

MAURIZIO BLOCK*

HUMAN DIGNITY IN ARMED CONFLICT: PERSPECTIVES FROM INTERNATIONAL CRIMINAL LAW AND ITALIAN MILITARY LAW**

ABSTRACT. This paper examines the concept of human dignity as a foundational and transversal principle within the legal system, with particular reference to international criminal law and military justice. Beginning with a theoretical reflection on human dignity as an inalienable right of the individual, the analysis highlights its centrality in various provisions of the Italian Constitution, despite not always being explicitly mentioned, as well as in the jurisprudence of the Italian Constitutional Court and in key supranational and international instruments, including the Charter of Fundamental Rights of the European Union and the Rome Statute of the International Criminal Court. The presentation focuses on the protection of human dignity within the Italian military criminal codes, underscoring the structural and normative limitations of the 1941 Italian Wartime Code, which remains partially applicable in peacetime, yet does not fully align with the Rome Statute, particularly concerning crimes against humanity. Special attention is given to the proposed Code of International Crimes, drafted by two ministerial commissions (Palazzo-Pocar and Nordio), whose legislative progress was halted despite its inclusion of innovative provisions, such as the recognition of cultural genocide. The paper further analyse draft law No. 1135/2024, currently under parliamentary review, which seeks to introduce the crime of sexual violence against women during armed conflict into the Italian Criminal Code, based on the principle of universal jurisdiction. While the bill's objectives are endorsed, several amendments are proposed, including gender-neutral language for victims, recognition of mitigating circumstances, and reconsideration of the crime's placement within the legal framework. Additionally, the introduction of a separate offense for the failure of superiors to prevent such crimes has to be recommended. In conclusion, although partial in scope, these legislative initiatives represent an important step toward a more comprehensive protection of human dignity in both domestic and international criminal law.

* Italian General Military Prosecutor at the Supreme Court of Cassation.

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1. *Introduction*

The protection of human dignity is a central value of international criminal law. As described by international doctrine, even commenting international law and jurisprudence in the context of armed conflict – where the erosion of fundamental values is most evident – the safeguarding of human dignity assumes a decisive role in preserving the moral core of the legal order.¹

This article aims to highlight the role of human dignity in national and international criminal systems, with a specific focus on Italian military justice and the challenges posed by the partial implementation of international norms, such as the Rome Statute of the International Criminal Court.² It defines human dignity as an inalienable and fundamental right of the individual. Human dignity refers to the inherent value that a person attributes to themselves and the perception of how their personhood is respected by others. There exists a minimum threshold below which human dignity is compromised; respecting this threshold must remain inviolable, even in extreme situations such as armed conflict, where the subversion of values endangers social peace and therefore calls for adequate legal regulation.

¹ Alessandra Annoni, Francesca Salerno, *La tutela internazionale della persona umana nei conflitti armati* (Carocci editore, 2023); Martti Koskenniemi, The gentle civilizer of Nations. *The rise and fall of International Law 1870-1960* (CUP, 2002); see also the Italian translation: Martti Koskenniemi, *Il mite civilizzatore delle nazioni. Ascesa e caduta del diritto internazionale 1870 -1960* (Carocci editore, 2012); Mahasen Mohammad Ataghoub, *The advisory function of the International Court of Justice, 1949-2005* (Springer Law International, 2006). Andreas Zimmermann, Rainer Hofmann (eds), *Unity and diversity in international law* (Duncker & Humblot, 2006). Sameh Amr, *The role of the international Court of Justice as the principal judicial organ of the United Nations* (Brill, 2003); Christian Dominicé, 'L'accorde du siege conclu par le Comité international de la Croix Rouge, avec la Suisse', (1995) *Revue générale de droit international public*, 1; Antonio Truyol Y Serra, *Histoire du droit international public* (Economica, 1995). Paolo Benvenuti, *L'accertamento del diritto mediante i pareri consultivi della Corte Internazionale di Giustizia* (Giuffrè, 1985); Wolfgang Fiedmann, *The changing structure of international law* (Stevens & Sons, 1964).

