

How do International Norms Matter? The Impact of the Convention on the Elimination of all Forms of Discrimination Against Women in Italy.

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Abstract

The role of the international norms in domestic politics is a central question in international relations. This article examines the major international treaty on the human rights of women, the Convention on the Elimination of all Forms of Discrimination against Women, and its impact on Italian politics, specifically on domestic legislation, case law and civil society activism, and institutional structure. The research contributes to the general debate on international norms diffusion and implementation, and identifies the factors which enable states to comply with these norms.

Keywords: Italy; international institutions; United Nations; Gender; Civil Society

Introduction

How international norms matter at a domestic level is a key research question in international relations (IR; Cortell and Davis 2000). In the area of human rights, scholars have argued that international norms have important effects on state behaviour (Risse, Roppe, and Sikkink 1999, 2013). Since the end of the Second World War, the emergence and diffusion of universal norms on human rights and the establishment of international regimes with growing competences and powers (Smith 2016; Goodhart 2016) meant that the states lost the role of the single player within the international arena in front of the increasing lobbying activities pursued by transnational advocacy networks (Keck and Sikkink 1998) who interact directly with international actors and institutions. In recent years some scholars (Dingwerth and Pattberg 2006) proposed the use of the term 'global governance' instead of 'international system' in order to describe the complex web of influences between state and non-state actors moving through the local, national, and international arenas and participating in complex decision-making processes.

These research topics are largely understudied within Italian political science that is traditionally focused on domestic issues such as national political party systems, electoral rules and behaviour, government organisations, and institutional reforms. Only in the field of European studies did a group of Italian scholars (among others see Franchino and Radaelli 2004; Fabbrini and Piattoni 2008) start to interpret the intense

change in the domestic politics and policies experienced by Italy since the year 1991 as an effect of the European Union's (EU) influence (especially due to the process of the economic and monetary union). These scholars identified the main mechanisms of domestic adjustment behind the so-called process of Europeanization, which refers to the increasing influence coming from the EU towards the members states. For the specific area of gender policies, the EU has been recognised in the role of key player in promoting women's rights through anti-discrimination measures and gender mainstreaming approaches (Kantola 2010); in the last decade studies have been conducted on the relationship between the EU and Italian gender policies (Calloni 2003; Donà 2008, 2011). While the EU and national arenas have been privileged for a long time as a target *loci* of lobbying activity pursued by feminist advocacy networks (McBride and Mazur 2006), more recent policy studies (on gender quota adoption in Europe see Rubio Marin 2017; on violence against women see Montoya 2012) emphasised the relevance of the international norms governing women's rights used by feminist international and transnational advocacy groups for pressuring change of state behaviour and practices in line with international standards. For Italian IR scholars, these research topics remain neglected while they tend to privilege traditional issues such as causes of war and peace, foreign policy, security, political integration, and international institutions (Andreatta and Zambenardi 2010); not to

mention, so far in the IR sub-field the attention on gender issues has been marginal, with sporadic work in the area of women's human rights (Degani 2010a, 2010b). Understanding the impact of the Convention on the Elimination of all Forms of Discrimination against Women (henceforth CEDAW) on Italy may help to overcome some of the highlighted research limitations due to the national culture of the Italian political science discipline. So, the aim of this article is twofold: first, to highlight the salience of the international norms for explaining domestic politics and policy change; second, to increase awareness of the relevance of the gender issues for Italian IR research agenda (and for the general Italian political science community) that traditionally has not been attentive to these debates (Padovani and Vingelli 2016).

During the last four decades a comprehensive regime of international norms for women's human rights has been established (Kardam 2004), and even if this regime is the one with the highest number of States Parties, it is also the most contested due to the variations in meanings across domestic contexts (Krook and True 2012). Despite the universal ratification of CEDAW, the diffusion and implementation of these norms varies significantly from one state to another. How can we account for this variation? What are the explanatory factors behind the different processes of domestic adjustment to international norms? This article argues the following points: the international norms on women's human rights are dynamic in their content; the

domestic diffusion and implementation of these norms are long-term processes; and, the role of societal actors is crucial in pressuring for domestic change by strategically using international norms. These points are discussed in the context of Italy as a case study to assess the domestic impact of international norms and institutions aiming to promote and protect women's rights. More specifically, it explores the impact of CEDAW on Italy and investigates if and how these norms affected state behaviour and promoted domestic change. I conducted research examining the content of the national periodic reports (to date, seven have been compiled and submitted) and the related concluding comments and recommendations approved by the CEDAW Committee. In addition, I collected data from official records, government declarations and speeches, parliamentary debates and reports, and conducted interviews with key (public and societal) actors involved in the reporting system.

The article is structured into three parts. The first part introduces CEDAW, the historical process that led to the approval of this international treaty, its evolving contents, and the monitoring mechanism. The second part examines Italy's behaviour within the CEDAW system through an overview of the reports submitted by Italy over the years and the related comments issued by the CEDAW Committee. The third part explores the impact of CEDAW in the Italian domestic context, providing some assessment criteria. In the conclusions, the main research findings are presented and

discussed in the context of the literature on the impact of international gender norms on domestic politics with indications for future research in the Italian context.

