AIDP/IAPL

International Colloquium IV: International Criminal Law and Artificial Intelligence

National Report - Italy

National Rapporteurs: Prof. Chantal Meloni (criminal law)
Prof. Silvia Signorato (procedural criminal law)

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Questionnaire - Section IV
International Perspectives on AI: Challenges for Judicial Cooperation and International Humanitarian/Criminal Law
General Rapporteur: Prof. Milena Sterio

Objectives and Scope

The purpose of this Questionnaire is to solicit national responses regarding the following issue related to Artificial Intelligence (AI): the use of AI and its impact on International Humanitarian Law and International Criminal Law. This Questionnaire briefly summarizes relevant legal issues and then lists a series of questions related to this important legal issue.

I. International Humanitarian Law and International Criminal Law

A) Summary of Issues

• _The use of Automated Weapon Systems (AWSs) raises legal implications related to both ius ad bellum and ius in bello.

• _The use of AWSs can influence public opinion and policy in favor of war, because the use of AWSs minimizes risks of death or bodily injury to soldiers/individuals involved in a war. Thus, the use of AWSs may have an impact on ius ad bellum.

• _The use of AWSs can negatively affect the respect of fundamental principles of ius in bello, such as the principles of distinction and proportionality.

• _By removing the human element from war, the use of AWSs can contribute to the increase in the number of deaths because of the absence of human feelings, such as fear and compassion, which may play a role in reducing the number of deaths.

• _The use of AWSs may cause significant collateral damage.

• _AWSs can commit international crimes; this raises serious attribution of criminal responsibility questions, including issues related to command responsibility (for crimes committed by "killer robots"). Thus, an international approach to AWSs may be necessary.

• _The use of AWSs can raise jurisdictional issues, because AWSs use may be trans-territorial. This also enhances the need toward a global approach to AWSs.

B) National Report – Italy*

* Questions have been divided as follows among the two national Rapporteurs: 1-17: Prof. Chantal Meloni - 18-24: Prof. Silvia Signorato

Prof. Chantal Meloni

1. Are AWSs defined in your national law? If so, where (military code? Legislation?)?

Autonomous Weapons Systems, or AWSs, are not defined in and of themselves in Italian Law; however, the definition of a specific kind of AWSs, that is Remotely Piloted Aircraft (RPA), is provided by Article 246 of the Italian Code of the Military System (ICMS), in which RPAs are defined as "aircrafts that are piloted by a crew from a remote pilot station".[1]

2. Does your national law limit the use of AWSs in any way? If so, how?

The ICMS limits the use of RPAs under Article 247,[2] which empowers Italian's armed forces to use these technologies for operational and training activities aimed at national defense and security, provided that their employment is limited to a defined national air space and takes place under the limitations contained in a technical operational document redacted by the Air Force after consulting the National Civil Aviation Authority (ENAC) and ENAV S.p.a., responsible for civil air traffic. However, the same article establishes that the limitations are not applicable in cases of operations connected to situations of crisis or armed conflict, conducted within the national territory or abroad. Neither the technical operational document regulating peace operations nor the one regulating crises and armed-conflict-related operations are public.[3] Article 247, paragraph 3 of the ICMS only specifies that the limitations, the

[1] Italian Code of the Military System, Legislative Decree 15 March 2010, n. 66, Article 246.
[2] Ibid, Article 247.
[3] In particular, the organization ECCHR has presented several FOIAs in order to obtain the documents regulating the use of armed drones in Italy. The Ministry of Defense has refused to provide any information, invoking security reasons and State secret. While the Supreme Administrative Court has not confirmed the State-secret status of all the documents, it has conceded that in any case all the documents are reasonably classified due to

operational procedures, the flying areas, and the equipment are defined in accordance with the principles of security of the flight.

3. Is there significant academic and/or policy debate in your country regarding the use of AWSs? If so, please briefly describe the majority and the minority view.

The possible use of AWSs in the future is debated in Italy. However, the issue has not been presented as a main concern by any political party at any political campaign; the topic is not covered adequately by national media and is not debated in main public spaces (including tv). Even in the academic domain, the issue is not dealt with by many in the legal field. Most scholars strongly argue in favor of a complete, pre-emptive ban with regard to the development and the usage of these weapons, putting forward several arguments that may be summarized as follows. First and foremost, AWSs should be banned on the pure moral principle that machines should not make decisions to kill human beings. Indeed, it is sustained that these kinds of machines would not possess the necessary human discernment to make determinations in complex situations that may require an evaluation of the broader context, as well as compassion and humanity.[4] Moreover, many doubts have emerged regarding the capability of AWSs to respect basic principles of International Humanitarian Law on the battlefield, such as the principle of proportionality and the principle of distinction. Second, the development and possible future usage of AWSs have raised numerous concerns about the reliability of such machines, especially in relation to possible cyber-attacks, internal malfunctions, and unpredictable interactions with the surrounding environment. Accordingly, it is argued that a hypothetical future use of AWSs poses several dilemmas with regard to liability, as machine decision-making undermines, or even removes, the possibility of holding anyone accountable for possible crimes and misconduct. Third, given the fact that the deployment of fully autonomous weapons may reduce military casualties, it is maintained that AWSs could make it easier to engage in warfare, thus lowering the threshold for the use of force. Consequently, in order to avoid a new international arms race, AWSs should be

national security, defence and military instances. For more details, see: Tribunale Amministrativo Regionale per il Lazio, Sez. I bis, 06883/2017 Reg. Ric., 14.06.2022.

[4] Diego Mauri, *Autonomous Weapons Systems and the Protection of the Human Person. An International Law Analysis*, Elgar International Law and Technology series, 2022, https://www.e-elgar.com/shop/gbp/autonomous-weapons-systems-and-the-protection-of-the-human-person-9781802207668.html. See also Daniele Amoroso, *Autonomous Weapons Systems and International Law*, Nomos, 2021: https://www.edizioniesi.it/pubblicazioni/libri/diritto_storia_filosofia_e_teoria_del_diritto_-_1/diritto_internazionale_-_1_-_07/autonomous-weapons-systems-and-international-law.html.

preventively banned. Finally, one last concern regards the possible usage of AWSs in non-war contexts, as a technology as such could be easily employed for border control, surveillance and even as a tool for repression in authoritarian regimes. The minority of scholars, on the other hand, advocates the development and usage of AWSs because of military advantage. Indeed, it is sustained that not only these new technologies would have an increased level of efficacy and precision, but also that they would be able to reach and operate in dangerous areas that were previously inaccessible to humans. Moreover, it is argued that AWSs would reduce human casualties by simply removing soldiers from dangerous missions and that their usage would be a great deterrent for enemies.

