it can be used. The obligation to evaluate new weapons is particularly important in light of the rapid development of new technologies for military purposes.

The Italian Military Code (Legislative Decree of March 15, 2010, n. 66 and Presidential Decree of March 15, 2010, n. 90), while not explicitly mentioning compliance with IHL conventions, provides for detailed and transparent public control procedures on the approval of each weapon system (art. 536). In detail, the procedure for verifying programs relating to the renewal and modernisation of weapon systems directly intended for national defence, requires approval by law if extraordinary funding is needed, or a decree by the Minister of Defense in case of programs financed through an ordinary budget. In this case, the opi-

nion of the Parliament Defense Commissions (of both Chambers) must first be acquired<sup>60</sup>. The Commissions can express a contrary opinion and formulate specific conditions which, in the event that the Government does not want to comply with them, lead to a further parliamentary passage for a definitive opinion of the Chambers. In the event of a negative opinion expressed by a majority and duly motivated, the program will not be adopted<sup>61</sup>.

**Good Practices:** In the *commentary to the Eleven Guiding Principles relating to the use of Lethal Autonomous Weapons Systems (LAWS)* developed by the Group of Governmental Experts in 2019, Italy argued that ‘the development, deployment and use of any weapons system, including possible lethal autonomous weapons systems, must comply with the rules and principles of International Humanitarian Law (IHL)’. Similarly, in a *2019 statement* within the Group of Experts, Italy confirmed that IHL continues to fully apply to all weapon systems, including the development and potential use of LAWS.

59 For details, see the support document published by the ICRC, *A Guide to the Legal Review of New Weapons, Means and Methods of Warfare* (2006).

60 This process takes place in agreement with the Minister of Economy and Finance if the renewal and modernisation programs are multi-year in duration.

61 The opinions expressed during the latest legislature are available on the website [https://temi.camera.it/leg18/temi/tl18\\_programmi\\_d\\_arma.html](https://temi.camera.it/leg18/temi/tl18_programmi_d_arma.html).



## c. New technologies and IHL

Within the framework of the 1980 Convention on Certain Conventional Weapons (see section 5a), Italy has consistently encouraged monitoring the development of technologies that raise IHL concerns. This includes constant monitoring of the development of military research, especially as regards new robotic weapon systems capable of acting beyond human control.

With regard to the developments of military research on the so-called Lethal Autonomous Weapons Systems (LAWS), Italy maintains that their functioning must not be independent of human control to guarantee attribution of responsibility in the event of IHL violations. As such, only human judgment can carry out the necessary assessments relating to the application of the principles of distinction, proportionality and precaution. Italy underlines the need to step up international efforts to keep significant attention on the humanitarian problems that could arise from these weapons.

At the national level, the rules that regulate the use of new technologies applied to weapon systems include the provisions relating to the 'Remotely piloted aircraft of the armed forces' contained in the Military Code ([Legislative Decree of 15 March 2010, n. 66](#) and [Presidential Decree of 15 March 2010, n. 90](#), 2<sup>nd</sup> Book, Section III arts. 246 and 247). In 2017, the Italian Parliament approved a [motion](#) which committed the government to favour an international definition and regulation of weapon systems, which provides that 'human beings continue to take the last decision on the use of lethal force and exercise enough control' over the autonomous weapons that will be developed. The same motion commits the Italian authorities to take 'initiatives to strengthen the previous assessment of compliance with international humanitarian law of weapon systems'<sup>62</sup>. At an operational level, humans control and supervise all weapon systems currently supplied and used by the Italian Armed Forces. This involves control of the weapon's 'life cycle', including the validation

of target selection and activation/deactivation of 'autonomous' mode in relevant systems.