² Edoardo Greppi, 'Diritto internazionale umanitario dei conflitti armati e diritti umani: profili di una convergenza', (1996), *La Comunità internazionale*, 473.

2. *The Principle of Human Dignity in National and International Law*

The principle of human dignity pervades the entire legal order and has gained increasing prominence at both national and supranational levels.

It seems relevant to underline that numerous international and European sources affirm and protect human dignity.

From an international perspective, the Universal Declaration of Human Rights (1948) affirms, in Article 1, that all human beings are “born free and equal in dignity and rights”.³

The Preamble of the International Convention on the Elimination of All Forms of Racial Discrimination States Parties⁴ (1965) express their understanding that the United Nations Charter is founded on the principles of “the dignity and equality inherent in all human beings”, and that the UDHR proclaims all human beings are born equal in “dignity and rights”.

The mentioned Preamble situates the Convention within the broader framework of international human rights, anchoring it to foundational texts like the UN Charter and the Universal Declaration of Human Rights, both of which affirm human dignity as a core value.

The Preamble of the International Covenant on Civil and Political Rights⁵ (1966), states: “Recognizing that these rights derive from the inherent dignity of the human person”. Furthermore, Art. 10, paragraph 1 expressly mentions this core principle: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

The International Covenant on Economic, Social and Cultural Rights⁶ (1966) shows an identic text in its Preamble, but any specific article concerning the human dignity.

From a gender perspective, The Preamble of the Convention on the Elimination

³ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)), art 1.

⁴ Available at: <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>>.

⁵ Available at: <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>>.

⁶ Available at: <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>>.

of All Forms of Discrimination Against Women⁷ (1979) indicates: “Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity...”. The following Article 11, paragraph 1 (c) recalls “in particular the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction, and to ensure, on a basis of equality of men and women, the protection of the human dignity of all workers.”

The following Article 13 (c) requires that the States shall grant to all women on an equal gender basis, “the right to family benefits, the right to bank loans, mortgages and other forms of financial credit, and the right to participate in recreational activities, sports and all aspects of cultural life.”

The above-mentioned Treaty is often described as an international bill of rights for women and defines what constitutes discrimination against women, setting up an agenda for national action to end such discrimination that offends the dignity of the women.

In the Preamble of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁸ (1984), human dignity is affirmed as the foundation of human rights, in accordance with the language of the Universal Declaration of Human Rights, as follows: “Recognizing that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, and that these rights derive from the inherent dignity of the human person...”.

In more recent times it should be relevant to mention also the Convention on the Rights of the Child (1989), as well as the Convention on the Rights of Persons with Disabilities (2006) that completed the modern international framework.

Last but not least, from an international perspective, it is mandatory to recall the Statute of the International Criminal Court⁹, that is a fundamental agreement that led to the formation of the International Criminal Court. The so-called Rome Statute¹⁰ was adopted at a diplomatic conference in Rome, Italy, on 17 July 1998 and it entered

⁷ Available at: <<https://www.un.org/womenwatch/daw/cedaw/cedaw.htm>>.

⁸ Available at: <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>>.

⁹ Available at <<https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>>.

¹⁰ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002), arts 6-8.

into force on 1 July 2002. As of July 2025, 125 states are party to the Statute.

The Rome Statute established four core international crimes: genocide, crimes against humanity, war crimes, and the crime of aggression (added by the Kampala amendments in 2010). As described in the following paragraph 4, those crimes, that “shall not be subject to any statute of limitations”, are not fully provided for by the Italian Wartime Code.

From an European perspective, the European Convention on Human Rights (1950) has primary relevance.

Although it does not explicitly mention human dignity, the concept is embedded in the rights it enshrines, such as the right to life, bodily integrity, and the prohibition of torture.¹¹

In this exact direction, the Charter of Fundamental Rights of the European Union (2000), in Article 1, unequivocally states: “Human dignity is inviolable. It must be respected and protected.”¹²

More precisely, the following Article 2 states: “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights...”.