As regards RPAs, it is relevant to point out that Italy has only had unarmed drones in the past, which have been used as tools for many years in various areas of operation – but essentially for intelligence, surveillance and reconnaissance activities (so-called ISR). However, Italy has recently decided to arm its RPAs, as confirmed in the 2021 Multiannual Planning Document of the Ministry of Defense. The policy debate regarding such decision is contested.[5] More specifically, many concerns have been raised by the left and center wing/populist coalition with regard to the possible heinous consequences brought by the future usage of such technologies. During his mandate, the Italian former MP, Erasmo Palazzotto (Partito Democratico), has expressed concern about the decision to arm Italy's drones, and has called for an ethical and political discussion, especially in light of the possible civil collateral damages that these technologies may bring upon. Another former MP, Daniela Donno (MoVimento 5 Stelle), had argued that armed RPAs represent a purely offensive military instrument that does not meet Italy's strategic needs. Already in 2021, Gianluca Ferrara (former MP for MoVimento 5 Stelle) affirmed that a decision as such was obsolete, and that Italy should rather focus its investments on cyber-defence and intelligence. Former MP Roger De Menech (Partito Democratico) defined the matter as "delicate" and called for a policy discussion; he added that while Italy's arms investments should be focused on maintaining peace, the country could not stay behind on technological advancement.[6]

[5] Luca Liverani, 'Guerra. Dubbi in Parlamento sul progetto della Difesa di armare i droni italiani', Avvenire, 10 September 2021, https://www.avvenire.it/attualita/pagine/la-difesa-vuole-armare-i-droni-dubbi-in-parlamento.

[6] See also the Report by the organization Archivio Disarmo, which includes a survey showing that Italian public opinion is by vast majority against the use of drones: https://www.archiviodisarmo.it/view/N22yPKk-zL1gcjGv2JdtBS-5n-rbRhif_ozdVHghyw8/droni-stampa-e-opininoe-pubblica.pdf

4. Within your legal system, which entity can officially declare war or officially begin using force against another country? The President, Congress, Parliament, etc.?

According to Article 78 of the Italian Constitution, the Parliament is vested with the authority to *deliberate* the state of war, while the power to *formally declare* war is granted to the President of the Republic under Article 87, paragraph 9 of the Italian Constitution. This formal declaration of war does not accord validity to the Parliament's deliberation, as it is simply aimed at informing the enemy State of the cessation of all diplomatic relations and the subsequent initiation of warfare.

5. Are there legal limitations on such declarations of war/uses of force? If so, which ones?

Article 11 of the Italian Constitution limits war declarations and military interventions solely to self-defence purposes, by stating that "Italy rejects war as an instrument of aggression against the freedom of other peoples and as a means for the settlement of international disputes".

6. Is your country bound by any specific regional agreements which limit the use of military force, or which obligate your country to become involved in a defensive operation?

Italy, being a Member State of the European Union, is obliged under Article 42, paragraph 7 of the Treaty on European Union to aid and assist by all the means of its power any other Member State which has been the victim of armed aggression on its territory. Additionally, based on the so-called 'European solidarity clause' provided by Article 222 of the Treaty on the Functioning of the European Union, Italy is under the obligation to assist fellow Member States in the event of a terrorist attack on their territory, at the request of the political authorities of the assaulted State. Moreover, under Article 5 of the North Atlantic Treaty, in the event of an armed attack against one or more Parties to the Treaty in Europe or North America, Italy is compelled to assist the attacked State or States by using the necessary means, including the use of armed force, to restore and maintain the security of the North Atlantic area.
Clearly, Italy's use of military force is limited from two different standpoints, the EU one and the UN one: in both cases, the principle of collective defence restricts Italy's military intervention solely to self-defense purposes.

7. Are fundamental ius in bello principles, such as the principles of distinction and proportionality, embedded in your national law? If so, which type of law – military code of conduct, national law, etc.?

Fundamental *ius in bello* principles can be found both in the 1938 Law of War and in the Italian Military Penal Code of War. As regards the 1938 Law of War, most of the norms contained in the Titolo II resemble those provided by the Hague conventions of 1899. Indeed, the use of force in war is considered lawful as long as it remains within the limits of military necessity. More specifically, according to Article 35 of the Italian Law of War, soldiers cannot inflict superfluous suffering to enemies or unneeded damages, while it is prohibited to use treacherous violence and to kill or wound an unarmed enemy. Moreover, Articles 41 and 42 assert that, when bombing villages and inhabited buildings, soldiers ought to take into consideration the collateral damage to which the civilian population may be exposed, whereas those bombings aimed at harming the civilian population or destroying civilian goods are prohibited altogether. In other words, no military necessity could ever justify an attack towards civilians or civilian goods. The 1938 Law of War also prohibits, under Articles 35, 51, 52 and 53, a number of weapons and military acts, such as the use of Dum-dum bullets and the use of chemical and biological weapons.
As regards the Italian Military Penal Code of War, fundamental *ius in bello* principles are contained in the Titolo IV of Libro III, denominated 'crimes against the laws and customs of war'. More specifically, numerous provisions, among which Articles 179, 191 and 194, prohibit military attacks against hospitals, healthcare workers and places of worship. The Military Penal Code of War also protects, under Articles 185 to 189, civilians and civilian goods, as it forbids the use of force against the civilian population and other persons protected in international conventions; a similar prohibition is provided for looting and destruction of civilian goods.

8. What type of national law governs the conduct of soldiers in your legal system?

The conduct of soldiers in wartime is governed by the 1938 Law of War and by the Military Penal Code of War; in peacetime, the conduct of soldiers is regulated by the Military Penal Code of Peace.

9. Is there relevant case law/prosecutions of soldiers for war crimes, where such soldiers have violated the principles of distinction and/or proportionality? Or where such soldiers have caused excessive collateral damage?

