



Ministero degli Affari Esteri  
e della Cooperazione Internazionale

**Sixth Committee**  
**76<sup>th</sup> 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 of Italy - ILC Report (2021)**

Madam Chair,

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, I will address **two topics: Immunity of State Officials from foreign criminal jurisdiction and Sea-level rise in relation to international law.**

Madam Chair,

I will first address 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 **Eighth Report**, which examines the relationship between the immunity of state officials and the jurisdiction of international criminal tribunals; a mechanism for the settlement of disputes; and the issue of good practices related to the

determination and application of immunities and proposes two new draft articles (17 and 18). Italy also notes the adoption by the Commission of draft articles 8 *ante* to article 12, with commentaries, which deal with some of the the procedural aspects of the determination and application of immunity – **aspects which were contained in the Special Rapporteur’s seventy report and on which Italy had already expressed its views during the discussions in the Sixth Committee in 2019.**

With regard to the issues highlighted in the latest report issued by the Special Rapporteur, Italy would like to make the following observations.

**Firstly**, with regard to the relationship between the immunity of state officials and the jurisdiction of international criminal tribunals, **Italy appreciates the proposed non-prejudice clause** under draft article 18, which safeguards the “speciality” of legal regimes establishing international criminal tribunals. At the same time, Italy recognizes that those regimes are not insulated from general international law, including the rules on functional and personal immunities.

**Secondly**, clarity on the part of the Special Rapporteur and the Commission on the ultimate goal of the draft articles would be most welcome: **Italy agrees with the acknowledgment by the Special Rapporteur that dispute settlement mechanisms** are especially linked to treaty instruments and would like to recall that it is the standard practice of the ILC that draft articles, unlike other ILC products, are recommended for transformation into a treaty.

**Thirdly**, with particular regard to the **dispute settlement clause** under draft article 17, Italy sees the need to complement the provisions on exchange of information and consultation with a more traditional *ex post facto* dispute settlement clause.

However, precisely because the proposal relates to the phase of dispute settlement *stricto sensu*, **Italy would recommend a more**

**standardized drafting in paragraph 2** (“may” with regard to the cooling-off period should be replaced by “shall”; and “may suggest to the other party that the dispute be referred” should be replaced by “may refer”).

**Fourthly**, Italy concurs with the insertion of **paragraph 3**, which is in line with the need to avoid the aggravation of disputes and preserve the rights of the parties.

At the same time, it would recommend to the Drafting Committee that a qualifier is added **to the effect that the obligation of suspension on the forum State is conditional upon the ascertainment of *prima facie* jurisdiction** by the international tribunal - an ascertainment that is normally conducted in the course of incidental proceedings on provisional measures -, in order to avoid that frivolous legal actions may interfere with the course of justice at the domestic level.

**Finally**, Italy agrees with decision by the Special Rapporteur and by the Commission not to propose any provision **on recommended good practices**, given the existing time constraints and the diversity of views on the content, form and goal of those recommended practices.

Madam Chair,

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

At the very outset, **Italy would like to reiterate that 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 both domestically and through international cooperation. To that extent, we consider the ILC’s study on some of the legal implications of sea-level rise very timely.

At the same time, Italy has taken note of the limitations established in the 2018 syllabus and in particular **the assertion therein that modifications to international law, including the 1982 United Nations Convention on the Law of the Sea, will not be proposed.**

The latter limitation, together with the nature of the exercise, which is not intended to produce specific guidelines or instruments, should adequately address the concern of Member States preoccupied by the potential destabilizing effect on the UNCLOS legal regime.

In this respect, Italy would like to stress the **importance of stability, security and legal certainty with regard to baselines and maritime delimitation.**

It fully concurs with the conclusion of the first Issues Paper to the effect that the principle of fundamental change of circumstances does not apply neither to existing delimitation agreements nor to decisions rendered in arbitral or judicial decisions.

It is also important to underline that **any principle of permanency** of baselines, which have been established and deposited in accordance with international law, must refer solely to sea-level rise induced by climate change and not to other circumstances, including land accretion.

Finally, with regard to paragraph 171 of the first Issues Paper, **Italy would like to stress that the freedom of the high seas is subject not only to the “due regard” condition**, but also to the other conditions and limitations provided under UNCLOS and customary international law, in accordance with Article 87, para. 1 of the UNCLOS.

Italy looks forward to the continuation of discussions on this important topic within the International Law Commission and **to the circulation by the Study Group of the issue paper on sea-level rise and statehood and sea-level rise and the protection of persons.**

Madam Chair,

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.