DIPLOMATIC AND PARLIAMENTARY PRACTICE

(edited by *Pietro Gargiulo*, *Marco Pertile* and *Paolo Turrini*)

VII. LAW OF THE SEA

1. NEGOTIATION AND SIGNATURE OF THE CAEN AGREEMENT ON THE DELIMITATION OF TERRITORIAL WATERS AND MARITIME JURISDICTION BETWEEN ITALY AND FRANCE

At the beginning of February 2016, some members of the Parliament posed an urgent interpellation to the *Sottosegretario di Stato per gli Affari esteri e la cooperazione internazionale* (Undersecretary of State for Foreign Affairs and International Cooperation), Mr. Benedetto Della Vedova, and subsequently, to the *Ministro degli Affari esteri e della cooperazione internazionale* (Minister for Foreign Affairs and International Cooperation), Mr. Paolo Gentiloni Silveri, regarding the Caen Agreement between Italy and France on the delimitation of the territorial seas and of the zones under their national jurisdiction, signed on 21 March 2015, but thus far only ratified by France.[1] The members of the Parliament were concerned that the Caen Agreement could erode the protection of Italian fishery resources and restrain Italian access to fisheries in the area off the Ligurian coast, where the commercially valuable red shrimp is found. They feared that the Agreement would raise environmental concerns and waive Italian rights over rich fishing waters, therefore affecting the Italian national interest and maritime rights.

Against this background, on 12 February 2016, the *Sottosegretario* intervened before the *Camera dei Deputati* (Chamber of Deputies) (568th Meeting – XVII Legislature) clarifying the reasons for signing the Caen Agreement. He stated:

> "We deemed it appropriate that a general instrument be signed, to update and effectively regulate the Italian-French maritime boundaries, also in view of the provisions of the 1982 United Nations Convention on the Law of the Sea. Italy and France established respectively in 2011 and 2012 an Exclusive Protection Zone and an Exclusive Economic Zone, a choice that accounts for a much needed determination of their boundaries from the wide areas of the Ligurian Sea to the Tyrrhenian Sea, that they share, and whose external boundaries had been only provisionally determined prior to the delimitation agreements".

With regard to the content of the Agreement and as to the protection of Italian fishing rights, Mr. Della Vedova confirmed that:

> "[T]he Agreement complies with the rules established under the UN Convention on the Law of the Sea with respect to the boundaries and delimitations of territorial waters as well as other maritime zones, with specific regard to the principles of median line for territorial seas and equal rights for the continental shelf. During the negotiations, Italy got to retain the definition of straight baseline for its Tuscan archipelago, as agreed in 1977 when delimiting the territorial sea, which significantly moves towards Corsica the baselines wherefrom to calculate the median line, and that France repeatedly disputed as in contrast with the

[1] On the Caen Agreement, see the comment by RONZITTI in "Treaty Practice", edited by MANCINI, in this *Volume*.

> Convention. In addition, Italy succeeded in preserving an area West of the Bocche di Bonifacio, traditionally used by both Italian and French fishing vessels, and still object of the Agreement on the Bocche di Bonifacio of 1986.[2] The Caen Agreement not only regulates the maritime boundaries between our country and France, but also amends the rules on the exploitation of the seabed or the groundwater resources that are located across the delimitation line".

As mentioned, on 24 February 2016, the *Ministro degli Affari esteri e della cooperazione internazionale* (Minister for Foreign Affairs and International Cooperation), Paolo Gentiloni Silveri, intervened before the *Camera dei Deputati* (Chamber of Deputies) (576th Meeting – XVII Legislature) and answered a similar parliamentary question. Mr. Gentiloni Silveri repeated that the Agreement had not yet entered into force and stated that it does not "waive Italian rights over rich fishing waters". As to coastal fishing, the *Ministro* stated that the relevant European legislation shall apply and that presently "evaluations and technical elements are being collected from the competent Ministry to consider appropriate integrative instruments to the Agreement. After that, the Government will be able to initiate the ratification process".

On 25 February 2016, before the *Camera dei Deputati* (Chamber of Deputies) (570th Meeting – XVII Legislature), Mr. Della Vedova further illustrated the implications of the Caen Agreement for Italian interests, maritime jurisdiction and fishing rights, reiterating that the Agreement serves the purpose of effectively and unequivocally determining maritime boundaries between Italy and France. He explained that:

> "[T]he law of the sea is subject to important changes owing, on the one hand, to the States attempting to expand their jurisdiction over high seas according to the UN 1982 Convention on the Law of the Sea and, on the other hand, to the proliferation of European legislation on the common fishery policy".

With respect to access to the marine resources, the Undersecretary concluded as follows:

> "[T]he Agreement protects national interests in that it provides for Italy's and France's coordinated action with respect to the exploitation of seabed deposits across the delimitation line. Similarly, with regard to the Mentone Bay, in the Ligurian Sea and the territorial boundary between Italy and France, failing any previous agreement on the matter, the Caen Agreement follows the principle of equidistance, as established under the 1982 United Nations Convention".

ALICE RUZZA

XI. TREATMENT OF ALIENS AND NATIONALITY

1. THE POSITION OF ITALY ON LARGE-SCALE MIGRATION: FROM THE MIGRATION COMPACT TO THE PRINCIPLE OF SHARED RESPONSIBILITY

During 2016, the Italian Government put forward a comprehensive proposal of reform of the European Union External Action on Migration. On 15 April, the *Presidente del Consiglio dei Ministri* (President of the Council of the Ministers), Mr. Matteo Renzi,

[2] Agreement between the Government of the French Republic and the Government of the Italian Republic on the Delimitation of the Maritime Boundaries in the Area of the Strait of Bonifacio, 28 November 1986.

addressed a letter[3] to the President of the European Commission, Jean Claude Juncker, and to the President of the Council of the European Union, Donald Tusk, enclosing the "Migration Compact", a non-paper describing the Italian proposals.[4] The Italian non-paper starts from the assumption that the European Union (EU) should develop an active strategy aimed at enhancing cooperation with "African countries of origin and of transit" identifying, in particular, a number of "key partners" and tackling the root causes of migration.

Along similar lines, at the international level, Italy pushed for a wider involvement of the international community in the management of migration and made reference in different contexts to the "principle of burden-sharing", or the "principle of shared responsibility". This position fully mirrors the approach taken by the United Nations Secretary General in his report on large movements of refugees and migrants, adopted on 21 April 2016,[5] and by a number of General Assembly resolutions.[6] It is noteworthy, in this respect, that in the above-mentioned report the Secretary General invokes the "principle of shared responsibility" to propose the adoption of a Global Compact on Migration. According to the Secretary General, Member States should commit "to support a comprehensive refugee response whenever a large-scale and potentially prolonged refugee movement occurs".[7]

On 4 May 2016, during the informal meeting of the General Assembly on such report, Ambassador Inigo Lambertini, *Vice Rappresentante Permanente dell'Italia presso le Nazioni Unite* (Vice Permanent Representative of Italy to the United Nations) welcomed the document and stated:

> "While being a frontier country, we do recognize however the principle of burden-sharing with our neighboring countries, a principle that should inform this conference. This is why the call to UNHCR to bring the existing efforts for Refugees under a comprehensive framework is much appreciated. Even if our resources are stretched in the effort of offering a dignified, safe, and orderly reception to people coming on our shores, we support resettlement programs as a key tool to save lives and to share the burden with Countries which host millions of migrants and refugees. […] We appreciate the distinction between refugees and migrants, however we notice that you duly stressed the importance of protecting particular categories of vulnerable people, regardless of their status. Unaccompanied minors, for example, must be protected first and foremost because they are children. We welcome the reference in your report to the lack of protection in international conventions of people who are compelled to leave their homes due to disasters or the erosion of livelihood caused by climate change".

Subsequently, on 13 May 2016, Ambassador Sebastiano Cardi, *Rappresentante Permanente dell'Italia presso le Nazioni Unite* (Permanent Representative of Italy before the United Nations), participated to the inaugural meeting of the group "Friends of Migration", an initiative launched by Bangladesh, Benin, Mexico and Sweden. He too made reference to the principle of burden-sharing in the management of migration. More precisely, he took position as follows:

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[3] An English translation of the letter is available at: <http://www.governo.it/sites/governo.it/files/lettera_01.pdf>.

[4] The Italian non-paper "Migration Compact – Contribution to an EU strategy for external action on migration" is available at: <http://www.governo.it/sites/governo.it/files/immigrazione_0.pdf>.

[5] UN Secretary General, "In Safety and Dignity: Addressing Large Movements of Refugees and Migrants", Report, A/70/59, 21 April 2016.

[6] Most recently by the UN General Assembly Resolution 70/135 of 23 February 2016, paras. 5 and 9.

[7] UN Secretary General Report, "In Safety and Dignity", *cit*. *supra* note 5, para. 70.

> "Italy has always been at the forefront of the migration crisis, a global and long term phenomenon caused by poverty, instability, climate change or simply demography. As you know, for many years we have been urging actions and a comprehensive approach, both at the global and regional levels, for ensuring safe, regular, orderly and responsible migration. This is why we much appreciated the Secretary General's Report on the 'High Level Plenary Meeting to Address Large Movements of Refugees and Migrants', on September 19, which, among other things, also recognizes the principle of burden-sharing, a principle that should inform this Group. At regional level, Italy, during its EU Presidency, launched a regional dialogue with the Countries of the Horn of Africa (Khartoum Process), and more recently proposed a 'Migration Compact' to the European Union. It is a comprehensive strategy on migrations which looks at their long term causes, and aims to promote a true partnership with Countries of origin, based on solid pillars: economic development, social and environmental sustainability, migration, and cooperation in maintaining peace and stability".

The *Ministro degli Affari esteri e della cooperazione internazionale* (Minister for Foreign Affairs and International Cooperation), Mr. Paolo Gentiloni Silveri, took a similar position on behalf of Italy during the UN Summit on Refugees and Migrants of 19 September 2016. He recalled that Italy "has long been calling for the involvement of the whole international community" and made reference to "the principle of shared responsibility". He then expressed a favorable position with respect to the extension of refugee status to the so-called "climatic refugees":

> "On the one hand, we are all aware of the international obligations regarding the protection of refugees. Such protection is due to those who are fleeing war and persecution. In my opinion, such protection should be extended to new categories of refugees, like people fleeing disasters caused by climate change. On the other hand, even those seeking a better life, those fleeing poverty and the lack of a future have the right to an answer from us, they have the right to hope. They should be able to hope that a better life is attainable in their own country, in their own home. In this spirit, Italy has promoted – also through our proposal of a 'Migration Compact', to our EU partners – a plan to develop a true partnership with African countries of origin".

MARCO PERTILE

XII. HUMAN RIGHTS

1. THE PROMOTION OF HUMAN RIGHTS IN THE ITALIAN PARLIAMENTARY PRACTICE OF 2016

In 2016, the Italian Government took a stance on a wide range of human rights violations, concerning a variety of countries. The Government's attention was drawn to the widespread human rights violations taking place in Turkey, after the failed military coup and the heavy-handed response by the Turkish Government; in Burundi, where the suppression of the opposition's protests escalated into generalized violence; in Somalia, due to the ongoing civil war; and in Egypt, following General Al-Sisi's takeover. On other occasions, the position expressed by the Italian Government focused on specific human rights issues – such as the limitations on free media in Russia, recourse to the death penalty in Saudi Arabia, the

recruitment of child soldiers in the Somali conflict, as well as the treatment of non-governmental organizations (NGOs) and their staff in Egypt.

A. The Failed Military Coup and the Protection of Human Rights in Turkey

The Italian approach to the failed military coup of 15 July in Turkey, and to the subsequent reaction by the Turkish Government, is noteworthy. With the stated aim to prosecute the alleged perpetrators of the coup (i.e., members of the Gülen movement), thousands of civil servants, academics, judges, members of the military, journalists, staff of NGOs, and parliamentary representatives were detained, and their right of access to a lawyer and to a judge heavily restricted. Dozens of associations, schools, universities, and media outlets were shut down. The European Union and the Council of Europe, as well as most Heads of State and Government of European States, expressed their concern for the extensive limitations imposed on human rights by the Turkish Government.

In Italy, the situation in Turkey was the subject of several parliamentary questions to the Government. Few days after the failed coup, on 20 July 2016, Ms. Maria Elena Boschi, *Ministro per le riforme costituzionali e i rapporti con il Parlamento* (Minister for Constitutional Reforms and Relations with the Parliament), illustrated the Italian and European position regarding the developments in Turkey, also in relation to Turkey's path towards EU membership and the future of the EU-Turkey deal on migration, concluded on 18 March 2016. Speaking before the *Camera dei Deputati* (Chamber of Deputies), during the 658th Meeting (XVII Legislature), the *Ministro* stated:

> "The Italian Government clearly and firmly condemned the attempted military coup of 15 July. At the same time, any deviation from and violation of the rule of law as a reaction to the failed coup is unacceptable to us. As Minister Gentiloni has already declared, the door to Europe remains open for a democratic Turkey – but the decisions of the Turkish authorities will be decisive in preventing that door from closing. Our Government expressed in all circumstances its commitment, along with that of our EU partners, to the full and substantial compliance by Turkey with human rights and democratic freedoms, which Turkey undertook to observe within various international fora, including the Council of Europe".