The CEDAW: Its evolving content and monitoring mechanism

The CEDAW is the reference text at an international level for the recognition and promotion of women's rights. The CEDAW belongs within a set of international treaties on human rights approved by the United Nations following the Universal Declaration of Human Rights of 1948; over the years the CEDAW has been ratified by numerous countries to become the most widely and rapidly ratified human rights treaty in history (as of September 2017 there were 189 State Parties). The objective of the CEDAW is to eliminate discrimination against women because it violates the principles of equal rights and respect for human dignity. The Convention states and promotes what are considered to be the minimal standards of human dignity that every society should guarantee and protect. To this end, the CEDAW prescribes the elimination of laws, cultural traditions, and practices that penalize women and subject them to discrimination in areas such as political participation, education, employment, and health.

The CEDAW ensued from the former 1967 Declaration (DEDAW), a text of 11 non-binding articles on marriage, property, education, and the right to vote. After the Declaration's approval, however, the lack of attention and commitment to it by countries immediately evidenced that it was an instrument unable to protect the rights of women because it granted excessive discretion to states. For this reason, the UN Commission on the Status of Women set about drafting a convention. The preparatory work lasted from 1973 to 1979, during which significant lines of conflict emerged (Zwingel 2016), specifically between the secular and religious visions of society and gender relations; between the capitalist and socialist interpretations and definitions of women's rights; between the understanding of discrimination against women versus discrimination based on gender; between the preferences of industrialised and developing countries; and finally between those in favour and those against strong protection mechanisms. After lengthy and complicated negotiations due to the need to reach a compromise among member states, the CEDAW was approved by the General Assembly on 17 December 1979, when 130 states voted in favour, none voted against, and 11 abstained (Fraser 1995). The CEDAW entered into force on 3 September 1981 (after the ratification by the twentieth state), and upon ratification of the treaty, 77 States Parties entered 'reservations' (by which term is meant the right of a state to exclude the legal effect of certain parts of the Convention on which the

reservation is entered) on particular provisions considered in contradiction with national law or harmful to cultural traditions: in particular, those referring to marriage and the family (articles 15 and 16) and related articles (such as article 9). Other States entered reservations to provisions considered the core parts of the CEDAW (articles 2 and 16), going against the objective and purpose of the Convention (Byrnes and Freeman 2012). Several countries have subsequently withdrawn reservations to those articles, in whole or in part. Nonetheless, a number of States Parties maintain noteworthy reservations (Keller 2014). In such a context, the CEDAW Committee has, on a number of occasions (see General Recommendations No. 4, 20 and 21; and its statement on reservations¹ issued in 1998), expressed its view and concerns in relation to the significant number of reservations entered to core articles of the Conventions.

After the Preamble, the CEDAW consists of 30 articles structured into six parts.² Parts 1 to 4 contain the substantial provisions; parts 5 and 6 refer to the rules of implementation and ratification of the Convention. The areas of action expressly mentioned in the CEDAW concern: social and cultural patterns of behaviour of men and women (prejudices and stereotypes); trafficking of women and exploitation of prostitution; participation in the political and public life of the country and in

¹ See the 1998 Report of the Committee on the Elimination of Discrimination against Women (Eighteenth and Nineteenth sessions), UN Doc (A/53/38/Rev.1, p 47)

² For a detailed and comprehensive analysis of the content of CEDAW and its Optional Protocol, see the commentary edited by Freeman, Chinkin and Rudolf (2012).

international organisations; acquisition of citizenship rights; access to education and training; employment (opportunities, access, equal pay, and treatment); health care; access to credit; women in rural areas; formal equality; and marriage.

Over the years, the CEDAW has been defined as an arena of international cooperation for the advancement of women's rights (Kardam 2004) characterised by: (a) principles and values (the dignity of women, equality between men and women, respect for human rights, and peace); (b) formal norms (a specific normative corpus has been established on discrimination against women); and (c) procedures and structures (creation of special monitoring institutions, rules on reporting by countries, institutionalisation of a periodic reporting mechanism). In comparison to other international human rights regimes, the CEDAW is a form of 'law without sanctions' and consequently belongs among the so-called 'promotional regimes' (Donnelly 1986). The examination of how the CEDAW system operates in practice shows that it acts through a process of socialisation based on a "regularized pattern of interaction between States, CEDAW Committee, other international organizations and domestic NGOs" (Baldez 2014, 136). The action of the CEDAW becomes explicit on the occasion of the CEDAW Committee's reporting sessions during which governments present their commitment to CEDAW norms. The institutionalised dialogue between the CEDAW Committee and the governments can foster and disseminate among countries new

ways to define the rights of women and therefore to interpret gender issues. The CEDAW remained the most comprehensive and authoritative international instrument for gender equality due to the 1999 Optional Protocol (OP) that contains procedures for consideration by the CEDAW Committee of individual complaints of violations of their Convention rights (art.2), as well as a procedure under which the Committee may undertake an inquiry into “grave or systematic” violations of Convention rights in States Parties (art. 8.1). The OP entered into force on December 2000; as of 12 October 2017, there were 109 States Parties to the Optional Protocol (Connors 2012). Moreover, the Committee has used General Recommendations³ to define a progressive jurisprudence of the Convention (Baldez 2014) and make it a living instrument (Byrnes 2013). For example, with General Recommendation n. 19 issued in 1992 (and more recently with General Recommendation n. 35 issued in 2017 with the aim to complement and update the guidance to State parties), the Committee has brought the issue of gender-based violence within the scope of the CEDAW (McQuigg 2007; Engle Merry 2006). The CEDAW with its OP has gained a central position for women’s rights advancement worldwide, and the Convention is increasingly

