

1. Italian legislation establishes universal jurisdiction in criminal matters in three general provisions in the Criminal Code (Articles 7, 8 and 10 CC). These provisions are contained in section one, book one, of the Criminal Code, devoted to general rules on the application of criminal law.

2. As is well known, at the international level universal jurisdiction has manifested itself in two main forms: "Unconditional universal jurisdiction", which entails, among other things, that prosecutions *in absentia* may occur; and "conditional universal jurisdiction", which requires the fulfillment of certain requirements to ensure reasonable exercise of extraterritorial jurisdiction (e.g. the presence of the alleged offender in the territory of the state of the forum, or the prohibition of his or her extradition towards the territorial or national state, or the need for a specific request by the Minister of Justice and so on).

3. In Italy, Article 7 CC refers to the punishment of offences committed abroad (both by Italians as well as foreigners). It affirms jurisdiction over a set of offences against national interests, such as offences against the personality of the State, or counterfeiting of money or State symbols. In these cases foreigners can be prosecuted before Italian courts even if they committed the crime abroad. However, the rationale is not so much universal jurisdiction but the protection of Italian interests.

Nonetheless Article 7(5) CC contains a broad provision which may be said to allow Italian courts to exercise *universal jurisdiction unconditionally* including over international crimes. According to Article 7(5) CC the foreigner that commits a crime abroad is punished under Italian law whenever this is provided for by special legislation, or by international conventions. Clearly, this is a 'blank' provision; its concrete content as well as the 'unconditional' or 'conditional' nature of universal jurisdiction under this rule will depend on the special provisions of Italian legislation or international conventions referred to.

In sum, Article 7(5) CC allows for universal jurisdiction, but it is ultimately for the other provisions to which it refers to determine the actual scope of universal jurisdiction. A case by case analysis will then be necessary to determine whether or not there are specific rules providing for universal jurisdiction for any given offence as well as whether or not there are conditions limiting universality. Just as an illustration, it is worth noting that with regard to some international conventions ratified by Italy, it has been decided to adopt implementing legislation which specifies the limits of universal jurisdiction (e.g. Law n. 107, 25 March 1985 Art. 2, implementing the UN Convention on internationally protected persons, or Law n. 342 10 May 1976, Art 3, implementing various international conventions on terrorism against aircrafts), thereby opting for 'conditional' universal jurisdiction. Even for the implementation of the 1984 Convention against Torture, it would seem that a choice was made to opt for the conditional version of universal jurisdiction (see Article 3, Law no. 498, 3 November 1988 on the ratification and execution of the Convention against Torture), requiring the presence of the defendant, the non-extradition and the request of the Minister of Justice.

It is more controversial whether any conditions may be imposed to universal jurisdiction provided for by the grave breaches provisions of the 1949 Geneva Conventions. In this case the solution would seem to be dependent upon the interpretation

given to the principle of universality provided for by the provisions of the Conventions themselves.

4. Article 10 CC generally provides for *conditional universal jurisdiction*. Italian law applies to *ordinary crimes* committed abroad by foreigners. On the basis of this provision a foreigner who commits a crime against an Italian citizen (in this case, of course, it is not universal jurisdiction but jurisdiction under the passive nationality principle) or against a foreigner outside Italy, can be brought before Italian courts provided that *several conditions are cumulatively met*: i) First of all it must be an offence for which a minimum sentence of three years is established. ii) Secondly, the alleged offender must be in Italy. iii) Thirdly, there must be the request of the Minister of Justice (or the complaint of the victim of the offence if this is required under Italian law). iv) Fourthly, no extradition may take place either because it is not granted or because it has not been requested. Hence, one may conclude that Article 10 CC contains the conditional version of universal jurisdiction. Foreigners who commit crimes abroad against can be punished under Italian law but only under strict circumstances.

5. Finally, there is a last general provision containing some elements of universal jurisdiction, even if in this case it seems that the true rationale of the provision is to be found in the need to protect the interests of the State. Article 8 establishes that where a foreigner commits a *political offence* abroad (implicitly against Italy) he or she may be brought before Italian courts if the Minister of Justice so requires. It is however doubtful that international crimes can be characterized as political offences under Article 8 CC.