With regard to the possible reintroduction in Turkey of the death penalty, as put forward by President Erdoğan himself, Ms. Boschi stated:

> "Italy is totally opposed to any proposal to reintroduce the death penalty. The abolition of this inhuman and degrading treatment in 2004 was a milestone in bringing Turkey closer to Europe. I would like to refer to the position already expressed by Minister Gentiloni: if Turkey reintroduced the death penalty, EU accession negotiations would be discontinued immediately, since [the death penalty] would clearly conflict with EU principles".

She then continued:

> "At the same time, the worsening of security in Turkey in light of the several terrorist attacks underscores the importance of an open dialogue with Ankara regarding counter-terrorism measures, with a view to aligning [Turkey's] actions with international standards. This is a prerequisite for going ahead with the

> liberalization of the visa regime. Italy has urged European partners to keep Turkey close along its road to Europe. Democratization and the inclusion of Islamic-based groups in the political institutions were welcomed by the EU as a significant step forward. However, many capitals [of Europe] subsequently failed to provide political support. Now we must tell our Turkish partners that there is willingness to engage in dialogue and to support the path undertaken. Turkey indeed remains an essential interlocutor to restore peace and stability in the Mediterranean and the Near East: but it is up to Turkey whether this path will be possible, in compliance with the international standards on those rights and principles that President Erdoğan himself invoked when calling on the population to thwart the coup".

She concluded:

> "Italy will endeavor, together with the other EU and NATO partners, to drive Turkey in the right direction. As Minister Gentiloni has already clarified, the EU will not be influenced by the agreement on refugees. We will continue to act in accordance with the European principles of freedom and democracy which are at the core of the European integration itself, and which could never be called into question".

On 21 July 2016, within the *Terza Commissione Permanente – Affari esteri e comunitari* (3rd Permanent Committee – Foreign and European Community Affairs) of the *Camera dei Deputati* (Chamber of Deputies), Mr. Vincenzo Amendola, *Sottosegretario di Stato per gli Affari esteri e la cooperazione internazionale* (Undersecretary of State for Foreign Affairs and International Cooperation), answered another question on the human rights situation in Turkey and on the relations between the EU and Turkey in the aftermath of the attempted coup:

> "[The Italian Government, together with the other EU Member States] asked Turkey, in an unequivocal manner, to fully respect the country's constitutional order, underlining the importance of the primacy of the rule of law. Any violation of and deviation from the rule of law is absolutely unacceptable to us, as Minister Gentiloni reminded again today in relation to Ankara's reaction to the failed coup. We asked the Turkish authorities to ensure full respect for all democratic institutions of the country, highlighting the need to uphold democracy, human rights, and fundamental freedoms – including the freedom of the media and of the academic and cultural institutions, and the right for everyone to a fair trial in full compliance with the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocol concerning the Abolition of the Death Penalty. This stance has been firmly and unanimously adopted by EU Member States on the occasion of the Foreign Affairs Council of last Monday, which Minister Gentiloni attended".

Mr. Amendola then reiterated Italy's firm opposition to the reintroduction of the death penalty in Turkey and the immediate disruption of the accession negotiations if that were the case. As regards the EU-Turkey deal on migration, the *Sottosegretario* stated:

> "Clearly, we will continue to monitor, in the relevant European fora, the agreement between the EU and Turkey on the management of the migration crisis. This agreement allowed to institutionalize a common approach to a sensitive and

> complex matter such as that of migrants and refugees. Nonetheless, as Minister Gentiloni declared, 'in this agreement we do not give up on EU principles, otherwise the EU foundations themselves are called into question'. In other words, there is no way the EU could be influenced, in its relations with Turkey, by the deal on refugees".

On 5 August, during the 668th Meeting (XVII Legislature) of the *Camera dei Deputati* (Chamber of Deputies), a parliamentary question was raised in the plenary on the specific issue of the condition of women in Turkey, allegedly further deteriorated after the failed coup. Mr. Benedetto Della Vedova, *Sottosegretario di Stato per gli Affari esteri e la cooperazione internazionale* (Undersecretary of State for Foreign Affairs and International Cooperation), highlighted the constant and firm commitment of the Italian Government to uphold women rights and to fight against gender-based violence, both inside and outside Italy. He then referred to the existing international instruments in this area:

> "We have two specific […] treaties […], whose monitoring mechanisms and procedures Italy supports. They are the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Council of Europe Convention on preventing and combating violence against women and domestic violence, known as the Istanbul Convention. The Italian Government has long based its monitoring of women rights in Turkey on these two instruments, and not only after the failed coup. We strongly support the work of the independent CEDAW Committee".

Having outlined the concluding observations recently issued by the CEDAW Committee on the situation in Turkey, Mr. Della Vedova added that "[w]e will make sure to carefully monitor the follow-up to these recommendations by Turkey, in the knowledge that this process will require long-term support". He then referred to the Universal Periodic Review (UPR) as another important instrument to monitor the situation of human rights, including women rights, in UN Member States. On the basis of this mechanism, the human rights records of each State are reviewed every four years by the other UN Member States within the Human Rights Council:

> "In this context, back in January 2015, Italy addressed specific recommendations to Turkey, including that to implement effectively the Law to Protect Family and Prevent Violence against Women, adopted in 2012 in light of the ratification of the Istanbul Convention in the same year. This recommendation was accepted by Turkey, which committed to implement it over the next few years".

A few months later, on 9 November, during the 704th Meeting (XVII Legislature) of the *Camera dei Deputati* (Chamber of Deputies), the views of the Government were sought on the ongoing restrictions on human rights in Turkey and, more specifically, on the arrest of nine representatives of the HDP (Peoples' Democratic Party). The *Ministro degli Affari esteri e della cooperazione internazionale* (Minister of Foreign Affairs and International Cooperation), Mr. Paolo Gentiloni Silveri, noted in this latter regard:

> "Both the Ministry of Foreign Affairs and the Presidency of the Council of Ministers immediately expressed their concern for and condemnation of [the arrest of various leaders and parliamentarians of the HDP]. The same was done in the following days by our ambassador in Ankara. We consider the arrest of the

> parliamentarians simply unacceptable and you know that the arrest took place after a new law abolishing parliamentary immunity was adopted by a majority last May. We have supported and continue to support Turkey in countering the military coup, and we show our solidarity to Turkey against terrorist attacks, including those carried out by the PKK, which we consider, along with the EU, a terrorist organization. However, arrests like these cannot be justified in any way. On the other hand the HDP, whose parliamentary leaders have been arrested, should be an interlocutor, as I told Demirtaş himself [one of the HDP leaders] during our last meeting in Ankara; it should be a key to the solution of Turkey's problems, certainly not a target of criminalization. Therefore, those who like Italy have always supported the path of dialogue between Turkey and the EU, and maintain in these months that the deal concluded between the EU and Turkey on migration should be preserved, cannot in any way accept the escalation of witch hunt and arrests, nor the treatment of the leaders of the third party in the Turkish Parliament […]".

The issue of the human rights situation in Turkey, and its impact on the accession of this country to the EU, was raised again on 23 November, during the 708th Meeting (XVII Legislature) of the *Camera dei Deputati* (Chamber of Deputies). The *Ministro degli Affari esteri e della cooperazione internazionale* (Minister of Foreign Affairs and International Cooperation), Mr. Paolo Gentiloni Silveri, replied as follows:

> "Turkey is clearly a country under attack, a country that underwent an attempted coup, a country that is the victim of repeated terrorist attacks, but it is also – not only in the last months, but particularly in this period – a country where the violations of the rule of law as we understand it are frequent, and where, most notably, a very serious incident took place, namely the arrest of almost the entire steering group of the third opposition party. […] At the same time, it is true that we – as EU or Italy – would not benefit in any way from closing the door to Turkey. Therefore, it is in this undoubtedly complicated scenario, and along this undoubtedly narrow path, that we must operate: on the one hand, by condemning extremely serious incidents, such as the most recent one concerning the HDP leadership, and at the same time by allowing Turkey to decide [as to its road to Europe]".

B. The Human Rights Situation in Burundi

The human rights records of other countries and the stance of the Italian Government on the matter were also scrutinized by the Italian Parliament in 2016. In Burundi, the decision of the outgoing President, Mr. Pierre Nkurunziza, to run for a third term, in violation of the country's constitution, triggered violent outbursts, and a more violent reaction of the Burundian Government. The victims of the government's crackdown on the opposition being mainly ethnic Tutsi, the issue was raised, during the 553th Meeting (XVII Legislature) of the *Camera dei Deputati* (Chamber of Deputies) on 22 January 2016, whether a genocide was indeed taking place in Burundi, and the Government was asked to illustrate the initiatives that it intended to take to put an end to violence. Mr. Della Vedova explained: "Notwithstanding the extreme seriousness of the country's situation, I believe it is premature to refer to a full-blown 'genocide', also in light of the assessment made by the United Nations".

As to the steps taken by the Italian Government, the *Sottosegretario* stated:

> "Faced with this complex situation, Italy has long and strongly supported ongoing diplomatic efforts to get the parties around the negotiating table. […] The [Italian] Government, also in light of the principle of African ownership of the management of local crises, believes that the regional mediation must be supported. This mediation is currently being carried out by Mr. Museveni, President of Uganda, under a mandate from the East African Community, and might be complemented by stronger support from the African Union, which has consistently and resolutely condemned the Bujumbura regime throughout the crisis".

Mr. Della Vedova then turned to the action undertaken by the EU, essentially based on the Cotonou Agreement. This Agreement, concluded between the EU on the one hand and 79 countries from Africa, the Caribbean and the Pacific on the other, is not limited to economic and trade cooperation, but covers a wide range of areas, from development aid to security, including human rights:

> "At the EU level, we are working with our partners to conclude, between the end of February and the beginning of March, the EU-Burundi consultations, which have been triggered by the violation of human rights, in accordance with Article 96 of the Cotonou Agreement. These consultations represent an intermediate stage before the adoption of actual sanctions, such as the suspension of EU development aid. In this context, the European External Action Service is considering possible measures to pursue cooperation with Burundi through channels other than the governmental one. Furthermore, the EU reserves the right to take new restrictive measures, in addition to the one adopted on 1 October [2015] against individuals responsible for acts of violence, human rights violations, and obstruction of political dialogue".

Finally, he referred to the measures adopted at the UN level:

> "Also in a multilateral context, we strongly support the action of the UN, particularly that of the UN Human Rights Council in Geneva. Within this framework, on 17 December [2015], we supported, together with our partners, a resolution asking the urgent deployment in the country of a mission by independent experts, as well as recommendations on technical assistance to support the reconciliation process and the implementation of the Arusha Accords".

The situation in Burundi, and the initiatives taken at the international and European levels with a view to solving the crisis, were followed up by way of another parliamentary question on 13 September 2016, during the 671th Meeting (XVII Legislature) of the *Camera dei Deputati* (Chamber of Deputies). The *Viceministro degli Affari esteri e della cooperazione internazionale* (Deputy Minister of Foreign Affairs and International Cooperation), Mr. Mario Giro, declared that the Italian Government reminded multiple times its Burundian counterpart of this latter's international obligations regarding human rights, as well as of the importance of an open and inclusive political dialogue involving all parties concerned, both within and outside the country. As regards multilateral initiatives, the *Viceministro* recalled the first Italy-Africa Ministerial Conference, held at the Italian Ministry of Foreign Affairs on 18 May 2016, where the issues of peace and human rights were discussed. Mr. Giro also mentioned

Italy's action within the UN Human Rights Council, including the adoption of Resolution 30/27 on the human rights situation in Burundi (2 October 2015), and of the abovementioned Resolution S-24/1 on the deployment of an expert mission in the country (17 December 2015). He then added, with respect to the EU level:

> "We are committed to support, with the EU, the mediation efforts by the East African Community and the African Union for a solution of the crisis. Nonetheless, after the encouraging signs from the Inter-Burundi Dialogue session of last May, no progress has been made, also because of the support that the Burundian Government received by the African Union. In so far as politico-economic means of pressure are concerned, the EU suspended its development aid to Burundi on the basis of the Cotonou Agreement […], as a sanction for the failure of the intensified political dialogue on human rights, as provided for by Article 96 of the Agreement. In any case Italy, together with its European partners, shall ensure that this sanctions regime does not exacerbate further the economic and social situation of the Burundian population – one of the poorest in the world. As an additional means of pressure on the country, Resolution No. 2248 of the UN Security Council provides for the possibility to adopt restrictive measures against individuals responsible for serious crimes".

C. The Human Rights Situation in Somalia

On 30 June 2016, within the *Terza Commissione Permanente – Affari esteri e comunitari* (3rd Permanent Committee – Foreign and European Community Affairs) of the *Camera dei Deputati* (Chamber of Deputies), the security situation in Somalia was dealt with. Particular attention was paid to the scourge of child soldiers in the country. In this regard, the *Sottosegretario* referred to Italy's action at the UN level, specifically within the UPR framework:

> "As far as human rights are concerned, Italy actively participated in the UPR second cycle concerning Somalia […]. In this context, at the beginning of this year, Italy recommended Somalia to ratify the Optional Protocols to the Convention on the Rights of the Child (thus including the Optional Protocol on the involvement of children in armed conflict) and to step up its efforts to prevent and put an end to the phenomenon of child soldiers. Somalia took note of this recommendation".