**Good practices:** *In light of the increase in cyber threats, since 2020, Italy has paid particular attention to the applicability of international law to the digital dimension, as demonstrated by the allocation of funds to support ICRC activities on the subject (2022- 2023), also aimed at implementing cyber capacity building programs for the benefit of third countries. In 2021, Italy adopted a position paper on 'International Law and Cyberspace', drawn up on the initiative of the MAECI together with the Presidency of the Council of Ministers and the Ministry of Defence, and presented at the United Nations Office for Disarmament Affairs (UNODA). The numerous topics touched upon by the document range from the protection of sovereignty and violations of the principle of non-intervention, to the attribution of responsibility to States for activities conducted in cyberspace, to the relationship between cyber-attacks and the use of force. On this last aspect, it was reaffirmed the general criterion of replicating in the digital dimension the system of protections and the limitations that have been identified over the years concerning the 'analogue' war dynamics.*

According to Italy, general IHL principles based on the need to limit the conduct of belligerents to protect people and civilian property, are fully applicable to cyberspace during international and non-international armed conflicts. The document also contains an explicit reference to the definition of 'attack' pursuant to art. 49(1) of the 1977 First Additional Protocol to the Geneva Conventions, and qualifies as a 'cyber-attack' for the purposes of IHL those conducts whose scale and effects can be equated to conventional armed attacks which cause the injury and/or death of human beings, significant physical damage to property, or disruption in the functioning of critical infrastructures. This contributes to giving the definition of 'attack' a 'functional' and not just a 'material' meaning.

<sup>62</sup> Chamber of Deputies, Motion 1-01776 presented by Hon. Carrozza on Wednesday 6 December 2017, session n. 898, <http://aic.camera.it/aic/search.html>.

## d. The regulation of the international arms trade

The 2013 UN Arms Trade Treaty (ATT) is the international instrument that establishes the criteria for the authorisation (and prohibition) of transfers of conventional arms<sup>63</sup>. In addition to regulating commercial aspects to prevent/eliminate illicit trafficking and contribute to international security, the Treaty, among other objectives, aims at 'reducing human suffering' (Article 1). Regarding exports, the States parties are called to evaluate 'in an objective, non-discriminatory manner and taking into consideration all useful elements', whether the conventional weapons being transferred can be used to commit or facilitate a serious violation of the IHL (Article 7.1 (b)i).

At the time of the approval of the Treaty, Italy had already regulated the sector through a specific legislative instrument ([Law 9 July 1990, n. 185](#))<sup>64</sup> which was considered sufficient to fulfil the provisions contained in the Treaty itself. Law n. 185/1990 and its numerous subsequent amendments define the necessary requirements for being able to operate in the sector and phases of authorisation procedures, as well as the potential sanctions in case of violations. While not making specific references to IHL, the legislation establishes a ban on manufacturing, importing and exporting specific categories of weapons (anti-personnel landmines, cluster munitions, biological, chemical and nuclear weapons).

Furthermore, its art. 1.6 prohibits the export, transit and brokering of arms to: a) countries in a state of armed conflict, contrary to the principles of article 51 of the United Nations Charter, without prejudice to compliance with the international obligations of Italy or the resolutions of the Council of Ministers, to be adopted with the prior opinion of the Chambers; b) Countries

whose policy conflicts with the principles provided by [article 11](#) of the Italian Constitution; c) Countries against which the United Nations, the EU or the OSCE have declared a total or partial embargo of war supplies; d) Countries whose governments are responsible for serious violations of international conventions on human rights, ascertained by the competent bodies of the United Nations, the EU or the Council of Europe. Furthermore, the authorisation to carry out the transfer of defence products is prohibited when these activities conflict with – among other things – Italy's international commitments and agreements on non-proliferation ([Law 9 July 1990, n. 185, arts. 1.5, 6.3](#)).

The monitoring of abovementioned activities is regulated by the National Authority – UAMA (see section [2.b](#) of this Report), in compliance with EU law. Its activities involves in particular, the management of the different types of authorisations and licenses provided by Law n. 185 ('individual', 'global', 'general', etc.) envisaged for the export, transfer, intermediation, technical assistance and transit of dual-use products (i.e., products, including software and technologies, which can have both civil and military use)<sup>65</sup>. The same applies to authorisations for the trade of goods that could be used to carry out the death penalty, for torture or other cruel, inhuman or degrading treatment or punishment<sup>66</sup>, as well as those for the direct and indirect trade of products listed following EU restrictive measures (or sanctions) pursuant to art. 215 of the Treaty on the Functioning of the European Union (TFEU).

The transactions covered by Law no. 185/1990

63 Ratified by Italy through [Law 4 October 2013, n. 118](#).

64 The legislation was amended by Legislative [Decree No. 105 of 22 June 2012](#) to allow the implementation of the [Directive of the European Parliament and of the Council 2009/43/EC of 6 May 2009](#), simplifying terms and conditions of transfers of defence-related products within the Community. Law 185/90 and its subsequent amendments were therefore integrated by the [Implementing Regulation - D.M. 7 January 2013, n.19](#).