³ According to CEDAW article 21, the Committee is entitled to issue “suggestions and general recommendations based on the examinations of reports and information received from the State Parties”. For the full content of the current 35 General Recommendations issued by the Committee see: <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx> (last access on 12 October 2017)

mentioned in public policies, legislation, and case law across countries. This explains the growing scholarly attention to the domestic implications of the CEDAW.

Monitoring mechanism: The treaty body and domestic compliance

The CEDAW Committee was created for the purpose of overseeing compliance with the Convention and its implementation. The Committee consists of 23 experts of high moral standing and proven competence selected by States Parties for a four-year mandate. The task of the CEDAW Committee is to evaluate the progress made by states in the application of the CEDAW; it may identify areas of concern and formulate recommendations based on an examination of the periodic reports and the information received from States Parties and NGOs. Since 2000, it also considers complaints by individuals and conducts investigations on States Parties to the OP in the case of systematic and grave violations of the rights of women. The States Parties submit a report on the legislative, judicial, administrative, or other measures that they have adopted to give effect to the Convention within one year after ratification and every four years thereafter. Civil society organised in NGOs may take part in the monitoring process through the preparation of shadow reports.

The CEDAW coexists with other gender (regional) human right regimes, such as the Inter-American Convention on the Prevention, Punishment, and Eradication of

Violence against Women (known as the *Convention of Belém do Pará*), the Protocol to the African Charter on Human and Peoples' Rights on the Human Rights of Women (known as the *Maputo Protocol*), the Council of Europe Convention on preventing and combating violence against women and domestic violence (known as the *Istanbul Convention*), and the EU gender equality law. However the CEDAW's holistic approach to women's equality and freedom (Hotmaat 2013) sets it apart from the regimes above, and the case of Italy has been studied to explore whether or not, and to what extent, the CEDAW makes its mark on promoting domestic change.

Italy within the CEDAW system

Most international indicators show that Italy performed low on gender equality (World Economic Forum 2016), and in Europe it is among the most backward countries with a gender equality index far below the EU-28 average (EIGE 2015). Despite significant progress towards equality in the area of education and national parliamentary representation in the most recent years, women still face resistance and obstacles in participating in the labour market, marked by a persistent gender segregation (European Parliament 2014). Maternity is an event that obliges a large amount of women to retire from professional life due the lack of effective work-life

balance policies (Donà 2011); and so, women's general employment rate (46.8% in 2017) remains far below the EU-2020 target that aims to have 75% of the adult population in employment. The dominant Italian patriarchal culture is enshrined in the Mediterranean welfare regime based on traditional gender roles (Naldini 2003), where the main beneficiaries are the working men and family is the fundamental ordering principle of social life (Saraceno 2003). Despite the principle of equality between men and women recognised in the 1948 Italian Constitution, and being an issue politically contested between the then two dominant parties of Christian Democrats (*Democrazia Cristiana*) and Communists (*Partito Comunista Italiano*; Donà 2007), for decades the government's agenda did not consider women's issues. Since the 1970s, the pressure to take legislative action was mainly due to the EU hard law (Guadagnini and Donà 2007) and the activism from the women's movement (Della Porta 2003). After its entering in the CEDAW system, how did the Italian conservative country comply with international obligations on women's rights? The CEDAW monitoring mechanism foresees the periodic submission by States Parties of a report that gives account of the measures adopted at a domestic level in pursuit of CEDAW's goals. In this context, states are invited to respond to the request of inquiries and comments from the CEDAW Committee. Was Italy receptive? Were the recommendations implemented? Additionally, what influence was exerted on Italy? By dealing with these

questions, of course, it cannot be assumed that any progress made by Italy in the field of women's rights is the result of mainly international pressure; other factors may be the result of academic debate, societal transformation, and political change. However, it is important to detect and identify how (and under which conditions) international norms may exert pressure and attempt to influence domestic politics.

Italian ratification of the CEDAW and reporting to the CEDAW Committee

The CEDAW was opened for signature on 1 March 1980, and Italy signed the document on 17 July 1980 during the World Conference on the UN Decade for Women held in Copenhagen, together with fifty other states. Without reservations, Italy ratified the CEDAW with law no. 132 of 14 March 1985 entitled '*Ratifica ed esecuzione della convenzione sull'eliminazione di ogni forma di discriminazione nei confronti della donna, adottata a New York il 18 dicembre 1979*' (Ratification and Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women adopted in New York on 18 December 1979). In case of international treaties that fall under art. 80⁴ of the Constitution (treaties of a political nature, or among other things,

⁴ Art. 80 It.Const: Parliament shall authorise by law the ratification of such international treaties as have a political nature, require arbitration or a legal settlement, entail change of borders, spending or new legislation.

implying legislative reforms and economic costs), it is required that both Chambers of the Parliament give authorisation to the President of the Republic to ratify the treaty. Of course, the executive branch is the institution that defines the lines of the foreign policy, leads the negotiation processes, and decides to sign the final treaty (Cassese 2006). In the case of the CEDAW ratification, the bill was proposed by the government in November 1983, discussed and approved by the standing committee on Foreign Affairs of the Chamber of the Deputies on January 1984, then passed to the Senate, and approved in March 1985; afterwards the law was promulgated in 1985 and gave mandate to the President of the Republic to ratify the CEDAW.