D. The Human Rights Situation in Saudi Arabia

On 14 July 2016, the *Terza Commissione Permanente – Affari esteri e comunitari* (3rd Permanent Committee – Foreign and European Community Affairs) of the *Camera dei Deputati* (Chamber of Deputies) debated the state of human rights in Saudi Arabia. The case of Ali Mohamed Al-Nimr was specifically addressed: Al-Nimr was arrested during anti-government protests in 2012, when he was still a minor, and then sentenced to death (a first time in May 2014, and definitively in September 2015). The case of Al-Nimr gave *Sottosegretario* Della Vedova the opportunity to set out the Italian Government's position on the death penalty more generally:

> "Italy raises the issue of recourse to the death penalty both on the occasion of bilateral meetings with the Saudi authorities and in the appropriate multilateral fora, in line with Italy's commitment to promote a global moratorium on the death penalty. […] On the occasion of the UPR second cycle, to which Saudi Arabia was subject in October 2013, Italy recommended the country to implement a moratorium on executions (recommendation which Saudi Arabia took note of) and to strengthen the transparency and publicity of trials that can lead to the death penalty (recommendation accepted by Saudi Arabia)".

As regards the specific case of Al-Nimr, the *Sottosegretario* noted:

> "The Italian Minister of Foreign Affairs, also through our Embassy in Riad, is monitoring the case in close coordination with the diplomatic missions of the other EU Member States and with the EU delegation on site. Together with our European partners, we are also engaged in identifying – in a coordinated manner – the most appropriate methods of intervention, in relation to both the Ali Al-Nimr case and other highly sensitive cases. In this affair, Italy has also strongly supported the steps taken informally by the EU vis-à-vis the Saudi authorities, with a view to obtaining updated information on the situation of Al-Nimr and to calling for a positive solution of the case".

E. The Human Rights Situation in the Russian Federation

That Italy acts within the relevant international organizations to promote respect for human rights by other countries is also clearly illustrated by the reply given by *Sottosegretario* Della Vedova to a question raised, during the session of 6 October 2016 of the *Terza Commissione Permanente – Affari esteri e comunitari* (3rd Permanent Committee – Foreign and European Community Affairs) of the *Camera dei Deputati* (Chamber of Deputies), on free media in Russia:

> "Italy strongly supports international initiatives, developed within the competent international organizations, aimed at protecting the freedom of expression and information, including in the Russian Federation. We especially support the action of the Council of Europe for strengthening fundamental rights, the rule of law, and democratic institutions across the European continent. In April 2015, the Council of Europe created, with Italy's support, the Platform for the protection and safety of journalists. […] At the EU level, the issue of respect for the freedom of expression and for the pluralism of the media is raised within the bilateral meetings with Russian counterparts – most recently on 19 September, within the ongoing session of the Human Rights Council in Geneva. On that occasion, we supported the action of the EU which, in the course of its statement regarding human rights situations that require the Council's attention because of their seriousness, reiterated its concerns for the implementation of the laws on 'foreign agents' and on 'undesirable organizations', as well as for the increasing limitations on the freedom of assembly and expression online and offline in the Russian Federation, which are restricting the scope available for the independent civil society. Furthermore, the EU condemned the attacks against the opposition, journalists, and human rights defenders. Along with Italy's support to the above-mentioned initiatives at the multilateral level, our country is committed to raise

the issue of freedom of expression and information in the course of bilateral political dialogue with Russian counterparts".

F. The Human Rights Situation in Egypt

The arrest of Ahmed Abdallah, Egyptian human rights activist and consultant for the family of Giulio Regeni (the Italian Ph.D. student murdered in Cairo at the beginning of 2016), triggered a debate, within the *Terza Commissione Permanente – Affari esteri e comunitari* (3rd Permanent Committee – Foreign and European Community Affairs) of the *Camera dei Deputati* (Chamber of Deputies), on the state of human rights in Egypt. *Sottosegretario* Della Vedova thus outlined the Government's position during the Committee's session of 30 June 2016:

> "The Italian Government is well aware of the complexity of the political transition in Egypt and of its challenges. These include the limitation on freedoms in the country, the troubling human rights situation, the risk of excluding large sections of society – especially young people – from the political process. All these issues are constantly monitored by the Italian Government, both at the bilateral level and within the wider framework of the UN and, notably, of the EU. Both Italy and the EU regularly refer to the problematic situation of human rights in Egypt within the relevant international fora. Italy largely coordinated, in Cairo also, with its European and international partners with a view to highlighting the human rights situation in Egypt through appropriate requests to the Egyptian authorities".

He then added, in relation to the case of Ahmed Abdallah:

> "As regards the specific case of the Egyptian activist Ahmed Abdallah (who started a hunger strike in detention to raise awareness on his conditions), at the instigation of the Italian Embassy in Cairo and in coordination with the local EU delegation, steps were taken vis-à-vis the Egyptian authorities. We expressed our deep concern for the arrest, and asked that the fair trial guarantees enshrined in the Egyptian constitution be fully upheld. An official of the Italian Embassy has constantly attended the hearings of the trial against Ahmed Abdallah, where his detention on remand has been extended. Reflection on further initiatives is under way, jointly with our European partners".

The Italian Government had the opportunity to illustrate further its stance on the human rights situation in Egypt on the occasion of a parliamentary question specifically concerning the condition of the staff of human rights NGOs in the country. Mr. Della Vedova thus addressed the *Terza Commissione Permanente – Affari esteri e comunitari* (3rd Permanent Committee – Foreign and European Community Affairs) of the *Camera dei Deputati* (Chamber of Deputies) on 3 November 2016:

> "Notwithstanding several converging interests on crucial matters, such as the fight against terrorism and the solution of the main crises in the common neighborhood, Italy is engaged in an open discussion with Egypt on the significant [human rights] challenges. This applies to both bilateral relations and the wider EU and UN frameworks. […] During the last September session of the Human Rights Council in Geneva, as well as in previous sessions, the EU statement, which Italy

clearly fully supports, expressed grave concern for the situation of human rights in Egypt".

With specific regard to the situation of Egyptian NGOs, Mr. Della Vedova added:

> "Firm support to a free and plural Egyptian civil society is an important objective of the Italian foreign policy. On this matter, within the UPR second cycle, in November 2014 […], Italy recommended that Egypt reform the legal framework on freedom of association and on the limitations on NGO's activities in conformity with international standards. […] The importance of the activities undertaken by [human rights NGOs] is well known and recognized by Italy and its European partners. That is why, through the EU delegation in Cairo, we communicated to the Egyptian authorities our objection to the shutdown of the Nadeem Center, a well-respected center monitoring human rights violations, torture, and forced disappearances. Furthermore, officials of the Italian Embassy, in coordination with other European and non-European States, attended the hearings of prominent court cases, most recently of the case concerning the so-called foreign funding. […] Moreover, in this context, the Egyptian Government decided to submit to Parliament a bill on NGOs, which will clearly have an impact on the actual autonomy and freedom of action of the various members of Egyptian civil society. In this regard, EU and Italy expressed to the Egyptian authorities their hope that the new law will comply with the principles enshrined in the Egyptian constitution and with the international treaties to which Egypt is party. The Italian Government will make every effort, in all relevant fora, to ensure that the Egyptian authorities follow up on those positive signs by widening the scope for NGOs' and civil society's activities, in full conformity with the Egyptian laws and constitution".

CHIARA TEA ANTONIAZZI

2. ON THE INCHOATE RIGHT TO HUMAN DIGNITY UNDER INTERNATIONAL LAW

Human dignity is usually seen as providing the moral foundation of all human rights. It is thus no wonder that it is cited in several legal instruments at the domestic level, most often in national constitutions. The role of human dignity in such texts may differ widely, as it may just serve a rhetorical function or, on the contrary, correspond to a self-standing and judicially enforceable right. Nevertheless, the number of constitutional instruments that make some reference to it is quite large. With no ambition of being exhaustive one might quote the constitutions of: Belgium (Article 23), Bolivia (Articles 9, 21 and 22), Colombia (Articles 1), Ecuador (Article 11), Egypt (Preamble and Article 51), Ethiopia (Article 24), Germany (Article 1), Greece (Article 7), Hungary (Article 54), Italy (Article 3), Kenya (Articles 10, 19 and 28), Namibia (Preamble and Article 8), Peru (Articles 1 and 3), Poland (Preamble and Article 30), Portugal (Article 1), the Russian Federation (Article 21), South Africa (Articles 1, 7 and 10), Spain (Article 10), Switzerland (Article 7), Ukraine (Articles 3 and 28), as well as the 1992 Basic Law of Israel (Articles 1 and 4). Moreover, in some cases where a national constitution does not mention human dignity, courts – even supreme courts – have used it to support their conclusions (such as in Canada[8] and the United States[9]).

[8] ULLRICH, "Concurring Visions: Human Dignity in the Canadian Charter of Rights and Freedoms and the Basic Law of the Federal Republic of Germany", Global Jurist Frontiers, Vol. 3, Issue 1, 2003, pp. 1-103.

At the international level, too, invocations of human dignity are present in a number of treaties and other legal texts: for instance, in the preambles of the Charter of the United Nations, the Universal Declaration of Human Rights, and of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The duty to protect human dignity is also clearly stated in Article 1 of the Charter of Fundamental Rights of the European Union.

Against this background, on 27 October 2016, at the 71st General Assembly Meeting on the Report of the International Court of Justice, Minister Plenipotentiary Andrea Tiriticco, *Capo del Servizio per gli Affari giuridici, del Contenzioso diplomatico e dei Trattati presso il Ministero degli Affari esteri* (Director General for Legal Affairs, Diplomatic Disputes and International Agreements at the Ministry of Foreign Affairs), took position on behalf of Italy and expressed the view that an international right to human dignity, presumably a custom or a general principle of law, would be now emerging from the practice of States. More specifically, he stated that:

> "As the international community framework expands to include new actors and a progressively tightened network of relations, and as international law adjusts to new scenarios, we cannot fail to recognize the increasing call for the primacy of a number of principles that should constitute the pillars of peace in this new magmatic world order. In this respect, we express our belief that the inalienable right to human dignity is one of such fundamental principles emerging in international law. It draws its force not only by virtue of its universality but also from the recognition given by States, whether constitutionally enshrined or through a consolidating domestic jurisprudence. From this perspective, we wish to convey our vision that the international law system should ensure its own effectiveness through a fairly balanced approach between the different principles governing the international community today".
>
> PAOLO TURRINI

XIV. CO-OPERATION IN JUDICIAL, LEGAL, SECURITY, AND SOCIO-ECONOMIC MATTERS

1. THE GOVERNMENT'S POSITION VIS-À-VIS EGYPT ON THE KILLING OF THE ITALIAN NATIONAL GIULIO REGENI

At the beginning of 2016, the Italian national Giulio Regeni was murdered in Cairo in unclear circumstances. This soon became a major issue in the foreign policy of Italy and a cause of tension in its relations with Egypt. The event is here illustrated through the accounts given by the members of the Italian Government themselves, on the occasion of official reports to the Parliament. At the same time, some important political and legal aspects are also briefly addressed.

On 9 February 2016, few days after the disappearance of Giulio Regeni, Mr. Benedetto Della Vedova, *Sottosegretario di Stato agli Affari esteri e alla cooperazione internazionale* (Undersecretary of State for Foreign Affairs and International Cooperation), was invited by the *Terza Commissione Permanente – Affari esteri, Emigrazione* (3rd Permanent Committee –

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[9] See, e.g., GOODMAN, "Human Dignity in Supreme Court Constitutional Jurisprudence", Nebraska Law Review, 2006, pp. 740-794; and GLENSY, "The Right to Dignity", Columbia Human Rights Law Review, 2011, pp. 86-95.