The following milestone is represented by the Art. 2 of the Treaty of Lisbon (2009), consolidated in the Treaty of European Union: “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights...”.

From an Italian perspective, the principle of human dignity represents an implicit yet foundational value within the Italian constitutional framework, even though it is not always explicitly mentioned. Nonetheless, it is central to numerous constitutional provisions, including Articles 1, 2, 3, 13, and 32 of the Italian Constitution.

The significance of human dignity emerges particularly in the area of prison treatment, as stated in Article 27, paragraph 3, of the Constitution, which mandates that punishment must respect human dignity.

Furthermore, human dignity lies at the core of a number of criminal offenses against the person, such as mistreatment, torture, sexual violence, and others that inherently imply a violation of this legal asset.

From a national judiciary perspective, the Italian Constitutional Court has repeatedly invoked the principle of human dignity in its jurisprudence to declare the un-

¹¹ European Convention on Human Rights (ECHR) (1950), art. 2, 3.

¹² Charter of Fundamental Rights of the European Union [2000] OJ C364/01, art 1.

constitutionality of laws that infringe upon personal rights. A paradigmatic case is Judgment No. 96 of 2015, regarding end-of-life decisions, where the Court explicitly referenced human dignity as a criterion for ensuring the individual's right to self-determination.¹³ Unfortunately, this ruling has not yet been fully implemented by the legislative power, to which the Court had addressed its directive.

3. *Military Criminal Law and the Italian Wartime Code*

In the specific context of military justice, which is the field in which I deal with, particular attention must be paid to how the concept of human dignity is protected within military criminal codes, especially within the Italian Wartime Code¹⁴ and the proposed International Crimes Code,¹⁵ currently still under legislative consideration. Additionally, a specific legislative proposal presently under review by Parliament addresses the protection of women during armed conflict and, by extension, the human dignity of women in such contexts.

It is important to note that the Italian Wartime Code is applicable not only in wartime but also in peacetime, pursuant to the amendments introduced by Law No. 6/2002.¹⁶ This extension, however, applies only to certain provisions – specifically, Articles 165 and following – concerning crimes against the laws and customs of war.

Despite this, the existing Military Code does not entirely reflect contemporary standards, either in form or substance, due to its origin in 1941 and its foundation in outdated ideological premises. Nevertheless, alongside international instruments such as the 1949 Geneva Conventions and their 1977 Additional Protocols,¹⁷ the Universal Declaration of Human Rights, and other sources of international law (many ratified by Italy), the Italian Wartime Code still contains provisions that aim to protect human dignity.

In particular, the chapter on crimes against prisoners of war merits mention. Articles 209 through 213 address, respectively, torture and mistreatment, insult, violence

¹³ Constitutional Court, Judgment n. 96/2015 (End-of-life case), available at <<https://www.cortecostituzionale.it>>.

¹⁴ Italian Wartime Code (Royal Decree Law No. 303 of 13 November 1941), as amended.

¹⁵ Ministry of Justice, 'International Crimes Code Scheme' (Palazzo-Pocar Commission and Nordio Commission, 2023).

¹⁶ Law No. 6 of 31 January 2002, 'Changes to the discipline of military crimes in peacetime and in wartime'.

¹⁷ Geneva Conventions (1949) and Additional Protocols I and II (1977), ratified by Italy with Law No. 173/1985.

or threats, coercion to provide information or perform prohibited labour, and violations of religious freedom. Each of these offenses protects the moral autonomy of the prisoner, safeguarding their conscience and preserving their sense of self-worth and human personhood.

4. *The Gap between the Italian Wartime Code and the Rome Statute of the International Criminal Court*

Unfortunately, the current Italian Wartime Code does not include all the offenses provided for in Articles 6, 7, and 8 of the Rome Statute: this issue represents sensitive matter. The Rome Statute articulates a broader and more nuanced protection of human dignity through the codification of offenses not currently reflected in either the Italian Wartime Code or other areas of Italian criminal law.¹⁸

It should be highlighted:

Article 6(c), (d), and (e) of the Rome Statute: imposing living conditions calculated to destroy a group; preventing births within a group; or forcibly transferring children to another group.