The Territorial Military Tribunal of Rome, on 20.07.1948, condemned Herbert Kappler to life imprisonment plus fifteen additional years in prison for the crimes committed during the Fosse Ardeatine massacre, which took place on 24.03.1944.[7] In the operation, conducted by the German occupying forces, a total of 335 prisoners and civilians were killed as a reprisal to the partisan attack that had taken place just the day before in Rome. The defendant, an SS Commander, ordered his unit to execute by shooting 10 Italians for every German police officer killed in the partisan attack. Kappler was condemned for the crime of violence with homicide *against private enemies* under Articles 13 and 185(1)(2) of the Military Penal Code of War, as well as under Articles 575 and 577(3) and (4) of the Italian Penal code, in relation to Articles 61(4) and (5) and 8 of the Italian Penal Code and Articles 47(2) and 58 of the Military Penal Code of Peace. The Chamber found that the defendant had acted with cruelty towards the victims and, therefore, recognized the presence of such aggravating circumstance under Article 61(4) of the Italian Penal Code. He was additionally condemned for the crime of arbitrary requisition under Article 224(1) and (2) of the Military Penal Code of War. The judges found that the reprisal was not lawful, as it was disproportionate to the previous offence, not only as regards the number of victims, but also as regards the damages inflicted.
The defendant appealed the decision of the Territorial Military Tribunal, but his appeal was rejected on 25.10.1952 by the Supreme Military Tribunal.[8] The Tribunal, among other things, underlined how the victims of the massacre could not be considered as 'legitimate belligerents'. Kappler appealed once again, arguing that some of the killings at the Fosse Ardeatine needed to be considered as 'political killings': to label those killings as 'political' would have allowed the defendant to be considered for an amnesty. The Supreme Military Tribunal, on 25.10.1960, rejected his appeal once again.[9]

The Military Tribunal of La Spezia, on 22.06.2005, condemned several SS officials to life in prison for the crimes perpetrated during the Massacre of Sant'Anna di Stazzema, committed on 12.08.1944. On that occasion, more that 500 people, including

[7] Tribunale Militare Territoriale di Roma, 20.07.1948, No. 631.
[8] Tribunale Supremo Militare, 25.10.1952, No. 1714.
[9] Tribunale Supremo Militare, 25.10.1960.

women, children, and elderly that *were not participating in the hostilities*, were slaughtered. More specifically, the defendants were condemned for the crime of violence with homicide *against private enemies* under Articles 13 and 185(1)(2) of the Military Penal Code of War, as well as under Articles 575 and 577(3) and (4) of the Italian Penal Code, in relation to Articles 61(4) and (5) and 112(1)(1) and (3) of the Italian Penal Code and Articles 47(2) and (3) and 58(1) of the Military Penal Code of Peace. The Chamber found that the defendants had acted with cruelty towards victims and, therefore, recognized the presence of such aggravating circumstance under Article 61(1) and (4) of the Penal Code.
The defendants appealed the decision of the Military Tribunal. The appeal was rejected and the decision was confirmed by the Military Court of Appeal in Rome on 21.11.2006.[10] The defendant appealed once more, but the decision was again confirmed by the Italian Court of Cassation on 08.11.2007.[11]

The same Military Tribunal of La Spezia, on 03.11.2006, condemned Heinrich Nordhorn for the killing through hanging of six Italian inmates from the Forlì prison.[12] Once again, the murdered victims were *not participating in the hostilities* and were not legitimate belligerents.
Nordhorn was condemned to life imprisonment for the crime of violence with homicide *against private enemies* under Articles 13, 23 and 185(1)(2) of the Military Penal Code of War, as well as under Articles 110, 61(1), 81, 112 (1)(1) and (3), 575, 577(3) and (4) of the Italian Penal Code and Articles 47(2) and (3) and 58(1) of the Military Penal Code of Peace.

On 09.06.1999, the Military Tribunal of Turin condemned Theo Saevecke, Capitan of the German Armed Forces, to life in prison for the crimes committed during the Massacre of Piazzale Loreto, executed on 10.08.1944.[13] More specifically, a total of 15 inmates at the San Vittore Prison were killed as a reprisal to the explosion of a German truck due to a bomb attack that had taken place just three days before in Milan, Viale Abruzzi. Clearly, the murdered victims were *not participating in the hostilities* and were not legitimate belligerents. The defendant was condemned to life in prison for the crime of violence with homicide *against private enemies* under Articles 13 and 185(1)(2) of the Military Penal Code of War, as well as under Articles 575 and 577(3) and (4) of the Italian Penal Code, in relation to Article 61(4) of the Italian Penal Code. The

[10] Corte Militare di Appello di Roma, 21.11.2006, No. 65.
[11] Corte di Cassazione, 08.11.2007, No. 4060.
[12] Tribunale Militare della Spezia, 3.11.2006, No. 50.
[13] Tribunale Militare di Torino, 09.06.1999.

Chamber found that the defendant had acted with cruelty towards the victims and, therefore, recognized the presence of such aggravating circumstance under Article 61(4) of the Penal Code. Moreover, the tribunal maintained that the reprisal was not lawful, as it was disproportionate to the previous offence.

The same Military Tribunal of Turin, on 15.11.1999, condemned Siegfried Engel for four different massacres, namely the massacre of Benedicta, which took place between 06.04.1944 and 11.04.1944 and in which numerous victims that did not take part into the hostilities were killed; the massacre of Turchino, on 19.05.1944, in which a total of 59 inmates from the Marassi Prison were killed as a reprisal to the bomb attack that had killed 5 German officers and had taken place just the day before in Genova; the massacre of Portofino, which took place in the night between 02.12.1944 and 03.12.1944 for no specific reason and in which a total of 22 Italian citizens taken from the Marassi Prison were killed; and, finally, the shootings of Cravasco, on 23.03.1945, in which a total of 20 Italian inmates from the Marassi Prison were killed as a reprisal to the attack that had killed 8 German soldiers and had taken place just the day before.[14] Once again, at least the majority of the murdered victims were *not participating in the hostilities* and were not legitimate belligerents. Moreover, the reprisals were not considered lawful, as they were disproportionate to the previous offences. The defendant was condemned to life in prison for the crime of violence with homicide *against private enemies* under Articles 13 and 185(1)(2) of the Military Penal Code of War, in relation to Articles 575, 577(3) and (4) and 61(4) of the Italian Penal Code, as well as to Article 58 of the Military Penal Code of Peace, Article 47 of the Military Penal Code of War, and Article 81 of the Italian Penal Code.