Foreign Affairs, Emigration) of the *Camera dei Deputati* (Chamber of Deputies) to summarize the facts of the case. His account of the events is as follows:

> "Giulio Regeni was a Ph.D. candidate at Cambridge University and, since September, he had been in Cairo as visiting researcher at the American University there. His research was economic in character and mainly concerned the role of independent trade unions in Egypt. He had studied Arabic, knew the country well, having already been there in the past, and had a great interest in it. On 25 January – the day of the fifth anniversary of the Egyptian revolution – some friends were waiting for him to have dinner together at a restaurant in Cairo, but he never reached the place of the meeting. […] Warned by [one of these friends, a professor at the American University], the Italian Embassy took immediate action by informing the local authorities and, at the same time, activating all possible channels of communication in order to find Giulio. In the hours immediately following the disappearance, the Italian Ambassador Maurizio Massari drew the attention of the Egyptian Minister of the Interior to the case, through the Egyptian Minister for Military Production, stressing the sensitivity of the case and the attention paid by Italy to the search [for Regeni]. The Egyptian authorities assured that all necessary efforts would be made in order to find our compatriot. The Egyptian police and military intelligence excluded that Giulio Regeni had been detained or arrested. […] Acting upon Minister Gentiloni's instructions, Ambassador Massari made contact with Fayza Aboul Naga, President al-Sisi's Advisor on National Security, and with Ambassador Hossam Zaki, Deputy Minister of Foreign Affairs. […] In this context, on 31 January, Minister Gentiloni himself had a direct phone conversation with his Egyptian counterpart Sameh Shoukry, to whom he expressed the deep concern of the Italian Government for the fate of our compatriot and urged that every effort be made in order to find him and obtain information on his conditions. […] The Italian Ministry of Foreign Affairs took further action on 2 February, when Ambassador Massari met the Egyptian Minister of the Interior, Magdi Adel Ghaffar, to whom he manifested the growing concern of the Italian Government for the situation, pointing to the growing interest of the Italian public opinion and mass media in the case, and renewed his appeal for a swift and positive solution of the matter. The Egyptian Minister, on his part, assured that investigations were ongoing and that all information gathered by the Egyptian intelligence service, which has a solid experience in localizing peoples, would be shared with the Italian Embassy. […] On 3 February, the Minister for Industrial Activities, Federica Guidi, landed in Cairo at the head of a long-scheduled entrepreneurial mission and raised the issue of Regeni's disappearance during a closed-door meeting with President al-Sisi, asking him that all efforts be made in order to find our compatriot. […] On the same day, around 8 p.m., during the official ceremony organized by the Italian Embassy on the occasion of the visit by Minister Guidi and her delegation, Ambassador Zaki, Assistant Minister for European Affairs at the Egyptian Ministry of Foreign Affairs, unofficially informed Ambassador Massari of the discovery of a body matching Giulio Regeni's description. […] Minister Guidi, in agreement with Minister Gentiloni, decided to cancel her visit and immediately go back to Italy. Minister Gentiloni, who was in London at that time, […] asked Egypt that light be shed on what happened, by means of investigations carried out with the participation of Italian experts as well. The night between 3 and 4 February, absent any confirmation by the Egyptian authorities on the

> identification of the corpse that was discovered as the body of Giulio Regeni, Ambassador Massari went to the morgue to see the body found in a ditch in Giza, a Cairo district far from the place where on 25 January Giulio was supposed to go for dinner. The official confirmation was given by the Egyptian authorities on 4 February, also because of pressure from the Italian Embassy. According to the preliminary results of the autopsy conducted in Cairo by the Egyptian coroner, Giulio Regeni's body shows ecchymoses, burns, and cuts on the chest and shoulders. Therefore, it appears as a violent death at the hands of persons unknown, preceded by torture, whose circumstances are now under investigation. On 4 February, in the morning, […] Minister Gentiloni had an ad hoc meeting in London with his Egyptian counterpart Shoukry and expressed his awe for the fate of our compatriot, and asked the full cooperation of Egypt, also through the inclusion of Italian experts in the investigations. At the same time, upon Minister Gentiloni's instructions, the Secretary General of the Italian Minister of Foreign Affairs urgently summoned to the Farnesina the Egyptian Ambassador in Rome, expressing Italy's dismay at the tragic fate of our young compatriot and stressing that unrestrained, efficient and transparent collaboration was expected. […] In the meantime, in Cairo, Ambassador Massari handed personally to the Head of Cabinet of the Egyptian Ministry of Foreign Affairs a note verbale requesting that the discovery of Giulio's body be made official, that a thorough inquiry be carried out with the participation of Italian experts and finally, that the body of our compatriot be returned for repatriation to Italy. On the same day, 4 February, President al-Sisi made a phone call to Prime Minister Matteo Renzi and told him that he had ordered the Ministry of the Interior and the Attorney General's Office that every effort be made in order to dispel all ambiguity and determine the circumstances of Giulio Regeni's death. President Renzi then obtained President al-Sisi assurances of full cooperation by the Egyptian authorities and his consent to sending a team of Italian experts to participate in the ongoing investigations in Cairo. Meanwhile, in the afternoon of 4 February, Ambassador Massari had a second talk with the Head of Cabinet of the Egyptian Ministry of Foreign Affairs, during which Ambassador Din assured that Regeni's body could be repatriated shortly, and this actually occurred on 6 February. […] On the judicial level, a few days ago the Italian Embassy transmitted the notice of the disappearance of Regeni to the Public Prosecutor's Office [*Procura della Repubblica*] of Rome, and later gave notice of his death. As a consequence, the Public Prosecutor's Office opened an investigation. The team of Italian investigators sent by Rome reached Cairo on the evening of 5 February. […] The day after, the team had a long meeting with high representatives of the Ministry of the Interior, and another long meeting with technical experts of the police".

On 5 April 2016, the *Ministro degli Affari esteri e della cooperazione internazionale* (Minister of Foreign Affairs and International Cooperation), Mr. Paolo Gentiloni Silveri, gave two speeches before the Italian Parliament – first at the *Senato della Repubblica* (Senate of the Republic, 603rd Meeting, XVII Legislature), and later at the Chamber of Deputies (602nd Meeting, XVII Legislature) – in order to update the MPs on the developments of the Regeni case. Recalling the words of Prime Minister Renzi (who had said: "we will stop only when we find out the truth – the real truth, not the convenient one"), he summed up the main actions taken by his Government and the Italian judicial organs to that end:

> "After a first phase of information-sharing on the ongoing investigation, the cooperation between our investigative team and the Egyptian authorities revealed to be, as time passed by, generic and insufficient. Thus, in late February, I informed my counterpart, the Egyptian Minister of Foreign Affairs, of a note verbale, delivered the day after, in which our Embassy asked directly and in detail to obtain five categories of investigative files that could somehow increase and complete the work that our investigators were also trying to carry out. On 2 March a 91-page dossier was delivered to our Embassy and, through it, sent to the Public Prosecutor's Office of Rome, which in the meantime had started its own enquiry".

According to Minister Gentiloni, however, the dossier was incomplete, while misleading information had at the same time been disseminated in the form of quasi-official reconstructions describing Giulio Regeni as working for the intelligence of some Western State. This notwithstanding, the confirmation by President al-Sisi of his personal commitment contributed to a temporary improvement of the relations between the two States. Mr. Gentiloni continued as follows:

> "Once again, however, ten days later, on the late evening of 24 March, our investigative team was invited by the Egyptian authorities responsible for the investigation for a briefing on the killing of a group of five criminals, who, by pretending to be policemen, used to kidnap foreigners. According to this briefing, […] Giulio Regeni's passport and university documents had been found inside a bag in the house of the leader of this group of criminals. This, objectively, appeared as a further and perhaps even more serious attempt to corroborate a truth of convenience. […] Both the Italian Government and the Public Prosecutor's Office, through their own contacts, immediately made clear that we would not accept this to be the conclusion of this investigation".

It is worth noting that the scant and unfruitful cooperation between Italy and Egypt led the former, on 8 April 2016, and thus only few days after Minister Gentiloni's speech, to recall its ambassador in Cairo. One month later, on 11 May 2016, a new ambassador, Mr. Giampaolo Cantini, was nominated but never sent to Egypt, so that the normal diplomatic relations between the two Countries have not, as of April 2017, resumed yet.

Minister Gentiloni then underlined that the firm stance taken by Italy contributed to bringing the Egyptian authorities to retract the abovementioned version of the facts, and described as a positive turn their reassurances that the enquiry would go on. He then urged the Parliament to express its position on Italy's resolute attitude towards Egypt:

> "At this point, honorable colleagues, I believe it is not only legitimate, but necessary that the Parliament wonders whether the firm reactions of the Government, the Parliament, the judiciary, of Giulio Regeni's family, and of the whole country will manage to restore a channel of full cooperation between Italy and Egypt. This is the same channel of cooperation that President al-Sisi himself assured he wanted to keep open".

On the role of the legislature, already at the beginning of his speech, Minister Gentiloni had stated that "it is useful that the Parliament makes itself heard in a loud and unanimous voice". In that, he was obviously referring to exerting political pressure on Egypt. However, it is worth recalling the concrete steps taken by the Italian Parliament as related to the Regeni case.

In the first place, both at the *Camera dei Deputati* (Chamber of Deputies) and at the *Senato della Repubblica* (Senate of the Republic) proposals have been put forward to establish parliamentary commissions of enquiry on Giulio Regeni's death. However, as of April 2017, such proposals (Doc. XXII no. 68 for the Chamber of Deputies and Doc. XXII no. 33 for the Senate, both dated 24 May 2016) are still stalled.

In the second place, on 29 June 2016 the *Senato della Repubblica* (Senate of the Republic) (650th Meeting, XVII Legislature) voted by a majority of 159 to 55 for amending Draft Law 2389 on certain measures for the consolidation of peace and security at the international level, which provides, among other things, the delivery free of charge of military materials to some foreign States, namely Iraq, Albania, Uganda and Egypt. With Amendment 4.100 by the Joint Committees (which came to be known as the "Regeni Amendment"), the transfer to Egypt of replacement parts for F-16 aircrafts was cancelled, in retaliation for the State's lack of real cooperation with Italy. In the same vein but in much more general terms, on this occasion also Motion G4.1002 was passed, which

> "commits the Government not to authorize transfers of weapons and weapon systems free of charge to the benefit of States responsible for committing grave violations of international human rights conventions, as established by the competent organs of the United Nations, the European Union or the Council of Europe, or States training and employing children in combat".

Thirdly and finally, on 26 May 2016, in the course of a debate on amendments to the Italian Criminal Code in order to include a new crime of perverting the course of justice [*inquinamento processuale e depistaggio*], Motion G1.100, which was explicitly connected with the Regeni case, was proposed at the *Senato della Repubblica* (Senate of the Republic) (635th Meeting, XVII Legislature). Such motion read:

> "The Senate […] having regard to the fact that: Article 7(5) of the Criminal Code provides for the punishment in accordance with Italian law of a national or an alien who commits abroad any crime for which the applicability of Italian criminal law is established by special law provisions or by international conventions; [also having regard to] the opaque way in which the Egyptian judiciary – also in the opinion of our national authorities – is conducting the investigations on the murder of the Italian national Giulio Regeni, is painfully topical. Regeni disappeared on 25 January in Cairo under circumstances that the Ministry of Foreign Affairs immediately described as 'mysterious'. Since the finding of his body, on 3 February, many hypotheses have been put forward, though it seems certain that he was tortured and that some units, even parallel to the security organs of Egypt, may be involved in the subsequent tampering of evidence; therefore, it is only right to extend the possibility for the Italian judicial authorities to prosecute those responsible of crimes against Italian nationals, especially in case of breaches of fundamental human rights, as protected by the Italian Constitution and international human rights treaties. These crimes do not only harm a political interest of the Italian State, which has the right as well as the duty to intervene to protect the rights of its nationals and provide them with the assistance needed, but also violate the fundamental rights of the victims themselves, as safeguarded by our Constitution and by international norms incorporated in our legal order, such as the right to life, the right to personal freedom, the right of free association, and the right to freedom of expression, commits the Government to consider the possibility of giving effect to the content

> of the item on the agenda under examination, extending the scope of application of the Italian criminal jurisdiction by amending Article 7(5) of the Criminal Code, so as to include the crime of perverting the course of justice […] where committed abroad against Italian or EU citizens".

The abovementioned motion, however, was not approved in full. The proponent of the bill to which it was attached, Mr. Felice Casson, endorsed by the representative of the Government, the *Sottosegretario di Stato alla Giustizia* (Undersecretary of State for Justice), Ms. Federica Chiavaroli, successfully recommended the deletion of its first and third paragraphs. The proposed extension of extraterritorial jurisdiction was rejected without giving a reason, whereas the whole reference to the Regeni case was erased because – in the words of Mr. Casson – "it referred to specific facts that concern the situation with Egypt, which is a country we do not want to start a conflict with".

The reasons behind Italy's willingness not to undermine its relationship with Egypt relate to the role of the latter in both the fight against terrorism in the Middle East and the containment of migratory flows from Africa, as explicitly declared on 13 July 2016 by Minister Gentiloni at the *Camera dei Deputati* (Chamber of Deputies) (653rd Meeting, XVII Legislature). However, according to him, "stressing such a role and the cooperation between Italy and Egypt, which the Government does not intend to question, has not undermined our determination in demanding collaboration and the truth on a fact that tragically involved an Italian national […]".

A similar tone has been used in other statements of the Italian Government concerning the Regeni case. Italy's stance on this issue is often expressed by resorting to a similar wording, that is, by affirming that the Government will not accept convenient truths and will insist on obtaining Egypt's full cooperation with the aim of finding those responsible for Giulio Regeni's assassination. Examples can be found in virtually all the Government's statements here reported and translated, and in other ones as well (for instance, Mr. Della Vedova's speech before the *Terza Commissione permanente – Affari esteri e comunitari* (3rd Permanent Committee – Foreign Affairs, Emigration) of the *Camera dei Deputati* (Chamber of Deputies), on 30 June 2016).

The Government also made clear what it means when it demands full cooperation from Egypt. In his speech of 5 April 2016, Minister Gentiloni explained:

> "What do we mean by this? We mean, for example, acquiring all missing documents; we mean giving no credit to distorted or convenient truths; we mean, for example, establishing who were those responsible for spying on Giulio Regeni prior to his disappearance; we mean accepting the idea that the Italian investigators in Egypt play a more active role in the enquiry, of course under the judicial supervision of the Egyptian investigators, as provided by law".

The same concept has been put forth on other occasions, sometimes in even stronger terms. On 24 February 2016, replying to a parliamentary question on the case before the *Camera dei Deputati* (Chamber of Deputies, 576th Meeting, XVII Legislature), Minister Gentiloni adopted a more imperative tone:

> "[W]e will not accept convenient truths, nor unlikely hypotheses like those that were evoked even this morning in Cairo. The cooperation with the team of our investigators can and must be more effective, meaning that the Italian investigators cannot be just informed: they must have access to all audio and

video recordings, all medical documentation, and to the proceedings of the trial […]".

