Genocide: The Italian Perspective

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In 1952 the Italian Parliament authorized the Government to proceed with the ratification of the Genocide Convention of 1949 (hereinafter Convention), but only fifteen years after the Implementation Act, “Prevenzione e repressione del delitto di genocidio,” came into force.

This paper aims to explore the reasons why the implementation process took such a long time, to analyze the Italian Genocide Act, with a special focus on its further content compared with that of the Convention, to examine the Italian case law related to the subject and to make a conclusive remark on the actual Italian approach to the international prevention and prosecution of genocide.

I. The Historical Perspective

As aforementioned, the Italian Government deposited the instrument of accession to the Convention on 4th June 1952, as authorized by the law no. 153/1952 which also contained the order of execution given through an anomalous formula. In fact, article 2 didn’t give immediate and full execution to the Convention, as would usually have been the case, but stated that the Convention itself would have to be completely executed starting from the day when the implementation law (mentioned by article V of the Convention) came into force; but we had to wait fifteen years before this event occurred.

4 Art. 2, l. 11 marzo 1952, n. 153.
6 The choice of such a formula can be explained by the fact that the drafters knew very well which problems the “legislator” had to face in order to give complete execution to the Convention, as analyzed infra.
Why such a long delay?

Before drafting the implementation law it was necessary to face and solve several problems related to the compatibility of the Convention’s provisions – which in a certain sense had to be reproduced in a domestic statute – within the content of the Italian Constitution. The main question was to coordinate the provisions contained in article VII of the Convention (“Genocide and the other acts enumerated in article III shall not be considered as a political crime for the purpose of extradition”) with articles 10 and 26 of the Italian Constitution “[(. . .)The extradition of a non-citizen is not allowed for political crimes,” “The extradition of a citizen may be allowed only when expressly provided for by international conventions.[Extradition] is never allowed for political crimes,” respectively).

The issue was strictly related to the huge and complex debate that went on in Italy at that time on the general definition of “political crime,” which one had to be applied to the provisions mentioned above (Article 10 and Article 26 of the Constitution), since the Constitution doesn’t itself define the notion of “political crime.” On one side some commentators thought that the definition contained in Article 8 of the Criminal code was also suitable for Articles 10 and 26 of the Constitution; on the other side it was stated that, for several reasons, another definition had to be found.

Obviously the essential and final question of the debate, with which we are concerned, was to consider whether or not genocide was a political crime according to Articles 10 and 26. Apparently there were two possibilities: in the case of a positive answer, the Constitution had to be amended, excluding the application of Articles 10 and 26 for genocide; in the case of a negative answer, no further steps had to be taken.

Even if scholars almost agreed that genocide couldn’t be considered a political crime (indeed the rapporteur at Parliament for the drafting text of law no. 153/1952 stated that genocide, being part of the crimes against humanity, a tertium genus, couldn’t belong to the traditional categories of

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7 On the subject, see: Pulitanò, “Delitto politico,” in Digesto delle discipline penalistiche, III, 358 (UTET 1989); Pelissero, Reato politico e flessibilità delle categorie dogmatiche, (Jovene 2000); Del Tufo, Estradizione e reato politico, (Jovene 1985).


9 See infra.