The preparatory workings and the debate during the CEDAW ratification are quite instructive of the poor attention given to women's rights within the political arena and to the convention itself. It took five years to ratify it, and during these years no commission was established with the task of assessing the legal effects of CEDAW norms, and other actions needed before the ratification could take place (contrary to what happened in other countries; see the national cases in Hellum and Aasen 2013). During the debate, scarce attention was given to the innovative content of the convention and its potentially meaningful domestic implications. Only the parliamentarian women from the Italian Communist Party underlined the relevance of the international convention, but they feared that the ratification of the convention

could be interpreted merely as an administrative and formal act. The poor domestic debate and the lack of preparatory initiatives may be interpreted as a sign of state resistance and of the little interest in the domestic effects of the convention (and of other international norms in general), a reiterated behavior of the governments ever since. There is a wide consensus among scholars (Isernia and Longo 2017) that since the end of the Second World War (until today) the Italian decision makers chose to adapt the domestic structure to the international norms according the 'policy of inactivity' with the aim to protect the dynamics of the domestic politics from external challenges and pressures.

The gender-biased corporate identity (Savery 2007) of the Italian state, made up of conservative legislation and traditional practices, represented the most significant barrier to diffusion and implementation of international gender norms for a long time. However, "gender-biased corporate identities are not fixed or immutable" (Savery 2007, 54), but vary according to historical junctures when other ideas of gender relations are institutionalised and new constellations of actors emerge (Zwingel 2012). Thus, the temporal dimension represents a relevant variable, because norms get constructed and in many instances evolve over time (Krook and True 2012).

Italy ratified the OP in 22 September 2002. The role of the Italian Department for Equal Opportunities (DPO), operational since 1997 to support the Ministry for Equal

Opportunities in drafting government equality legislation and implementing gender mainstreaming (Guadagnini and Donà 2007), was meaningful in promoting the OP and the domestic process of ratification.⁵ However, the promised work of dissemination of the CEDAW and OP and of promoting the human rights of women was weakened by the institutional weakness of the DPO.

After CEDAW ratification, Italy should have submitted its initial report within one year, that is, in 1986. As shown by Table 1, which sets out the reporting history, Italy is distinguished by severe delays in submitting its periodic reports (an average three-year delay with respect to the official deadline).

[INSERT TABLE 1 HERE]

In preparing the report, the coordinating role was assigned to a special body within the Minister for Foreign Affairs with the support of women's policy agencies (first the National Commission for Equality between Men and Women, and since the fourth report, the DPO), generally without the involvement and consultation of civil society actors. The emergence of civil society networks appears evident in the case of the

⁵ See the institutional report containing the activities of the DPO during the period 1996-2001 (DPO 2001).

discussion of the sixth and seventh report, when a comprehensive shadow report was prepared for the CEDAW Committee by an alliance between NGOS (named *Piattaforma italiana*) along with the official government document. Civil society activists increasingly acknowledged the relevance of the CEDAW for pressuring Italy on specific issues and strategically built alliances from different organisations with the same goals⁶ to enter into the cycle of reviewing.

If we look closer the preparation of the last periodic report (the seventh) submitted in 2015 and the working of the 67th CEDAW session (3-21 July 2017), we observe some new features: first, the report has been submitted almost regularly; second, the coordinating role of the Inter-Ministerial Committee for Human Rights operating within the Office of the Minister for Foreign Affairs (in Italian, *Comitato interministeriale per i diritti umani – CIDU*) was weakened by controversies with DPO that gained a leading and prominent role in preparing the report;⁷ third, the number of NGOs elaborating shadow reports and policy recommendations to submit to the CEDAW Committee has increased, and now we count – beyond the network of the *Piattaforma italiana* - nine other organizations. According to a leading civil society

⁶ Interview with NGO activist, with coordinating role for the preparation of the 2011 and 2017 shadow report, June 2017.

⁷ Interview with DPO official, Head of the International Affairs Office, June 2017.

activist,⁸ the more the NGOs organise themselves to participate in the international arena (specifically during the CEDAW Committee sessions), the more the probability to gain access to and influence domestic policy-making when dealing with gender issues by using the CEDAW recommendations.

Recurrent areas of concern, according to the CEDAW Committee

What were the CEDAW Committee's comments on the various reports submitted by Italy, and what were the main areas of concern identified since the presentation of the initial report? By examining the content of the concluding observations issued by the CEDAW Committee on the occasion of its special sessions devoted to the examination of Italy's reports in 1991, 1997, 2005, 2011, and 2017,⁹ I identified five issue areas and four institutional weaknesses that have been persistently discussed in the constructive dialogue between Italy and the CEDAW Committee.

