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The Third Universal Periodic Review of Italy between Recurring Trends and New Challenges

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Abstract

Drawing from the outcomes of the third Universal Periodic Review of Italy before the UN Human Rights Council (November 2019), this paper aims to take stock of the lights and shadows characterising the overall country's human rights performance. The analysis compares and discusses the recommendations received by Italy in the third cycle with those emerged in the first two UPR (2010 and 2014) and the country's policy-makers discourse and action surrounding the reception and response to these recommendations. Accordingly, the paper aims to a) understand if and to what extent Italy's many lacunae identified in the review of November 2019 represent new human rights challenges for the country to address; b) evaluate the overlapping between the national and international human rights agenda; and c) assess the impact (if any) of the 'populist turn' in the country's leadership between 2018 and 2019 on its international perception and reputation.

Keywords: *Universal Periodic Review, UPR, human rights monitoring mechanisms, Italy and human rights, Italian foreign policy, national role conception*

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Introduction

On 4th November 2019 Italy's underwent, in Geneva, its third cycle of the Universal Periodic Review (UPR) during the 34th session of the ad hoc UN Human Rights Council Working Group. In discussing the main outcomes of this intergovernmental peer review process, this paper aims to take stock of the lights and shadows characterising the overall country's human rights performance.

Especially when analysed in conjunction with the two previous review cycles, which took place in 2010 and 2014, the latest UPR can be seen as a litmus test to understand both the state of health of human rights in Italy today, and the type of international commitment that the country is actually taking in a particularly complex and controversial period regarding these matters. Indeed, the third review was held in the context of an ongoing phase that had first gradually marked a trend of 'stagnation' in relation to Italy's generative capacity of policies and norms on these fundamental aspects (UP-HRC 2018, 15-19). Then, especially following the 'populist turn' in the country's leadership between 2018 and 2019, this trend has generated and legitimised forms of human rights compressions 'by omission' (UP-HCR 2019, 20), provoking, incidentally, also a compact wave of international concern for Italy's detour from its traditional commitment on these matters.

The third cycle of the UPR represents therefore the first comprehensive international overview of Italy's human rights performance and behaviour which was held in the context of this regressive phase. At the same time, it represents an update in a cyclical scrutiny which has started 10 years ago.

This paper will first compare and discuss the recommendations received by Italy in the third cycle with those emerged in the first two UPR with a view to assess if and to what extent Italy's many lacunae identified in the review of November 2019 represent new human rights challenges for the country to address. Secondly, the paper will draw from Italy's policy-makers discourse and action surrounding the reception and response to these recommendations. This will serve a dual aim: assessing the overlapping between the national and international human rights agenda, and evaluating the extent of the recently observed shift in Italy's behaviour on its international perception. Indeed, Italy has for long built a large part of its reputation on a proclaimed support for the international human rights agenda (Marchetti 2018). Understanding the current status of this support, between recurring problems and new challenges, between the political will to cooperate and intermittent instances of rejection, also helps shedding light on whether the most recent attitude on human rights held by the

country has repositioned its place and role in the international community as a responsible and reliable human rights supporter.

Finally, consistent with the view that sees the UPR as a ‘catalyst for public debate on human rights’ (Parra 2016), this article seeks to inform a broader transnational discussion on the domestic human rights problems and the actual and possible contributions which, beyond rhetoric, Italy could bring to this global agenda.

This paper is structured into five sections. The first explains why the UPR represents, within the wide range of international human rights monitoring mechanisms, a particularly helpful resource to address the country’s overall behaviour on human rights matters. Starting from Italian leaders’ rhetoric, the second section contextualises and discusses the third UPR of Italy as a process, setting the focus on the international attraction which surrounded this review and the authorities’ level of cooperation. Sections three and four are devoted to the empirical analysis of Italy’s behaviour in the UPR, and deal, respectively, with peers’ perceptions of the structural and/or contingent gaps affecting the national human rights protection system (section 3), and with Italy’s responses to UPR recommendations (section 4). The final section wraps up the main arguments and provides some general conclusions on both Italy’s behaviour and the UPR as such.

1. The Promises of UPR: Exposing Domestic implementation, Commitment and International Perceptions

This paper is not the proper setting to extensively present the UPR, its phases and rituals, its strengths and weaknesses (see, among others, contributions in Charlesworth H. and Larking E. (eds.) 2014; Parra 2016; Alvarez 2019, Smith 2003). Only its key features are thus briefly outlined here in order to provide the necessary basis for discussion. In a nutshell, the UPR is a political human rights monitoring mechanism, created by the UN in the context of the institutional reform process which eventually led to the establishment of the Human Rights Council in 2006, in place of the then widely delegitimised Human Rights Commission. The first session of the Human Rights Council UPR Working Group (made by all the 47 member of the Council) was held in 2008.

According to Human Rights Council resolution 5/1 (A/HRC/RES/5/1), the UPR aims at improving the human rights situation on the ground in all the 193 member states of the United Nations by fulfilling each state’s human rights obligations and commitments, assessing, in consultation with,

and with the consent of, each state concerned, the positive developments and challenges to be faced, and enhancing their capacities to promote and protect human rights (HRC 2007). All UN member states have therefore to periodically undergo this review every five years on an equal footing.

In substance, the UPR is carried out through a member state-driven peer-review process based on cooperation and on objective and reliable information. Resolution 5/1 also states that the review must be conducted in an objective, transparent, non-selective, constructive, non-confrontational and non-politicized manner. The crux of the process (Smith 2013) is the 'interactive dialogue', a discussion held in Geneva to which every UN member state and observer can register to make oral comments and recommendations to the state under review concerning its human rights situation. The three key documents on which each review and 'interactive dialogue' are based are: a) a report prepared by the government of the state under review; b) a report compiled by the OHCHR summarising information contained in the monitoring outputs of human rights expert mechanisms and other agencies, and c) a stakeholder's document that collects and summarises the reliable information presented by NGOs, National Human Rights Institutions and research centres.