Article 7(g) and (h): rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilization, and other forms of comparable sexual violence; and persecution against identifiable groups based on political, racial, national, ethnic, cultural, religious, or gender grounds.

Article 8(x): subjecting persons in enemy hands to mutilation or medical/scientific experimentation not justified by the medical treatment of the persons involved, causing death or serious harm.

These examples underscore the gap between international standard and national legislation.

Therefore, a legislative intervention aimed at giving full effect in the Italian criminal system to the criminal provisions contained in the Rome Statute appears to be essential and its adoption is hoped for as soon as possible.

¹⁸ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002), arts 6-8.

5. *The Proposed Italian Code of International Crimes*

Significant progress might have been achieved through the enactment of the proposed Code of International Crimes, which I contributed to in both the initial Palazzo-Pocar Ministerial Commission and the subsequent one chaired by Minister Nordio.¹⁹ Both commissions produced draft codes. The most recent – commonly referred to as the “Nordio Draft” – was presented to the Council of Ministers in March 2023, but it was approved (in a press release) only in part. The section on “crimes against humanity,” which offered the most robust protection of human dignity, was excluded.²⁰

The draft included offenses of considerable normative importance, such as cultural genocide. This crime punishes any person who, with the intent to eradicate a national, ethnic, racial, religious, or linguistic group, subjects members to restrictions on personal liberty, deportations, forced indoctrination, bans on religious or cultural practices, or other actions aimed at eliminating the group’s identity.²¹ Such conduct strikes at the very foundations of human personality and dignity.²²

Other crimes against humanity proposed in the draft included slavery, forced marriage, sexual and reproductive violence, torture, persecution, and apartheid. The exclusion of these provisions represents a significant setback, as they align directly with the Rome Statute and ensure full protection of fundamental rights, including human dignity. The remaining approved provisions have not proceeded through the legislative process, and the draft remains dormant.

The question of jurisdiction over crimes against humanity has also been debated, specifically, whether such cases should fall under the ordinary or military courts. Given the gravity of these offenses and their impact on fundamental rights, consensus was reached that they should be adjudicated by ordinary courts, notwithstanding the existence of military tribunals under Article 103 of the Italian Constitution.

On the other side, according to the draft law, war crimes committed by military personnel remain under the jurisdiction of military courts, while those committed by civilians in peacetime fall under the jurisdiction of ordinary courts. These provisions appear to be consistent with the Italian Constitution, which provides that military courts

¹⁹ Ministry of Justice, Report of the Nordio Commission on International Crimes Code Scheme (2023).

²⁰ Council of Ministers, Press release No. 51, 9 March 2023.

²¹ *Ibid.*, art 7-ter (draft), as proposed.

²² Edoardo Greppi, *I crimini dell'individuo nel diritto internazionale* (WK, 2012).

in peacetime have jurisdiction only for military crimes committed by members of the Armed Forces.

6. *The New Legislative Proposal on Sexual Violence in Armed Conflict.*

In the same spirit of protecting human dignity, a recent draft law – still under parliamentary review – addresses the protection of women during armed conflict. While partial in scope, this initiative revives much-needed attention to the implementation of international criminal law. It is draft law No. 1135, presented to the Senate on 9 May 2024 by members of the parliamentary majority, including Senators Campione, Balboni, and Rastrelli.²³ The mentioned draft law proposes incorporating into the Italian Criminal Code the offense of sexual violence against women as a mean or a method of war.²⁴

Commendably, it introduces Article 609-bis.1, which establishes the principle of universal jurisdiction for such crimes, allowing prosecution in Italy, even when committed abroad by foreigners, provided the perpetrator is present within Italian territory, a principle previously endorsed by the aforementioned ministerial commissions.²⁵

The proposed article punishes anyone who, during an armed conflict, coerces a woman into acts of sexual violence – including rape, sexual slavery, forced prostitution, and other forms of sexual coercion – by violence, threat, or abuse of power, with imprisonment from 8 to 12 years. A second paragraph criminalizes acts such as forced genital mutilation or sterilization aimed at preventing births.