65 See [Regulation \(EC\) No. 428/2009 of the Council of 5 May 2009](#), which establishes a Community regime for the control of exports, transfer, intermediation and transit of dual-use items, art. 2.1. These products are listed in detail in Annex I of the Regulation.

66 See [Regulation \(EU\) 2019/125 of the European Parliament and of the Council of 16 January 2019](#) on trade in certain goods which could be used for the death penalty, torture or other cruel, inhuman or degrading treatment or punishment. The goods subject to authorisation are those listed in Annexes III and IV of the anti-torture regulation



must comply with Italy's foreign and defence policy and are therefore authorised under the directives of the Government and Parliament. At the same time, the process of progressive "Europeanization" of national verification procedures on the movement of military assets has some effects at the domestic level. On the one hand, it led to the distinction between transfers made within the EU and outside the EU (see Directive 2009/43/ EC of the European Parliament and of the Council of 6 May 2009). On the other hand, it has given increasing value to the commitments undertaken in the framework of the Common Foreign and Security Policy (CFSP).

In particular, the [Common Position of the Council of the European Union 2008/944/CFSP of 8 December 2008](#)<sup>67</sup> requires Member

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67 It should also be noted that Article 3 specifies how

States to refuse the license if there is a clear risk that military technology or equipment could be used to commit serious violations of IHL or for the purpose of 'internal repression', i.e. acts involving torture and other cruel, inhuman or degrading treatment or punishment, summary or arbitrary executions, disappearances, arbitrary detentions (Criterion 2.b and 2.c). Finally, the 'conduct' of the purchasing country towards the international community is an additional element to consider, particularly its fulfilment of international obligations, including those relating to IHL, non-proliferation, and disarmament (Criterion 6).

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the right of Member States to apply more restrictive national policies shall remain unaffected, but at the same time Article 4.2 specifies that '[t]he decision to transfer or refuse to transfer any technology or military equipment remains the exclusive competence of each Member State'.



## e. Private military and security companies

Over the past two decades, the trend to ‘outsource’ some military and security functions traditionally assigned to State entities has gradually consolidated. Today, private military and security companies carry out numerous tasks in armed conflict scenarios, including logistics and training, the security of civilian and military personnel and infrastructures, the management of complex weapons systems, detention and interrogations. These dynamics bring about a series of particularly delicate issues in terms of IHL application.

As set out in the ‘[Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict](#)’, drafted and circulated in 2006 by the Swiss government and the ICRC, the general criterion is the prohibition on States to circumvent IHL obligations through such companies. On the contrary, the Montreux Document, signed by Italy in 2009 ([here](#)), calls on the authorities of the parties to the conflict to ensure its observance, punishment of those responsible for any violations and, at the same time, guarantee the necessary protection to the personnel of these organisations, as required by IHL.

As a party to the 1977 First Additional Protocol to the Geneva Conventions, Italy does not recognise the attribution of the status of combatant or prisoner of war to ‘mercenaries’ (art. 47). At the same time, Italy is a party to the United Nations Convention against the Recruitment, Use, Financing and Training of Mercenaries (1989)<sup>68</sup>. The ratifying law contextually defined the criminal offences (arts. 3 and 4 of [Law 12 May 1995, n. 210](#)) and introduced a safeguard clause in the case of actions conducted ‘with the approval of the Government’ (art. 5) and increased the penalties for the two conducts already present in the Italian legislation and referring respectively to ‘hostile acts towards a foreign State, which expose the Italian State to the danger of war’

(art. 244, Italian Criminal Code) and ‘unauthorised enlistments or armaments in the service of a foreign State’ (art. 288 Italian Criminal Code). Notably, unlike the provisions of the 1977 First Additional Protocol and the UN Convention, the definition introduced into the Italian legal system does not provide that the relative remuneration is ‘significantly higher than that promised or paid to combatants with similar rank and functions in the armed forces of that Party’.