The contents of each interactive discussion between the state under review and recommending states are compiled into a final report by a group of three states selected through a drawing of lots among the members of the UPR Working Group, which is also tasked to assist the review process for that state (the so-called 'troika'). The state under review communicates in writing what recommendations it intends to 'support' (accept) or 'note' (non-support, in fact, not accept) among those it received in an '*addendum*', which is eventually adopted by the Human Rights Council together with the final report. This central stage of the UPR - the interactive dialogue and the adoption of the report - is, in fact, framed within a larger three-stage cyclical process. Before of it, the state prepares for the review and report on human rights implementation; following it, there is the stage of implementation of the recommendations received and the reporting at mid-term. Following the conclusion of the first cycle, when all member states underwent their first UPR, the Human Rights Council Secretariat decided that ensuing cycles were tasked to also assessing implementation of the accepted recommendations by the states under review.

The UPR is one - the latest - of the several mechanisms established since 1945 in the framework of the gradual development of the international human rights regime to monitor states' compliance with their human rights commitments and obligations. Its primarily political nature has both positive and negative implications to consider, not only to assess the effectiveness

of the mechanism *per se* – an aspect which, however, does not directly fall under the remit of this paper – but also to evaluate what its outcomes can actually tell about a country's human rights behaviour and performance.

Many of the limits that have been observed in the literature derive from the formality of its structure and procedures, caught between the possible regulatory character of its rituals and the ever-present trap of ritualism (Charleswoth and Larking 2014; Parra 2016). Some even claimed that the outcome of the review is a 'formulistic, bland statement virtually identical for each state' (Smith 2013, 10).

Recommendations and their actual contents should be approached carefully and contextualised in the broader international politics milieu into which the review is actually taking place. Terman and Voeten (2018) have demonstrated that rather than being the result of an objective and impartial analysis of the situation of human rights in the country, the number, severity and responses to recommendations are often motivated by political interactions, namely the level of friendship and alliances among states. That is, strategic relations provide the actual mechanism linking rhetorical pressure to behavioural outcomes in the UPR.

Other shortcomings are identified with reference to the inherent limits to the delegations' actual participation in the dialogue and the types and depth of recommendations addressed. The documents on which the review is based have to respect page limits indications and there are strict time-constraints for each interactive dialogue, which lasts 3 hours and half, 140 minutes of which are allocated to recommending states for commenting, and 70 minutes to the state under review to present its human rights situation and respond to questions. Especially in the first sessions, it happened, and this was also the case of Italy's first UPR in 2010, that not all states wishing to comment or ask questions could eventually take the floor during the interactive dialogue. That is to say, that the review is rarely thorough and comprehensive in analysing compliance with all salient human rights obligations and the result is, inevitably, an indicative snapshot of human rights performance as it is perceived by peers and other stakeholders (Smith 2013, 10).

Updated statistics provided by *UPR-Info*, a Geneva-based NGO which aims to monitor and inform about this mechanism, show that across the three cycles there has been an incremental trend in making specific, measurable, achievable, relevant and time-bound recommendations (currently about 33% of the total recommendations addressed propose a specific action according to the NGOs taxonomy). However, the majority of recommendations made during interactive dialogues remains broad and vague – ranging between suggesting general commitments on specific human rights matters or asking to continue on the same path.

Such breadth and vagueness, combined with the political nature of the UPR which deprived it of any formal mechanism or procedure for assessment and enforcement (Chauville 2014), allows states to claim compliance before their peers and multilateral institutions without, in fact, producing any substantial change in the situation on the ground (Alvarez 2019; Charlesworth and Larking 2014, 15). Therefore, as it happens with other international and regional human rights mechanisms as well, many states often engage with the UPR to advance their national interests while preserving the narrative of co-responsibility. This approach, however, paves the way for ritualism in the UPR (Parra 2016, 67; see also Cofelice 2017) and for the increase or consolidation of rhetoric-performance gaps in their overall human rights commitment. The latter, a common aspect for many states, is a long-standing feature of Italy's overall human rights policy (de Perini 2019).

As part of the potential effectiveness of the UPR relies on its opportunity to naming and shaming states' negative attitudes vis-a-vis human rights among peers, and as states do not like to be publicly criticised on their human rights records, delegations on average 'mute their criticism so as to avoid this negative reaction' (Terman and Voeten 2018, 7, see also, Donnelly and Whelan 2020). Alternatively, many countries tend to implement a series of strategies to alleviate the possible scope of the received criticisms (Schokman and Lynch 2014). For instance, it was demonstrated that, in formulating its recommendations in the first and second UPR cycles, Italy itself has carefully avoided to emphasize, those human rights issues on which the country is deficient (Cofelice 2017). The result of these strategies is an overall tendency to focus on rather non-confrontational issues, making politically neutral recommendations (Kälin 2014). Unsurprisingly, after two full cycles and a half, almost 20% of recommendations request ratifications of human rights legal instruments (UPR-Info 2020).

The strong ritualistic and formulistic procedure surrounding the UPR together with the inevitable implications of having conceived this review exercise as a primarily political state-driven process, suggests that the overall picture of a country's human rights performance which emerges from the various stages of this process are likely to be not thorough, complete and fully objective.

At the same time, however, the features which characterise this mechanism in the negative can also produce a series of unique advantages that match particularly well with the objectives that this paper seeks to address. For some analysts, indeed, if the UPR matters, it is precisely because of its political nature, not in spite of it (Terman and Voeten 2018; Alvarez 2019)

First, it was noted that, as all highly ritualistic events, the UPR embodies and expresses the will of states to rally around the case of human rights

(Kälin 2014, 29). The fact that periodic monitoring takes place through a mutual cooperative – and non-confrontational – evaluation between delegations of all national governments, has eventually resulted in a significant commitment by most countries to increase their participation and show commitment to this process. This helps keeping the global interest high on the main human rights issues in all countries of the world which are increasingly taking the mechanism and its procedures seriously (see Chauville 2014, 89). The process of international socialisation among peers, but also between governmental delegations and civil society organisations, which is favoured during the various UPR stages and rituals, also helps shaping the international consensus of what are the actual priorities of the global human rights agenda. Parra claims that that the UPR now bears most of the expectations regarding the human rights performance of the United Nations (Parra 2016, 7). Given the high visibility and importance that the process has progressively achieved among delegations, it is possible to transpose those expectations to the evaluation of states' behaviour and performance in light of the internationally agreed priorities.