The five issue areas are: (1) the persistence of gender stereotypes and patriarchal attitudes inadequately addressed at the cultural level, in the education system (particularly in primary and secondary school syllabuses), and in the legislative arena,

⁸ Interview with the NGO activist, June 2017.

⁹ For the full documentation regarding the CEDAW sessions on Italy, see the web site http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=ITA&Lang=EN (last access on 12 October 2017)

with negative repercussions on the condition of women; (2) the low female representation in political and public life due to the Italian government's opposition to the introduction of positive action measures to encourage women to participate in politics; (3) the diffusion of violence against women and girls and the high number of women murdered by their (ex) partners, aggravated by the scarce preparation and poor sensitiveness to all forms of violence against women and girls by the actors involved in the management of violence cases (particularly the police force, the judicial apparatus, and the health care system); (4) the absence of measures to facilitate the reconciliation of family and work life and to support the participation of women in the labour market; and (5) the territorial differences in the area of health services, strongly underdeveloped in Southern Italy (where 60% of women do not have access to abortion services and mammograms).

What I named 'institutional weakness' refers to a series of elements connected with the specific features of the women's policy agency (WPA) structure and of the established reporting system procedure, both of which - according to the CEDAW Committee - help explain the Italian difficulties to elaborate long-term strategies and adequate policy responses to combat discrimination against women and promote gender equality *de jure* and *de facto* in line with CEDAW obligations. The four institutional weaknesses are: (1) the lack of data disaggregated by gender to provide

enough information on the *de facto* situation of women and for the impact assessment of legislation and public policies for enhancing the equal opportunities between men and women; (2) the weak involvement of female organisations in the preparation of the national report; (3) the poor dissemination across all the branches of government, in society at large, and among women themselves of the contents of the CEDAW and its Optional Protocol, the 1995 Beijing Platform, the Italian periodic reports, and related recommendations issued by the CEDAW Committee; and (4) the weak position within the government of the Ministry of Equal Opportunities and the DPO, equipped with scarce resources to achieve gender equality and to ensure that gender mainstreaming is consistently applied in the formulation of programmes and laws across ministries and levels of governments (local, regional, and national).

Moreover, from a formalistic point of view, the CEDAW Committee reiterated the following criticisms towards the Italian periodic reports: the excessive length, the use of a predominantly legal language, the descriptive nature of the information provided, and the sporadic reference to the concluding observations adopted by the Committee upon the consideration of the State Party's previous report. Evident from the examination of the Concluding Observations by the CEDAW Committee is its strongly critical position towards Italy. The Committee therefore has sought to persuade Italy to implement the commitments assumed through the ratification of the CEDAW by

constantly insisting on the shortcomings of the country, and by supporting initiatives intended to sensitize civil society and to empower NGOs in strategically using international pressures for fostering domestic change. Did all these international pressures bring some domestic change after more than three decades from CEDAW ratification?

The impact of the CEDAW in Italy: An empirical assessment

Only recently scholars have focused on the CEDAW as a potential instrument for social and political change at a national level (Zwingel 2005), and feminist and non-feminist IR scholarship started to investigate the impact of the CEDAW on states. Among this growing literature on CEDAW implementation we can find case studies (Pakistan in Weiss 2003; the United States of America as a case of non-signatory state in Baldez 2014), comparative studies of two different domestic contexts (Finland and Chile in Zwingel 2016; Japan and Turkey in Mello and Strausz 2011) or a group of states (McPhedran et al. 2000; Byrnes and Freeman 2012; Hellum and Aasen 2013), or large-scale studies (Englehart and Miller 2014; Simmons 2009; Den Boer 2008), including Western and non-Western countries.

In measuring the CEDAW impact on Italy, I referred to the work by Byrnes and Freeman (2012), who have conducted an impact assessment using qualitative methodology to identify specific domestic changes deriving from the use of the CEDAW by governments and civil society. These two scholars identified a set of indicators of CEDAW impact on domestic law and practices in the states, included in the following list: review of existing legislation with a particular reference to the CEDAW as the reason and inspiration for reforms; withdrawal of a reservation to the Convention by a state because of the process of presentation of periodic reports and pressures by the CEDAW Committee; change made to a law following the observations of the CEDAW Committee; reference to CEDAW obligations by the parliament or other political bodies; reference to the CEDAW by activists and NGOs; reference to the CEDAW and its general recommendations by courts during judicial proceedings; and use by citizens of States Parties of the complaint procedures established by the OP.

For analytically assessing the CEDAW impact on Italy, I grouped the impact indicators mentioned above along three dimensions: legislation, case law and citizen activism, and institutional structure.

The impact of the CEDAW on legislation.

