



**Sixth Committee
78th Session of the General Assembly
Agenda item n. 79 - Report of the International Law Commission
Second Cluster
Statement of Italy
Delivered by Mr Walter Ferrara**

Mr. Chairman,

In our intervention today, we will address the topic “**Settlement of disputes to which international organizations are parties**”.

As a preliminary remark, we would like to express our appreciation to Special Rapporteur, Prof. August Reinisch, for producing a comprehensive first report and for addressing in the *draft Guidelines* provisionally approved by the Commission some core definitions, as a valuable basis for further discussion on the topic.

Firstly, with reference to the **concept of international organization**, Italy shares the view that certain minimum requirements are necessary for an organization to prove its international legal personality, notably the distinguishing feature of a body capable of expressing the entity’s own will as distinct from that of its members. In this respect, we confirm our commitment to advance the debate and **elaborate further on some major differences between international organizations** as autonomous subjects of the international legal order **and several multilateral initiatives** of intergovernmental cooperation functioning in accordance with the global public interest, although **not endowed with international legal personality**. Indeed, only the former have the capacity to engage in legal proceedings, are granted functional immunities, and may incur liability and international responsibility.

In this latter regard we would like to **dwelt in more detail on the potential inclusion within the draft Guidelines of claims raised by private parties** against international organizations. Consistently with the approach taken by the Special Rapporteur, it is worth noting that **international organizations may also be parties to disputes of a private law character** - such as those **resulting from breaches of contracts or arising from wrongful acts**. In this regard, we would like to point out that the right to a remedy applies to all types of disputes. However, when international organizations are concerned, their functional immunity could in practice prevent a private party from obtaining reparation within the domestic judicial system.

Finally, it is unquestioned that the parties are free to choose the means of settlement which they consider most appropriate to resolve the dispute. Nevertheless, **in light of the foregoing**, we propose **paying particular attention to the challenges of resorting to alternative means of**

settling, or internal mechanisms possibly established by international organizations, **in the context of certain disputes of a private character**.

Indeed, where individual rights are at stake as a consequence of wrongful conducts of international organizations, we consider it essential to strike a balance between the independent functioning of the organizations and the right of private parties to an effective remedy.

We stand ready to engage in constructive discussions on the topic with interested delegations during and after the present session.

I now turn to the topic of the topic of “**Prevention and repression of piracy and armed robbery at sea**”.

Preliminarily, allow me to commend the International Law Commission for its work on the subject.

Italy has particularly appreciated the meticulous work done by the Special Rapporteur, Mr. Yacuba Cissé, in researching national and international practices on maritime piracy, and will consider sending written comments to contribute to the work of the Commission.

We agree on the importance of preventing and repressing acts of piracy, which is considered the most ancient international crime. In this regard, we wish to recall Italy’s direct participation in several international counter-piracy operations, in both NATO, between 2008 and 2016, and currently European Union frameworks, as well as at national level, in particular in the Gulf of Guinea.

Being aware of the preliminary phase of the study, Italy welcomes the efforts that have been made for the elaboration of the Draft Articles on the subject and wishes to share the following observations.

Firstly, as regards the recent introduction of the second Paragraph in draft Article 2, which provides as follows: “Paragraph 1 shall be read in conjunction with the provision of article 58, Paragraph 2, of the United Nations Convention on the Law of the Sea”, we welcome the reference to the UNCLOS. Nevertheless, we wish to express our preference for a rewording of this Paragraph in order to clarify more explicitly whether and to what extent offences perpetrated in the exclusive economic zone of a coastal State may fall within the definition of piracy.

Secondly, with regard to the principle of **universal jurisdiction**, Italy wishes to express its interest in following the developments of the studies carried out within the Commission. This principle is currently under examination in our legal system, given its possible application also in other fields of international law.

At the same time, in order to ensure the repression of the crime of piracy, Italy encourages embracing a method that may favor a **clear allocation of jurisdiction among the States potentially involved in incidents** occurring on the high seas.

For this reason, Italy agrees to set a **clear distinction between the crime of piracy and the crime of armed robbery at sea**, in order to limit the reference to universal jurisdiction only to the offences perpetrated on the high seas.

In conclusion, we agree with Commission that the absence of a national legislation providing specific penalties for these crimes in many Countries may result in an impediment to the exercise of

jurisdiction. However, we share our expectation that, as a result of the present work, **States will be** in a better position **to introduce a domestic legal framework that allows the prosecution of these crimes** and that favors **international judicial and police cooperation** in this field.

Thank you, Mr Chair.