On 24.11.2000, the Military Tribunal of Verona condemned Michael Seifer to life in prison for the crime of violence with homicide *against private enemies* under Articles 13 and 185(1)(2) of the Military Penal Code of War, as well as Articles 110, 575, 577(3) and (4) and 61(4) of the Italian Penal Code.[15] More specifically, Seifer was a supervisor at the concentration camp in Bolzano and committed a great number of murders of men, women and children who were *not participating in the hostilities*.

10. <u>What type of criminal liability do soldiers and commanders face within your national system if they commit war crimes and/or other misconduct? Are</u>

[14] Tribunale Militare di Torino, 15.11.1999.
[15] Tribunale Militare di Verona, 24.11.2000, No. 97.

soldiers and commanders subject to court martial procedures only, or are they also subject to criminal liability outside of the military system?

Soldiers and commanders can face both military liability and criminal liability, depending on the qualification of the crime committed. Indeed, the combined reading of Article 103(3) of the Italian Constitution and Article 620 of the Code of Penal Procedure suggests that military tribunals have the jurisdiction established by the law during wartime, while they have jurisdiction over military crimes committed by members of the armed forces in peacetime. In all other cases, for ordinary crimes committed by members of the armed forces, it is the ordinary criminal tribunal that has jurisdiction. When a member of the armed forces commits numerous crimes, both military and ordinary, military tribunals will only have jurisdiction if the military offence is graver than the ordinary one.

11. What modes of liability exist within your national criminal system?

According to Articles 25 and 27(1) of the Italian Constitution, criminal liability is solely and strictly *personal* and *culpable*. No strict liability is allowed. Modes of liability are not determined in pre-defined normative categories (as in the differentiated model), as the Italian Penal Code adopts an "unified perpetrator model", meaning that all those who participate in the commission of the crime can be responsible for it. More precisely, Article 110 of the Italian Penal Code establishes that: "When more than one person participates in the same crime, each one of them is punished with the penalty envisaged for that crime". Joint criminal responsibility can therefore arise from any kind of participation to the crime.

According to legal scholarship and criminal jurisprudence, forms of contribution to the crime can be distinguished between physical assistance ('*concorso materiale*') and psychological assistance ('*concorso morale*'). Physical assistance entails concrete, material participation in the number of acts that generate the criminal offence. Such assistance may be provided by a co-perpetrator ('*coautore*' or '*correo*'), meaning a person that fulfils all of those actions that would integrate a criminal offence if considered separately, or by an accomplice ('*complice*' or '*partecipe*'), the latter referring to any person who concretely cooperates in the material preparation of the crime or in its execution. Psychological assistance, on the other hand, refers to the moral contribution that a person provides to the perpetrator for the commission of a criminal offence. Next to the actual perpetrator, scholars and jurisprudence have identified three different kinds of contributors: first, the determinator, who raises in the

perpetrator the intent to commit a crime, which was absent before. Second, the instigator, who reinforces a criminal intent that already existed in the mind of the perpetrator. Third, the aider, who simply facilitates the commission of the criminal offence.
Finally, in line with Legislative Decree 8 June 2001, n. 231 and with Law 16 March 2006, n. 146, the Italian legal system contemplates the liability of legal persons as a consequence of the commission of certain crimes. Such liability is of quasi-criminal nature.

12. Does your national criminal law provide for command responsibility/other types of liability? If so, what are the requirements for command responsibility?

Italy does not have a provision addressing command responsibility *per se*. However, there exist two means through which the responsibility of a commander for crimes committed by his or her subordinates may be assessed.
According to Article 40(2) of the Italian Penal Code, "[n]ot to prevent an event, which one has the legal obligation to prevent, is tantamount to causing it". This is the so-called 'commission by omission', according to which, as long as a commander does not prevent the event he or she has the legal obligation to prevent, his or her criminal liability could be engaged under Article 40(2) of the Italian Penal Code, since the omission would be considered as the very commission of the event.
Furthermore, according to the combined reading of Articles 40(2), 110 and 113 of the Italian Penal Code, the commander's criminal liability may be assessed through the so-called 'complicity by omission' ('*concorso omissivo colposo in reato commissivo*'). More specifically, Article 110, which deals with participation in the crime committed by others, states that "[w]hen more than one person participates in the same offence, each shall be subject to the penalty prescribed for such offence […]". In interpreting this provision, the prevailing Italian case law applies the so-called criterion of '*causalità agevolatrice*', which affirms the relevance not only of the necessary contribution but also of the contribution that has only facilitated the realization of the offence, making it more probable, easier or more serious, based on an ex-post judgment. In some cases, the Italian case law has also applied the so-called criterion '*causal-condizionalistico*', according to which only the conduct of the participant that, based on an ex post judgment, constitutes a *condicio sine qua non* for the commission of the offence can assume relevance. It is generally recognized that participation into an offence can be realized also through an omission. Participation into an offence may be realized either negligently or intentionally (and, at the same time, the offence may be committed

either with negligence or with intent). Therefore, this criminal liability could be affirmed not only in the case of 'active participation', but also in the case of 'omissive participation'.
Moreover, Article 138 of the Italian Military Code for Peace Time and Article 230 of the Italian Military Code for War Time punish the military commander who, outside the cases of complicity in the crime, "out of fear of danger or other inexcusable motive does not use every possible means to prevent the execution of any of the crimes against military loyalty or defense, or of revolt or mutiny, which is committed in his presence".

13. Is there case law within your criminal justice system or your military system of commanders for abuses committed by their subordinates, using the mode of liability known as command responsibility? If so, please provide relevant citations and a brief summary of such cases.

No, as delineated above, the Italian criminal law system does not include a form of command responsibility.

14. Is there significant academic and/or policy debate in your country regarding the attribution of responsibility to soldiers/operators/commanders for misconduct of AWSs? If so, please briefly describe the majority and the minority view.

