**Ⅰ. Introduction to the University of Naples**

It is really an honor and pleasure to be with all of you in the law school. First of all let me introduce my university, which is a very old university founded in 1732. It was a university which intended to make Asia, east and west, cooperate, speak to them, and communicate with each other. This is what we are engaged to do also after nearly 300 years. I am very proud to be here as Vice President of the institution, which has widely opened to East Asia, to China in particular. We have strong relationships with Chinese universities, academies, and of course, we hope to develop further this cooperation. I am really interested in having stronger ties with my colleague in China in order to make a full cooperation. We hope to begin some formal cooperation. And also a change in Chinese law in my university which is for the moment still in lack. This is really a very important meeting for me. A future cooperation can now put on our agenda. The late Professor Cassese was one of my masters. And my friend is one of the members of International Court of Justice, so it is a very difficult task to do.

**Ⅱ. Italian legal system and international law**

Now let’s come to the topic of my lecture today, Italian legal system and international law. Our domestic system began affected after the Fascist and World War II. Our constitution was effected in 1948. And this new constitution nearly not changed, of course with some little reforms but the general framework is still this one. Our Parliament and the Chamber of Deputy are both elected. We didn’t want to give to people direct election of the President of the republic because of the difficulties we experiment. The delegation of powers in order to elect our President, also because our President lack of control of the democratic system, but don’t very affect the power of the Parliament, of course. The President nominates the Prime Minister, the Prime Minister choose the means of our judicial system. As you know, they are Roman law system, Roman Germanic system which was in part modified by Napoleon Code. In the criminal branch we have the Supreme Court, like in France, and which has the task of uniform interpretation of law.

**2.1 Constitutional court**

We have also a constitutional court, a centralized constitutional system. The constitutional court in Italy functions more or less like the constitution in German. The main difference is that we have no direct access from persons or peoples to the constitutional court. The constitutional court controls the respect by statutes of our constitution by assistance of the judges who pose constitutional questions to the constitutional court, to verify the constitutional legitimacy of law and legal force of law. We are the founding member of the European Union. As we were defeated during WWII, we are not the original part of the United Nation system. We were only admitted to the United Nations in 1955. And we are part of North Atlantic Treaty Organization (NATO), and we are part of many international agreemental organizations.

**2.2 Italian constitution and treaties ratification procedure**

Let’s give a look to the constitutional provisions which are devoted to international law. First of all, Article 87 Paragraph 8 of the Italian Constitution which provides that President of the Republic ratifies international treaties which have well required is authorized by the Houses. So the task of ratifying treaties has been given by the constitution to the President of the Republic but he needs the authorization by the Parliament for what substance specific can make of treaties, which are in Article 80, treaties of a political nature should be ratified by Chambers, and treaties impose changes to the national territory or financial burdens or changes to regulations. But the President of the Republic needs the authorization of the Parliament. Why the President is said to be denied the power to ratify treaties because nearly all treaties maybe of political nature. So the constitutional court has interpreted this capacity that we need to restrict interpretation of this definition of treaties of the political nature.

We have to see that in the practice, this constitutional procedure of ratification of treaties has been modified, because normally if an authorization is required, the authorization must arrive before the act of the President. And so, this means that the conclusion of treaties in a signified form cannot be concluded in the President’s capacity because he needs the authorization by the Parliament. This means that if you do not have the authorization, you cannot conclude an agreement in a simplified form, in a form which excludes in a certain way the ratification, such as agreements concluded by a branch of the government with another branch of a foreign government, and it is not subjected to ratification. But if the article 80 requires authorization for ratification, this means that ratification is needed. So in theory, the conclusion of a treaty in simplified form is excluded, but what does happen in practice? In practice, in the mean time the government has concluded treaties in simplified forms governed by Article 80, and so according to the constitution it needs a previous authorization of the Chamber. For example, a very important treaty Italian sanction to the United Nations was made with the Italian Minister of Foreign Affairs and Italian Parliament upheld the sanction afterwards, after much time. So the problem is that if the Parliament says that everything is ok, the situation is in a certain way solved. But the Parliament is in a position of black mate, because if the Parliament has already concluded a treaty and the treaty compelled Italy in the international order, it should be very difficult for the Parliament to say no I do not accept this because it is not provided in the constitution. So the Parliament so far has always given its authorization which is an authorization as we see *ex post facto* after the action has already been done. So this is some outlook for our constitution provisions, but anyway, some practice now is more or less established.

In our constitution also find important regulations on the relationship between international treaties and constitutional order. But we have to slash a part from what we now said on the bodies with treaty-making power. This interaction in treaties and domestic system is not regulated so far by the constitution, or internationally. Only in 2001, we specified in the constitution Article 117 now it is said in our constitution in a specific way that legislative power shall be vested in the State and regions in compliance with the constitution and within the limits deriving from European legislation and international obligation. So now it is written clearly in the constitution that for what concerns, treaties are in a superior position than law. So the legislative power by State and by regions must be exercised in full respect of international relations of the State.