It is difficult to say whether the Italian Government, by resorting to this language, assumes the existence of a right to take part in the Egyptian enquiry and obtain the related data. At any rate, it is a fact that the Government threatened the adoption of retaliatory measures in the event that Egypt does not give effect to such a tight cooperation. In the words of Minister Gentiloni, as uttered on 5 April 2016 before the *Camera dei Deputati* (Chamber of Deputies):

> "Something is to be said now, even with a bit of solemnity if you want, that is, it is to be said in the Parliament, so that there is no doubt that, if this improvement [in Egypt's cooperation] does not occur, the Government is ready to adopt those immediate and proportionate measures that it will deem necessary, promptly informing the Parliament".

As seen above, Italy has already taken some of these measures. For example, in April 2016 the Government decided to call back the Italian ambassador in Cairo, while the Parliament cancelled the transfer free of charge of military materials to Egypt. Both acts were said to be Italy's reaction to Egypt's lack of real cooperation. To these, another one must be added. On 3 November 2016, Mr. Della Vedova, before the *Terza Commissione permanente – Affari esteri, Emigrazione* (3rd Permanent Committee – Foreign Affairs, Emigration) of the *Camera dei Deputati* (Chamber of Deputies), affirmed that:

> "Notwithstanding the multiple converging interests on crucial issues such as the fight against terrorism and the overcoming of the main crises in the common neighbourhood, we have always been straightforward with Egypt on such critical points, in our bilateral relations as well as in the wider EU and UN context. As is well known, we acted consistently with our position on the Regeni case by not voting for Egypt during the recent elections in New York for the renewal of the Human Rights Council's membership".

PAOLO TURRINI

2. THE ITALIAN GOVERNMENT'S POSITION ON THE NEGOTIATION AND APPROVAL OF CETA

Throughout 2016, the Italian Government was called upon on several occasions to express its position on the negotiation and approval of the Comprehensive Economic and Trade Agreement between Canada and the EU (CETA). EU-Canada negotiations on CETA began in May 2009 and were declared concluded in September 2014. The legal review of the agreement was completed in February 2016,[10] but before submitting CETA to the EU Council for signature, the EU Commission had to make a decision on how to qualify the agreement under EU law. While initially taking the view that under Article 3 of the Treaty on the Functioning of the European Union CETA was to be considered a "EU only agreement", falling within the sole competence of the EU as part of its commercial policy, in July 2016 the EU Commission finally decided to qualify CETA as a "mixed agreement",[11] subject to the

[10] The text of the agreement is available at: <http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc_152806.pdf>.

[11] The EU Commission's decision is available at: <http://eur-lex.europa.eu/resource.html?uri=cellar:b922cc35-4357-11e6-9c64-

approval of each of the national parliaments of the EU Member States as containing elements of both exclusive EU's and Member States' competences. Such decision was taken in light of the position expressed on the matter by the majority of Member States, which formally asked to consider CETA as a "mixed agreement". The EU and Canada finally signed CETA on 30 October 2016.[12] The EU Parliament approved the agreement on 15 February 2017. Once Canada would have ratified the agreement, CETA will be provisionally applied[13] pending ratification by all of the EU Member States.[14]

Interestingly, in contrast with the wide majority of the other Member States, in May 2016 Italy decided to take the initial EU Commission's stand on the nature of the agreement and announced its willingness to consider CETA as a "EU only agreement". The Italian Government's view on the matter was expressed on 27 June 2016, when the *Senato della Repubblica* (Senate of the Republic, 646th Meeting, XVII Legislature) rejected two parliamentary motions aimed at involving the national parliaments of EU Member States in the process of approval of CETA.

On 1 July 2016, before the EU Commission announced its decision, the *Sottosegretario di Stato per lo Sviluppo economico* (Undersecretary of State for Economic Development), Mr. Ivan Scalfarotto, reported to the *Camera dei Deputati* (Chamber of Deputies, 646th Meeting, XVII Legislature) on the Government's position on the involvement of national parliaments in the process of accession to and ratification of CETA. He explained the Government's stand on the interpretation of CETA as a "EU only" agreement by stating the following:

> "Should the agreement be considered of a mixed nature, any decision regarding CETA would have to be taken unanimously by Member States and the agreement would have to be ratified according to the mechanisms provided by each constitutional system. The practical outcome of such an option is self-evident: waiting for national ratifications, the provisional application that would take place would end up being very narrow as it would have to reflect different national sensitivities. Moreover, each national parliament alone could decide not to ratify and in such case CETA would never enter into force. It is exactly for these reasons, and in light of the strategic importance of the agreement, that on 28 May the Commissioner for Trade, Ms. Cecilia Malmström, and the President of the EU Commission, Mr. Juncker, have been informed of the fact that, in principle, pending the decision of the ECJ, we are open to the idea of treating CETA as a 'EU only agreement' – thus as an agreement within the sole competence of the EU – and not as a 'mixed agreement', therefore considering the process of approval as falling within the competence of the Council of the EU and the EU Parliament elected by universal suffrage. Such position is supported and justified by the fact that, according to the Lisbon Treaty, the EU has exclusive competence over commercial policy".

01aa75ed71a1.0001.02/DOC_1&format=PDF>. While maintaining the strict legal view that CETA is a "EU only agreement", the Commission made its decision in view of Member States' opinion and in order not to delay the signature of the agreement.

[12] Few days before, the whole process had been hampered by a decision of the Walloon Parliament refusing to give powers to the Federal Government to ratify CETA. In the end, an agreement was reached between the Belgian Government and the regional parliament, enabling the situation to unfold.

[13] Provisional application of the parts of the agreement that fall under EU's exclusive competence has been set forth by the EU Council's decision of 28 October 2016 (available at: <http://data.consilium.europa.eu/doc/document/ST-10974-2016-INIT/en/pdf>), drawing on Art. 218(5) of the Treaty on the Functioning of the European Union and Art. 30(7)(3) of CETA.

[14] As of April 2017, only the Latvian Parliament has ratified the agreement on 23 February 2017.

He also advanced the claim that national parliaments could be involved in a later phase, during the implementation process of the agreement. In particular, he stated the following: "It is just worth recalling that the proposed interpretation by no means implies putting aside the proper function of national parliaments, which would be able, within their full competences, to intervene in the phase of implementation of the agreement".

On 6 July 2016, while reporting to the *Camera dei Deputati* (*Chamber of Deputies*, 648th Meeting, XVII Legislature) on the system of international jurisdiction envisaged in the context of the negotiations on the Transatlantic Trade and Investment Partnership (TTIP), the *Ministro dello Sviluppo economico* (Minister of Economic Development), Mr. Carlo Calenda, submitted that a broad understanding of the State's right to regulate had been transposed into CETA and that the International Court System provided by such treaty had been conceived of as a system of jurisdiction rather than a system of private arbitration. In particular, he stated the following:

> "Two are the issues at stake: on the one hand, the possible interference with the State's right to regulate; on the other hand, the need to prevent the rise of conflicts of interests (since arbitrators are private individuals), and most of all the need not to favor the investor by letting him/her step from one legislation – the national one – to, let's call it like that, the international arbitration, thus benefiting from a privileged treatment".

He then added:

> "The core issue is that the tribunal would and could only intervene in cases of manifest violations of the investor's fair and equitable treatment, so basically in cases of discrimination of the international investor. This will allow to narrow every – let's call it like that – excess of litigation, which has emerged particularly in the last few years and might interfere with the right to regulate. Therefore, the cases the tribunal will focus on will be indirect expropriation, illegitimate nationalization (lacking adequate compensation) and failure to issue a license to a foreign investor in cases where licenses have been issued to domestic investors. The States' right to regulate the protection of fundamental rights without any interference is wholly guaranteed, as in such field it is not possible to call into question the full legitimacy of the State's action. It is worth underlining that the first case of application of this approach – which ought to turn into a new international standard for Europe, being an indispensable (and I repeat, indispensable) feature of the TTIP deal – has been transposed into the agreement with Canada, an agreement which has been concluded and will now face the process of ratification".

Subsequently, on 22 September 2016, during a question time taking place at the *Senato della Repubblica* (Senate of the Republic, 648th Meeting, XVII Legislature), Mr. Calenda highlighted the difference between TTIP and CETA by stating the following:

> "This brings me to talk about CETA, an agreement of a completely different nature. We do have access to the text of CETA and we do know what it contains: to begin with, for the first time we have the recognition of geographical indications by an Anglo-Saxon country. Parma ham used to get into Canada as 'original prosciutto', while now it can enter as 'prosciutto di Parma' and this applies to several other categories. Furthermore, in this case we have access to

procurement – as opposed to what is happening with the US. In the view of all European actors, CETA has become a positive model agreement".

He also referred back to the Government's position on the framing of CETA as a "EU only agreement", and expressed concerns about the final choice of the EU Commission for a "mixed agreement" model. More specifically, he stated the following:

> "As to the Italian Government's position, in our view CETA's perimeter falls within the competence of the EU as commercial policy, and the reason is that if we face negotiations as EU we weigh X, if we negotiate as single countries we weigh less than X. The Italian Government used to think – and did follow this conviction – that the approval could be the one provided for the so-called 'EU only' treaties, those falling within the competence of the EU. This is not an antidemocratic procedure, as it provides for the involvement of the Council and the EU Parliament – which is a democratic organ. The Commission, pushed by Member States, decided to bring the agreement forward as a mixed one, subject to national ratification, in the process we already described: it is a dangerous process, because no one knows its possible outcomes. So far, it is still not clear what happens legally if a single country fails to ratify the agreement. Provisional application would cover the part of the treaty that is undoubtedly 'EU only', as has been done with all other agreements. The important aspect in this case is how we can turn up at the negotiations with this disadvantageous situation that we created – having very low barriers in countries we are interested in entering (indeed we are all economies relying heavily on export) – if we do not negotiate as a critical mass, and most of all if our counterparts know that, once we have negotiated, the Walloon Parliament might turn the agreement down for each and every one of us. This is a question we have to ask ourselves. The Italian Government took a highly European stand on the issue and we cannot be pro-Europe every other day – just paying lip service to it, and then not applying it in practice".

BIANCA MAGANZA

XVI. INTERNATIONAL ORGANIZATIONS

1. THE POSITION OF ITALY ON THE UNESCO'S EXECUTIVE BOARD DECISION ON OCCUPIED PALESTINE

On 26 October 2016, the *Ministro degli Affari esteri e della cooperazione internazionale* (Minister of Foreign Affairs and International Cooperation), Mr. Paolo Gentiloni Silveri, intervened before the *Camera dei Deputati* (Chamber of Deputies) and answered three parliamentary questions regarding the abstention of Italy on Decision 200 EX/25 adopted by the UNESCO Executive Board on 13 October 2016. The decision referred to "Occupied Palestine" and was adopted with 24 votes in favour, 6 against, and 26 abstentions.[15] The text regretted "the Israeli refusal to implement previous UNESCO decisions concerning Jerusalem" and deplored "the failure of Israel, the occupying Power, to cease the persistent excavations and works in East Jerusalem particularly in and around the Old City". In section 25.1.A, the decision made reference to several issues related to the "Al

[15] The text of the decision is available on the website of UNESCO at: <http://unesdoc.unesco.org/images/0024/002463/246369e.pdf>.

Aqṣa Mosque/Al-Ḥaram Al-Sharif" condemning, *inter alia*, "escalating Israeli aggressions […] against the freedom of worship and Muslims' access to their holy site", as well as deploring "the continuous storming" of the mosque "by Israeli right-wing extremists and uniformed forces". In doing so, the resolution did not make reference to the "Temple Mount", which according to the Jewish tradition would be located beneath the "Al Aqṣa Mosque/Al-Ḥaram Al-Sharif". The absence of any reference to the Jewish holy site prompted the *Presidente del Consiglio dei Ministri* (President of the Council of the Ministers), Mr. Matteo Renzi, to define the Italian abstention as "inexplicable, unacceptable and wrong", and to request immediate clarifications from the Minister of Foreign Affairs.[16] Prime Minister Renzi publicly pledged that the Italian position on these UNESCO's resolutions would change in the future.[17] Before Parliament, Mr. Gentiloni started by illustrating the Italian position on the Israeli-Palestinian conflict more generally and made reference to one of the parliamentary motions adopted by the Italian Parliament on the recognition of the Palestinian State in 2015.[18] He expressed the position of the Italian Government as follows:

> "[…] I believe that the Italian position has been clear and consistent for many years, that is, we are one of those countries that insist on the need to pursue a strategy leading to the two-State solution, whereby Israel and Palestine could live peacefully and safely. We must admit, very clearly and openly, that negotiations in this direction have slowed down. Negotiations are at a stalemate and this stalemate has given rise to very serious difficulties: the proliferation of settlements, which Italy has always criticized; and violence, which Italy resolutely condemns. Within this context, I have always maintained […] that formal recognition of the Palestinian State must be a step forward along this road. This is a commitment that the Parliament made and that the Government intends to fulfil, under the conditions provided for by the resolution itself: that is, I am quoting, 'at the right time and under the appropriate conditions'. All European Governments – the Spanish, French, and British Governments, whose Parliaments at the end of 2014 or in early 2015 passed resolutions similar to the Italian one – stuck to this rule, namely, to avoid playing the card of formal recognition until the moment when it will be more useful and crucial for boosting the peace process, rather than adopting a merely symbolic act. Clearly, in this context, we continue to collaborate with the Palestinian authorities. […]".

