CONTENTS

LIST OF ABBREVIATIONS XIII

Symposium
SEARCH AND RESCUE: BALANCING HUMANITARIAN AND SECURITY REASONS

INTRODUCTION Giuseppe Cataldi 3

ITALY VERSUS NGOS: THE CONTROVERSIAL INTERPRETATION AND IMPLEMENTATION OF SEARCH AND RESCUE OBLIGATIONS IN THE CONTEXT OF MIGRATION AT SEA Giorgia Bevilacqua 11

BETWEEN A “GO BACK!” AND A HARD (TO FIND) PLACE (OF SAFETY): ON THE RULES AND STANDARDS OF DISEMBARKATION OF PEOPLE RESCUED AT SEA Paolo Turrini 29

THE MISSING OBLIGATION TO DISEMBARK PERSONS RESCUED AT SEA Kiara Neri 47

EU REGIONAL DISEMBARKATION ARRANGEMENTS IN THE MEDITERRANEAN: BETWEEN THE OUTSOURCING OF SEARCH AND RESCUE SERVICES AND THE EXTERNALISATION OF SEA BORDER MANAGEMENT Marco Fantinato 63

DISTRIBUTING RESPONSIBILITY BETWEEN SHIPMASTERS AND THE DIFFERENT STATES INVOLVED IN SAR DISASTERS Francesca De Vittor and Massimo Starita 77

THE VATICAN CITY STATE’S REFUSAL TO GRANT ITS FLAG TO SEARCH AND RESCUE VESSELS OF NGOS OPERATING IN THE MEDITERRANEAN Valentin J. Schatz and Fabian Endemann 97

ARTICLES

THE INTERPLAY BETWEEN INVESTMENT LAW AND THE DUTY OF NON-RECOGNITION IN SITUATIONS OF CONTESTED SOVEREIGNTY Sondra Faccio 113
Emma Luce Scali

THE EFFECTS OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS ON THE FINAL DECISIONS OF DOMESTIC COURTS: RECENT DEVELOPMENTS IN THE ITALIAN CASE LAW
Fabrizio Marongiu Buonaiuti

GOVERNMENT TRANSPARENCY AND THE RIGHT OF ACCESS TO INFORMATION: EVOLVING INTERNATIONAL AND EUROPEAN STANDARDS AND THEIR IMPLEMENTATION IN THE ITALIAN LEGAL SYSTEM
Valentina Rossi

NOTES AND COMMENTS

THE CONCLUSION OF BILATERAL AGREEMENTS AND TECHNICAL ARRANGEMENTS FOR THE MANAGEMENT OF MIGRATION FLOWS: AN OVERVIEW OF THE ITALIAN PRACTICE
Andrea Spagnolo

THE ROLE OF FACEBOOK IN THE PERSECUTION OF THE ROHINGYA MINORITY IN MYANMAR: ISSUES OF ACCOUNTABILITY UNDER INTERNATIONAL LAW
Silvia Venier

ON AMERICAN DRONE STRIKES AND (POSSIBLE) EUROPEAN RESPONSIBILITIES: FACING THE ISSUE OF JURISDICTION FOR “COMPPLICITY” IN EXTRATERRITORIAL TARGETED KILLINGS
Diego Mauri

THE FRANCO-GERMAN APPROACH TO TACKLING CLIMATE CHANGE IN THE AACHEN TREATY OF 2019
Ferdinando Franceschelli

PRACTICE OF INTERNATIONAL COURTS AND TRIBUNALS

THE JUDICIAL ACTIVITY OF THE INTERNATIONAL COURT OF JUSTICE IN 2018
Serena Forlati

Tullio Treves
ITALIAN PRACTICE RELATING TO INTERNATIONAL LAW

Classification scheme

JUDICIAL DECISIONS
(edited by Daniele Amoroso and Andrea Caligiuri)