A quick search through the Italian database of legislation in force¹⁰ with the key words 'convention AND women' produced 1 hit (the 1985 law of CEDAW ratification). The absence of the CEDAW in political and legislative debates may be explained by the more coercive influence of EU norms that prescribe transposition of communitarian obligations by national legislation. The main Italian legislation on women's rights and equal opportunities has been adopted to ensure conformity with EU directives. Based on this, it is of interest that the periodic reports submitted by the Italian government to the CEDAW Committee describe domestic measures and laws (among them, the 1977 law on equal pay, the 2000 law on parental leave, and the 2004 law on electoral gender quota for the European Parliament) without mentioning that they were the effect of EU obligations. Italy has manifested its domestic policy weakness (or 'policy inactivity', see Isernia and Longo 2017) not only in enacting measures that prohibit discrimination against women but also in implementing the recommendations of the CEDAW Committee. Italian decision-makers and civil servants responsible for the implementation of CEDAW minimize the effects of the legal character of the convention. On the other hand, the main women's policy agency – the DPO – is increasingly using the CEDAW requirements to draft equality legislation and programmes. However, the DPO is a low-profile political institution, often headed by

¹⁰ See the database of the Italian legislation currently in force available at <http://www.normattiva.it/> (last access 12 October 2017)

Ministers without portfolio specifically appointed for this task, by Ministers who held other important offices at the same time (Labour, Welfare), or high government officials (*sottosegretario*). Therefore, its activity remains often ineffective.

Consequently, the Committee's recommendations had no effect and the treaty-body regrets the following: the non-involvement of women's associations and organisations in preparation of the periodic reports; the lack of adequate publicity and institutional dissemination for the Convention and the general recommendations issued by the CEDAW Committee (still today such documents are not grouped and immediately available on the website of the DPO but are scattered among several websites under the domains of the Equal Opportunity and Foreign Affairs); and the failure to produce a periodic report that, according to the instructions of the CEDAW Committee, should be a monitoring and results-oriented account, not a formal and prolix historical reconstruction of laws and policy initiatives in Italy.

CEDAW impact on case law and citizen's activism.

Concerning the highest judiciary branch, the case law relating to the CEDAW is either non-existent or inconsistent. The Constitutional Court referred to the CEDAW in

four sentences and one ordinance.¹¹ In case no. 422/1995, the Court declared unconstitutional electoral gender quotas introduced by law in 1993 for national and local elections and suggested that although they are unconstitutional when introduced by law, electoral quotas may be voluntarily adopted – as indicated by the CEDAW - by political parties, associations, or groups that participate in the elections. In cases no. 49/2003 on the 2002 Valle d’Aosta electoral legislation and no. 4/2010 on the 2009 Calabria electoral legislation, the Court legitimated two promotional measures (i.e. the list quota and the *doppia preferenza di genere*) adopted at a regional level. In declaring these measures admissible, the Court cited the international obligations for more gender-balanced representation signed by Italy, such as the CEDAW and the 2000 European Charter of Fundamental Rights, thus underlining the broader frame of reference for its interpretative role beyond the Italian Constitution (Donà 2015). In case no. 286/2016, the Court recognised the mother’s right to give her child her name by declaring the traditional practice outlawed “based on outdated patriarchal ideals”, to automatically give children of married couples their father’s name. Lastly, the CEDAW is mentioned in ordinance n. 306/2011 concerning the norms on immigration introduced by law 286/1998. If we look through the database of court cases, we find

¹¹ Taken from the database available at web page <http://www.cortecostituzionale.it/actionPronuncia.do> (last access 12 October 2017).

that in their judicial proceedings, the courts preferred more often referring to the European Convention on Human Rights (ECHR) and EU legislation (Möschel 2015; Pollicino 2015). This lack of judicial activism (and of individual litigation, see below) may be explained with the fact that in the universities and especially in law studies, attention to the CEDAW is minimal and the doctrinal debate is absent (Möschel 2015). While in other countries (for example in the Netherlands, see Van den Brink 2013), almost every law school has a specific women and law department, in Italy the situation is quite different; the picture indicates that the general public is hardly aware not only of the CEDAW, but knows very little about the whole system of the UN human rights treaties. Thus, citizens and legal professionals do not use the CEDAW against Italy, but prefer to refer to other international legal provisions that have already proven to be successful, such as EU legislation and the ECHR.

To assess the citizen use of the CEDAW, I consider both the activation of the complaint procedure and the degree of feminist political activism. Concerning individual litigation, since the entry in force of the OP in 2002, there has been one complaint registered against Italy (Mukhina v. Italy, in 2010 considered inadmissible for lack of motivation) out of 67.¹² The data show that the citizens appear more active

¹² See the Statistical Survey on the individual complaints available at web page: <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/CEDAWIndex.aspx> (last access 23 November 2017).

in Denmark (16 complaints) and in the Netherlands (8 complaints), a result that may indicate the highest visibility of the CEDAW in these two countries. With respect to the political activism of feminists advocating change to state practices, the increased number of NGOs working on the elaboration of a shadow report suggests that the CEDAW is considered a relevant instrument of feminist activism. Italian activists strategically use the CEDAW Committee recommendations to conduct lobbying activity at the domestic level. For instance, in 2009 a network of NGOs¹³ organised media campaigns to raise awareness and generate public support on the issue of gender violence and used international norms (including the CEDAW) to pressure the Italian Parliament, the DPO, and the single Ministry to intervene with legislative measures and policy programs. Even if the costs of the coordination and elaboration of the shadow report are very high for NGOs, activists consider it worthy, because in this way they obtain visibility in the media, support from public opinion, and influence inside the political arena, with important policy results. Again, in 2012 a dozen Italian feminist organisations grouped under the label 'No More! (Violence)' started a political mobilisation at the domestic and international level asking the government to ratify the Istanbul Convention that was finally ratified in the summer of 2013. According to feminist activists, both the coordinated action of mobilisation and the strategic use of

¹³ A network of nine organizations working on violence and human rights, coordinated by Fondazione Pangea Onlus, was established in 2009.

international norms for promoting legislative action to address the issue of violence against women were able to overcome the deliberate policy of inactivity chosen by the Italian government.