While an active debate is not particularly present in the national context, a slightly more active discussion has developed at the EU level. For instance, in 2017, the European Parliament passed a Resolution with recommendations to the Commission on *Civil Law Rules on Robotics*.[16] Even though the resolution addresses civil law only,[17] some provisions could affect the interpretation of criminal provisions too. Article 59 letter f, for instance, calls on the Commission:

> "when carrying out an impact assessment of its future legislative instrument, to explore, analyze and consider the implications of all possible legal solutions, such as: […] creating a specific legal status for robots in the long run, so that at least the most sophisticated autonomous robots could be established as having the status of electronic persons responsible for making good any damage they

[16] European Parliament, European Parliament resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics (2015/2103(INL)), 2018/C 252/25.
[17] Notably, the EU does not have direct legislative authority regarding the domains of security and criminal law, which are of exclusive competence of Member States.

may cause, and possibly applying electronic personality to cases where robots make autonomous decisions or otherwise interact with third parties independently".

Suggesting attributing the responsibility of the "most sophisticated autonomous robots" to the machines themselves, the EU seems to support the view that the human behind the AI (whether its owner, programmer or "guardian") shall not bear responsibility for the robot's unlawful actions.

More recently, in April 2021, the European Commission proposed the first EU regulatory framework for AI (the so-called AI Act). On 14 June 2023, the European Parliament adopted its negotiating position on the Act. In addition, these provisions, do not include any indication of criminal liability for offences committed by AI robots.

15. Does your national system recognize any other modes of attribution of criminal liability?

Article 416 of the Italian Penal Code criminalizes the partnership between three or more people, established with the purpose of committing criminal offences. In particular, the law prohibits the acts of promoting, establishing, organizing, or participating in such partnerships.

While this article partially overlaps with the disciplines of commission of and participation in criminal offences, it represents a crime by itself and is punished with 3 to 7 years of imprisonment in case of promotion, establishment, or organization, or with 1 to 5 years in case of mere participation. The same provision includes aggravated forms of the same crime, such as for the use of weapons in public spaces, for organizations including more than 10 affiliates, for organizations with the purpose of enslavement, human trafficking, organ trafficking, slave trade, aiding and abetting of illegal migration, prostitution of minors, juvenile pornography, sexual violence against minors and gang-rape against minors.

The article is potentially applicable to State or State-like structures when they are involved in the commission of crimes, in light of the organized and structured mode of commission of the crimes.

Articles 97 and 109 of the Military Code of Peace regulate the so-called 'culpable facilitation' ('*agevolazione colposa*'), according to which any member of the armed forces – including the commander – who facilitates the commission of certain crimes enumerated by the articles is punished with up to 5 years of military detention.

Moreover, according to Article 323 of the Italian Penal Code, which deals with the crime of abuse of office, "[u]nless the fact constitutes a more serious offence, a public

official or a person in charge of public service who, in the performance of his or her duties or service, in violation of the provisions of the law or of regulation, or failing to abstain in the presence of his or her interest or that of a close relative or in the other provided cases, intentionally procure for himself or herself or others an unjustified pecuniary advantage or causes an unjustified injury to others, shall be punished with imprisonment from one to four years. The punishment is increased in the cases in which the advantage or the injury is of a serious mature". Article 323 applies "unless the fact constitutes a more serious offence". Therefore, it shall be noted that, in those cases in which the conduct of the concerned individual/individuals qualify as "a more serious offence" (such as murder or manslaughter), Article 323 would not apply; the relevant provision of the Italian Penal Code would apply instead.
Provided that the fact does not constitute a more serious offence, Article 323 requires that a) the offence be committed by "a public official or a person in charge of a public service"; b) the offence be committed by a public official or a person in charge of a public service "in the performance of his/her duties or service" and "in violation of the provisions of the law or of regulation, or failing to abstain in the presence of his/her interest or that of a close relative or in the other provided cases"; and c) as regards to the subjective element, the offence be committed "intentionally" in order to procure "an unjustified pecuniary advantage" to himself or herself or to others or in order to cause an "unjustified injury to others".

16. Does your national military or criminal system address the issue of liability for the "misconduct" of AWSs? Can an operator and/or his/her commander face criminal liability in such circumstances?

No, as explained above (question 14) criminal law is not developed regarding the responsibility of AWSs, or AIs in general. The issue, thus, still represents a normative gap.

17. Is there any relevant case law, within the criminal justice system or within the military system, which addresses the issue of operator/commander liability for crimes committed by AWSs? If so, please provide relevant citations and a brief summary of such.

No, there is no relevant case law since there are no legal instruments to assess such responsibilities (see answers to questions 14 and 16).

18. What mechanisms exist in your national law to handle jurisdictional/conflict-of law disputes? Please cite any relevant case law on jurisdictional disputes.

Article 28 of the Italian Code of Criminal Procedure provides for two types of conflict between Italian judges: the conflict of jurisdiction and the conflict of competence. The conflict of jurisdiction arises between one or more ordinary judges and one or more special judges (for example, between an ordinary judge and a military judge). Instead, the conflict of competence arises between two or more ordinary judges.
Both the conflict of jurisdiction and the conflict of competence can be positive or negative. Specifically, a conflict is positive when multiple judges simultaneously take cognisance of the same fact for which the same person has been charged with. On the contrary, a conflict is negative when one or more ordinary judges and one or more special judges simultaneously refuse to take cognisance of the same fact attributed to the same person.
The conflict resolution mechanism is provided for by Articles 29, 30, 31 and 32 of the Italian Code of Criminal Procedure. In particular, in the case of a negative conflict, this conflict ends if one of the judges declares his competence. Instead, in the case of a positive conflict between two judges, this conflict ends if a judge declares his or her incompetence. If this does not happen, the Court of Cassation shall decide on the conflict.
One of the most relevant examples of case law on jurisdictional disputes concerns the Fosse Ardeatine massacre, which – as already recalled above – occurred in 1944 during the German occupation of Rome. Specifically, in 1996, E. P., former captain of the German SS, was accused of having, as a member of the German armed forces, enemies of the Italian State, and in collaboration with other subjects, caused the death of 335 people, mostly Italian citizens, military and civilians. A jurisdictional conflict initially arose between the ordinary judge and the special judge of the Military Court of Rome. For this reason, the issue relating to jurisdiction was submitted to the Court of Cassation to resolve the conflict. However, at a later time, the ordinary judge declared that he lacked jurisdiction. The Court of Cassation, Criminal Section I, in the judgment of 04.04.1996, n. 2639 stated that a "current conflict" of jurisdiction had not yet occurred as the ordinary judge had not yet gained effective knowledge of the fact. In any case, at the time of the pronouncement of the sentence by the Italian Court of

