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Statement by

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Mr. Chairman,

Allow me to congratulate you and the other members of the Bureau on your elections and on the remarkable manner 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. Georg Nolte of Germany, for his presentation of this year's report.

Today I will address three topics: "Crimes against Humanity"; "Protection of the atmosphere"; and, "Immunity of State officials from foreign criminal jurisdiction."

Mr. Chairman,

Italy wishes to congratulate the ILC and, in particular, the Special Rapporteur Sean Murphy for the progress made on the topic "crimes against humanity" and for the results achieved. The Third Report submitted to the Commission by the Special Rapporteur is a remarkable document, where doctrine and State practice are examined in a comprehensive and insightful manner. The Commission had a thorough discussion on the issue, which is reflected in the proposed draft articles with extended commentaries. Enhancing the legal framework to prevent and punish heinous crimes such as crimes against humanity is an important objective for today's world order. The draft before us provides an excellent basis for the possible conclusion of a global convention which would also cover the promotion of inter-State cooperation in that regard.

Italy has always been in the forefront of the initiatives aimed at reinforcing respect for the rule of law and at fighting impunity for crimes that offend the very conscience of humankind. Therefore, we wish to reiterate our support for the work of the Commission and for the general thrust of the draft articles on crimes against humanity. At the same time, we wish to add a few remarks on three specific points.

The first point relates to the need, that Italy has consistently stressed, to avoid any conflict between the draft articles on crimes against humanity and the rights and obligations of States with respect to competent international criminal tribunals, in particular with the Rome Statute of the International Criminal Court. The ICC remains the key judicial institution for the prosecution and punishment of the core crimes under international humanitarian law and no provision in the draft articles should detract from the Rome Statute. Italy appreciates the fact that the concerns about relationships with international criminal tribunals are taken into account in

various parts of the draft articles (for example in draft article 3 on the definition of crimes against humanity, which reflects verbatim article 7 of the Rome statute, or in draft article 9 concerning the principle aut dedere aut judicare). However, Italy is still in favor of adding to the draft articles a general formulation that would eliminate any risk of contrasting State obligations. As indicated by the Special Rapporteur, this formulation could read as follows: “in the event of a conflict between the rights and obligations of a State [under the present draft articles] and its rights and obligations under the constituent instrument of a competent international criminal tribunal, the latter shall prevail”.

Italy’s second remark at this stage concerns the question of protection of the rights of the alleged offender which is dealt with in the current draft article 11. Together with the need to prosecute and punish those responsible for the most heinous crimes under international law, it is equally crucial, in terms of respect for the rule of law, that the rights of the accused and of those persons held in custody are fully respected. This principle is reflected in draft article 11. However, we believe that the text could still benefit from some improvement aimed at emphasizing the importance of applying the highest standards of respect for international human rights. For example, the reference contained in article 11, para.1 to applicable national and international law, including human rights law, should in our view be further qualified by stating that national law is applicable only to the extent that is fully consistent with internationally recognized human rights.

Thirdly, and without prejudice for the specific written comments that Italy may submit in accordance with the request of the Commission, Italy welcomes the rather detailed provisions concerning extradition and mutual assistance that are contained in the draft articles. “Horizontal” inter-state cooperation is particularly important in the area addressed by the draft articles, provided as we already said, that it would not intend to replace the cooperation with international criminal justice or in any way affect its effectiveness.

In sum, Italy wishes to congratulate once again the Commission and the Special Rapporteur for the draft articles submitted to us and stands ready to contribute to the work aimed at reaching the objective of an agreed text of a draft convention on the prevention and punishment of crimes against humanity.

Mr Chairman,

I will now turn to the topic of the “Protection of the Atmosphere”. First of all, Italy wishes to congratulate the Special Rapporteur Shinya Murase for his Fourth Report. My delegation also welcomes the Special Rapporteur’s initiative to organize a meeting with scientific experts prior to the Plenary of the Commission next year. In acknowledging the utmost importance of scientific knowledge for the purposes of developing appropriate regulation on environment related issues, Italy deems input from the scientific community as essential to the Commission’s future work on the topic in hand, as successfully experienced in the past, with special regard to the topic of Transboundary Aquifers.