Secondly, the UPR is the most inclusive and comprehensive of all international human rights monitoring mechanisms. A large extent of UN human rights machinery is based on the crucial work of expert-based mechanisms: special procedures and treaty bodies. These experts provide in fact much more thorough and reliable analysis and specific recommendations to countries which are periodically placed under their scrutiny. However, their comments and concerns normally refer either to a specific theme (special procedures), or to a well-defined set of rights, namely those set forth in international legal instruments (treaty bodies). In this latter case, moreover, only states that ratified a specific treaty can be periodically monitored by the related body of independent experts, and not all possible monitoring functions of the latter are necessarily accepted when the states formally manifest their will to be bound by the treaty in question.

By contrast, in the UPR, which is incidentally expected to complement and mutually reinforce the work of this machinery and is based also on a report summarising information by UN expert bodies, the review is carried out with regards to a larger set of obligations. This goes much beyond ratified treaties and include the UN Charter, the Universal Declaration of Human Rights, voluntary pledges and commitments made by the state - and Italy, presented a long list of voluntary commitments every time it applied to a sit at the Human Rights Council, including in February 2018 (A/73/72) – and applicable international humanitarian law.

Although the level of depth, severity and objectivity of UPR recommendations can be unsatisfactory overall, the review can allegedly stretch the whole

range of internationally accepted human rights, and beyond. States can indeed discuss and promote issues which are relevant to human rights but have not yet found universal recognition (Kälin 2014), such as LGBTI rights (Alvarez 2019). From its inception, indeed, the interactive dialogue has provided a 'holistic approach' and states' delegations have discussed the situation of social, economic, cultural, civil and political rights, development – with reference to both the Millennium and the Sustainable Development Goals (The Danish Institute for Human Rights 2017) - vulnerable groups, human rights defenders, and gender issues, including the question of sexual orientation (Dominguez-Redondo 2012, 695). As the ultimate goal of the paper is to discuss the overall human rights commitment and behaviour by Italy, the outputs provided by this type of monitoring, once acknowledged their inherent flaws, are therefore particularly convenient to achieve this aim.

The cyclical nature of the process is a third aspect which motivates the choice of UPR as a privileged data source for this analysis. In line with the cooperative character of this mechanism, any commitments made by the state in response to recommendations is considered to be voluntary and not legally binding (Charlesworth and Larking 2014). However, it is also true that the goal of the UPR is not only reaffirming human rights but ensuring implementation (Kälin 2014, 37). From this perspective, when a state accepts a recommendation it is implicitly agreeing to be evaluated as the implementation of such recommendations during subsequent recommendations cycles (Alvarez 2019). As seen, given the breadth and vagueness of many recommendations, states can easily claim implementation between one cycle and the other even if the situation has not been satisfactorily improved. This does not refrain peer delegations to reiterate similar and even more specific comments and requests in the ensuing cycles. Addressing the similarities and differences in both recommendations received and responses given during the *ad hoc* diplomatic exchanges by a state across the three cycles, including the motivations for supporting or not recommendations has a dual advantage. It allows an assessment of what are, in a longer perspective, achieved improvements, recurring problems and new challenges, and helps understanding the seriousness of the government's behaviour in the UPR framework.

Therefore, although acknowledging risks and limitations, we consider the UPR as a resource which can provide a comprehensive and up-to-date overview of the situation of a country vis-a-vis the old and new priorities of the international community on these matters. Especially when analysed with the benefit of (relatively) 'long duration' – that is looking at more cycles in perspective – it represents, after all, a sufficiently reliable and increasingly

visible picture of what steps are to be taken overall domestically to be considered (or perceived) compliant with the global human rights political consensus.

Moreover, the UPR is at the same time a national process and an international mechanism (Parra 2016, 8). The analysis of domestic problems should thus not be separated by considerations of the foreign policy dimension it entails. In particular, the process surrounding the ‘interactive dialogue’ proper represents a significant exercise of public diplomacy for a country as each state under review has to manage simultaneously pressures coming from international organisms and agencies, delegations of peers with often very different understanding of human rights, and civil society organisations and networks, and to try protecting, accordingly, its international reputation.

Reputation, especially for a (aspiring) middle-power as Italy is, can be defined both in terms of credibility, foreign policy predictability, and compliance with previously concluded agreements (Giacomello and Verbeek 2011, 16). From this perspective, the UPR represents a continuous process of interaction that, in the same framework, provides a long-term perspective on change and continuity in states’ credibility and compliance at the domestic and international levels. Although the actual content of the UPR may be subjective, broad, selective and at times approximate, the longitudinal analysis of Italy’s received recommendations and given responses from 2010 to nowadays exposes the actual political commitment and the reasons for full or partial achievements in human rights. Furthermore, it can explain the persistence of rhetoric-performance gaps, the reasons for inconsistent multi-level games and, eventually, for double-standards attitudes.

2. The Third UPR of Italy in Context

Speaking before the Parliament’s reunited foreign affairs committees few days after Italy’s interactive dialogue in Geneva, Foreign Affairs Minister Di Maio (2019) lauded the process at the UN and Italy’s performance overall. In particular the Minister stressed that the 121 delegations which took the floor ‘expressed their appreciation and recognised [Italy’s] high standards of protection, with further confirmation of the role that our country plays at the multilateral level for the promotion of human rights and the implementation of the obligations related to their full realisation (*authors’ translation*)’.