**Ⅲ. Particular categories of treaties**

**3.1 Lateran Pact**

But from the origin, there are some particular categories of treaties which have a specific and particular value. Let’s see which they are. The first category is mentioned by Article 7 of our constitution, and the so-called Lateran Pact. Lateran Pact is the agreement concluded by Italian State and Catholic Church. They have specific constitutional value. This is a historical problem because, as you know, when Italian State was built in 1861 (we have 150 years of our State), it was still pending on the question of the Catholic Church because the Church was sovereign in the Vatican State, there was the supreme Pope on this territory. The Pope did not accept the law of Guarantees and he considered himself a prisoner in the Vatican of the so-called Italy city. The question was in a certain way settled in 1929 with the Lateran Pact which was applied in 1983, and this agreement ended the Roman question between Italy and the Vatican.

So Article 7 in 1948 Constitution makes a reference to this agreement between Italy and the Catholic Church, saying, and I quote: “The State and the Catholic Church are independent and sovereign, each within its own sphere. Their relations are governed by the Lateran Pact. Changes to the pact that are accepted by both parties do not require the procedure of constitutional amendments.” So a special status has been accorded to the agreement by the constitution, which is subject to a limit—the supremacy of fundamental principles of the constitutional order over principles established by the pact. This was said very clearly by Italian constitutional court in 1982.

The constitutional court evaluates the constitutionality of domestic Italian law implementing the Lateran Pact, because at that time the law provided for the automatic effect of the Church annulment of marriages, celebrated by a Catholic priest. The court decided that this has to be limited because the proceedings beyond the Church system of annulment of marriages are not proceedings which can be accepted by Italian constitutional order, because it is against the guarantee provided by Article 24. Article 24 provides that everyone can defend himself before the court. So every annulment of marriage in the Catholic system can be done also without the presence of one of the two persons. This is not accepted according to our system that what said about the constitution. The constitutional court said in many cases the fundamental principles of the constitutional order must prevail over the pact. There is strong criticism against the maintaining of this special status of the Lateran Pact in our constitutional system because the freedom of religion is one of the fundamental principles of our system, which implies equality before law of every religion. So why this agreement must preserve this special constitutional status and other agreements between the State and other churches have lower status in our constitutional court? This is a strong debate today much more than in the past because now, of course, we have communities of people belonging to other faith and other churches or maybe people free from religion, so there is a strong debate on this point. We will see if this special privilege will be got in our constitution. According to my position, it may be because the church is still very powerful in Italy. We have interest in the Catholic Church, we need them.

**3.2 Treaties of the legal status of foreigners**

Another special position in our constitutional system is given to treaties of the legal status of foreigners. Article 10 Paragraph 2 of our constitution affirms that the legal status of foreigners is regulated by law in conformity with international rules and treaties. So there is a strong and specific limitation because any law which deals with the status of foreigners cannot in any case derogate international rules and treaties (including international customs of course). This is very important because the interpretation given to the provision is that now there is no more rules in reciprocity, for what concerns, the treatment of foreigners, because in our Civil Code, still enforces Article 16 of the preliminary rules to the Civil Codes, which states that the treatment of foreigners will be focused on the application of the reciprocity codes, but the reciprocity codes is something out of our constitutional system. This is very important in people’s life for example the freedom of belief. We cannot act for there being reciprocity and for example not permit to a specific religion to be followed in Italy, because in the country of this person his religion is not respected, so the principle of reciprocity is very important for human rights matter.

**3.3 European Community treaties**

The third exception, the third particular status of international treaties is of all European Community treaties, and this is made through a particular interpretation that has been given to Article 11 of our constitution. This article says Italy rejects war as an instrument of aggression against the liberty of other people and as a means for settling international disputes. Italy agrees to limitations of sovereignty which are necessary to the legal system grounded upon peace and justice between nations. It promotes and encourages international organizations having such ends in view.

So if you read this article, there is no specific relationship with an organization like the European Union, but this is very logic because our constitution is of 1948, the European Community was born in 1962 and then in 1968 came the *European Community Treaty*. So this was from many other European partners that have specific relation on European Union in their constitutions because their belonging to European Union is precedent to the enactment of their constitutions. European Union is subsequent to our constitution.

This Article 11 was put in this form in our constitution, with a specific aim—the participation of Italy to United Nations. As I have already told, we lost WWII, so we have to show that we were a new people with a new constitution, a democratic republic which wanted to participate, to enter international organizations in order to make values and so on. So, in order to justify the limitation to sovereignty and of course participation in international organizations like United Nations, Article 11 was adopted. Article 11 has also been exploited to interpret European Union legislation and in particular the limitation to sovereignty.