Cassation, there was no real conflict because, in the meantime, the aforementioned declaration of lack of jurisdiction by the ordinary judge occurred.
Up to this point, the conflicts of jurisdiction and competence that can occur between judges of the Italian State have been analysed. In addition, conflicts of jurisdiction may occur between Italian judges and judges of other States. In accordance with Article 10 of the Italian Constitution, the Italian legal system conforms itself to the generally recognized rules of international law. Furthermore, Article 117 of the Italian Constitution provides that legislative power is exercised in compliance with the constraints deriving from the European Union law and international obligations.
In matters of resolution of conflicts of jurisdiction, with the States to which they apply, Italy complies with the principles and rules set out in some legal acts, including the Convention implementing the Schengen agreement of 15 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, as well as the Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings.

19. Does domestic law apply to AI systems processing data inserted into the Cyberspace from abroad?

The answer to this question requires addressing two different issues. Firstly, it is necessary to verify whether Italian law applies to crimes committed by means of AI systems which process data inserted into the Cyberspace from abroad.
Secondly, it is necessary to examine whether Italian law applies to the collection of e-evidence inserted from abroad into the Cyberspace by AI systems and to the evaluation of this type of evidence.

a) In regard to the first question, the place where the crime was committed is relevant. If the crime is committed in Italy, domestic law applies. However, domestic law could be applied even if the crime is committed abroad because the Italian system provides for a wide applicability of domestic law to crimes committed abroad. This is provided for by both the Italian Penal Code and the Italian Military Penal Code.
Specifically, Article 7 of the Italian Penal Code provides that Italian citizens or foreigners who commit the crimes listed below in foreign territory are punished according to Italian law. These crimes are: crimes against the personality of the Italian State; crimes of counterfeiting the seal of the Italian State and use of this counterfeit

seal; crimes of forgery of coins having legal tender status in the territory of the Italian State or of revenue stamps or Italian public credit cards; crimes committed by public officials in the service of the Italian State, abusing their powers or violating the duties inherent to their functions; and, finally, any other crime for which special legal provisions or international conventions establish the applicability of Italian criminal law.

Furthermore, Article 9 of the Italian Penal Code provides that a citizen who is in Italian territory and who commits a crime abroad other than those already indicated above but which Italian law punishes with a life sentence or with imprisonment of at least three years will be punished according to Italian law. In addition, there are some additional cases provided for by Articles 8, 9, and 10, in which Italian law applies to crimes committed abroad, provided that there is a request from the Italian Minister of Justice.

Moreover, the Italian Military Penal Code also provides for the applicability of Italian law in relation to the crimes it provides for. In particular, Article 4 of the Italian Military Penal Code of War provides that Italian military criminal law of war applies when crimes are committed in places that are in a state of war, or which are considered to be in a state of war. Such a law also applies when crimes are committed in places that are not in a state of war or are not considered to be in a state of war, in those cases in which this is expressly provided for by law or if such crimes may cause damage to military war operations or related services or to the conduct of the war in general.

b) In regard to the applicability of Italian law to the collection of e-evidence concerning data processed by means of AI systems and inserted into the Cyberspace from abroad, the applicable law varies depending on the case. In particular, in case of trans-border access to stored computer data with consent or where publicly available, Article 32 of the Convention of Cybercrime applies, given that Italy signed this convention. Consequently, the collection of e-evidence will take place without the need to activate a European Investigation Order in criminal matters or a letter rogatory, according to the rules of domestic law. In other cases, if there are no specific agreements, the collection of e-evidence abroad can only take place through the European Investigation Order in criminal matters or a letter rogatory, and the law applicable to the e-evidence collection will usually be the lex loci and not the lex fori. Instead, in all cases Italian law applies to the admissibility and evaluation of e-evidence in criminal trial.

20. Does domestic law apply if the AI hardware system involved in committing a criminal offense is on national territory, but the artificial agent operates on websites or networks that can be traced back to foreign countries (and the converse situation)?

Italian criminal law applies to anyone who commits a crime in the territory of the Italian State and, in the cases provided for by law (see answer to question 19), and also to crimes committed abroad.
Article 6 of the Italian Penal Code provides that a crime is committed in a State when the action or omission which constitutes it occurred in whole or in part in that State, or if the event which is the consequence of the action or omission occurred in that State.
Italian jurisprudence tends to interpret this provision in a broad sense. For example, as stated by the Court of Cassation, Criminal Section III in the judgment of 15.03.2022, n. 26956, Italian law applies even if only one of the fragments of which the criminal conduct is made up occurred in Italy, and it is not even necessary for the conduct carried out in Italy to be such as to constitute a crime in itself. Furthermore, it is not even required that there exist the suitability and unambiguity requirements that characterize the attempted crime (see, Court of Cassation, Criminal Section IV, judgment of 07.10.2021, n. 39993).
Therefore, to conclude, in the current state of jurisprudence, Italian law is applicable to the two situations mentioned in the question.

21. If a crime using AWSs is committed using software located in your home country but hardware located elsewhere, how does your domestic law localize such a crime? Would such a crime be considered as being committed within the borders of your country? Please cite any relevant case law.

Please refer to the answer to question 20.

22. Does your government have extradition treaties with other countries which cover crimes committed by AWSs? Name such extradition treaties. What offenses are typically covered in such extradition treaties?

Italy signed numerous extradition treaties. However, most of them date back to a historical moment in which the discussion on crimes committed by AWSs was still embryonic. Nonetheless, such agreements with other countries also cover crimes

committed by AWSs. Specifically, there are both multilateral conventions and bilateral agreements.

The multilateral conventions are the European Convention on Extradition (Paris, 1957) and the Second Additional Protocol to the European Convention on Extradition (Strasbourg, 1978).