Law 12 May 1995, n. 210 is only partially relevant, in light of neither the automatic nor total overlap of the figure of mercenaries and private security personnel (i.e., ‘contractors’), to which the Italian legislation does not provide for a specific regulation. In 2010, to partially bridge the regulatory gap on private security companies, a domestic court established that the unauthorised recruitment provided for in art. 288 of the Italian Criminal Code only applies if the activity is carried out ‘in favour of the foreigner’. In this case, the Italian ‘contractors’ recruited and operating abroad had acted as security operators for objects and individual ‘not directly involved in the armed conflict or the multilateral mission’.<sup>69</sup>

<sup>68</sup> Ratified by Italy through [Law 12 May 1995, n. 210](#).

<sup>69</sup> Court of Assizes of Bari, Sentence n. 7, July 16-October 12, 2010, [link](#).

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# 6

## Prosecution of international crimes and national jurisdiction



## 6. Prosecution of international crimes and national jurisdiction

### Legal framework of reference

In order to limit the conduct of hostilities and protect the victims of armed conflicts, IHL prohibits specific individual conducts. The main IHL treaties identify some particularly 'grave breaches' (1949 Geneva Conventions) or 'serious violations' (1977 First Additional Protocol), which include, for example, deliberate attacks against civilians, the use of prohibited weapons or torture.

IHL rules also contemplate the necessary measures to prevent and repress any violations, including through legal proceedings of a criminal nature or disciplinary sanctions. Other international conventions, which Italy is a party to, provide for the duty to prosecute, such as the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict, and its second Protocol (see section 4.b of this Report)<sup>70</sup>, as well as the 1994 Convention on the Safety of

United Nations and Associated Personnel<sup>71</sup>. Given the gravity of the violations amounting to war crimes, universal jurisdiction is considered applicable to them, based on the *aut dedere aut iudicare* principle. According to this principle, any State has the duty to investigate suspects, prosecute or extradite them to another State willing to do so, irrespective of the existence of a direct relationship (territorial or personal) between the crime and the State of the forum. This criterion is also considered applicable to crimes committed in the context of non-international armed conflicts, with respect to which a customary norm has emerged<sup>72</sup>.

The effective repression of IHL violations, including those not constituting war crimes, is traditionally entrusted to the States through the

<sup>70</sup> See in particular the [Law of 16 April 2009 n. 45](#), arts. 7-13 identifying a series of military crimes, to be applied in coordination with the Wartime and Peacetime Criminal Codes (articles 14 and 15).

<sup>71</sup> Ratified by Italy through [Law 30 November 1998, n. 425](#).

<sup>72</sup> CIHL, Rules 157 and 158.



application of national laws by domestic courts. With the end of World War II, and especially since the 1990s, domestic repression was accompanied by international criminal justice, particularly through the action of the International Criminal Court, established with the [1998 Rome Statute](#), today ratified by 123 States, including Italy. With the practice of previous ad

hoc international criminal tribunals<sup>73</sup>, the Statute and the activities of the ICC have allowed for a more accurate definition of offences constituting war crimes and the related responsibilities.

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73 Namely the International Criminal Tribunals for the former Yugoslavia (1993) and Rwanda (1994), established by the UN Security Council, as well as 'hybrid' experiences, carried out with the involvement of territorial States and the international community, such as the Special Court for Sierra Leone (2002) and the Extraordinary Chambers in the Courts of Cambodia (2003).

## a. The prosecution of war crimes in the national legal system

In the Italian legal system, crimes committed in the context of armed conflicts and by military personnel are governed by military criminal law. The primary normative tool is the Wartime Military Criminal Code approved with the [Royal Decree n. 303 of 20 February 1941](#) and still in effect today. Internally, the repression of IHL violations is contemplated by the provisions in its Third Book, Title Four, dedicated to 'crimes against the laws and customs of war' (articles 165-230).

The Wartime Military Criminal Code, however, did not receive for decades any legislative updates since its adoption, thus impeding the systematic implementation of the subsequent IHL treaties signed by Italy. This is with particular reference to the (explicit and implicit) duties to internally criminalise the violations of abovementioned international instruments (and apply, in some cases, connected principles such as that of universal jurisdiction). These include the Geneva Conventions (1949); the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954) and its Second Protocol (1999); the Additional Protocols to the Geneva Conventions (1977 and 2005); and the Statute of the International Criminal Court (1998). Furthermore, the Italian Parliament authorised the ratification of the Statute of International Criminal Court without adopting specific rules to incorporate the criminal offences envisaged in this instrument in its domestic system (see section [6.b](#) below). For several decades, Italian missions abroad were often regulated by the Peacetime Military Criminal Code, adopted with the same Royal

Decree n. 303 of 20 February 1941, which does not include provisions relating to IHL violations.