These words are certainly part of a rhetoric exercise and explain well what is the established national conception of the role of Italy, the orientation that the country should have in this specific international milieu (on role conceptions and foreign policy analysis, see for instance, Holsti 1970; Harnisch

et al. 2011; Thies and Breuning 2012). However, they only partially depict the whole picture which emerged from the UPR and its many implications. In the delegations' inputs there certainly were positive acknowledgments about some recent human rights developments in the country (including the adoption of national action plans and efforts to eradicate violence against women). These were presented in the traditional frame of praises and concerns which characterises the UPR rituals as well as a large part of human rights monitoring.

Di Maio's words also provide an important starting point for the investigation of both the areas under scrutiny in this paper: the attitude vis-a-vis human rights in the country and the overall perception of Italy's commitment before the international community. Firstly, although consistent with a deeply rooted narrative, they represent a change of tone concerning the most recent dialogue of Italy with international human rights machinery (globally and regionally). In fact, some of the measures adopted by the Conte I cabinet – namely the Ministry of Interior's 'security decrees' – were met by deep and compact concern for the ways in which they affected primarily migrants and refugees' rights, and raised issues concerning hate speech and the spread of racism and xenophobia (OHCHR 2018; Council of Europe 2018; Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression et al. 2018). Moreover, as promptly signalled by a large portion of the Human Rights Council (thematic) Special procedures – who sent, often in joint venture, 11 urgent communications to Italy between the summers of 2018 and 2019 – the choices made by that cabinet also had negative implications on a number of other human rights-related issues, from the rights of Roma minorities, to the regression on women's rights, up to the criminalisation of solidarity which affected, broadly speaking, NGOs and human rights defenders.

The concern for such further rights compression was complemented by unprecedented tensions between some of Italy's leaders and key UN and European human rights institutions. These tensions unsettled the already delicate balance between lights and shadows which had traditionally emerged from international monitoring of the country's overall human rights performance over the years. UN, Council of Europe and European Union human rights-concerned institutions were harshly criticised – and in substance, delegitimised – for being 'biased against Italy', 'uselessly expensive and misinformed' (RaiNews 2018), 'ignorant', 'speaking nonsense', 'hostile' (Aska News 2018) and representing bureaucratized and ideologized machines (Dipartimento per le politiche antidroga 2018).

Secondly, by trying to draw domestic praises for the country's action before a divided Parliament, Di Maio's words point to another interesting

aspect of the third UPR: the large international attraction that Italy's review produced among its peers. Indeed, Italy's third UPR was in some ways a record-breaking review from this perspective. The number of delegations who signed up for the 'interactive dialogue' to present the Italian authorities with comments and recommendations – 121, as correctly reported by Di Maio in his hearing – marked one of the highest participations overall since the activation of this mechanism monitoring in 2008. The number was exceeded by countries as China, whose third UPR attracted 150 delegations, and Turkey which received inputs by 122 delegations. 121 also represents a visible increase country-wise, although consistent with a larger trend in overall participation that exposes the growing appreciation for UPR procedures by member states. 51 delegations (plus 13 which could not be heard during the time allocated) participated in the first UPR of Italy in 2010, and 92 in 2014.

This large participation can, in fact, be assessed in two opposed ways. One is that voiced by the Foreign Minister. During the 'interactive dialogue' the Italian delegation, led by Manlio Di Stefano, Undersecretary for Foreign Affairs and International Cooperation¹, welcomed with satisfaction the great participation of peers. Di Stefano considered this an indicator of the effectiveness of the dialogue and cooperation mechanism set up by the UPR, underlining, moreover, the fluid and constructive modality with which the review of Italy took place (UN Webcast 2019). If these words reiterate the renovated highly cooperative behaviour of Italy following the detour under the Conte I cabinet, one also has to acknowledge the Italy's delegation did not include the Foreign Minister, as an increasing number of delegations is doing.

On the other hand, it was observed in the literature that wide participation of delegations in a specific UPR may occur only occasionally, when the state under review 'has a particularly poor human rights records, is an international outcast, or finds itself at the centre of political controversy' (Kälin 2014, 31). Although a causal nexus between this participation and the country's recent performance on human rights cannot be established, this growth can allegedly be framed within the third group of motivations, as empirical evidence of a greater concern by the international community in relation to the path recently taken by the country, especially in the context of migration, hate speech and racism. The fact that, just after five

¹ The delegation was composed by Mr Di Stefano and, among others, Fabrizio Petri, Stefania Pucciarelli and Iolanda di Stasio, Chairs, respectively, of the Inter-ministerial Committee for Human Rights at the Ministry of Foreign Affairs, of the Extraordinary Commission of the Senate for human rights and of the Permanent Committee on human rights in the world of the Chamber of Deputies

years, an additional group of 29 states felt the need to comment and discuss human rights in Italy gives, therefore a first, tentative, insight about the consequences of the recent phase of regression which has characterised the country's agency on human rights matters. It also cast a shadow on the overly positive outputs that the Minister for foreign affairs provided of this third cycle.

Indeed, the latest UPR was a record review also for the number of recommendations received by Italy as a whole, as many as 306, an exponential increase compared to the 157 (then summarised into 92 recommendations by the troika) received in the first cycle (2010) and 186 in the second cycle (2014). What do these recommendations say about Italy's human rights commitment? How many of the issues raised in this review are new challenges that the country has to freshly address following recent developments and how many of them highlight recurrent problems?

3. Italy as a State under Review: 'Same-old' and 'Brand-new' Challenges

As mentioned, Italy underwent its third review in November 2019, during the 34th UPR session. As a first step, Di Stefano was called to report to the Human Rights Council the main actions taken by Italy both at national and international level to promote human rights. In his presentation, he emphasised that Italy had successfully implemented 153 out of the 176 recommendations accepted during the second UPR cycle (that is 87%), while the remaining recommendations concerning the setting-up of an independent national human rights institution were being implemented. It is worth noting that this statement remained totally unchecked. This is just a further confirmation, on one hand, of Italy's perceived identity as a country supporting human rights and multilateralism; on the other hand, of the political and consensus-driven nature of the UPR, which lacks any independent mechanism to assess states' human rights performances, thus leaving governments free to define what constitutes evidence of fulfilment (Cofelice 2017).

