Ministero degli Affari Esteri
e della Cooperazione Internazionale

Sixth Committee

76th Session of the General Assembly

Min. Plen. Stefano ZANINI

Head of Legal Service

ITALY's Ministry of Foreign Affairs and International Cooperation

Agenda item n. 82 - Report of the International Law Commission

Statement ILC Report (2021)

First cluster

Madam President,

Allow me to congratulate you and the other members of the Bureau on your election to steer the work of this Committee and to assure you of the cooperation of the Italian delegation also throughout this part of the session dedicated to the latest Report of the International Law Commission.

I also wish to thank the Chairman of the International Law Commission, Mr. Mahmoud Hmoud, for his comprehensive and clear presentation of the first cluster of the report. Italy continues to attach great importance to the work conducted by the ILC and remains of the view that constructive dialogue and interaction between the ILC and the Sixth Committee is key to an effective discharging of the function of codification and progressive

development of international law that the Charter has entrusted to the General Assembly.

Let me also take the opportunity to thank the Secretariat, especially the Codification Division, for ably supporting the ILC during its 72nd session and Member States during the current work of the Sixth Committee.

Today I will address three topics: "Protection of the Atmosphere"; "Provisional Application of Treaties"; and "Other decisions".

Madam President,

Italy has always been **at the forefront in multilateral efforts to protect the global environment, including the atmosphere**. We look forward to world leaders meeting in Glasgow next week to discuss and achieve real progress in the context of COP26 under the auspices of the UK-Italy Presidency Partnership. At the same time, Italy has been a strong supporter of the role of the ILC in stimulating codification and progressive development of international law, including on matters of international environmental law.

In this vein, Italy wishes to congratulate the ILC and, in particular, the Special Rapporteur, Professor Shinya Murase, for the adoption on second reading of the **Draft Guidelines on the Protection of the Atmosphere with Commentary**.

The accompanying commentary is also a very useful tool, with important insights into the rationale of the provisions, and will assist practitioners, judges, academics and civil society alike, in their interpretation of the draft guidelines.

While the material scope of the draft guidelines was limited by the choice made by the ILC in 2013 **to exclude from the remit of its work important principles of international environmental law, such as the "polluter-pays" principles, the precautionary principle and the**

common but differentiated responsibility principle, the Draft Guidelines remain a valid contribution to the advancement of international law in this field.

Whereas the Draft Guidelines are intended to remain a soft law instrument, other important principles and norms of international environmental law are expressly restated with specific reference to the protection of the atmosphere, **such as the obligation to protect the environment, the obligation to undertake an environmental impact assessment, the sustainable, equitable and reasonable use of natural resources and the principle of international cooperation in protecting the environment**.

It is also to be noted that the preamble recognizes that the Draft Guidelines are **"not intended to interfere with relevant political negotiations or to impose on current treaty regimes rules or principles not already contained therein".**

Moreover, Italy would like to underline that the atmosphere is a common and limited natural resource indispensable for the survival of all. Its protection is a pressing concern for the international community as a whole.

For this reason, **we welcome the use of the expression "common concern of humankind" in the third preambular paragraph of the Draft Guidelines**, as the legal expression mostly accepted in multilateral environmental instruments – both of a binding and non-binding nature – for example in the 2015 Paris Climate Accord.

Such expression points to the existence of a common legal interest of all States, as agents and "caretakers" of the international community, in protecting the global atmosphere. For this reason, it is our view that Draft Guideline 3 entitled "Obligation to protect the atmosphere" should be interpreted as entailing an obligation of an *erga omnes* character.

We also would like to reiterate our support for the formulation of Draft Guideline 10, which is framed **in terms of due diligence, leaving discretion to the State as to the means adopted to implement international legal obligations** related to the protection of the atmosphere.

Italy also welcomes the provision of **facilitative compliance** procedures under Draft Guideline 11 – in line with modern multilateral environmental instruments – and the reference to **the use of scientific and technical experts** in the settlement of disputes under Draft Guidelines 12.

Finally, we have taken note of the **recommendation issued by the ILC** that the General Assembly take note in a resolution of the draft preamble and guidelines, annex the draft guidelines to that resolution and ensure the widest possible dissemination, and we look forward to engaging in discussions in this regard.