Impact of the CEDAW on institutional structure.

Since the beginning, the CEDAW has been interpreted as a foreign policy matter and therefore as pertaining to the Minister for Foreign Affairs. Foreign policy has been represented as the ambit for expression of the independence of the sovereign state, and for this reason is within the purview of the institutions of government, not of activism by civil society. This organisational definition explains Italy's difficulty in involving actors other than institutional ones. In general, the government delegated the implementation of the CEDAW to the CIDU, which has the competence to prepare reports to submit to the UN human rights treaty system and the Council of Europe. The origins of CIDU date back to the end of the Seventies, when law n. 519 of 15 February 1978 established this structure as part of the Minister for Foreign Affairs. The CIDU is chaired by a high-level diplomat and composed of public officials of all the other Government Ministers (Equal Opportunities, Local and Regional Territories, Home Affairs, Justice, Defence, Health, etc.), but no high level political actors. In 2012 the CIDU was surprisingly suppressed under the spending review procedure but was re-

established in 2013 due to the political pressures of then Minister for Foreign Affairs Emma Bonino, a politician very sensitive to the issues of human rights (Marchetti 2016). The capacity of the CIDU varies according to the availability of financial resources, the cooperation of the other Ministers, and the sensitivity of the politicians to take seriously its activity and human rights issues in general.¹⁴ Looking closely at the CIDU workings, it appears that the stage of report preparation is an entirely closed process governed by ministry officials and diplomats. A preliminary version of the report is then circulated among NGOs but with such strict deadlines for revisions or integration¹⁵ that any attempt of effective participation during the process of compiling the report is difficult. NGOs strongly denounced the lack of fair mechanisms of consultation with civil society. In this process, the role of the DPO -the institution with established and permanent connections with civil society- varies according to political conjunctures, the political will of the government, and the civil servants' commitment for enhancing gender equality.

¹⁴ Interview with expert on human rights working as advisor at the CIDU, November 2015.

¹⁵ Interview with ONG representative, December 2015.

At the parliamentary level, permanent, special or ad hoc committees on human rights¹⁶ have been constituted since the Nineties through the legislatures (Filippone–Thaulero 2012); however, their political nature, poor visibility and weak inquiry power reflect the difficulties to establish a true independent structure, in line with the so-called UN Paris Principles (adopted by the General Assembly in 1993), a set of core minimum standards for the role and functioning of national human rights institutions (NHRI).¹⁷ The Italian delay in reforming an inadequate and incoherent national machinery for human rights (Papisca 2007) is periodically a cause of concern in the international arena (under the procedure of the Special Rapporteur¹⁸ or during the Universal Periodic Review Second Cycle¹⁹), and the Italian delay is emphasised by the comparison with other European countries (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Denmark, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Latvia, Luxembourg, Netherlands, Poland, Portugal, Russian Federation, Serbia,

¹⁶ In the current XVII legislature (2013-2018), the Senate has established the Special Commission for the Protection and Promotion of Human Rights, while at the Chamber of Deputies works the Permanent Committee on Human Rights.

¹⁷ See the UN Principles relating to the Status of National Institutions, adopted by General Assembly resolution 48/134 of 20 December 1993 (UN A/RES/48/134).

¹⁸ Full documentation concerning country visits and concluding reports issued under the Special Procedures of the Human Rights Council since 1998 is available here: <http://spinternet.ohchr.org/Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=ITA>

¹⁹ For the second cycle report (2012-16) on Italy, documents are available here: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/ITIndex.aspx> ;

for a research on Italy's behavior during the first 19 URP sessions see Cofelice 2017.

Spain, Ukraine, and the United Kingdom) whose national human rights institutions are fully accredited by and member of the Global Alliance of NHRI, the international association established in 1993 to promote and strengthen NHRIs to be in accordance with the Paris Principles. In the shadow reports and during the informal consultation meetings in front of the CEDAW Committee, Italian NGOs strongly recommended establishing a monitoring body for the promotion and protection of women's rights as part of the new national independent agency for human rights.

In conclusion, bearing in mind our indicators, the empirical evidence shows that the role of the CEDAW in promoting the rights of women has for a long time been marginal in the case of Italy. However, the research findings reveal signs of emerging influence of the CEDAW within domestic politics. While the Italian government and the parliament, as well as the local and regional institutions, have not made any direct reference to the Convention, feminist activism and the WPA started to act as agents of norm diffusion and socialisation (Prantl and Nakano 2011), promoting a range of legislative initiatives coherent with international norms.