Among the bilateral agreements the following can be mentioned: Convention between Great Britain and Italy for the mutual surrender of fugitives criminals (Rome, 1873); Extradition Convention between the Kingdom of Italy and the Republic of Cuba (Havana, 1928); Lateran Treaty between the Holy See and Italy (Rome, 1929); Additional agreement between the Italian Republic and the Republic of Austria to the European Extradition Convention of 13 December 1957 and intended to facilitate its application (Vienna, 1973); Additional agreement between the Federal Republic of Germany and the Republic of Italy at the European Convention on Extradition of 13.12.1957 and intended to facilitate its application (Rome, 1979); Extradition and judicial assistance convention between the Italy and Costa Rica (Rome, 1873); Treaty of Extradition between Australia and the Republic of Italy (Milan, 1985); Extradition Treaty between the Government of the United States of America and the Government of the Republic of Italy (Rome, 1983); Extradition Convention between the Italian Republic and the Argentine Republic (Rome, 1987) and Additional Protocol to the Convention on Extradition between the Argentine Republic and the Italian Republic of 9 December 1987 (Rome, 2003); Treaty between Canada and Italy Concerning Extradition (Rome, 2005); Extradition Treaty between the Italian Republic and the Federal Republic of Brazil (Rome 1989); Extradition Treaty between the Government of the Italian Republic and the Government of the Republic of Peru (Rome 1994); Extradition Treaty between the Italian Republic and the Republic of Paraguay (Asuncion, 1997); Instrument Amending the Treaty of October 13, 1983 between the United States of America and Italy (Rome, 2006); Agreement between the Italian Republic and the Republic of Albania additional to the European Convention on Extradition of 1957 and to the European Convention on Mutual Assistance in Criminal Matters of 1959 (Tirana, 2007); Treaty on extradition between the Republic of Italy and the People's Republic of China (Rome, 2010); Treaty on extradition between the Government of the Italian Republic and the Government of the United Mexican States (Rome, 2011); Agreement on Extradition between the Government of the Republic of Kosovo and the Government of the Republic of Italy (Prishtina, 2013); Bilateral agreement between Italy and Montenegro additional to the European Convention on Extradition of 13 December 1957, aimed at facilitating its application (Podgorica,

2013); and, finally, United Arab Emirates (UAE)-Italy extradition agreements (Dubai, 2022).

It should be noted that Italian Law of 22 April 2005, n. 69 contained provisions to conform domestic law to 2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States. Consequently, extradition is no longer the preeminent institution, but an instrument that applies between Italy and non-Member States.

In relation to offenses that are typically covered in such extradition treaties/conventions/protocols, they tend to be defined with reference to the penalty limit prescribed by domestic law. In particular, most permits extradition for any crime punishable under the laws of both States by imprisonment for more than one year.[18] In some cases, extradition is possible in the presence of a penalty whose maximum exceeds two years.[19] Finally, some agreements refer to a list of offenses.[20]

Additionally, Article 2.2 of the Council Framework Decision of 13 June 2002 on the European arrest warrant indicates 32 crimes for which it is possible to proceed with the European arrest warrant without carrying out the double crime check. These crimes are: participation in a criminal organisation; terrorism; trafficking in human beings; sexual exploitation of children and child pornography; illicit trafficking in narcotic drugs and psychotropic substances; illicit trafficking in weapons, munitions and explosives; corruption; fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests; laundering of the proceeds of crime; counterfeiting currency, including of the euro; computer-related crime; environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties; facilitation of unauthorised entry and residence; murder, grievous bodily injury; illicit trade in human organs and tissue; kidnapping, illegal restraint and hostage-taking; racism and xenophobia; organised or armed robbery; illicit trafficking in cultural goods, including antiques and works of

[18] For example, see: Article 2(1) of the European Convention on Extradition (Paris, 1957); Article 2 of the Treaty on extradition between the Republic of Italy and the People's Republic of China (Rome, 2010); Article 3 of the Extradition Treaty between the Government of the Italian Republic and the Government of the Republic of Peru (Rome 1994); Article 2(1) of the Agreement on Extradition, between the Government of the Republic of Kosovo and the Government of the Republic of Italy (Prishtina, 2013); and Article 2(1) of the Treaty of Extradition between Australia and the Republic of Italy (Milan, 1985).

[19] For example, see Article 2(1) of the Extradition Treaty between the Italian Republic and the Republic of Paraguay (Asuncion, 1997).

[20] For example, see: Article 2 of the Convention between Great Britain and Italy for the mutual surrender of fugitive criminals (Rome, 1873); and Article 1(2) of the Bilateral agreement between Italy and Montenegro additional to the European Convention on Extradition of 13 December 1957, aimed at facilitating its application (Podgorica, 2013).

art; swindling; racketeering and extortion; counterfeiting and piracy of products; forgery of administrative documents and trafficking therein; forgery of means of payment; illicit trafficking in hormonal substances and other growth promoters; illicit trafficking in nuclear or radioactive materials; trafficking in stolen vehicles; rape; arson; crimes within the jurisdiction of the International Criminal Court; unlawful seizure of aircraft/ships; and, finally, sabotage.

23. Have agreements/protocols been concluded between your State and other States on judicial and police cooperation?

Italy stipulated numerous agreements/protocols/memorandums/letters of intent, which will be listed below, distinguishing between those relating to Police cooperation and those relating to Judicial cooperation.

1) Police cooperation

Italy is a Member State of the European Union. As such, Italy first applies the rules established by the various sources of the European Union. In this regard, among the multiple sources of law, the following sources can be mentioned: Convention implementing the Schengen agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders;[21] Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU; and Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816.
Furthermore, these sources should be noted: Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and

[21] See Title III (Police and Security), Chapter 1 (Police Cooperation), Articles 39 to 47. This Convention provides for important instruments such as cross-border surveillance (see Article 40), pursuit in the territory of another Contracting Party (see Article 41) or sending information (see Articles 39 and 46).

intelligence between law enforcement authorities of the Member States of the European Union; Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA; Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA; and, finally, Regulation (EU) 2017/2101 of the European Parliament and of the Council of 15 November 2017 amending Regulation (EC) No 1920/2006 as regards information exchange on, and an early warning system and risk assessment procedure for, new psychoactive substances.