Madam President,

We will now turn to the topic **"Provisional Application of Treaties"**. At the very outset, we would like to commend the Commission and the Special Rapporteur, Mr. Manuel Gomez-Robledo, for the adoption of the Guide to Provisional Application of Treaties on second reading and their accompanying commentary.

The Guide to Provisional Application of Treaties **constitutes a practical and flexible instrument**, which will facilitate the work of legal practitioners, including the legal services of ministries of foreign affairs and international organizations, in identifying the most appropriate legal arrangements in order to provisionally apply treaties, which have not yet entered into force.

Italy is of the view that the Special Rapporteur and the Commission have managed to strike a **good balance between the need to preserve the *acquis* of the Vienna Conventions on the Law of Treaties and the need to clarify a number of legal issues** arising out of the growing practice of provisional application of treaties.

At the same time, as a country whose Constitution regulates in detail the entry into force of international treaties at the domestic level, Italy finds very important the ILC reassurance – to be found in the general commentary – "that it is in no way claimed that the Guide creates any kind of presumption in favor of resorting to the provisional application of treaties.

Provisional application is neither a substitute for securing entry into force of treaties, which remains the natural vocation of treaties, nor a means of bypassing domestic procedures."

Italy also supports the **"open" and flexible formulation of Draft Guideline 4,** which does not limit the variety of forms through which States and international organizations can agree to provisionally adopt a treaty, and yet underlines the role of resolutions and decisions adopted by international organizations and intergovernmental conferences as a means to agree on the provisional application of treaties.

In terms of internal consistency, given the ILC's distinction between the legal obligation deriving from the agreement to apply the treaty provisionally and the legal obligations deriving from the provisionally applied treaty **as explained in the commentary to Guideline 6, Guideline 8 on "responsibility for breach"** should have clarified the double-tier of potential responsibility for breach that provisionally applied treaties entail.

Italy concurs instead with the Commission **on its formulation of Draft Guideline 7**, to the extent that the practice of reservations to provisionally applied treaties is very limited.

Finally, Italy would also like to express appreciation for the choice of the ILC **to provide examples** drawn from existing treaties with regard to the several issues involved. While treaties with regard to non-parties remain *res inter alios acta*, useful lessons can be drawn from past and current practices in the provisional application of treaties.

Finally, Madam President, as regards the aspects relating to **"Other decisions and conclusions of the Commission"**, Italy would like to make the following comments.

Firstly, as for the recommended inclusion of the topic **"Subsidiary means for the determination of rules of international law"** in the long-term program of work, Italy concurs with the Commission's view that the topic fulfills all the criteria established by the Commission in 1998.

It is also a topic, which is pertinent to the Commission's overall work on the sources of international law – a work that has gained momentum in the last ten years. Given the increasing "judicialization" of international law and the increasing production of academic literature (however not always coupled with the advancement of multilingualism), it would be of great use for States to receive rigorous guidance from the Commission on how those subsidiary means for the determination of rules of international law should be applied.

Therefore Italy supports consideration of the topic in the future work of the ILC.

Secondly, with regard to the **promotion of the rule of law at the national and international levels**, Italy is appreciative of the role of the ILC in advancing the rule of law in international relations.

Promotion of the progressive development and codification of international law are key functions that the Charter has entrusted to the General Assembly and the ILC, as a subsidiary organ of the General

Assembly created with that objective in mind, plays a key role in this respect.

The development of international law and adherence to its tenets are fundamental tools by which the 2030 Agenda for Sustainable Development can be achieved.

Italy will continue to advocate for an effective and efficient ILC, which can assist States and international organizations in addressing global challenges, including those related to security, climate and humanitarian crises, through the development of international legal instruments.

Thirdly, and finally, Italy would like to express **its deep appreciation for the innovative, hybrid ways** in which the ILC has worked over the 72nd session thanks to the commitment of its members and to the dedication of the Secretariat, both in New York and in Geneva.

While serious challenges had to be faced – such as those highlighted in the report, including time differences, reduced hours of operation and impaired collegiality in key aspects such as drafting – the quality of the report and of the work accomplished, including the completion of the works on the protection of the atmosphere and on the provisional application of treaties, **testifies to the importance of the Commission continuing to perform its crucial function**, including in exceptional times and circumstances.

It is Italy's expectations that useful lessons will be learnt from the experiences of the last two years in a way that is beneficial to the working methods of the Commission.

That concludes Italy's statement of today.

Thank you, Madam President.