Answering another parliamentary question, Mr. Gentiloni focused more precisely on the Italian abstention on the Executive Board's decision of 13 October 2016:

> "I recall […], first of all, that the UNESCO resolution on Jerusalem is not new: it has been put forward twice a year since 2010, and Italy voted on it eleven times. Since 2014, it has included wordings […] that even deny the Jewish roots of the Temple Mount. Now, the Italian diplomacy has never been lenient with these wordings and these positions, I want this to be clear, because no matter the debate on Jerusalem, and on the tensions about access to the Holy places of the three

[16] ANSA, "Unesco: Renzi, allucinante risoluzione su Gerusalemme, stop a queste posizioni", available at: <http://www.ansa.it/sito/notizie/politica/2016/10/21/unesco-renzi-allucinante-stop-a-queste-posizioni-_d41a6323-3353-45db-b4fe-b4069f517530.html>.

[17] On 3 May 2017 Italy voted against a similar resolution adopted by the UNESCO Executive Board with 22 votes in favor, 10 against, and 23 abstentions. ANSA, "Unesco, sì alla risoluzione su Gerusalemme", available at: <http://www.ansa.it/sito/notizie/mondo/2017/05/02/unesco-ok-risoluzione-su-gerusalemme_87184411-f1bb-428b-b9c7-13cf833cb5a4.html>.

[18] See GARGIULO and PERTILE (eds.), "Diplomatic and Parliamentary Practice", IYIL, 2015, pp. 546-550.

> monotheistic religions […], these tensions do not justify in any way those wordings that deny history and reality. During these years, we have been working to reduce support to these positions and, surely not only thanks to Italy, this support decreased. Out of 60 members, 23 only were in favor of the resolution, while 27 abstained and 6 voted against. Nonetheless, we must recognize that the decrease in support has not resulted in a change of these positions […], and proposals retain the same language and do not strike a balance. Therefore, if these proposals will be put forward again next April, the Government will instruct our mission to switch from abstention to a vote against the resolution".

It is noteworthy that, according to the official document published on the UNESCO website, the decision received 24 votes in favor and 26 abstentions. By mentioning only 23 votes in favor, Mr. Gentiloni might refer to the fact that Mexico, after voting in favor of the resolution, wished to withdraw its initial support and – at a subsequent meeting held on 18 October – noted for the record that its position on the matter had become one of abstention.

Finally, a third parliamentary question on this issue gave Mr. Gentiloni the opportunity to outline the way forward, according to the Italian Government. He stated:

> "[…] I believe that, first of all, we must strongly support the diplomatic efforts of the United States, but also pursue them ourselves, with a view to strengthening and giving effect to the agreements between Jordan and Israel regarding the management of this area. Precisely because this is a fundamental area for the three monotheistic religions, it cannot bear excessive levels of tension. Therefore, we must work for an agreement between Jordan and Israel. Secondly, we must take advantage of the good relationship that Italy has both with Israel and with Palestine to foster the very difficult resumption of negotiations. We do not give up on the idea of two States living in peace and security. When Shimon Peres died, everyone said that this path had to be revived: it is a commitment that must be put in practice. Finally, I believe that we must work to ensure that UNESCO acts within its mandate, because it clearly is – potentially – one of the most important UN institutions, and plays a fundamental role for us Italians. We are proud to be the country with the largest number of sites recognized by UNESCO as world heritage, but at the same time we cannot accept that UNESCO, instead of focusing on the protection of the cultural heritage, becomes a sounding board for political and religious conflicts. Therefore, beside our approach, which I tried to clarify, I believe that there is a lot to do in the next months for the peace process to be resumed in that tormented land".

CHIARA TEA ANTONIAZZI and MARCO PERTILE

XVIII. USE OF FORCE AND PEACE-KEEPING

1. THE LEGAL REQUIREMENTS FOR MILITARY INTERVENTION AND FOR HUMANITARIAN ASSISTANCE IN LIBYA

The situation in Libya was of great concern for the Italian Government during 2016. The instability of the African country and the risk of increased terrorist activities on Libyan soil carried a significant weight in the reports of the Italian executive in front of the Parliament. Within these issues, the parliamentary practice of Italy highlighted three strictly intertwined legal questions, namely the requirements for military intervention and for

humanitarian assistance in Libya, as well as the boundaries of the concept of self-defence. It should not come as a surprise that in this case, during 2016, migration issues played a relatively minor role with respect to security concerns. One might take the view that the stability of the State and the need of having an effective government can be seen as preconditions for tackling the root causes of migration. Speaking about the requirements for intervening militarily in Libya the *Ministro degli Affari esteri e della cooperazione internazionale* (Minister of Foreign Affairs and International Cooperation), Mr. Paolo Gentiloni Silveri, affirmed the need of obtaining a formal request from the legitimate government. On 9 March 2016, in front of the *Camera dei Deputati* (Chamber of Deputies) (586th Meeting, XVII Legislature) he stated the following: "The Government will intervene militarily if and when it will be possible to respond to security requests from a legitimate Government, actively engaged in regaining control of the territory. The Government will do so upon a decision of the Parliament and it will coordinate its activity with the allied forces".

This approach is consistent with a previous statement of the *Ministro della Difesa* (Minister of Defense), Ms. Roberta Pinotti. On 24 February 2016, reporting before the *Camera dei Deputati* (Chambers of Deputies) (576th Meeting, XVII Legislature), the *Ministro* took the Iraqi case as the example that Italy will follow also in Libya. Although reference to invitation from the host State is not explicit, her statement confirms that operations abroad must be made "in agreement" with the government. Differently from what will be seen in the following statements, in this position expressed by Ms. Pinotti, United Nations Security Council Resolutions do not seem to have been taken into consideration as preconditions for intervening, but only as parameter of legality of the action. More precisely, the *Ministro* stated:

> "[…] [W]ith the same determination we endorse the national [Italian] point of view that sees the active and direct involvement of the local population and of the local governments as fundamental in the fight against terrorism, to which a support is needed. This involvement is fundamental for the positive outcome of the action and is its catalyst for efficacy. This is the reason why we are present in Iraq and not in other scenarios. There we operate, in agreement with the Iraqi Government, and we support the battle that they are conducting against terrorism. The same approach is true for Libya, where Italy is an active side for its sustainable and durable stabilization, in full respect of international law and of United Nations Security Council Resolutions".

As has been mentioned, the above position slightly changed at a later stage. On 28 April 2016, Minister Gentiloni stated in front of the *Camera dei Deputati* (Chamber of Deputies) (615th Meeting, XVII Legislature) that in the case of Libya a UN Security Council resolution must complement intervention by invitation. More specifically, he stated:

> "The only condition for obtaining these objectives is stabilization, which will be very long, gradual and strenuous. As Italy, we are committed to this and there will not be any military intervention without requests from a Libyan Government and without a validation from the United Nations Security Council. Until now no request has arrived – and I want to point that out – even for the protection of the oil reservoirs, because also in this field no request has arrived from the Libyan Authorities neither to the Italian Government, nor, per our knowledge, to any other Western Government. Our clear impression is that the Libyan Authorities are for the moment heading towards consolidating their presence by enlarging it, little by little, from the naval base in which they are installed. Now they have

> taken possession of eight ministries in Tripoli and they are gradually consolidating their presence and just on the basis of this consolidation they will then also be able to ask the international community for a contribution in terms of training of their security forces or for other purposes. In this context it will be possible to discuss, but this will be discussed firstly in Parliament, and we will need a framework of international legality from the United Nations".

The above position is not isolated. The necessity of having both a formal request from the host authorities and a specific international legal framework from the UN arose already before the *III Commissione Permanente – Affari Esteri e Comunitari* (III Permanent Committee – Foreign and European Community Affairs) of the *Camera dei Deputati* (Chamber of Deputies) on 4 February 2016. According to the *Sottosegretario di Stato agli Esteri* (Undersecretary of State for Foreign Affairs), Mr. Amendola, the legal framework for an international mission involving Italy would include not only an invitation from the local authorities, but also a UN Security Council resolution. In an even more stringent manner, the involvement of Italy would also depend on political and factual conditions such as the participation of Italy's allies and adequate security conditions on the ground. More precisely, he stated:

> "On the one side, and as underlined by the Prime Minister already some months ago, Italy is available to lead a possible international mission supporting the stabilization of Libya. It would be a training and assistance mission aimed to consolidate the capacity of the future Government to operate in a secure environment in Tripoli and to expand its authority on the whole territory. Also in this venue I want to recall that the mission would be initiated only on the basis of a formal request of the establishing Libyan Government, in an international legal framework integrated by a United Nations Security Council Resolution, in the presence of an adequate participation to the effort by our international partners and, finally, by sufficiently permissive security conditions for the safeguard of our military personnel".

Along similar lines, the *Ministro della Difesa* (Minister of Defense), Ms. Pinotti, dealt with a parliamentary question concerning some military activities against ISIS carried out by the United States in Libya. On 3 August 2016, reporting in front of the *Camera dei Deputati* (Chamber of Deputies) (667th Meeting, XVII Legislature), Ms. Pinotti mentioned the existence of the invitation by the Libyan authorities, and also mentioned Resolution 2259 adopted by the Security Council in 2015. According to paragraph 12 of Resolution 2259, Member States are urged "to swiftly assist the Government of National Accord in responding to threats to Libyan security and to actively support the new government in defeating ISIL […] upon its request". The *Ministro* stated that the "activity conducted by US forces is fully consistent with United Nations Resolution n. 2259 of 2015 and, as a result of a specific request for support formulated by the legitimate Libyan Government for opposing to ISIS in the area of Sirte".

According to the Italian Government, military intervention in Libya would thus be subject to the existence of a formal invitation from the host State and a UN Security Council resolution. In contrast, the conditions needed for starting a mission of humanitarian assistance would seem to be confined to the invitation from the host State. In the case discussed in front of a joint session of the III *Commissione permanente – Affari esteri e comunitari* (III Permanent Committee – Foreign and European Community Affairs) and the IV *Commissione permanente – Difesa* (IV Permanent Committee – Defense) of the *Camera dei Deputati*

(Chamber of Deputies), and the III *Commissione permanente Affari esteri e emigrazione* (III Permanent Committee for Foreign Affairs and Emigration) and the IV *Commissione permanente difesa* (IV Permanent Committee for Defense) of the *Senato della Repubblica* (Senate of the Republic) on 13 September 2016, the mission of humanitarian assistance would include doctors, nurses and military personnel for protection and logistic support. Aside from medical equipment, the mission would also include an aircraft C-27J parked in the airport of Misurata for strategic evacuation.

> "On 8 August president Al-Sarraj addressed to President Renzi the request for military hospital structures for nursing the wounded. Before this, there have already been manifestations of interest. […] Obviously, until the request was not official and since it implies programming the dispatch of military to Libya, it was not possible to proceed in an official way. […] As Minister Gentiloni reminded, this is a humanitarian mission".

In a further statement in front of the *Camera dei Deputati* (Chamber of Deputies) (576 Meeting – XVII Legislature) on 24 February 2016, the Minister of Defense apparently adopts an extensive reading of the scope of self-defence under Article 51 of the UN Charter. While it would be beyond the scope of this piece to enter into the debate on the interpretation of the article, suffice it to say that the declaration of Ms. Pinotti is consistent with the general tendency of States to invoke self-defence for purposes that may not, in theory, be covered by the article. Speaking about the increased US presence in the base of Sigonella, the Minister remarked that, given the security concerns in North Africa, US activities aimed to protect US citizens in that area would amount to legitimate self-defence. She stated:

> "More recently, after a very serious episode in which, you remember, the American ambassador in Bengasi was killed in Libya, it was negotiated and we were requested, through the relationship between our Governments, the reinforcement of the American presence [in Sigonella], in order to satisfy the legitimate needs to protect their citizens in the area of North Africa, not just Libya, but the area of North Africa, given the situation that it is experienced therein. The usage of the above means encompasses exclusively defensive profiles of their personnel, when necessary, and that is an exemplification of the right to self-defence set forth by Article 51 of the UN Charter. In full respect of that principle, the usage by the US of the base of Sigonella is every time discussed and authorized […]".

A very similar wording was used by the *Sottosegretario di Stato alla Difesa* (Undersecretary for Defense), Mr. Alfano, in front of the IV *Commissione permanente – Difesa* (IV Permanent Committee – Defense) of the *Camera dei Deputati* (Chamber of Deputies) on 3 March 2016, further confirming the extensive reading of the scope of Article 51 of the UN Charter:

> "More recently, following the murder of the American Ambassador in Bengasi, Libya, the reinforcement of American means in [Sigonella] was asked and negotiated between Governments in order to satisfy the legitimate exigencies of protection of their citizens, not only in Libya but in the area of North Africa. The employment of these concerns exclusively defensive profiles of their personnel, when necessary, and that is an exemplification of the right to self-defence set forth by Article 51 of the UN Charter".