During the review, Italy received 306 recommendations concerning 22 different human rights issues (HRC 2019). However, over half of these recommendations concern only four thematic areas, namely: racial discrimination (15.4%); national human rights institutions (15%); rights of migrants, refugees and asylum seekers (14.1%); women's rights, gender equality, violence against women (10.5%).

Table 1 reports a diachronic analysis of the recommendations received by Italy in its three UPR cycles (2010, 2014 and 2019), disaggregated by thematic areas, which allows identifying the main trends as well as structural and/or contingent critical issues affecting the national human rights protection system, as perceived by Italy's 'peers' within the international community.

Table 1 - Number of recommendations by thematic areas received by Italy during its UPR cycles

| | Human rights issues | III Cycle (November 2019) | | II Cycle (October 2014) | | I Cycle (February 2010) | |
|----|---|------------------------------|------|----------------------------|------|----------------------------|------|
| | | N | % | N | % | N | % |
| 1 | Racial discrimination | 47 | 15.4 | 33 | 17.7 | 25 | 15.9 |
| 2 | National human rights institutions | 46 | 15.0 | 25 | 13.4 | 16 | 10.2 |
| 3 | Migrants and asylum seekers | 43 | 14.1 | 20 | 10.8 | 24 | 15.3 |
| 4 | Women's rights, gender equality, violence against women | 32 | 10.5 | 18 | 9.7 | 2 | 1.3 |
| 5 | Economic and social rights | 16 | 5.2 | 5 | 2.7 | 2 | 1.3 |
| 6 | Trafficking | 15 | 4.9 | 8 | 4.3 | 9 | 5.7 |
| 7 | Torture and rights of detainees | 15 | 4.9 | 6 | 3.2 | 5 | 3.2 |
| 8 | Sexual orientation and gender identity | 14 | 4.6 | 5 | 2.7 | 4 | 2.5 |
| 9 | Minorities | 13 | 4.2 | 16 | 8.6 | 19 | 12.1 |
| 10 | International instruments | 12 | 3.9 | 23 | 12.4 | 18 | 11.5 |
| 11 | Children's rights | 11 | 3.6 | 9 | 4.8 | 10 | 6.4 |
| 12 | People with disabilities | 11 | 3.6 | 3 | 1.6 | 0 | 0.0 |
| 13 | Right to education and human rights education | 8 | 2.6 | 1 | 0.5 | 4 | 2.5 |
| 14 | Civil rights and the rule of law | 6 | 2.0 | 3 | 1.6 | 4 | 2.5 |
| 15 | Other | 4 | 1.3 | 2 | 1.1 | 1 | 0.6 |
| 16 | Human rights defenders | 3 | 1.0 | 0 | 0.0 | 0 | 0.0 |
| 17 | Development cooperation | 2 | 0.7 | 4 | 2.2 | 2 | 1.3 |
| 18 | Freedom of expression | 2 | 0.7 | 3 | 1.6 | 7 | 4.5 |

| | | | | | | | |
|----|--|-----|-----|-----|-------|-----|-------|
| 19 | Contemporary forms of slavery | 2 | 0.7 | 0 | 0.0 | 0 | 0.0 |
| 20 | Arms trade | 2 | 0.7 | 0 | 0.0 | 0 | 0.0 |
| 21 | Cooperation with the UN (UPR, Treaty Bodies ...) | 1 | 0.3 | 2 | 1.1 | 2 | 1.3 |
| 22 | Freedom of religion | 1 | 0.3 | 0 | 0.0 | 3 | 1.9 |
| | TOT | 306 | 100 | 186 | 100.0 | 157 | 100.0 |

Source: authors' elaboration on HRC data.

First of all, what clearly emerges from the above data is that in all UPR cycles the most frequent recommendations addressed to Italy (both in absolute terms and as a percentage of the total number of recommendations received) deal with racial discrimination and the rights of migrants, refugees and asylum seekers. Therefore, in spite of the fact that during its 2019 review Italy was under the spotlight for the 'security decrees' adopted by the Conte I cabinet, in the international community's view these issues are not contingent, but rather represent the main *structural* challenges to the national human rights protection system. At least over the past ten years, indeed, Italy has been constantly called upon to take further and more incisive actions above all to counter the spread of hate speech in the public sphere, administrative forms of discrimination, the violation of the principle of *non-refoulement*, as well as to improve living conditions in reception centres for migrants.

In addition to this stable 'stock' of human rights issues, a growing 'flow' of recommendations deals with the establishment of independent national human rights institutions, in line with the Paris Principles. The lack of these institutions in Italy has become a case of great concern by the international community: the number of recommendations on this issue has almost tripled over the past ten years, from 16 in 2010 (10% of the total recommendations received in the first UPR cycle) to 46 in 2019 (15%).

Unlike expert-based mechanisms, that tend to discuss human rights national reports years after their initial submission, in general the UPR procedure has proven to be more flexible and 'responsive' towards new and emerging challenges, including issues which appear to be relevant to human rights but have not yet found universal recognition in binding treaties. This is particularly evident in Italy's case: as already discussed above, between 2018 and 2019 several Human Rights Council Special procedures had sent urgent communications to Italy expressing concern for the negative impact of government decrees on a number of human rights-

related issues, including the rights of Roma minorities, the regression on women's rights, and the criminalisation of solidarity.

These concerns are largely reflected in the 2019 UPR cycle, both in terms of a spectacular increase in the number of recommendations concerning issues that, in previous cycles, were perceived as just 'marginal' for Italy, such as women's rights (from 2 recommendations in 2010 to 32 in 2019) or the promotion of economic and social rights (from 2 recommendations in 2010 to 16 in 2019); and in terms of the emergence of brand-new issues, such as the need to protect human rights defenders more effectively (especially by countering the criminalisation of NGOs carrying out search and rescue missions in the Mediterranean) and to fight against contemporary forms of slavery, particularly in the agricultural sector. It is worth stressing that the protection of human rights defenders appears also among Italy's 2018 voluntary commitments in its candidacy to the Human Rights Council for the period 2019-2022.