The contextual element requires that the conduct be committed during an internal or international armed conflict, as defined in Article 165 of the Italian Wartime Code. However, limiting the protection to women as victims is problematic. This restriction contradicts the inclusive approach of both the general provisions of the Italian Criminal Code and the Rome Statute, which recognize protection regardless of gender or sexual orientation. International jurisprudence, including the International Criminal Court and The Hague Convention of 26 May 2023, supports this broader interpretation.²⁶

It would be more appropriate, therefore, to use the term *any person* as the victim of such crimes, ensuring gender-neutral protection.

As for the criminal conduct itself, it is recommended defining it in terms of *sexual conducts* already recognized under existing criminal law, encompassing a range from

²³ Senate of the Republic, Bill No. 1135 (presented on 9 May 2024).

minor sexual harassment to aggravated sexual violence. This would prevent the judiciary from having to interpret subjective terms such as “serious offense to liberty and human dignity,” which is inherently implied in any non-consensual sexual act.

A mitigating circumstance should also be included that of Article 609 bis, first paragraph of the Criminal Code for cases of lesser seriousness, also taking into account the high penalty (8 to 10 years imprisonment) for basic crime hypotheses.²⁷

This provision should also apply in peacetime for the Italian State even if the act is committed abroad in a situation of armed conflict, regardless of whether or not the state of war exists.

In the opinion of the author, this provision should include an aggravating circumstance when the offense is committed by military personnel, given the potential for abuse of power inherent in their role.

Finally, I suggest reconsidering the placement of this military-specific offense within the ordinary Criminal Code. A more appropriate approach would be to include it within the military criminal codes – either of peace or of war – as it inherently pertains to military conduct.

Additionally, I urge the introduction of a separate offense for failure to prevent the commission of such crimes by commanders or civilian superiors, even though negligence. Too often, these acts occur with the tacit approval or silent complicity of those in authority, yet existing legal provisions, such as Article 40 of the Criminal Code, may not fully encompass such responsibility.

In fact, it has often happened, in conflict territories, that serious crimes against the civilian population, consisting of rape and gang rape by combatants, have been permitted thanks to the complacent silence of the hierarchies, who have not taken steps to prevent the commission of such serious crimes but have instead used indifference to leave troops complete freedom to commit all kinds of atrocities, almost as a reward for their commitment to the conflict.

It is therefore considered necessary to provide for a specific criminal provision that punishes the hierarchical superior who willfully fails to take the necessary measures to prevent personnel employed in conflict zones from committing acts that are seriously harmful to the sexual and personal sphere of the civilian population, and who fails to report and punish those responsible.

However, the application of the general rules established for the complicity of persons in the crime remains unchanged in the case that the commander has encouraged the commission

²⁷ Rachele Marconi, The sexual violence against women as torture in the case of law of Inter-American Court of Human Rights (2019), 3, *Diritti Umani e Diritto Internazionale*, 639.

of such criminal acts or has expressed approval for their occurrence, according to the provisions established in the Common Penal Code in Articles 110 and 40 respectively.

This legislative proposal No. 1135 – though partial as it limits its scope of application only to the specific area of sexual violence in armed conflict rather than to the protection of all criminal offences covered by the Rome Statute – however fits within a broader framework for strengthening the protection of human dignity within our legal system.

7. Conclusion

Human dignity, particularly the dignity of women in armed conflict, remains a central concern of international humanitarian and criminal law. While normative developments have been significant, implementation gaps persist. Bridging these gaps requires stronger enforcement, increased gender sensitivity in military and humanitarian practices, and meaningful inclusion of women in peace and justice processes. A global commitment to these goals will not only protect women's dignity but also strengthen the rule of law and the prospects for lasting peace.