The flaws of the Wartime Military Criminal Code were partially filled in the early 2000s with the reform of some provisions of its Third Book, Title IV<sup>74</sup>, whose application has been ordered 'in every case of armed conflict' in which 'at least one of the parties makes militarily organised and prolonged use of arms against another' (art. 165). These provisions extend to international armed conflict (even if the terminology used does not fully align with the definition provided by the standard Article 2 of the Geneva Conventions)<sup>75</sup> as well as non-international ones and military operations carried out 'abroad by the Italian armed forces'. Furthermore domestic judges have interpreted art. 165 as implying that the section of the Wartime Military Criminal Code dedicated to 'crimes against the laws and customs of war' can find autonomous application in the situations envisaged therein, independently of the general application to the mission of the Peacetime Military Penal Code. Through legislation adopted in 2002, new criminal offences were introduced to (partially) adapt to existing international law, as in the case of 'acts of torture or other inhuman treatment, illegal transfers, or other conduct prohibited by international conventions [...] to the detriment of pri-

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74 See the two laws converting decree-laws issued by the Government, respectively [Law 31st January 2002, n. 6](#) and [Law 27th February 2002, n. 15](#).

75 See the official ICRC commentary on common Article 2 to the Geneva Conventions of 1949.

soners of war or civilians' (art. 184-bis and 185-bis of the Wartime Military Criminal Code)<sup>76</sup>. In 2016, the Italian Parliament finally approved the [Law 21 July 2016 n. 145](#), containing 'Provisions concerning the participation of Italy in international missions'. This new legislation – contributing to the clarification of the regulatory framework applicable to criminal offences – established the general applicability

of the Peacetime Military Criminal Code to missions carried out abroad, 'without prejudice to the Government's faculty to decide on the application of the provisions of the Wartime Military Criminal Code'<sup>77</sup>. However, applying the rules of the Wartime Military Criminal Code is possible under the possibility provided by the aforementioned art. 165 of the same Code, thus permitting the criminalization of IHL violations in such contexts.

<sup>76</sup> See art. 185-bis of the 'Military Penal Code of War' added by means of the [Law of 31 January 2002, n. 6](#).

<sup>77</sup> See arts. 19.1 and 19.2.



## b. Italy and the International Criminal Court

The [Statute](#) of the International Criminal Court (ICC) was approved during the Rome Conference in 1998 and entered into force on 1 July 2002. As known, the Court exercises its jurisdiction in a complementary manner to that of States parties, i.e., in cases where they are unable or unwilling to exercise their primary prosecution power (articles 1 and 17 of the Statute). The principle of complementarity, therefore, has a value that is not only procedural but also substantial, as it places on the States an implicit obligation to adapt national legislation to the provisions of the Statute, in the absence of which the Court could eventually claim its jurisdiction. The Statute also contains rules which impose precise obligations on the States Parties to cooperate with

the ICC in the conduct of investigations, trial activities, and the execution of convictions.

After hosting the Conference establishing the ICC, Italy was among the first States to ratify the Statute through a law with which the Parliament ordered its simultaneous execution in the internal legal system, without envisaging changes<sup>78</sup>. However, this act was unsuitable for transposing some of the substantial rules of the Statute, including the cooperation duties in the domestic legal system. [Law of 20 December 2012, n.237](#), is a partial adaption of the domestic legal framework as it only regulates the cooperation with the ICC. Subsequently, Italy

<sup>78</sup> Ratified by Italy through [Law 12 July 1999, n. 232](#).

has also ratified a series of amendments to the ICC Statute extending the list of crimes provided for non-international armed conflicts<sup>79</sup>. In March 2022, the Ministry of Justice created a Commission responsible for preparing a 'Draft code on international crimes' to adapt the Italian legal system to the provisions of the ICC Statute and other relevant obligations in this area<sup>80</sup>. The Commission concluded its work with a [proposal](#) and a [final report](#), subsequently presented to the Minister of Justice on 31 May 2022. In January 2023, a 'working group' composed of experts and senior officials was set up at the Legislative Office of the Ministry of Justice to elaborate a final legislative proposal<sup>81</sup>.

