



Permanent Mission of Italy
UN - New York

Agenda item n. 79 Report of the International Law Commission

Statement of Italy - ILC Report (2019)

delivered by Min. Andrea Tiriticco

Second Cluster

Mr. Chairman,

I would like to thank the Chairman of the ILC for his presentation of the second part of the ILC Report.

In my intervention today, which will be my last before this Committee for this session, I will address **three topics: Protection of the Environment in relation to armed conflicts, Immunity of State Officials from foreign criminal jurisdiction and Sea-level rise in relation to international law.**

Mr Chairman,

I will first address the topic of the “**Protection of the Environment in relation to armed conflicts**”.

Italy wishes to congratulate the ILC and the Special Rapporteur, Ms. Marja Lehto, for the adoption on first reading of a full set of 28 Draft Principles and the Commentaries thereto. As previously stated before this Committee, Italy shares the holistic approach taken by the ILC and its special rapporteurs to adopt a three-phase approach, looking at the intersection between international environmental law and armed conflict before, during and after the outbreak of hostilities. We are pleased to see this approach confirmed in the Draft Principles adopted on first reading. Italy also finds the additional part concerning situations of occupation of great relevance, as it is in this context that the long-term effects of military presence and activities on the environment are often felt. Finally, Italy is also pleased that the Commission has made a clear distinction between codification of customary international law and progressive development, specifically indicating when the latter was provided.

Moreover, without prejudice to any written comments it may decide to submit at a later stage, Italy would like to make three specific remarks.

Firstly, Italy believes that the issue of the impact of armed conflict on the applicability of international environmental agreements should be further studied and reflected in the Draft Principles. The current work seems to lean towards the application of the *lex specialis* principle on the relationship between law of armed conflicts and international environmental law. Yet further clarifications would be welcome on the applicability of environmental treaty obligations not affected by the application of international humanitarian law during an armed conflict. These clarifications would also be warranted for long-term occupations, where *lex specialis* and the automatic prevalence of international humanitarian law over international environmental law do not fully reflect current needs for protection of both the local population and the environment.

Secondly, Italy welcomes the insertion of a specific provision – Principle 9 - on state responsibility for environmental harm during armed conflicts, including the possibility of envisaging compensation for “purely” environmental damage that cannot be financially assessed, as per the practice of the UN Compensation Commission and the recent case law of the International Court of Justice. In this regard, Italy also asks whether the non-prejudice clause in para. 2 on the application of the rules of state responsibility is necessary, considering that para. 1 implements those rules in the specific context of environmental harm caused in armed conflicts and that the Commentary specifies that it is a general provision, applying to all phases considered in the Draft Principles.

Thirdly, Italy highlights that, given the broad definition of “occupation” in the relevant part of the Draft Principles, we should further consider the connection between the law of occupation and other branches of international law, especially the law on self-determination, where applicable. It concerns, in particular, the exploitation and use of natural resources, for which current Principle 21 refers to “the benefit of the local population”. The Commentary specifies that this reference was drawn from the concept of “protected persons”, as specified in Article 4 of the 4th Geneva Convention. Italy would like to see in the Draft Principles – and not only in the commentary - further reference and exploration of the obligations of States stemming from the principle of self-determination and permanent sovereignty over natural resources, including the need to undertake any exploitation of natural resources in accordance with the wishes and for the benefit of the local population. Thus a reformulation of Principle 21 should be considered.

Mr. Chairman,

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

Italy would like to thank the Special Rapporteur, Ms. Conception Escobar Hernandez, for producing the Seventh Report, where full consideration of the procedural aspects relating to judicial cooperation between the forum State and the State of the official is given and draft proposals are presented. In this respect, Italy looks forward to the completion of the Drafting Committee’s work.

As preliminary remarks, Italy would like to express its appreciation for the articulation of the relevant procedural aspects, including the questions of *invocation*, *waiver*, *notification*, *exchange of information*, *transfer of proceedings* and *consultation*. In our view, Part III gives content to the duty of international cooperation in this field, including the need to cooperate in good faith as a means to prevent international disputes.

On the issue of *invocation*, Italy welcomes the distinction made by the Special Rapporteur between *immunity ratione materiae* – conditional upon the invocation by the State of the official – and *ratione personae* - to be applied by the relevant national authorities *ex officio* - as reflected in the proposed Draft Article 10.

On the other hand, Italy is concerned that the proposed wording of Draft Article 14, paragraph 1, in indicating that “[t]he authorities of the forum State may consider declining to exercise their jurisdiction in favour of the State of the official, transferring to that State criminal proceedings that have been initiated or that are intended to be initiated against the official” introduces a discretionary element, running counter to the precept of the rules on immunity of State officials, which, when applicable, create an obligation to abstain from exercising jurisdiction. Italy understands that the Special Rapporteur also bore in mind a model of judicial cooperation in cases in which the forum State would be entitled to assert jurisdiction and yet it is also of the view that the Draft Articles’ primary purpose should be to regulate situations in which immunity *ratione materiae* applies. Italy believes that the provision in point should be revised by the Drafting Committee to keep these concerns into account.

Finally, Italy would like to take this opportunity to reiterate its strong support for the current drafting of Article 7.

Mr. Chairman,

I would like now turn briefly to the topic, “**Sea-level rise in international law**”.

The rise in sea-levels is indeed a major issue, also considering its dramatic impact particularly on developing countries and small islands of the Pacific and the Caribbean. Italy is at the forefront of initiatives addressing the issue of sea-level rise. It is very appropriate to explore the latter’s possible repercussions in relation to international law.

Italy would like to express its appreciation for the Commission’s approach to the subject. Given the theoretical complexities and the novelty of the topic, Italy believes that a Study Group with rotating Co-Chairs is the most appropriate way to address the Commission’s work on the issue. Moreover, the thematic break-down in different areas of study - namely the law of the sea, statehood and protection of persons - is a good starting point. While, at this current stage, Italy is not able to share any specific practice of its own to assist the Commission in developing its work on sea-level rise and the law of the sea, we will be available to contribute and comment on the work of the Commission, once the first substantive report is published.

At this early stage, we will only mention some aspects of the law of the sea that could be affected by the rise in sea levels. In particular, we refer to the legal baselines for measuring the breadth of the territorial sea. One of the main problems is the question of whether the baselines should move with the rise of sea levels. UNCLOS does provide rules on changes to legal baselines if they move seaward, but not landward. Another point is the effect of the sea-level rise on the recognition of the status of island as a “naturally formed area of land, surrounded by water, which is above water at high tide” according to UNCLOS Article 121, para. 1. A related aspect concerns the legal status of artificial substitutes of disappearing islands. Finally, no less important is the study group’s focus on the displacement/resettlement of insular people and their status, considering that under the 1951 Convention on the status of refugees, people displaced because of climate change are not accorded this status.

Mr. Chairman,

Let me conclude my statement by reiterating that Italy attaches great importance to the role and work of the ILC. The legal expertise and the truly universal representation of legal traditions to be found in the ILC are unique assets that must be valued and safeguarded within the UN system, including within the Sixth Committee. I wish the Commission renewed success for its future activities.

Finally, Italy expresses its appreciation to the Secretariat for the vital support it gives to the work of the ILC.