While these concerns reflect the perceptions of Italy's peers and other stakeholders within the international community, it is legitimate to ask whether Italian national elites and decision makers perceive similar (or different) priorities. In order to explore this dimension, we chose to compare the frequency of recommendations received by Italy during its third UPR cycle with the number of bills on human rights-related issues introduced in the Italian Parliament in 2019 (UP-HRC 2020).

Table 2 shows that the overlapping between the 'international' and 'national' human rights agenda is only partial. In other words, while some issues are perceived as equally overriding by both national and international stakeholders (i.e. economic, social and cultural rights, as well as women's rights, gender equality and violence against women), Italian legislators seem to consider the top three issues in the UPR, namely the protection of migrants' and refugees' rights (6% of the bills presented in 2019 compared to 14% of UPR recommendations on this issue), the setting up of national human rights institutions (2% of bills compared to 15% of UPR recommendations), and, above all, the fight against racial discrimination (1.4% of bills compared to 15.4% of UPR recommendations) at the bottom of the national human rights agenda.

After all, the fact that international and national agendas are 'untuned' confirms one of the main limits of the UPR mechanism, which, despite its original intention, is still characterised by an intrinsic demarcation between the international and domestic tables, each of them dominated by distinct logics of actions, thus allowing states to play 'two-level games' (Putnam 1988; Smith 2013; Cofelice 2017).

Table 2 – UPR recommendations and bills on human rights-related issues in comparative perspective

| | Most frequent issues in UPR III cycle (2019) | | Bills on human rights introduced in the Italian Parliament (2019) | |
|----|---|------|---|------|
| | | % | | % |
| 1 | Racial discrimination | 15.4 | Economic, social and cultural rights | 24.0 |
| 2 | National human rights institutions | 15.0 | Women's rights, gender equality, violence against women | 18.0 |
| 3 | Migrants and asylum seekers | 14.1 | Children's rights | 16.6 |
| 4 | Women's rights, gender equality, violence against women | 10.5 | Civil and political rights | 11.5 |
| 5 | Economic and social rights | 5.2 | People with disabilities | 8.8 |
| 6 | Trafficking | 4.9 | International instruments | 6.5 |
| 7 | Torture and rights of detainees | 4.9 | Migrants, refugees, asylum seekers, minorities | 6.0 |
| 8 | Sexual orientation and gender identity | 4.6 | Torture and rights of detainees | 2.8 |
| 9 | Minorities | 4.2 | National human rights institutions | 2.3 |
| 10 | International instruments | 3.9 | Disarmament and humanitarian law | 2.3 |
| 11 | Children's rights | 3.6 | Racial discrimination | 1.4 |
| 12 | People with disabilities | 3.6 | | - |
| 13 | Right to education and human rights education | 2.6 | | - |
| 14 | Civil rights and the rule of law | 2.0 | | - |
| 15 | Other | 1.3 | | - |
| 16 | Human rights defenders | 1.0 | | - |
| 17 | Development cooperation | 0.7 | | - |
| 18 | Freedom of expression | 0.7 | | - |
| 19 | Contemporary forms of slavery | 0.7 | | - |
| 20 | Arms trade | 0.7 | | - |
| 21 | Cooperation with the UN (UPR, Treaty Bodies ...) | 0.3 | | - |
| 22 | Freedom of religion | 0.3 | | - |
| | N | 306 | N | 217 |

Source: authors' elaboration on data from HRC and UP-HRC

4. Italy's Responses to UPR Recommendations

Italy's overall acceptance rate of UPR recommendations stands at 87% for the first cycle, 94% for the second cycle and 95% for the third cycle (thus, an average of 92%): these figures are significantly higher than the global mean registered during the first 31 UPR sessions (74%). The (few) recommendations 'noted' (i.e. 'not-accepted') by Italy for each of its three review cycles, respectively 12 in 2010, 9 in 2014 and 12 in 2019, are reported in Table 3 below.

At least three interesting observations can be drawn from the table. Firstly, almost two-thirds of the noted recommendations deal with the rights of migrants, refugees and asylum seekers, which is confirmed to be a highly sensitive issue. On the one hand, indeed, Italy has systematically rejected, with no exception, all the requests to ratify the International Convention on the protection of the rights of all migrant workers and members of their families, formulated by all regional groups; on the other, encouragements to decriminalise irregular entry and stay in Italy, repeal discriminatory laws against irregular migrants, provide humanitarian protection for all migrants, and put an end to the practice of collective expulsion (among others) have been declined on the grounds that Italy's laws and practice are considered as fully consistent with international and European standards. The remaining third of the noted recommendations refer to eight different human rights-related issues, including the protection of minorities (especially the Roma and Sinti peoples), the prohibition all corporal punishment of children, the adoption of a national integrated human rights plan in accordance with the Vienna Declaration and Programme of Action, etc.

Secondly, these rejections are distributed almost evenly among four out of the five regional groupings existing within the UN. Italy, indeed, noted recommendations formulated by 15 African states, 14 Asian states, 14 Latin American and Caribbean states (GRULAC), as well as 11 states belonging to the Western European and other states group (WEOG – i.e., Italy's own regional group). On the contrary, Italy noted just 3 recommendations originating from the Eastern European group (EEG), whose 'recommending attitude' is however significantly lower than the global mean (UPR-Info 2020).