Concerning war crimes, the Commission took into account the legal sources in force at both national and international levels and the need for coordination between them. In view of developing a systematic framework, the Commission has proceeded to a subdivision between 'crimes against protected persons' and 'crimes relating to prohibited means and methods of combat', regardless of the nature of the armed conflict. Furthermore, to extend criminalization to all situations of armed conflicts, it was deemed appropriate to include in the proposal explicit definitions of the two typologies of armed conflicts, in line with the standard interpretations provided by IHL.

Equally appreciable is the choice to provide for the automatic extension of some provisions to future situations without the need for further legislative changes. An example is provided by the offence related to the 'use of prohibited means of warfare', able to include in a single provision all the means of combat currently prohibited by international conventions as well as those that might be potentially prohibited in the future (as already provided for by art. 174 of the Wartime Military Criminal Code), without resorting to an analytical list of prohibitions that risked becoming obsolete.

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79 See the [Law 10 November 2021, n. 202](#).

80 Ministry of Justice, [Decree of 22 March 2022](#) - Commission for the preparation of a draft Code of International Crimes.

81 At the time of drafting this Report, the legislative proposal had not yet been approved.

The Commission paid attention to crimes relating to the recruitment of minors into the armed forces and their involvement in hostilities, setting the minimum age for their enlistment at 18, in line with the Optional Protocol of the Convention on the Rights of the Child concerning the involvement of children in armed conflicts (2002), and not at 15 years as required by the Statute of the ICC. The Draft Code then contains a specific provision relating to attacks on a cultural property which, in order to avoid regulatory gaps, considers the category of property subject to 'special protection', currently not mentioned in the relevant legislation (see section 4b of the present Report).

Based on IHL provisions on the matter, the Commission also introduced in the Draft Code a provision concerning the responsibility of the military commander and the civilian superior, pursuant to art. 28 of the Statute of the ICC, currently not expressly provided for in the domestic legal system. They would be criminally liable by omission for the crimes committed by the subordinates for not having exercised their duty of control over the latter and not having prevented/punished the commission of crimes by the same.

The proposed provision would therefore have an important function not only in terms of prosecution but also in permitting a better prevention of potential crimes, being based on a duty to control. In this regard, it should be considered that a broader provision is currently established in the Italian criminal law to protect humanitarian interests, since art. 230 of the Wartime Military Criminal Code punishes the failure to prevent those military offences constituting international crimes, in the event that a soldier (irrelevant if superior, equal or inferior to the agent) does not use every possible means to prevent their execution.

The Draft Code also embraces the principles of non-applicability of statutory limitations for international crimes and universal jurisdiction. The prosecution would thus be possible even in cases where the crime is committed abroad, by a foreigner and not against the Italian State or an Italian citizen, provided that the person concerned is in Italy. Equally, it is envisaged that the functional immunity of foreigners is of no relevance to the foreseen international crimes. The Draft Code also



outlines a normative framework for the other crimes included in the Statute (aggression, crimes against humanity and genocide), and addresses other relevant aspects, such as attribution of jurisdiction and statutory penalties.

The issue relating to the division between ordinary and military jurisdiction over international crimes remains unresolved in the Commission's final work. In this regard, three different theses have been proposed: the first, according to which the ordinary jurisdiction should be competent for all international crimes; the second, according to which the ordinary judiciary would be competent for international crimes committed by civilians while the military judiciary for those committed by members of the Armed Forces; the third, according to which the ordinary jurisdiction would have competence for all international crimes, except for those war crimes committed by members of the Armed Forces which would be under the competence of military tribunals. In cases of connection among crimes, the jurisdiction would always belong to the ordinary judiciary.

**Good practices:** *Starting from the 1990s, the Military Judiciary, following the identification of numerous procedural files concerning possible war crimes committed during the Second World War, has managed a laborious and complex action of investigation and judicial assessment against the individuals involved. As per the sentences handed down by various military tribu-*