V. IMMUNITIES
THE AFTERMATH OF THE ITALIAN CONSTITUTIONAL COURT JUDGMENT NO. 238 OF 2014 IN EXEQUATUR AND ENFORCEMENT PROCEEDINGS (note by Pierfrancesco Rossi)
Corte di Cassazione (Sez. III Civile), 8 June 2018, No. 14885
Region of Sterea Ellada v. Presidency of the Council of Ministers and Federal Republic of Germany

VII. LAW OF THE SEA
WHAT POSSIBILITIES FOR EXERCISING CRIMINAL JURISDICTION OVER MIGRANT SMUGGLERS IN INTERNATIONAL WATERS? (note by Francesca Mussi)
Corte di Cassazione (Sez. I Penale), 3 July 2018, No. 29832 459
Criminal proceedings against Ahmad Hassan Ali Mohmoud and AhmadRamadan Mohammad Hassan

XI. TREATMENT OF ALIENS AND NATIONALITY
DIPLOMATIC PROTECTION BEFORE ITALIAN ADMINISTRATIVE JUDGES (note by Andrea Caligiuri)
Diplomatic protection – Political act – Treatment of aliens – Article 20 of the TFEU – Consular assistance – Judicial review
Tribunale Amministrativo Regionale per il Lazio (Sezione Terza Ter), 4 December 2017, No. 11955
Francesco Becchetti v. Presidenza del Consiglio dei Ministri and Ministero degli Affari Esteri e della Cooperazione Internazionale
XII. HUMAN RIGHTS

Gender-Sensitive Interpretation of International Protection in the Light of Italian Practice (note by Maura Marchegiani)


Corte di Cassazione (Sez. I Civile), 24 November 2017, No. 28152 (order)

J.O.S. v. Ministero dell’Interno

The Compliance of Retrospective Pension Legislation with the ECHR before the Constitutional Court (note by Donato Greco)


Corte Costituzionale, 1 December 2017, No. 250

C.G. and others v. INPS

Ne Bis in Idem Principle and “Double-Track Systems”: The Ongoing Dialogue between the Italian Constitutional Court and the ECtHR (note by Cristina Renghini)

Article 649 of the Italian Code of Criminal Procedure – Ne bis in idem – Article 4 of Protocol No. 7 of the ECHR – Double-track systems – Penalty – Dialogue between Courts

Corte Costituzionale, 24 January 2018, No. 43

Criminal proceedings against Claudio Stiscia

Cultural Practices and the Protection of Human Rights in a Recent Ruling by the Corte di Cassazione (note by Alessandra Nepa)

Culturally oriented crimes – Cultural pluralism – Universal human rights – Right to culture – Right to a cultural identity

Corte di Cassazione (Sez. III Penale), 29 January 2018, No. 29613

Criminal proceedings against Q.N. and Q.E.

XIII. INTERNATIONAL CRIMINAL LAW

Limiting “Preventism”? The Court of Cassation Clarifies the Notion of “Participation in an Association for Terrorist Purposes” (note by Elena Carpanelli)

“Participating” in an association for the purpose of terrorism – Lone wolf terrorists – Operative contact with the association – Additional Protocol to the Council of Europe for the Prevention of Terrorism of 22 October 2015 – Directive (EU) 2017/541 on combating terrorism – Human rights protection

Corte di Cassazione (Sez. VI penale), 29 March 2018, No. 14503

Criminal proceedings against Messaoudi El Mostapha

XVII. RELATIONSHIP BETWEEN MUNICIPAL AND INTERNATIONAL LAW

A Controversial Ruling by the Corte di Cassazione on the Domestic Rank of Treaties Other than the European Convention on Human Rights (note by Giuliana Lampo)

Rank of international treaties in the Italian legal system – Article 117(1) of
the Italian Constitution – Sub-constitutional treaties – Lanzarote Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse – Article 351(1 ter) of the Italian Code of Criminal Procedure
Corte di Cassazione (Sez. III Penale), 22 May 2018, No. 22754
Criminal proceedings against M.E. 488