Moreover, there are: Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime; Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime; Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime;[22] Directive (EU) (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA; Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC; Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU; Directive (EU) 2019/2177 of the European Parliament and of the Council of 18 December 2019 amending Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance; and, finally, Directive 2014/65/EU on markets in financial instruments and Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing; and Regulation (EU) 2021/784 of the European

[22] See Articles 9 and 11.

Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online.
Finally, there is the Directive (EU) 2021/555 of the European Parliament and of the Council of 24 March 2021 on control of the acquisition and possession of weapons.

The Italian State is also a State Party to a number of international conventions, which provide for forms of Police Cooperation, such as the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna, 1988). These instruments of cooperation add to the sources of the European Union.

Furthermore, in order to effectively combat crime, the Italian State has distinguished itself by signing numerous bilateral cooperation instruments. In accordance with the latest available data, 299 bilateral technical agreements or understandings for Police cooperation were signed, which are geographically distributed as follows: 36 with American states; 45 with African states; 172 with European states; 46 with Asian states; and none with Oceania. In addition to these instruments, there are various agreements, protocols and letters of intent under negotiation. If the latter are all signed, the number of instruments of cooperation in force will reach 393.

Among the most recent bilateral instruments signed by Italy we can mention, for example: Agreement on police and customs cooperation between the Government of the Italian Republic and the Swiss Federal Council (Rome, 2013); Agreement on Police cooperation between the Government of the Italian Republic and the Government of the Republic of Cuba (Havana, 2014); Bilateral agreement on police cooperation between Italy and Austria (Vienna, 2014); Letter of intent between the Ministry of Defence of the Italian Republic and the Secreteria de Gobernation of the United Mexican States for cooperation between the Carabinieri and the Federal Police regarding the Gendarmerie division (Rome, 2017); Declaration of intent between the Minister of the Interior of the Italian Republic and the Minister of Security and Civil Protection of the Republic of Côte d'Ivoire for the strengthening of cooperation on immigration and security (Rome, 2020); Memorandum of understanding between the Department of Public Security and the General Directorate of the Police of Montenegro on strengthening police cooperation in the fight against irregular immigration and migrant trafficking, including by sea (2020); and Letter of Intent between the Chief of Police and Director General of Public Security and the Executive Director of Aseanapol aimed at strengthening the partnership with South East Asia in the context of security cooperation (Rome, 2021).

Finally, it is necessary to consider the fact that other important cooperation instruments between the Italian State and other States also exist, such as the Police and Customs Cooperation Centres; the Asset Recovery Office; the National Central Office for False Coins; the Italian Child Abduction Alert System (ICAAS); and the Interpol Cooperation Against 'Ndrangheta (ICAN) project.
Finally, through its own security experts (also called liaison officers), Italy is present in 62 foreign States. Liaison officers also play an important role in police cooperation.

2) Judicial cooperation

Since Italy is a Member State of the European Union, it complies with the acts stipulated on the matter at the European level. In particular, the legal basis of Judicial cooperation in criminal matters can be found in Articles 82 to 86 of the Treaty on the Functioning of the European Union (TFEU).
The legislative acts adopted under ordinary legislative procedures are numerous. Among them, we can mention some that set common minimum standards for criminal proceedings, such as: Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings; Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings; Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty; Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings; Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings; and, lastly, Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings.[23]

[23] Furthermore, there are numerous legal acts that refer to specific sectors. For example, in the field of protection of victims, these acts can be mentioned: Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims; Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography; Directive 2011/99/EU of the European Parliament and

Furthermore, at the European Union level, the European Union Agency for Criminal Justice Cooperation (Eurojust) and the European Public Prosecutor's Office (EPPO) play a fundamental role in Judicial cooperation in criminal matters.
With regard to judicial cooperation with non-Member States, this issue is governed by numerous international, bilateral or multilateral treaties and agreements.[24]

of the Council of 13 December 2011 on the European protection order; and Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime. Furthermore, in terms of exchange of information and collection of evidence between Member States and EU agencies, the following legislative acts can be mentioned: Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters; Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA); Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters; Regulation (EU) 2019/816 of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726. This regulation is connected to Directive (EU) 2019/884 of 17 April 2019 amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third-country nationals and as regards the European Criminal Records Information System (ECRIS); and Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration. In addition, there are legislative acts in the field of fight against cybercrime, corruption, fraud and money laundering, such as Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA (the Cybercrime Directive); Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union; Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (the Market Abuse Directive); Directive 2014/62/EU of the European Parliament and of the Council of 15 May 2014 on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA; Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law; Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing; Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law; Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders; Directive (EU) 2019/713 of the European Parliament and of the Council of 17 April 2019 on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA. Finally, in the field of fight against terrorism these legal acts can be mentioned: Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime; Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA; and, lastly, Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online.

[24] By way of example, the following acts can be mentioned: the Treaty on mutual assistance in Criminal Matters between the Government of the United Arab Emirates and the Government of the Republic of Italy (Abu Dhabi, 2015); and the Agreement on Mutual Legal Assistance in Criminal Matters, between the Government of the Republic of Kosovo and the Government of the Republic of Italy (Prishtina, 2013).

24. To what extent have the domestic law and the debate on the subject among scholars been influenced by international sources, initiatives, white papers or reports developed at European and/or international levels?

At the level of sources of law, Article 10 of the Italian Constitution provides that the Italian legal system conforms to generally recognized norms of international law. Moreover, in accordance with Article 117 of the Italian Constitution, the Italian legislative power is exercised in compliance not only with the Italian Constitution, but also with the constraints deriving from the European Union system and international obligations. Consequently, supranational sources show a capacity to influence domestic law.

This can be seen from a double perspective. First of all, legislators increasingly issue laws specifying, in their preparatory works, that these laws are issued to align Italian regulations with supranational sources. This is also confirmed by the fact that the Senate of the Republic and the Italian Chamber of Deputies prepare dossiers intended for the internal documentation needs of parliamentary bodies and parliamentarians. In these dossiers, reference is frequently made to supranational initiatives, including reports and white papers. Secondly, the judgments take into account supranational sources.

Finally, even in areas other than legislative and judicial, there is particular attention to international sources and European and international initiatives, white papers and reports. This is proven by the fact that doctrinal articles constantly give an account of them, reflecting on them.