



ITALY

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STATEMENT BY

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Mr. Chairman,

At the outset, please allow me to express my congratulations to you and to the other members of the Bureau on your election and on the admirable way in which you, Mr. Chairman, are conducting the work of this Committee.

I also wish to thank the Chairman of the International Law Commission Mr Narinder Singh of India, for his presentation of this year's report, in particular with regard to the topics addressed by this intervention of the Italian delegation.

On the basis of the programme of work of this Committee, I will address today three main topics: Chapter IV on the Most-Favoured Nation Clause; Chapter V on Protection of the Atmosphere, as well as Chapter XII entitled "Other decisions and conclusions of the Commission", in which I will place emphasis on the programme of work of the Commission.

Moreover, I will also touch upon the topic contained in Chapter VII concerning "Crimes against humanity", examined in this Committee under cluster II.

Mr. Chairman,

The Italian Delegation has studied with great interest and appreciation the **report of the Study Group on the Most-Favoured-Nation Clause**. We, therefore, wish to express our warm congratulations to its Chairman, professor Donald McRae of Canada, and Professor Forteau for his work during the 2013 and 2014 sessions, and to his co-chairman Amb. Rohan Perera. We believe that the report can provide a useful contribution to a still complex and open debate in international law and assist in the interpretation and application of MFN clauses.

Italy regards such a contribution as an important complement to the Draft Articles adopted in 1978 on the same topic. The latter remain a valuable term of reference, with special regard to the *eiusdem generis* principle, as a guardian for the appropriate interpretations of MFN clauses in full compliance with the principle of State consent as the main source of treaty rights and duties.

My delegation shares the conclusions on the topic adopted by the Commission at its 3277th meeting on 23 July 2015, with special regard to the emphasis placed on the importance that the interpretation of MFN clauses be made consistently with the relevant provisions of the VCLT concerning treaty interpretation. As to the question whether in investment treaty arbitration MFN clauses should apply only to substantive obligations, or also to dispute settlement provisions, Italy subscribes to the conclusion of the Commission to the effect that it is a matter of interpretation of MFN clauses on a case-by-case basis, and that, accordingly, States are well advised to negotiate such clauses in explicit terms. In case where such clauses are not explicit on the matter, Italy believes that the application of MFN clauses to dispute settlement provisions should not be presumed.

Mr. Chairman,

I will now turn to **Chapter V on the Protection of the atmosphere**, which Italy regards as a highly important issue. We wish to thank the Special Rapporteur, Professor Murase, for the extensive work that he has put into his second report. We also express appreciation for the thorough debate over the report carried out by the Commission, also commending the useful dialogue it has conducted with scientists which provides a sound basis for the working definition of the term "atmosphere".

My Delegation is pleased to note the progress made in the preparation of the draft guidelines on this topic, including preambular paragraphs and commentaries. We are also pleased that the work on the topic is proceeding on the understanding that its scope should be without prejudice to political negotiations under way in related forums, with special regard to those on climate change, ozone depletion, and long-range transboundary air pollution. We believe that this point has been appropriately addressed in preambular paragraph 4. Likewise, we are happy to see the contours of the scope of application of the guidelines as clearly delineated in Guideline 2, together with the decision to give further consideration to the bracketed language in paragraph 1. Finally on this topic, we find that the language proposed in Guideline 5 on

“International cooperation”, as corroborated in its commentary, appropriately reflects and adjust this key general principle of international law to the protection of the atmosphere. To that end, Italy fully subscribes to the language contained in paragraph 2 of Guideline 5 including the enhancement of scientific knowledge in the field within the scope of international cooperation.

We look forward to the discussion on this topic in the coming year.

Mr. Chairman,

Allow me briefly to comment on **Chapter VII regarding the topic “Crimes against humanity”**; my delegation would like, first of all, to congratulate the special rapporteur, Mr. Sean Murphy, for his outstanding first report, which has been duly reflected in the quality of the report of the Commission.

Italy is convinced of the potential benefits of developing a convention on crimes against humanity promoting the prevention, criminalisation and cooperation among states. The positive attitude of the Italian delegation is based on the premises of the approach proposed and pursued by the Commission at the present stage of its work.

Italy favours the decision to confine, for the time being, the scope of the draft articles to crimes against humanity. Most importantly, my delegation wishes to express its satisfaction for the approach clearly undertaken by the Commission to the effect that the draft articles are meant to avoid any conflicts with obligations arising from existing treaties relating to crimes against humanity, including those establishing international or “hybrid” criminal courts, with special regard to the ICC.

As to the relationship with the latter, we fully subscribe to the point made by the Commission that the compatibility of the draft articles with the ICC Statute would lie on the fact that the draft articles will consist of obligations to adopt domestic legislation and to engage in inter-State cooperation, within the framework of a set of “horizontal” legal relationships, whereas the Rome Statute governs legal relationships of a “vertical” nature between the ICC and its States Parties.

In the same vein, Italy supports the approach anticipated by the Commission whereby, not only would the draft articles be without prejudice to the Rome Statute in general, but, also, they should aim to enhance the principle of complementarity under the Statute in addressing inter-State cooperation on the prevention of the crimes in question and on the investigation, arrest, prosecution, extradition and punishment at the domestic level.

The Italian delegation looks forward to discussing in due course the draft articles that will translate operatively the indications just discussed; mindful that there might be other initiatives focusing on multilateral legal assistance and cooperation among Member States focusing on Rome Statute crimes that will have to be taken into account. Member States will have to reflect on the interaction between these initiatives as the activities on this topic move along.

Mr Chairman

My final remarks relate to **Chapter XII on the programme of work** of the Commission and a variety of other topics, on which I will not comment at this stage, with the exception of a mention regarding the role of the ILC.

With regard to the programme of work we look forward to the activities of the Special Rapporteur, Mr Dire Tladi of South Africa, on the issue of *jus cogens*. We believe there are many challenges in this area, but we applaud the vision and courage of the Special Rapporteur and of the Commission to start work in this area; we look forward to the future discussions of this topic.

Finally, let me say a word on the role the ILC must play in the promotion of the rule of law at the national and international levels. Historically the Commission has given an unrivalled contribution to the codification and development of international law. Today its continued relevance is evidenced in the work undertaken on several topics of great importance for the current legal framework, ranging from “the protection of the atmosphere”, to the “identification of customary law”, from “the protection of the environment in relation to armed conflict”, to the issue of “crimes against humanity”, from the draft articles on “immunity of state officials from foreign criminal jurisdiction” to the report on the “most favoured nation clause” which we are discussing at this session; as well as the many other topics on its agenda, which are all relevant for the work of the international community on legal matters at the United Nations and beyond. In this regard, we believe the ILC will indeed continue to be relevant in promoting and enhancing respect for international law. We welcome the fact that the Commission and its members continue this good work in accordance with the

tradition, and we consider that this work could be further strengthened including through increased and improved informal interaction with the Sixth Committee, something which has already happened in the past and which we will further encourage.

Thank you, Mr. Chairman