*nals and by the Military Court of Appeal, dozens of life sentences were recorded for those responsible for war crimes committed in Italy, confirming the value of basic principles such as the inapplicability of the superior order as a potential exemption from criminal prosecution or the responsibility of the commanders involved. This judicial activity, in the context of which the provisions of the Wartime Military Criminal Code were applied, was carried out in full compliance with the provisions of the Italian Constitution and the European Convention on Human Rights, as confirmed by numerous sentences of the Court of Cassation and of the European Court of Human Rights itself (see in particular Court of Cassation, Section II, 23 March 2010, Sommer case, relating to the proceeding for the massacre of S. Anna di Stazemma). The Military Judiciary has also carried out investigations relating to possible perpetration of war crimes in relation to contemporary missions, such as those in Afghanistan and Iraq.*

*In 2019, Italy supported Switzerland's proposal to insert an amendment to the ICC Statute aimed at extending the scope of application of the crime of 'starvation' to contexts of non-international armed conflicts. Another good practice to be highlighted is identifiable in art. 19.4 of [Law 21 July 2016, n. 145](#), which excludes the exemption from criminal liability for personnel who carry out orders and directives received, in cases such acts imply crimes envisaged by the ICC Statute.*







## Conclusions

This Report results from the collaboration between the institutions represented in the Commission for the study and development of international humanitarian law, as well as the consultations with other administrations and relevant actors, which the drafting of the document required. In addition to conducting a survey of the matter in our legal system, it contains examples of good practices that can be brought to international attention, with a view to sharing useful measures for IHL implementation and dissemination purposes.

Furthermore, the results of the Report highlight some areas that might imply further initiatives and lay the foundations for a subsequent Action Plan. Among these: the training of the Armed Forces, also through the updating of military manuals which could take into account technological progress in armed conflicts; compliance with international law provisions relating to war crimes and the Statute of the International Criminal Court; the protection of minors and their inalienable right to education even in the event of hostilities; the strengthening of the protection of cultural heritage and the environment in armed conflicts.

Italy's marked attention on humanitarian issues is confirmed by its tradition and does not end with this Report, as evidenced by a plurality of ongoing initiatives. To recall a few included in this document: the launch of the IV Action Plan on Women, Peace and Security 2020-2024; the 'open pledge' on the protection of minors in armed conflicts presented by Italy on the occasion of the 33rd International Conference of the Red Cross and Red Crescent in 2019; the IHL training and dissemination activities carried out in synergy with civil society (the Italian Red Cross, the IIHL of Sanremo and many universities); the Task Force 'Blue Helmets of Culture'.

In a complex international scenario characterised by several humanitarian crises that need to be addressed, Italy's commitment to the promotion and respect of international humanitarian law remains firm and constant, and the present Report represents a further confirmation.

# Acknowledgements

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## Annex: IHL Treaties to which Italy is a party and implementation instruments

Topic	Treaty	Date of Ratification/ Accession	Implementing legislation
Protecting victims of armed conflicts	Convention for the Exemption of Hospital Ships, in Time of War, from the Payment of all Dues and Taxes Imposed for the Benefit of the State, 1904	14.08.1907	<a href="#">Law 19 September 1907, n. 686</a>
	Geneva Conventions, 1949  (I) Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field;  (II) Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea;  (III) Convention relative to the Treatment of Prisoners of War;  (IV) Convention relative to the Protection of Civilian Persons in Time of War;	17.12.1951	<a href="#">Law 27 October 1951, n. 1739</a>
	Additional Protocol (I) to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts, 1977  Additional Protocol (II) to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts, 1977	27.02.1986	<a href="#">Law 11 December 1985, n. 762</a>
	Convention on the Rights of the Child, 1989	05.09.1991	<a href="#">Law 27 May 1991, n. 176</a>
	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000	09.05.2002	<a href="#">Law 11 March 2002, n. 46</a>
	Additional Protocol (III) the Geneva Conventions relating to the Adoption of an Additional Distinctive Emblem, 2005	29.01.2009	<a href="#">Law 15 October 2008, n. 178</a>
Means and methods of warfare	St Petersburg Declaration relating to Explosive Projectiles, 1868	11.12.1868	
	Hague Convention (II) with Respect to the Laws and Customs of War on Land and its annex, 1899	04.09.1900	