Finally, Italy has almost always adopted a non-confrontational approach in rejecting the recommendations received. In this respect, three main strategies can be identified. The most recurrent response (65% of the cases) consists in considering the recommended action or the right to be protected as already implemented or guaranteed. Illustrative examples are represented

by the comments on the numerous recommendations inviting Italy to ratify the International Convention on the protection of the rights of all migrant workers and members of their families, which generally end with the following: 'However, the Italian legal framework already guarantees the rights of regular and irregular migrants'. Similarly, when invited by Kenya and other states, during the third UPR cycle, to put an end to the practice of collective expulsion, Italy replied that: 'The principle of non-refoulement is established by Italian law and is fully implemented in the practice. Rights of migrants and asylum seekers are recognized and respected in full compliance with national, EU and international law'.

In other cases (23%), Italy has made the effort to explain *in public* the reason why specific recommendations have been noted. For example, following its third review, Italy took steps to respond to concerns expressed by Peru about its firearms control policy and the correlation between their use and feminicides, by indicating detailed statistical data showing that such correlation simply does not exist and listing the measures that can be adopted when cases of domestic violence and stalking are reported. While there remain concerns about the substance of these policies, having to publicly explain them is considered as arguably beneficial by NGOs, expert mechanisms and other stakeholders (Schokman and Lynch 2014, 139)

Sometimes, Italy also resorted to a 'tied hands' strategy, that is invoking (alleged) institutional or financial impediments that prevent the government from taking actions. A first example refers to the setting up of national human rights institutions, as recommended by Denmark in the 2010 review: the government committed to submit a bill on this to the Parliament, 'as soon as the required budgetary resources are made available' (HRC 2010, 3). Another example, based on the separation of power principle, refers to the signature of the UN Global Compact for safe, orderly and regular migration, as recommended by Colombia in 2019: according to the government, Italy is not in a position to accept this recommendation since 'an assessment by the Italian Parliament on whether to join the Compact is [*still, ed.*] ongoing' (HRC 2020, 4).

In one single case, dealing with a recommendation by Iceland on a sexual orientation and gender identity related issue (third UPR cycle), Italy decided to adopt a more confrontational approach by declaring that it would simply ignore it (i.e., by just 'taking note' of it, as expressed in the diplomatic jargon).

To sum up: Italy's acceptance rate of the recommendations received is higher than the global mean; moreover, negative responses to recommendations essentially focus on a single main issue (i.e. the rights of migrants, refugees and asylum seekers) and, as showed by regional breakdowns, do not seem to be significantly affected by 'political motivations', i.e. by the level of

friendship and alliances among states; finally, Italy generally tend to adopt non-confrontational approaches in rejecting the recommendations received. All these features combined confirm that Italy seeks to exploit the review phase in Geneva to reaffirm, in front of its peers, its role as an international 'human rights friendly' actor, and represent a *prima facie* indicator of the Italian interest and willingness to use this mechanism to promote human rights (although, of course, they do not clarify the efficacy of the recommendations).

Table 3 – UPR Recommendations Noted by Italy

| Cycle | Recommendation | Recommending State | Regional Group | Issue | Strategy |
|-------|---|--|-----------------------------|------------------------------------|---|
| I | Become a party to remaining human rights instruments and consider withdrawing its reservations, in particular to International Covenant on Civil and Political Rights | Pakistan | Asian | International instrument | Already implemented/ guaranteed |
| I | Consider ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) | Algeria, Azerbaijan, Chile, Egypt, Iran, Mexico, Philippines | Asian, EEG, African, GRULAC | International instrument | Already implemented/ guaranteed + Tied hands |
| I | Incorporate the crime of torture into domestic law | Netherlands, Czech Republic, New Zealand | WEOG, EEG | Torture | Already implemented/ guaranteed |
| I | Establish its national human rights institution in accordance with the Paris Principles before the end of 2010 | Denmark | WEOG | National human rights institutions | Tied hands |

| | | | | | |
|---|--|---------------------|--------------|----------------------------------|------------------------------------|
| I | Develop a national integrated human rights plan in accordance with the Vienna Declaration and Programme of Action | Iran | Asian | Other | Already implemented/ guaranteed |
| I | Incorporate in its legislation the 1996 Supreme Court judgement that corporal punishment was not a legitimate method of discipline in the home, and criminalize corporal punishment in all cases, including in education | Spain | WEOG | Children's rights | Already implemented/ guaranteed |
| I | Strengthen the independence of the judiciary | Iran | Asian | Civil rights and the rule of law | Already implemented/ guaranteed |
| I | Protect the Roma and the Sinti as national minorities, and to ensure that they are not the object of discrimination | United States, Cuba | WEOG, GRULAC | Minorities | Already implemented/ guaranteed |
| I | Take all measures necessary to ensure the rights of the Roma people under article 27 of the International Covenant on Civil and Political Rights, specifically by amending the 1999 Act, which lays down this creation of connection with a specific territory | Denmark | WEOG | Minorities | Public explanation |

| | | | | | |
|----|---|--|------------------------|-----------------------------|------------------------------------|
| I | Take appropriate legislative measures to decriminalize irregular entry and stay in Italy | Brazil, Mexico | GRULAC | Migrants and asylum seekers | Public explanation |
| I | Take appropriate legislative measures to exclude undocumented stay in Italy as an aggravating circumstance for the purposes of sentencing following a criminal conviction | Brazil | GRULAC | Migrants and asylum seekers | Public explanation |
| I | Repeal all discriminatory laws against irregular migrants | Pakistan | Asian | Migrants and asylum seekers | Public explanation |
| II | Study the possibility of acceding to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) | Egypt | African | International instrument | Already implemented/ guaranteed |
| II | Consider ratifying ICRMW | Chile, Indonesia | GRULAC, Asian | International instrument | Already implemented/ guaranteed |
| II | Ratify ICRMW | Ghana, Sierra Leone, Uruguay, Peru, Iran | African, GRULAC, Asian | International instrument | Already implemented/ guaranteed |
| II | Ratify ICRMW | Senegal | African | International instrument | Already implemented/ guaranteed |