So European Union treaties and European Union legislation in particular have a specific status in our system which has been finally recognized by Italian constitutional court in a famous decision in 1984 No.170. In this decision, the Italian constitutional court for the first time accepted that European system and domestic system are two different systems, each one with its own court. So if there is a problem of respect of a piece of legislation coming from European Union with fundamental values, it is not up to the constitutional court to decide, it is something that constitutional court must reserve to European Court. So when a piece of European legislation has been enacted by European Union, this means that there is no rule for the domestic legislator to introduce legislation in this matter. This implies that the single domestic judge in Italy must not go beyond the constitutional court to say that there is a constitutional violation because the Parliament has enacted the law which is against European Union law or which is against interpretation of European law. No, it is up to any single judge to not apply, not implement a domestic legislation which is against European Union law and directly implement European Union law.

So for the first time, the constitutional court says something which in the moment sounds a little bit revolutionary in Italian constitutional system, because we were used to consider any act of legislation according to constitution, to be subjected to the control of the constitutional court.

Now for the first time, the constitutional court says no, for what concerns, these is no necessity for the single judge to go beyond constitutional court, it will be up to the domestic judge not to implement a domestic law which is against European Union system.

And European Union court will make its sole judgment if this European piece of legislation is against fundamental values. But the question was, at that time, how European court can control the respect of European legislation with fundamental values of human rights. There is no European Union constitution because many European nations’ constitutional courts have their constitutions as parameters of reference. European Court of Justice answered, saying that the parameter of reference for respect by European Union legislation of fundamental values of human rights law is not only represented by European Union treaties but also by the constitutional traditions of European member States, which is a common heritage, and also by the human right treaties ratified by European Union State members. So the European Court will meet this confrontation between these legislations coming from European Union Council or Parliament and these parameters of reference, and it will follow the system of so-called “better law”. For example, if we discuss the right to family, the right of liberty of expression and so on, the parameter of reference for European Court will be that of the member States where they think will be better for their countries. This will be the parameter of reference by the European Court. So the question in a certain way was solved, and now it is accepted that in Italy, European Union legislation has a direct value interpretation force that has international position which is superior to domestic law, and the single judge will saw this problem only in making a part of domestic legislation and letting the European legislation be enforced.

**3.4 *European Convention on Human Rights***

A question remained for other treaties which shall not in the framework for European Union system, and mainly, *European Convention on Human Rights* which has been ratified by Italy in 1963 deals with fundamental rights. On this point, the constitutional court has given two important decisions in 2007. In these decisions, the Italian constitutional court refused to give the same effect to the provisions of *European Convention on Human Rights* as the European Union law. The constitutional court said the question is different in the case of *European Convention on Human Rights*. We do not have a super-national system. We do not have created a State. European Union has a particular status. It is a very important convention of course, with a very important European Court of Human Rights, but this does not authorize the domestic judge to put aside domestic legislation which is in concert with *European Convention on Human Rights*. The single judge has to do what he normally does when there is a suspect of violation of the constitution by law. According to Article 117, treaties prevail over domestic legislation. So if there is a domestic law which is against *European Convention on Human Rights*, it is a constitutional violation and the single judge has to do beyond the constitutional court in order to make the domestic law disappears from beyond. This is a sound decision, but a little bit too formalistic, because so far until the decision of the constitutional court, our judges have developed a theory of delicate interpretation of *European Convention on Human Rights*. They decide what human rights are. It is the jurisprudence of European Court on Human Rights to give us interpretation to give to this single provision. So in the interest of human beings, it is up to ourselves to give direct interpretation to the conventional provisions.

So if there is a conflict between domestic law and *European Convention on Human Rights*, we feel authorized to directly implement, if of course there is the possibility of direct implementation, the provisions of *European Convention on Human Rights*. This path has been followed by years, by the court of Italy and also by single judges, and now has been sought by Italian constitutional court. In my own opinion, it is a pity, because in other European systems we see how easy it is to directly implement the *European Convention on Human Rights*, and this has been in a certain way thought by constitutional court. Constitutional court afforded to directly implement *European Convention on Human Rights* but only after the domestic legislation. If there is no legislation, there must be intervention of the Italian constitutional court.

**3.5 Self-executing treaties**

This gives me the thinking of spending towards on the question of self-executing norms or treaties in domestic Italian system. The problem is only in the relationship by interpreter with the provision. And by possibility, given or not given to interpreter by the system. For example, we know that there are systems like common law countries where there is no possibility of directly implementing a treaty, if this treaty has not been implemented first by at least domestic legislation. In Italy, we have the system of the execution order, which is a law, a law which says full application is given to the following treaties, and the text of the treaty follows, and is published in the Italian official journal.