Conclusions

In line with the overall behaviour of States Parties regarding their treaty obligations (Zwingel 2005), Italy registered a medium level of compliance to the CEDAW, where

the formal measures are adopted but without adequate implementation. However, we have to interpret the process of norm diffusion and implementation as a dynamic process (Krook and True 2012; Savery 2007) because “the norms tend to be vague, enabling their content to be filled in many ways and thereby to be appropriated for a variety of different purposes” (Krook and True 2010, 104); hence, we must consider how the CEDAW impact has changed over time. Interpreted in this way, international norms acquire an evolutionary character, and it becomes crucial to focus attention on the dynamic interplay between the international and domestic levels (called the process of localization in Acharya 2004; or norm translation in Zwingel 2012). The evolving content of international norms interact with the specific features of the state context (or the gender-biased state identity) and of the domestic actor constellations acting in favour of international norms diffusion and adaptation to put pressure on states to comply.

The CEDAW demands not only the formal prohibition of discrimination against women but also places positive obligations on the state for the *de facto* fulfilment of women’s rights to equality. The CEDAW has exerted over time pressure on states to change practices and legislation. The persistent conservative gender-based identity of Italy explains the minor evidence of domestic change we found so far in the areas of legislation, case law, and institutional structure. Italian decision-makers and national

courts do not make reference to the CEDAW in legislating measures for women's rights and in their judicial decisions. At domestic level, a deliberative strategy of policy inactivity was chosen with the goal "to minimize the impact of the most costly (both in political and material terms) recommendations, and to protect the dynamics of domestic politics" (Cofelice 2017, 247).

Yet, bearing in mind that norm diffusion and implementation are dynamic processes, we found two promising actors that may foster change in the near future: civil society and the WPA structure. The existence of civil society and their advocacy is critical to improve the flow of information from the international level to the domestic level. This facilitates the monitoring and implementation of the Convention locally and the claiming of rights by women. The true impact of the CEDAW is manifest through its daily use in practice by advocacy associations to generate public awareness and produce policy change. Numerous studies, in fact, have evidenced that it is not so much the impact of human rights treaties on the national legal dimension that matters as the opportunities that they create for NGOs (the so-called "paradox of empty promises" described by Hafner-Burton and Tsutsui 2005). Our research findings documented the capacity of Italian feminist activism to put pressure on the government to alter its behaviour and comply with the CEDAW. Moreover, we observed that the DPO has started to play a role in promoting the CEDAW diffusion, for

drafting legislation in line with international obligations, and for ensuring state compliance with international norms. However, because of its peripheral position and shortcomings regarding its staffing and resources (Guadagnini and Donà 2007), the DPO powers of persuasion and influence have not always been affective, making it a weak mechanism for CEDAW implementation. These findings suggest that the real challenge will be to increase dialogue and collaboration between feminist organizations and the WPA structure to influence policy debates, to take the CEDAW from the margins to the centre, and to hold the Italian government responsible for its duty to respect, protect, and fulfil the human rights of women. Also, academics can contribute to this end with further research on the domestic relevance of international norms and on the mechanisms and conditions that may contribute to the processes of diffusion and implementation of the CEDAW in Italy.

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Table

Table 1: Italian Reporting History

Report	Due	Received	Examined by CEDAW Committee	NGO Shadow Reports	Concluding observations issued by CEDAW Committee
Initial	10 July 1986	20 October 1989 (CEDAW/C/5/Add.62)	21 January 1991	NO	30 January 1992 (UN A/46/38)
Second Periodic	10 July 1990	1 March 1994 (CEDAW/C/ITA/2)	15 July 1997	NO	12 August 1997 (UN A/52/38/Rev.1)
Third Periodic	10 July 1994	21 June 1997 (CEDAW/C/ITA/3)	15 July 1997	NO	12 August 1997 (UN A/52/38/Rev.1)
Fourth Periodic	10 July 1998	22 December 2003 (CEDAW/C/ITA/4-5)	25 January 2005	NO	31 August 2005 (A/60/38(SUPP))
Fifth Periodic	10 July 2002	22 December 2003 (CEDAW/C/ITA/4-5)	25 January 2005	NO	31 August 2005 (A/60/38(SUPP))
Sixth Periodic	10 July 2006	16 December 2009 (CEDAW/C/ITA/6)	14 July 2011	YES (Piattaforma Italiana network)	2 August 2011 (CEDAW/C/ITA/CO/6)
Seventh Periodic	1 July 2015	27 October 2015 (CEDAW/C/ITA/7)	5 July 2017	YES (Piattaforma italiana network and other single or grouped organisations*),	24 July 2017 (CEDAW/C/ITA/CO/7)

(*) These organisations are: Associazione 21; Human Rights Watch; Global Initiative to End All Corporal Punishment of Children; International Baby Food Action Network (IBPFAN); International Planned Parenthood Federation European Network (IPPF EN), Laiga - Libera Associazione Italiana Ginecologi per Applicazione Legge 194, Vita di Donna And the Center for Reproductive Rights; Italian Disability Forum (FID); Italian Network for Women's Rights; StopIGM.org Italy; and Women's International League for Peace and Freedom (WILPF).