



Ministero degli Affari Esteri
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Agenda item n. 78 - Report of the International Law Commission

Second Cluster

Statement of Italy

Delivered by Mr Stefano Zanini

Mr. Chairman/Madam Chair,

In our intervention today, we will address two topics: “Immunity of State officials from foreign criminal jurisdiction” and “Sea-level rise in relation to international law”.

I will now address the topic of “**Immunity of State officials from foreign criminal jurisdiction**”.

As a preliminary remark, Italy would like to commend the Special Rapporteur, Prof. Concepcion Escobar Hernandez for the excellent work and to congratulate the Commission for the adoption on first reading of the Draft Articles and the Commentaries thereto.

We support the efforts made to elaborate a set of rules on the complex and important topic of immunity with a view to preventing disputes between States. Indeed, the adoption of a set of draft articles on the topic will hopefully lead to the elaboration of a specific Convention that would solve the problem of the fragmentation of national practices on the issue.

More specifically, we wish to reiterate our support for **Draft Article 7**, which states an **exception to functional immunity in respect to crimes under international law**. In fact, we are considering the inclusion of a rule having the same content of Draft Article 7 in our national Code of International Crimes currently under drafting.

With regard to the other Draft Articles, Italy would like to make the following observations.

Firstly, we welcome the relocation of the “**without prejudice**” **clause concerning international tribunals** into the Third Paragraph of **Draft Article 1**. Nevertheless, with regard to the rewording of the clause, we believe that the specific reference exclusively to international criminal courts established by treaty may unintentionally narrow its scope.

Secondly, Italy welcomes the adoption of **Draft Article 14**, concerning the **determination of immunity**, which is considered a key provision that completes the rules contained in Part Four. However, regarding the moment at which the immunity should be determined, Italy has some reservations on the employment of the generic expression “before initiating criminal proceedings”, which is also used in Draft Article 9, which regulates the examination of immunity. In particular, we would welcome the elaboration of two different wordings, since the two Draft Articles have different meanings and scopes. Indeed, while we certainly recognize the importance that the examination of immunity begins at a pre-trial stage, we believe that the determination of immunity, in particular in relation to immunities *ratione materiae*, requires a preliminary search for evidence. Therefore, in Draft Article 14 we recommend the employment of a different expression that could set later the time limit of the determination of immunity, possibly before the commencement of trial.

Thirdly, we welcome the wording of **Draft Article 11**, concerning the Invocation of immunity by the State of the Official, especially with regard to paragraph 2, which clearly states that such invocation shall be made in writing. Likewise, as far as **Draft Article 10** is concerned, Italy is of the view that the mentioned **notification** by the forum State should be made in a written form, especially taking into account that such notification is mentioned in Draft Article 14 as a significant element for the determination of immunity.

Finally, Italy welcomes the inclusion of a **settlement of disputes clause** in the Draft Articles, especially in view of the desirable elaboration in the future of a convention on the basis of the draft articles. However, Italy suggests to clarify in the text of the **Draft Article 18** that disputes may arise only after immunities have been finally determined by the competent judicial authority.

Mr. Chairman/Madam Chair,

I will now address the topic “**Sea-level rise in relation to international law**”.

At the outset, please allow me to commend the International Law Commission for its work on the legal implications of sea-level rise. Italy recognizes the importance and the urgency of addressing this issue, mainly because of the dramatic consequences that several States, especially small island developing States, are facing and will face in the future due to sea-level rise, a phenomenon that is unfortunately irreversible and has long-term effects. At the same time, such work should be conducted in a manner that does not undermine the legal framework enshrined in United Nations Convention on the Law of the Sea.

Italy wishes to express its appreciation to Ms. Galvão Teles and Mr. Ruda Santolaria, the Co-Chairs of the Study Group, for the submission of their second issues paper, which addresses the subtopics of **statehood** and **protection of persons affected by sea-level rise**. The guiding questions identified therein are of great relevance for the further development of the work on the subject.

Being aware of the preliminary nature of the issues paper, Italy would like to make the following observations.

With regard to the subtopic of **statehood**, Italy agrees with the proposal made within the Study Group to address separately cases where the territory of a State is completely submerged from

cases where a State has become uninhabitable due to a partial reduction of its territory as a consequence of sea-level rise. Italy believes that due consideration should also be given to the effects on statehood of phenomena such as periodic flooding and freshwater contamination caused by rising sea levels. Furthermore, Italy encourages the Study group to consider whether and to what extent States affected by sea-level rise could invoke a state of necessity.

In reference to the discussion held on the subtopic of **protection of persons affected by sea-level rise**, Italy encourages further researches in order to analyze the applicability, and possibly the consequences of the application, of human rights law, refugee and migration law, disaster and climate change law to address the specific challenges arising from this crucial issue.

Finally, regarding the **final outcome** of the work on the topic, Italy is particularly in favor of the proposal suggested within the Study Group regarding the elaboration of a draft treaty on a new form of subsidiary protection for persons affected by sea-level rise and is ready to provide its contribution on the main legal issues that will be selected in the examination of the topic.

Thank you Mr. Chairman/Madam Chair.