| | | | | | |
|------------|--|--|-----------------------------|-----------------------------|------------------------------------|
| II | Complete the ratification process of ICRMW | Turkey | WEOG | International instrument | Already implemented/ guaranteed |
| II | Strengthen the legal framework to take better account of migrants and migrant workers, in particular by ratifying ICRMW | Algeria | African | International instrument | Already implemented/ guaranteed |
| II | Enact legislation to enshrine the 1996 Supreme Court ruling in legislation and explicitly prohibit all corporal punishment of children in the home | Liechtenstein | WEOG | Children's rights | Already implemented/ guaranteed |
| II | Explicitly prohibit all corporal punishment of children | Sweden | WEOG | Children's rights | Already implemented/ guaranteed |
| II | Suspend summary returns to Greece | Sweden | WEOG | Migrants and asylum seekers | Public explanation |
| III | Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families | Uganda, Uruguay, Senegal, Sierra Leone, Sri Lanka, Azerbaijan, Bangladesh, Egypt, Seychelles | African, GRULAC, EEG, Asian | International instrument | Already implemented/ guaranteed |

| | | | | | |
|-----|---|-----------|---------|-----------------------------|------------------------------------|
| III | Raise domestic awareness on the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families | Indonesia | Asian | International instrument | Already implemented/ guaranteed |
| III | Sign and ratify the Treaty on the Prohibition of Nuclear Weapons | Ecuador | GRULAC | International instrument | Public explanation |
| III | Consider revising the framework regulating the control of firearms, given the correlation between their use and feminicides | Peru | GRULAC | Women's rights | Public explanation |
| III | Investigate all allegations of ill-treatment and excessive use of force against asylum seekers and migrants | Pakistan | Asian | Migrants and asylum seekers | Already implemented/ guaranteed |
| III | Implement the principles of non-refoulement and relevant minimum standards, relating to the rights of migrants and asylum seekers | Kenya | African | Migrants and asylum seekers | Already implemented/ guaranteed |
| III | Observe the principle of non-refoulement and provide humanitarian protection for all migrants | Thailand | Asian | Migrants and asylum seekers | Already implemented/ guaranteed |

| | | | | | |
|-----|---|--------------|---------|--|---------------------------------|
| III | Guarantee the individual assessment of the situation of each migrant in order to put an end to the practice of collective expulsion | Burkina Faso | African | Migrants and asylum seekers | Already implemented/ guaranteed |
| III | Endorse the Global Compact for Safe, Orderly and Regular Migration | Colombia | GRULAC | Migrants and asylum seekers | Tied hands |
| III | Take measures to avoid collective expulsions of migrants | Argentina | GRULAC | Migrants and asylum seekers | Already implemented/ guaranteed |
| III | Review Law No. 132 of 2018 on the detention of asylum seekers to align it with international refugee law and human rights law | South Africa | African | Migrants and asylum seekers | Public explanation |
| III | Enact legislation on the recognition of both same-sex parents involved in the growth of a child, as well as extending their access to adoption on a par with others | Iceland | WEOG | Sexual orientation and gender identity | Confrontational attitude |

Source: authors' elaboration on data from HRC

Conclusions

This longitudinal analysis of Italy's UPR has confirmed a certain degree of immobility for the country's action: the subjects of recommendations, and the motivations used to note them, have been reiterated over the last 10 years, showing little change overall.

This finding has both positive and negative implications for the overall assessment of the country's behaviour and performance vis-à-vis human

rights. On a more negative note, the finding confirms that Italy's phase of stagnation is not over. If Italy aims to effectively comply with the international human rights agenda's priorities – an agenda which, also due to the flexibility and responsiveness of the UPR mechanism, is particularly dynamic –, it has to solve its long-standing problems at home, especially those highlighted in the context of migration policies, the treatment of Roma minorities, the protection of women's and children's rights and the long-promised development of a dedicated national infrastructure. This latter, namely the creation of an independent national human rights commission consistent with the Paris Principles, would constitute a significant step toward this achievement and help as well Italy being more consistent with the goals of the 2030 Sustainable Development Agenda, especially with Goal 16 which deals with peace, justice and strong institutions.

The well-illustrated lack of matching between the Italian legislators priority and the recommendations received in the UPR (as such, the priority of the international community) shows little courage and political will on these matters, but also that the exit from current stagnation necessarily go through a serious effort to glue the national and international agendas which, as far as Italy is concerned, have been often developing on parallel tracks. Only when the two agendas match significantly, Italy's role conception as a 'human rights loving' country will rest on safe grounds and provide a real contribution to its credibility abroad. Otherwise, the much-pursued international reputation of the country runs the risk of appearing just a façade perception, pretty well consistent with the formalistic ritualism of the UPR, and little conducive to any actual improvement of human rights on the ground, which, incidentally is the key goal of the UPR. This and the fact that the numbers presented by the Italian delegations during the third interactive dialogue were not counterchecked by anyone, makes the case of Italy a further empirical evidence of the UPR shortcomings as a mechanism.

In this immobility we can also find positive implications. The cooperative way in which the UPR of Italy was conducted and welcomed domestically suggest that, after all, the phase of regression that marked the populist experience of Conte I have not left permanent traces or stains. It has created 'momentum' around Italy's human rights behaviour and is allegedly at the basis of the very large number of recommendations received in 2019. However, recommendations show that the tones and themes of discussion in the third cycle were not exacerbated by the shadows of delegitimation that the previous government (tried to) cast on the UN, although there was a significant concentration on topics which in previous cycles were just marginally touched. The role conception and international perception of Italy thus has remained unaltered overall. It is now high time to put formal

reputation, policy rhetoric and related ritualism in line with the reality on the ground and make the international role of Italy a reflection of a domestic performance, not an unrelated policy domain.

This paper has focused on discourse at the institutional level. This has deprived civil society organisations from their very much deserved attention. Civil society plays a huge role in the UPR process and, also in light of virtually no attention in the media, in spreading the results of the review. The research design did not provide room to assess also national and international civil society contributions to the UPR (and to Italy's UPR in particular). These organisations, however, remain the most effective vector to enable the change proposed in these conclusions and hopefully this paper will support their action.

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