Italy commends the Special Rapporteur, and the Commission as a whole, for the progress made so far in the preparation of the Draft guidelines. While we acknowledge that the draft guidelines on the protection of the atmosphere are an integral part of the wider discussion surrounding environmental issues, we appreciate the care used by the Special Rapporteur in confining himself within the limits of his mandate, to the effect of avoiding interference with ongoing political negotiations on environmental protection.

My Government has consistently supported the efforts which the ILC has carried out in the past to enhance a systemic interpretation and application, and a harmonious integration between the various bodies of international law, with special regard to its work Fragmentation. It is against this background that my delegation is pleased to see paragraphs 1 and 2 in Draft Guideline 9. We find that the studies referred to at paras. 7-13 of the Commentary to Draft Guideline 9 may prove of significant assistance in pursuing harmonization between the ongoing legal process on the protection of the atmosphere with other bodies of international law.

My delegation regards the inter-generational dimension as key to the principle of sustainable development, in the pursuit of a balance in the protection of common goods, such as the atmosphere, on the one hand, and economic development, on the other. Therefore, Italy supports the inclusion in the Draft Guidelines of Preambular Paragraph 3, as proposed by the Commission.

Provisions requiring special consideration to be given to persons and groups particularly vulnerable are recurrent in international environmental instruments. Such special consideration appears all the more appropriate with regard to the potential impact of atmospheric pollution and atmospheric degradation. This, Mr. Chairman, should reflect the concern of the international community as a whole. Accordingly, without prejudice to future drafting suggestions on the point at issue, my delegation supports paragraph 3 of Draft Guideline 9.

Mr Chairman,

I will now address the topic of “Immunity of State officials from foreign criminal jurisdiction”. Italy would like first of all to congratulate the Special Rapporteur, Concepción Escobar Hernandez, for her Fifth Report, and the Commission for the intense work on this important topic. Our comments on the ongoing work are to be considered provisional and without prejudice to our stand on the text of all draft articles when complete.

We note from the Commission’s Report that the debate around the exceptions, or limitations, to immunity for State officials from foreign criminal jurisdiction largely reflects the lack of consensus among States with regard to some of the exceptions originally proposed for discussion.

On that score, Mr. Chairman, allow me to make two preliminary comments.

First, Italy is aware of the seriousness of the crime of corruption and finds itself in the forefront in the fight against it and in fostering international cooperation to that end. However, we concur with the view that the acts constituting corruption, since they are carried out for purposes of private gain, fall outside the objective scope of functional immunity *ratione materiae* and, therefore, do not require to be exempted from it.

Second, as Italy has previously stated, it does not regard the so-called “territorial tort exception” in Draft Article 7 (1) (c), originally proposed by the Special Rapporteur, as reflecting either *lex lata*, or even a trend in *a de lege*

ferenda prospect. Italy regards the elements of State practice referred to in her Fifth Report as insufficient to establish the existence of the exception in question to the customary rule of immunity of State officials *ratione materiae*. Furthermore, it may be noted that most of the domestic case law relied upon concerns civil, rather than criminal, proceedings, or revolves around clandestine conduct, such as espionage or sabotage.

Against this background, my delegation welcomes the choice of the Drafting Committee of curtailing the list of crimes in relation to which immunity *ratione materiae* does not apply, while changing the title of Article 7(1), which we find evidentiary of customary international law. In the same vein, we are also in favour of the choice of referring to those crimes as strictly defined in the relevant treaties to be listed in an annex to the draft articles.

Mr Chairman,

Italy welcomes the deletion of Paragraph 2 of Article 7, proposed by the Special Rapporteur, on the understanding that this is without prejudice to Draft Article 4(2) on the scope of the immunity *ratione personae*.

My delegation also supports the deletion of Article 7(3), originally proposed by the Special Rapporteur, in view of spelling out the deleted “without prejudice” clauses in a separate article, hence, expanding their scope of application to the whole text of the draft provisions on this topic.

Finally, Mr. Chairman, Italy looks forward to the next report by the Special Rapporteur, addressing the procedural aspects of immunity. Italy trusts that the third report by Special Rapporteur Kolodkin will serve as a very useful basis for Special Rapporteur Escobar Hernandez’ Sixth Report.