THE EUROPEAN SOCIAL CHARTER AS A PARAMETER FOR CONSTITUTIONAL REVIEW OF LEGISLATION (note by Lorenza Mola)
Article 117(1) of the Italian Constitution – European Social Charter – European Committee of Social Rights – Article 1475(2) of the Italian Code of the Armed Forces’ Order – Article 3(1) of Legislative Decree No. 23 of 4 March 2015 (“Jobs Act”)
Corte Costituzionale, 13 June 2018, No. 120
Francesco Solinas and AS.SO.DI.PRO. v. Comando generale della Guardia di finanza
Corte Costituzionale, 8 November 2018, No. 194
Francesca Santoro v. Settimo senso s.r.l. 493

XXI. INTERNATIONAL DISPUTE SETTLEMENT
PARALLEL DOMESTIC AND ARBITRAL PROCEEDINGS: ITALIAN JUDGES STILL DISTRUST INTERNATIONAL ARBITRATION (note by Giovanni Zarra)
Parallel domestic and arbitral proceedings – Triple identity test - Bilateral investment treaties – 1965 Washington Convention – Argentine crisis – Italian judges’ distrust in international arbitration
Corte di Cassazione, Sez. I Civile, 14 November 2018, No. 29354
Pietro Palmieri and others v. Banca Popolare di Milano S.c.a.r.l. 500

DIPLOMATIC AND PARLIAMENTARY PRACTICE
(edited by Pietro Gargiulo, Marco Pertile and Paolo Turrini)

VI. TERRITORY
THE ANNEXATION OF CRIMEA AND THE SANCTIONS AGAINST THE RUSSIAN FEDERATION (note by Antonino Ali) 505

XI. TREATMENT OF ALIENS AND NATIONALITY
THE DIPLOMATIC ROW BETWEEN ITALY AND AUSTRIA OVER VIENNA’S DRAFT LAWS ON DUAL NATIONALITY AND CONSULAR ASSISTANCE FOR GERMAN- AND LADIN-SPEAKING SOUTH TYROLEANS (note by Marco Pertile and Aida Halilovic) 510

XII. HUMAN RIGHTS
MIGRATION POLICY AND MANAGEMENT (note by Chiara Tea Antoniazzi) 517

XIV. COOPERATION IN JUDICIAL, LEGAL, SECURITY, AND SOCIOECONOMIC MATTERS
THE THREATENED DEMOLITION OF THE KHAN AL-AHMAR “RUBBER TIRE SCHOOL” IN THE OCCUPIED PALESTINIAN TERRITORY (note by Marco Pertile) 529
XVI. INTERNATIONAL ORGANIZATIONS
THE SCOPE AND MEANS OF ACTION OF THE UNITED NATIONS SECURITY COUNCIL AS SEEN BY ITALY DURING ITS “SHARED MEMBERSHIP” (note by Paolo Turrini) 536

XVIII. USE OF FORCE AND PEACE-KEEPING
THE AIRSTRIKES AGAINST SYRIA IN RESPONSE TO THE ALLEGED USE OF CHEMICAL WEAPONS (note by Jean Paul Moinet) 553

XIX. ARMED CONFLICT, NEUTRALITY, AND DISARMAMENT
THE ILLEGAL TRAFFICKING IN CRUDE OIL AND PETROLEUM PRODUCTS FROM LIBYA AND THE RELATIONSHIP BETWEEN ITALY AND MALTA (note by Marco Pertile) 557

LEGISLATION
(edited by Pia Acconci)

XI. TREATMENT OF ALIENS AND NATIONALITY
Decree-Law No. 113 of 4 October – converted, with amendments, into Law No. 132 of 1 December 2018 (GU No. 281 of 3 December 2018)
REFORM OF THE ITALIAN REGULATORY FRAMEWORK ON MIGRATION (note by Sara Fattorini) 565

BIBLIOGRAPHIES
ITALIAN BIBLIOGRAPHICAL INDEX OF INTERNATIONAL LAW 2018
(edited by Giulio Bartolini and Alessandro Chechi) 577

REVIEW OF BOOKS
(edited by Marco Gestri) 611


INDEX 645