Topic	Treaty	Date of ratification/ accession	Implementing legislation
	Hague Declaration (IV, 2) concerning Asphyxiating Gases. The Hague, 1899  Hague Declaration (IV, 3) concerning Expanding Bullets, 1899	04.09.1900	
	Hague Convention (IV) respecting the Laws and Customs of War on Land, 1907  Hague Convention (IX) concerning Bombardment by Naval Forces in Time of War, 1907	18.10.1907	
	Geneva Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, 1925	03.04.1928	<a href="#">Royal Decree 6 January 1928, n. 194</a>
	Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, 1972	30.05.1975	<a href="#">Law 8 October 1974, n. 618</a>
	Treaty on the Non-Proliferation of Nuclear Weapons, 1968	02.05.1975	<a href="#">Law 24 April 1975, n. 131</a>
	Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, 1976	27.11.1981	<a href="#">Law 29 November 1980, n. 962</a>
	Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, 1980  And related Protocols: <ul style="list-style-type: none"> <li>• (I) on Non-Detectable Fragments, 1980</li> <li>• (II) Prohibiting Mines, Booby-Traps and other Devices, 1980</li> <li>• (III) Prohibiting Incendiary Weapons, 1980</li> </ul>	20.01.1995	<a href="#">Law 14 December 1994, n. 715</a>
	Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons, 1993	08.12.1995	<a href="#">Law 18 November 1995, n. 496</a>



Topic	Treaty	Date of ratification/ accession	Implementing legislation
	<p>Protocols related to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, 1980:</p> <ul style="list-style-type: none"> <li>• (IV) on Blinding Laser Weapons, 1995</li> <li>• (II, as amended) Prohibiting Mines, Booby-Traps and other Devices, as amended, 1996</li> </ul>	13.01.1999	<a href="#">Law 30 July 1998, n. 290</a>
	Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997	23.04.1999	<a href="#">Law 26 March 1999 n. 106</a>
	Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, 1980, modified art. 1, 2001	01.09.2004	<a href="#">Law 28 April 2004, n. 131</a>
	<p>Protocols related to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, 1980:</p> <ul style="list-style-type: none"> <li>• (V) on Explosive Remnants of War (2003)</li> </ul>	11.02.2010	<a href="#">Law 12 November 2009, n. 173</a>
	Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Cluster Munitions, 2008	21.09.2011	<a href="#">Law 14 June 2011, n. 95</a>
Air and naval warfare	<p>Hague Conventions, 1907:</p> <ul style="list-style-type: none"> <li>• (VI) on Enemy Merchant Ships</li> <li>• (VII) on the Conversion of Merchant Ships</li> <li>• (VIII) on Submarine Mines</li> <li>• (XI) on the Restrictions of the Right to Capture</li> <li>• (XIII) on Neutral Powers in Naval War</li> </ul>	18.10.1907	
	Treaty for the Limitation and Reduction of Naval Armament, 1930	06.11.1936	<a href="#">Royal Decree 15 October 1936, n. 1966</a>

Topic	Treaty	Date of Ratification/ Accession	Implementing legislation
Protection of cultural property	Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict with Annexed Regulation and Protocol, 1954	09.05.1958	Law 7 February 1958, n. 279
	Second Protocol of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1999	10.07.2009	Law 16 April 2009, n. 45
Criminal proceedings	Rome Statute of the International Criminal Court, 1998  Amendments: <ul style="list-style-type: none"><li>• Article 8 (2010)</li><li>• Article 8bis, 15bis and 15ter (2010)</li><li>• Article 124 (2015)</li></ul>	26.07.1999  26.01.2022 26.01.2022 13.04.2018	Law 12 July 1999, n. 232  Law 20 December 2012, n. 237
	International Criminal Tribunal for the former Yugoslavia, 1993	28.12.1993	Law 14 February 1994, n. 120  Law 7 June 1999, n. 207
	International Criminal Tribunal for Rwanda, 1994	15.8.2002	Law 2 August 2002, n. 181  Law 6 February 2006, n. 64
Other treaties relevant for IHL	Hague Convention (III) on the Opening of Hostilities, 1907	18.10.1907	
	Hague Convention (V) Neutral Powers and Persons in Case of War on Land, 1907		
	Convention on the Prevention and Punishment of the Crime of Genocide, 1948	04.06.1952	Law 11 March 1952, n. 153
	International Convention Against the Recruitment, Use, Financing and Training of Mercenaries, 1989	21.08.1995	Law 12 May 1995, n. 210
	International Convention for the Protection of all Persons from Enforced Disappearance, 2006	08.10.2015	Law 29 July 2015, n. 131
	Arms Trade Treaty, 2013	02.04.2014	Law 4 October 2013, n. 118