Whereas in the above statements the right to self-defence is mentioned in relation to the protection of nationals, in a different statement the right to self-defence is linked to the protection of the State. The context is related to the threat posed by terrorist activities and the need to defend the country from such threat. On 9 March 2016, Mr. Gentiloni intervened before the *Camera dei Deputati* (Chamber of Deputies) (586th Meeting – XVII Legislature) without explicitly recalling Article 51 of the UN Charter, but mentioning, instead, Article 52 of the Italian Constitution, which states that "[t]he defence of the country is a sacred duty for every citizen".[19] It is unclear from the overall discourse whether the Minister poses this provision as the legal ground legitimizing covert intelligence operations supported by military units. Nonetheless, according to the Minister, these confined operations already take place in several areas across the Mediterranean and Libya will not be an exception. Self-defence is mentioned slightly afterwards, when arguing that it is important to distinguish between contrasting terrorism, thus acting in self-defence, and the overall stabilization of Libya. He stated:

> "We have to defend ourselves from the terrorist threat, we will defend ourselves and we will do so exactly as it has to be done, because this is what our Constitution provides for under Article 52. It is our duty to defend Italy from the terrorist threat. […] However, once we set the boundaries and the frames of our reaction to the terrorist threat, which has to exist, and will take place, we have to know that it is not from our counter-terrorism activity that we can expect the stabilization of Libya. Confusing self-defence and the stability of Libya does not help, on the contrary, it might even complicate the situation we are facing".
>
> IOTAM LERER

XIX. ARMED CONFLICTS, NEUTRALITY, AND DISARMAMENT

1. ITALY'S POSITION ON SANCTIONS AGAINST THE RUSSIAN FEDERATION

On 15 June 2016, the *Ministro degli Affari esteri e della cooperazione internazionale* (Minister of International Affairs and International Cooperation), Mr. Paolo Gentiloni Silveri, intervened during the question time at the *Camera dei Deputati* (Chamber of Deputies) (638th Meeting, XVII Legislature) and answered a parliamentary question on the possible renewal of the European Union sanctions against the Russian Federation. The interrogating MP had recalled that the sanctions had been agreed upon because the European Union qualifies the 2014 unilateral annexation of Crimea and the support given by the Russian Federation to the insurgents in Ukraine as a "grave breach of international law". He had further noted that the adoption of sanctions had severely damaged the export of the European Union and that Italy alone had lost 4 billions euros. He had thus concluded by asking which measures the Italian government wanted to adopt to "normalize" the relationship between the European Union and the Russian Federation. Quite interestingly, Mr. Gentiloni did not make any reference to the qualification of the Russian actions as a breach of international law and – coherently with such position – he did not mention the possible existence of a duty of non-recognition of unlawful annexations. He mainly substantiated his position by making reference to geopolitical and economic considerations and did not address the level of State responsibility for serious breaches of peremptory rules. Conversely, as is well known, Article 40 and 41 of

[19] The Italian Constitution is available in English at: <https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf>.

the ILC Articles on State Responsibility affirm that a serious violation of a peremptory rule of international law generate on third States the duty not to recognize the effect of the violation and the duty not to provide aid or assistance in maintaining the situation.[20] There seems to be some consensus within the doctrinal debate on qualifying unlawful annexations as paradigmatic examples of serious breaches of peremptory rules such as the prohibition of the use of force and the right to self-determination.[21]

That notwithstanding, in his statement, the *Ministro* clearly seemed to take the view that the decision on the renewal of sanctions should be taken with reference to political – rather than legal – arguments. He thus expressed the position of the Italian Government as follows:

> "[…] [T]hroughout these years, and in the last two years, Italy has always worked to keep the road of dialogue with Russia open. One has to recognize that this approach, which until one or one year and a half ago was rather isolated, now is widely shared. We have done so chiefly to avoid escalations and we have therefore highlighted how important it was that Russia and the Atlantic Council started to meet again, which happened two months ago; we have done so to exploit the potential of cooperation at the geopolitical level in crises such as Syria and Libya; we have done so to try and foster the economic relations with Russia and I recall that the President of the Council tomorrow will leave to participate in the St. Petersburg economic forum, the only leader of a Western country participating in this, which is the most important economic event in Russia. The fact remains that our commitment with the European Union and NATO has always been that of sharing the strategy of sanctions in a unitary manner. Sanctions are a tool – and not a permanent fact to be bureaucratically renewed – which serves the purpose of implementing an agreement, the Minsk accords, and to exert pressure so as to make this agreement effective. Very likely, given the surely not brilliant state of implementation of the Minsk agreement, these sanctions will be renewed. Italy is however pressing for this decision – should it be taken – to be taken in the light of a political discussion, and this in order to underline that the European Union is not an entity 'providing for' sanctions and even less so for 'automatic sanctions', but is a forum in which discussions are made on whether the accords are progressing and sanctions are directed at that".
>
> MARCO PERTILE

2. THE PARLIAMENTARY PRACTICE OF ITALY ON ARMS EXPORTS: THE CASES OF LIBYA, SOMALIA, SAUDI ARABIA, QATAR, UKRAINE AND EGYPT

During 2016, the Italian Government was often questioned before the Parliament about arms exports from Italy to countries where either a conflict was occurring or international norms were being violated. The statements by different members of the Government highlighted a heterogeneous practice, contingent upon the presence of international sanctions and upon political considerations. As shown below, the Government made ample reference to the main domestic legal source on the issue, *Legge 9 luglio 1990, n. 185* (hereafter: Law

[20] Responsibility of States for Internationally Wrongful Acts, 2001, Annex to General Assembly Resolution 56/83 of 12 December 2001, corrected by document A/56/49(Vol. I)/Corr.4.

[21] See, for instance, DAWIDOWICZ, "The Obligation of Non Recognition of an Unlawful Situation", in CRAWFORD, PELLET and OLLESON (eds.), *The Law of International Responsibility*, Oxford, 2010, pp. 679-684; and MILANO, "The Non-Recognition of Russia's Annexation of Crimea: Three Different Legal Approaches and one Unanswered Question", QIL, Zoom out I, 2014, pp. 35-55.

185/1990), and, in a number of cases, seemed willing to exercise its discretion in identifying grounds for which arms exports could be denied. The assessment was characterized by a case-by-case approach and this sometimes led to balancing the presence of possible violations of international norms with considerations regarding the relations between Italy and the recipient state. In the cases of Libya and Somalia, an arms embargo imposed by the UN Security Council was involved and played a major role in determining the conduct of the Government.[22]

A. The Case of Libya

On 28 April 2016, the *Ministro degli Affari esteri e della cooperazione internazionale* (Minister of Foreign Affairs and International Cooperation), Mr. Paolo Gentiloni Silveri, intervened before the *Camera dei Deputati* (Chamber of Deputies) (615th Meeting, XVII Legislature) and replied to a parliamentary question on the actions undertaken by the Italian Government to strengthen the arms and oil embargo imposed by the UN Security Council on Libya, according to Resolutions 1970 (2011), 1973 (2011) and 2146 (2014). The *Ministro* stated:

> "[...] Theoretically, the rules are established by the United Nations. The embargo is extended and specified through a number of resolutions. The most recent resolution – No. 2278 of the last 31 March – sets the rules that serve the aim, very clear in the last resolution, of affirming that both arms and oil transfers that do not pass through the Government of National Accord (GNA) have to be considered as unlawful by the international community".

He then highlighted the difficulty of the enforcement of the embargo, mentioning an attempt to illicitly export 650,000 barrels of crude, occurred on 26 April 2016, and followed by the Sanctions Committee reaction the day after. In this regard, he seemed to criticize the United Nations sanctions regime and emphasized the necessity of a balance between the enforcement of international legal norms and support for the internationally recognized government in its counter-terrorism actions. These are the words of the *Ministro*:

> "In fact, this kind of transfers are both oil traffics and violations of the arms embargo, which is, however, slightly more ambiguous as the arms embargo keeps out the arms provided to fight terrorism. Here one enters in a huge ambiguity, which does not exist only in Libya, but is present – alas! – in Syria as well. There was a reaction, yesterday (last night in Italy): for instance, the Sanctions Committee of the United Nations added the shipping company of the oil tanker that had made this illegal shipment to the list of sanctioned subjects".

And he added:

> "[…] [S]omething has to be clear: in order to strengthen and stabilize the al-Sarraj Government [the internationally recognized Government of Libya], it is necessary that they can exercise their own counter-terrorism action. Accordingly, if the embargo has to be modified for counter-terrorism activities, this modification has

[22] At the domestic level, the relevant provision in this regard is Art. 1(6) of Law 185/1990, which states: "The export and the transit of armament material are also prohibited: […] (c) towards Countries against which a partial or total embargo of war supplies was imposed by the United Nations or the European Union".

> to be in favor of the legitimate Government. Moreover, they [the legitimate Government] have to be able to use the profits of the oil. Failing these two conditions, the consolidation of the Government is very hard. I want to reassure Honorable Artini [the questioning MP] that we are moving towards this direction both on a bilateral and multilateral level".

B. The Case of Somalia

The necessity of balancing the embargo with the goal of stabilizing a conflict situation emerged also with regard to Somalia. In this case, however, the Government took a somewhat ambiguous stance regarding the export of arms to States where human rights norms are violated. On 30 June 2016, during the question time before the *III Commissione Permanente – Affari esteri e comunitari* (III Permanent Committee – Foreign and Comunitarian affairs) of the *Camera dei Deputati* (Chamber of Deputies) (XVII Legislature), the *Sottosegretario di Stato per gli Affari esteri e la Cooperazione internazionale* (Undersecretary of State for Foreign affairs and International Cooperation), Mr. Benedetto Della Vedova, replied to a questioning MP, who highlighted that Italy was sending arms to Somalia, where Somali regular armed forces, the recipient of the arms, committed serious violations of international law regarding the employment and exploitation of child-soldiers. The *Sottosegretario* clarified that Italy supported the process of reform of the Somali security forces, respecting, at the same time, the measures internationally adopted by the United Nations with regard to the provisions of armament. These are Mr. Della Vedova's words:

> "[…] [W]e believe it is necessary to continue supporting the reform process of the Somali security forces through an approach which is inclusive of the several political and social components of the country and in line with the relevant international provisions, with, of course, a particular focus on the norms regarding international human rights and the protection of fundamental freedoms. Those principles have always been and will always be at the basis of the Italian action in Somalia. Furthermore, this support action is undertaken according to what Law 185 of 1990 prescribes and in respect of the UN embargo on armaments export, initially imposed in 1992 and recently renewed through the Security Council Resolution 2244 of 2015. In this context, the only exports to this country authorized by the Ministry of Foreign Affairs are the ones duly notified to the relevant Sanctions Committee and these are exclusively the ones aimed at strengthening the Somali institutions".

The position expressed by the *Sottosegretario* makes reference to the legal framework adopted by the UN for the Somali case. Therefore, to better understand Mr. Della Vedova's statement the content of the relevant resolutions should be hereby outlined. Until 2013, the embargo on Somalia was general, according to Resolution 733 (1992), and extended to advising and training activities and funds. In 2013, Resolution 2093 amended the embargo, turning this from general to partial. The admitted exception, besides UN and African Union peacekeeping troops, regarded the armed and security forces of the Federal Government of Somalia. Initially, the Security Council partially lifted the embargo only for a period of twelve months. Then, through resolutions number 2142, 2244 and 2317, this measure was periodically renewed every twelve months. These exceptions were combined with some control and supervision measures, such as the duty of notification to the Sanctions Committee about the cases of reception of arms under paragraph 38 of Resolution 2093.

Regarding the issue highlighted by the questioning MP, the link between the embargo and the violation of international norms, such as the ones regarding child-soldiers, was indeed established by Resolution 2093, which at paragraph 43 recalled paragraph 7 of Resolution 1844 (2008). This latter required Member States to prevent direct or indirect arms transfers, assistance or training to certain categories of individuals and entities. Paragraph 43 of Resolution 2093 added to those categories also the individuals responsible for recruiting or using child-soldiers (letter d) or violating relevant international provisions (letter e), including those related to armed conflicts. Furthermore, while the obligation to enforce the application of international provisions regarded Member States, through the prevention of arms transfers, two resolutions gradually extended this obligation also to the Federal Government of Somalia. First, Resolution 2124 (2013) requires the Somali Government to train its security forces for the respect and enforcement of international norms, including those of international humanitarian law, human rights law and concerning child-soldiers (paragraph 18). Subsequently, resolutions 2244 and 2317 required the Somali Government to establish civilian oversight over the security forces, the enforcement of international provisions and the prosecution of the related violations. Therefore, jointly reading the resolutions of the Security Council, after 2013, arms should not be transferred to individuals responsible for violations of the relevant international norms. The obligation to prevent these transfers is upon UN Member States, while the duty to enforce the respect of those norms is upon international bodies, Member States and, since 2013, the Federal Government of Somalia. According to the relevant Security Council resolutions, Italy should thus assess whether the transferred arms end in the hands of members of the security forces responsible for violating international provisions, including those regarding the recruiting and use of child-soldiers. In addition to that, it is worth noting that Law 185/1990 further establishes a link between violations of international provisions and arms transfers.[23]

C. The Cases of Saudi Arabia and Qatar

The fact that the Italian Government considers the presence of an international sanctions regime to be a crucial variable to decide whether and to whom to transfer arms is also shown *a contrario* by the cases of Saudi Arabia and Qatar. In those cases the decision to authorize the transfer of arms was justified by making reference to the absence of an international sanctions regime.

