GENERAL ASSEMBLY

68th Session

Sixth Committee

18th meeting

Agenda item n. 81

REPORT OF THE INTERNATIONAL LAW COMMISSION

STATEMENT BY

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(NEW YORK, OCTOBER 29th, 2013)

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Mr. Chairman,

At the outset, please allow me to express my congratulations to you and to the other members of the Bureau on your election and on the admirable way in which you, Mr. Chairman, are conducting the work of this Committee.

I also wish to thank the Chairman of the International Law Commission Amb. Mr. Bernd H. Niehaus of Costa Rica, for his presentation of this year's report, in particular with regard to the topics addressed by this intervention of the Italian delegation.

On the basis of the programme of work of this Committee, I will address today three main topics: Chapter IV of the ILC Report on "Subsequent agreements and subsequent practice in relation to the interpretation of treaties"; Chapter V on "Immunity of State officials from foreign criminal jurisdiction"; and Chapter XII entitled "Other decisions and conclusions of the Commission", in which I will place emphasis on the programme of work of the Commission.

Mr. Chairman,

I shall first address the topic of "Subsequent agreements and subsequent practice in relation to the interpretation of treaties". My delegation wishes to express its appreciation for the choice adopted by the Commission to the effect of restricting the scope of its study of originally on the topic of "treaties over times" to that of "subsequent agreements and subsequent practice in relation to the interpretation of treaties". My delegation believes that his decision will enhance a more focused and effective treatment of one of the most critical issues pertaining to the law of treaties, hence, allowing for a smooth implementation of the programme of work outlined in 2012 and 2013 for the topic at issue. I should also like to congratulate Professor Georg Nolte for his first report on the topic.

The Italian delegation also welcomes the first five conclusions adopted by the ILC at its 2013 session which it finds well suited to the general streamlined approach to the matter. Overall, the conclusions adopted so far seem to meet the general aim to elaborate future drafting propositions with may have a sufficiently robust normative content, while preserving at the same time the flexibility inherent in the concept of subsequent practice. This approach appears to be appropriately evidenced by draft-**Conclusion 1** on the "General rule and means of treaty interpretation". The latter, as we see it, correctly reflects the double role that subsequent practice can play as an authentic means of interpretation under the general rule enshrined in article 31, paragraph 3, letters (a) and (b) of the Vienna Convention, on the one hand, and also as a supplementary means of interpretation under the rule of article 32 of the Vienna Convention, on the other. In this vein, paragraph 5 of the conclusion appropriately reminds that the interpretation of a treaty consists of a "single combined operation", as originally indicated by the ILC in its *travaux préparatoires* on arts. 31 and 32 of the Vienna Convention, and further endorsed in the 2006 Commission's Report on the Fragmentation of International Law.

Mr. Chairman,

My delegation also supports Draft-**Conclusion 2,** insofar as it emphasises the objective character of subsequent agreements and subsequent practice as evidence of the parties' common understanding as to the meaning of a treaty. In this respect, the qualification there provided of subsequent agreements and subsequent practice as authentic means of interpretation seems to provide an appropriate complement to the contents of article 31, paragraph 3, letters (a) and (b) of the Vienna Convention. As to Draft-**Conclusion 3,** it appears to appropriately reflect the approach to the matter authoritatively developed in the case law of the International Court of Justice, with special regard to its 2009 Judgment concerning the *Dispute Regarding Navigational and Related Rights*. The definitions of subsequent agreements and subsequent practice

officials, different from the ones mentioned in draft article 3, without prejudice for the possible application of rules pertaining to immunity *ratione materiae*.

The scope of immunity *ratione personae* is then considered by draft article 4. In paras. 1 and 2, the