From this moment onwards, the treaty is compulsory, and also self-executing in the manner which it can meet self-execution, because of course there are provisions which by nature are not self-executing. For example, if the provision says that a double system of judgment in appeal must be created in a certain matter if a law does not intervene in creating a judge of second layer, there is no possibility of having this suit by a person which was to exploit this provision. Or, another example, if an international provision gives the faculty to a State not the obligation, for example, a convention which says the State can afford the adoption of a child by a senior or not, it is up to the order to choose if giving this possibility to the person or not. So in this case, we have dealing with no specific provision. In other case, we have for example, if there is a negative provision states only not to follow this behavior. In other cases, it is difficult to say if the provision is executive or not, but it depends especially on the attitude of the interpreter. If the interpreter is open to international law, there is no problem. If we have a close relationship with international law, there will be problems. It is particularly not concerned with the action of judges because normally judges in Italy are very independent and with an open mind attitude. The problem is with functionaries of a decision which in many cases wait for the superior to give their authorization, to ask certain matter. So if they have a piece of legislation coming from European Union but they do not find the order of the superior maybe they will be a little bit in the faculty in giving an Italian interpretation to this piece of legislation. This is of course a question of mentality and many deserve this attitude of functionality with international law.

**Ⅳ. Customary international law in Italian domestic system**

I will finish just with a quick relationship to customary international law in Italian domestic system. We have a specific constitutional provision which is Article 10 which is followed by Paragraph 1: Italian legal system conforms to the generally recognized rules of international law. Generally recognized rules are interpreted as customary rules and also the so-called general principles of international law. This means that there are many words of international customary law. If a customary rule exists in international system, automatically it enters Italian domestic system, and it enters with constitutional force. Article 10 is a constitutional provision, so customary rules have constitutional rank in our domestic system. This means that a law which is contrary to a customary rule is automatically contrary to the constitution and must be reviewed and eliminated by the constitutional court.

Constitutional court has dealt with problems and interpreted the values of customary law in domestic system many times. For example, when it counsels a law which prevail that in the case of aggression on goods or money pertaining to foreign embassy by a judge, they must intervene first in authorization of the judgment. The constitutional court said now time has passed and the civilization power the judge must in his own appreciation interpret on the assets of the foreign country. So if there is a violation of international law or even domestic law by a foreign country, there is no problem in making this sort of evaluation by a domestic judge, and there is no formal courtesy to be given to foreign countries if there is a violation of law of the embassy. So there is no need of governmental intervention. There is freedom of the judge to go on, because customary international law of immunity must be interpreted in the strict sense now in order to give rule to personal human rights protection of human beings. So this has been a very interesting position of our constitutional court.

According to our domestic system, not only European legislation affects the implementation in our system, but also the decision of the court of European Union, and the decisions of European Court of Human Rights. This is an important matter which is developing, and which of course does not only relate to Italian constitutional system, the value of the decisions of European Court of Human Rights because it has developed an interesting jurisprudence in which it says that not only full decisions but also others in the European Court capacity. There is a need to follow and also we have some problems, some principles because our former government refused to give direct interpretation to the European Court on Human Rights orders concerning questions related to expulsion or foreigners. And our former Prime Minister said in an official occasion that the European Court on Human Rights decisions are not compulsory, but the decisions of our court said in 2010 that our Prime Minister was wrong, and that the decisions of European Court of Human Rights are compulsory and has to be implemented in our system.

And now we are passing to another court, another international court, International Court of Justice (ICJ). We have present an important question in implementation of the decision of ICJ, which is in February 2012, has condemned Italy for its judicial practice concerning the civil suits brought beyond Italian tribunals by victims of WWII against Germany in our domestic judges. Our judges recognized the rights of these people to a monetary resolution for suffering during WWII by Nazi soldiers. And Germany protested that they have already paid a large sum of money after WWII, so if there are new facts, new questions it is up to the Italian government, and there is the rule of State immunity which has to be observed by Italian judges. So Germany went beyond the ICJ, and ICJ recognized the right of Germany to the full recognition of State immunity beyond Italian tribunals. And now there is the problem of interpretation of this decision because we need a law, because otherwise I don’t think that Italian judges can change their attitude. They must change because in a certain way when an international court has given its own decision, all the States will mobile, not only related government to follow this international decision. So it is not up only to Italian government or to Italian Parliament to enact a new legislation to change, maybe it is up to the single judge not to follow this ICJ decision, but this is not acted in this way. Law is needed and maybe in order to facilitate the behaviors of judges. But the paradox if you want from democracy the civilization power maybe can afford a judge to keep his own mind and reason according to his own mind.