On 12 October 2016, during the 691st Meeting (XVII Legislature) of the *Camera dei Deputati* (Chamber of Deputies) the *Ministra della Difesa* (Minister of Defense), Ms. Roberta Pinotti, replied to a parliamentary question regarding a photograph of a bomb used in the conflict in Yemen, allegedly bearing the serial number of the Italian Ministry of Defense. The interrogating MP also requested clarification about a visit by the *Ministra* to Saudi Arabia, along with the *Segretario generale per gli armamenti* (General Secretary for Armaments). After explaining the procedure for issuing an authorization for armament exports, the

[23] Art. 1(6)(d) reads: "The export and the transit of armament material are also forbidden: […] d) towards Countries of which governments are responsible for serious violations of international conventions on human rights, assessed by the competent bodies of the United Nations, European Union or Council of Europe". Therefore, if any violations of human rights were found by the competent bodies of the organizations quoted above, Italy, according to its own legislation, would have to stop the arms transfer. However, it seems that some gaps are still present, both in the UNSC resolutions and the Italian domestic legislation. First, after 2013, the prohibition to transfer arms in case of international violations regarded only individuals and entities, not the whole Somali Government. Second, the Italian domestic legislation about arms transfers requires that international bodies ascertain violations. Therefore, Art. 1(6)(d) of the Law 185/1990 does not seem to apply in the case of mere allegations of violations.

Ministra clarified that the company quoted by the MP had regularly obtained a license and authorization to export, according to the required procedure. Moreover, Minister Pinotti clarified that the bomb displayed in the photograph did not belong to any stock held by the Italian Armed Forces, contrary to what was suggested by the questioning MP, and that her State visit to Saudi Arabia did not have any commercial purpose.

On 26 October 2016, the issue of arms transfers to Saudi Arabia came to the surface again during the question time at the *Camera dei Deputati* (Chamber of Deputies) (699th Meeting, XVII Legislature). Paolo Gentiloni Silveri, the *Ministro degli Affari esteri e della cooperazione internazionale* (Minister of Foreign Affairs and International Cooperation) was questioned regarding the presence and the possible revocation of arms exports licenses towards Saudi Arabia, in light of the conflict occurring in Yemen. After explaining once again the process through which the licenses are issued, the Minister highlighted the fact that there are no international or European sanctions towards Saudi Arabia along with the fact that other Western countries had exported more armaments to Saudi Arabia than Italy. He then continued as follows:

> "Of course, should the United Nations or the European Union acknowledge any violations, Italy will conform itself to following prescriptions and prohibitions immediately. In conclusion, firstly, Italy cannot be portrayed as a huge seller of arms to Saudi Arabia. […] Secondly, our diplomacy is collaborating with the United Nations to pursue the only possible solution to the Yemenite crisis, which is a negotiating solution".

The Government adopted the same approach when questioned about Italy's military cooperation with other countries. On 13 October 2016, during a question time before the IV *Commissione Permanente – Difesa)* (IV Permanent Committee – Defense) of the *Camera dei Deputati* (Chamber of Deputies) (XVII Legislature) the *Sottosegretario di Stato per la Difesa* (Undersecretary of State for Defense), Mr. Rossi, replied to a question regarding the fact that the signing of a contract for armaments transfers has to be regulated not only by the relevant domestic and international law but also by the presence of human rights violations on the territory of the other signing party, as well as its involvement in certain conflicts. The questioning MP, mentioning the presence of domestic, European and international relevant regulations, argued that the signing of such contracts had to follow an assessment of the alleged violations of international norms on human rights and the conduct in the conflict of the State of Qatar. The *Sottosegretario* merely stated that the ordinary procedure had been followed also in the case of this contract. Moreover, Mr. Rossi added that there were no international or European sanctions imposed on Qatar.

D. The Cases of Egypt and Ukraine

Contrary to what happened in the previous cases, the Italian Government appeared willing to exercise a certain degree of political discretion in the decisions on arms transfers towards Ukraine and Egypt, balancing the absence of international restrictive measures with the assessment of the scenario where the arms would have arrived. This kind of assessment could be connected to what is prescribed by Law 185/1990 which allows a political evaluation, according to, among others, the Constitution of the Italian Republic and Italy's international obligations.[24] This legislative framework might explain the statements delivered

[24] The relevant provisions are Arts. 1(1), 1(5), 1(6)(a) and 1(6)(b).

regarding concrete cases and the hypothesis of arms and military equipment transfers addressed to Ukraine, Egypt and Syria.

On 26 January 2016, during a question time at the *III Commissione Permanente – Affari esteri e comunitari* (III Permanent Committee – Foreign and communitarian affairs) of the *Camera dei Deputati* (Chamber of Deputies) (XVII Legislature), the *Sottosegretario agli Affari esteri e della Cooperazione internazionale* (Undersecretary of State for Foreign Affairs and International Cooperation), Mr. Benedetto Della Vedova, explained that the Italian Government had stopped the issuing of authorizations to arms exports towards Kiev, concerned by the development of the conflict and despite the absence of any international sanction. The *Sottosegretario* stated:

> "[…] I would like to emphasize that Italy is not among the countries, as said, that would have provided military equipment to Kiev. Despite the absence of a ban on armament exports, since 2014, the developments of the crisis in Ukraine have strongly discouraged us to proceed with the issuing of authorizations for commercial supplies of arms and lethal material, believing that any possible improper use could contribute to the escalation of the hostilities. The Italian Government has always affirmed that the solution to the Ukraine crisis should necessarily pass through the way of dialogue and of an agreed solution, rather than end up on a military level".

The Government showed a similar approach with regards to the case of the arms and military equipment transfers to the Arab Republic of Egypt. On 22 June 2016, the *Sottosegretario di Stato per la Difesa* (Undersecretary of State for Defense), Mr. Gioacchino Alfano, intervened before the *IV Commissione Permanente – Difesa* (IV Permanent Committee – Defense) of the *Camera dei Deputati* (Chamber of Deputies) and answered a parliamentary question requesting the disclosure of the terms of the technical-military agreement between Italy and Egypt. The interrogating MP had also highlighted the fact that the presence of numerous human rights violations in the country could provide a valid ground to stop such cooperation. While the *Sottosegretario* disclosed the terms of the contracts for the transfers of military equipment, he also maintained that no transfer had been made yet. Moreover, Mr. Alfano admitted that the recent serious events concerning Egypt could change the relationship of Italy with the Arab country. Mr. Alfano stated:

> "[…] Concerning the activities of assistance for the weapon systems related to the cooperation agreements quoted earlier, it is prescribed that the transfer of out of service material of the Armed Forces be made free of charge. […] This decision was taken because of the previous good relations with Egypt and considering carefully the strategic significance which, because of diverse and concurrent circumstances, connected to the crisis of the Middle Eastern area, this Country was building up. Considering this scenario, since the first months of the current year, with the firm hope that these episodes in question – although very painful – will end with the always comforting approach to the truth, we have learnt some facts that still lead to cautiousness towards a partner that remains very important. Through this perspective, the adding of Article 4.6 within the Decree-Law 67 of 16 May 2016, regarding the material mentioned above, represents only an official fulfilment, adopted after the approval on the merits by the Parliament through the conversion of the previous decree law, quoted earlier. […] The prescribed authorization shows, on the one hand, that the material has not been concretely provided yet and, on the other hand, that this transfer can be revised, in light of

> the latest and more updated information. Likewise, with regard to the transfer of the patrol boats, this has not been done yet. Only on the level of bilateral relations, the total cancellation of the training activities provided [by the agreement] could appear less congruent. Such activities are in themselves neutral and moreover have already slowed down, even though not suspended, according to the foreign policy of our country towards Egypt, waiting for the indispensable clarification of the general framework".

Considering the cases analyzed, in 2016 the Italian parliamentary practice on arms transfers seems to be characterized by two different approaches. Firstly, the Italian Government tends to regard the presence of a UN arms embargo as a decisive element to prevent arms transfers and exports to a given country. This is confirmed by the statements on Saudi Arabia and Qatar, where restrictive measures were not present, as well as Libya and Somalia, where Italy showed deference to the regulations imposed by the Security Council. Secondly, in the cases of Egypt and Ukraine, Italy's Government exercised its political discretion to freeze arms transfers to countries where, despite the absence of international sanctions, transferring arms appeared dangerous or inconsistent with Italy's Constitution and foreign policy, as also prescribed by the relevant domestic legislation. Comparing these two different approaches, two final considerations can be done. First, in case of absence of an arms embargo, the Italian Government exercised its political discretion to authorize, or not, arms transfers to countries allegedly linked to possible violations of international norms or where armed conflicts were present. Second, the presence of international measures led the Italian Government to renounce undertaking its own assessment of the presence of possible violations of international norms, a behaviour that possibly appears incompatible with the relevant UN resolutions in the case of Somalia.

RICCARDO LABIANCO

XXI. INTERNATIONAL DISPUTE SETTLEMENT

1. ITALY'S INITIATIVES IN THE ENRICA LEXIE CASE FOLLOWING THE ORDER OF ITLOS TO SUSPEND NATIONAL COURT PROCEEDINGS PENDING ARBITRATION

On 14 January 2016, during a question time taking place at the *Camera dei Deputati* (Chamber of Deputies, 547th Meeting, XVII Legislature) the *Ministro della Difesa* (Minister of Defense), Ms. Roberta Pinotti, responded to a parliamentary question concerning the initiatives adopted by Italy with regard to the controversy with India widely known as the *Enrica Lexie* case. The events triggering the dispute date back to 15 February 2012, when two Indian fishermen were killed off the western coast of India, after a shooting incident involving Italian marines on-board the Italian-flagged oil tanker *Enrica Lexie*. The subsequent arrest by Indian authorities of two Italian marines, Massimiliano Latorre and Salvatore Girone, sparked a controversy between the two States, both claiming jurisdiction over the incident, with Italy also invoking the functional immunity of the two soldiers under international law.

After unsuccessful attempts to settle the case through diplomatic means, on 26 June 2015 Italy decided to submit the dispute to international arbitration pursuant to Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS).[25] Additionally, Italy sought provisional measures before the International Tribunal for the Law of the Sea, which ordered the suspension of all court proceedings against the two Italian marines pending a

[25] 10 December 1982, Art. 287 and Annex VII, Art. 1.

decision on the issue of jurisdiction by the Arbitral Tribunal.[26] On 13 January 2016, the Indian Supreme Court was convened to discuss the situation of one of the two marines, Massimiliano Latorre, who had been allowed to repatriate to Italy for medical reasons. In answering the parliamentary question, Minister Pinotti explained before the *Camera dei Deputati* (Chamber of Deputies) the views expressed by Italy at the Supreme Court hearing. She stated:

> "Italy has informed the Supreme Court of India of the consequences of the 24 August 2015 decision of the International Tribunal for the Law of the Sea of Hamburg for the position of rifleman Latorre, which [decision] ordered the suspension of all internal court proceedings in Italy and India and the prohibition of aggravation of the dispute. Italy has therefore reiterated that it believes that, on the basis of said decision of the Hamburg Tribunal, the Supreme Court is prevented from taking any decision concerning rifleman Latorre and, therefore, he can remain in Italy. The Indian Government asked the Supreme Court to be granted a period of time in order to be able to express its position on the matter. Therefore, the jurisdiction of India has not been accepted. Absolutely not. The Court itself, by granting the requested period of time, adjourned the hearing to April on the basis of the request by the Indian Government to further examine the Italian position".

The *Enrica Lexie* case came to the surface again in parliamentary debates on 3 February 2016, when the *Sottosegretario di Stato per la Difesa* (Undersecretary of State for Defense), Mr. Gioacchino Alfano, intervened before the *Quarta Commissione permanente – Difesa* (4th Permanent Committee – Defense) of the *Camera dei Deputati* (Chamber of Deputies) to answer a similar parliamentary question concerning the initiatives taken by the Italian Government to resolve the issue of the two Italian marines involved in the incident. Recalling the order of the International Tribunal for the Law of the Sea[27] to suspend all court proceedings against the two Italian marines, Mr. Alfano stated that Italy immediately complied with the decision, suspending all pending proceedings concerning the incident. He then went on to illustrate the views expressed by the Italian Government before the Indian Supreme Court:

> "On 13 January 2016, Italy has informed the Supreme Court of India of the developments in the context of the international arbitration and brought to the attention of the Supreme Court [Italy's] position on the consequences of the decision of the Hamburg Tribunal with regard to the situation of rifleman Latorre. Italy argued that the suspension of all court proceedings in India and in Italy and the prohibition of aggravation of the dispute ordered by the Hamburg judges constitute the legal basis for the stay of Massimiliano Latorre in Italy until the end of the arbitration proceedings, which shall decide the question of the allocation of jurisdiction between the two countries".

Mr. Alfano also addressed the issue of the second Italian marine charged in the death of the two Indian fishermen, Salvatore Girone. He explained:

> "On 11 December, Italy submitted a request for provisional measures to the Arbitral Tribunal of the Hague, asking for the repatriation of rifleman Girone

[26] *The "Enrica Lexie" Incident (Italy v. India), Provisional Measures*, ITLOS, Order of 24 August 2015.
[27] *Ibid*.

pending the arbitration proceedings. With this application, Italy asked the Arbitral Tribunal to authorize rifleman Girone to stay in Italy until the end of the arbitration proceedings, also in view of the foreseeable duration of the proceedings themselves".

He then concluded:

"The Government pursues the path of international justice with determination in order to obtain the protection of the rights of Italy and of marine riflemen Latorre and Girone, including the rights to exercise exclusive jurisdiction on the *Enrica Lexie* and the functional immunity recognized under international law to the soldiers engaged in official missions on behalf of the State".

ALESSIO GRACIS