



**PERMANENT MISSION OF ITALY  
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**Agenda item n. 82 Report of the International Law Commission  
Statement ILC Report 2018 (1st Cluster)**

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Mr. Chairman,

Allow me to congratulate you and the other members of the Bureau on your election to steer the work of this Committee and assure you of the cooperation of the Italian delegation throughout the session.

I also wish to thank the Chairman of the International Law Commission (ILC), Mr Edoardo Valencia Ospina of Colombia, for his masterful presentation of the first cluster of the report.

This year marked an important anniversary for the ILC: 70 years of very fundamental contributions to the codification and progressive development of international law.

We commend the Commission and the Secretariat for the interesting programmes on the occasion of the “celebrations” both here in New York as well as in Geneva. We appreciated the interaction several members of the Commission had with delegations, particularly during the half session of work of the Commission here in New York in May 2018.



Today, in keeping with the wishes of the Chairman of the Sixth Committee, I will address three topics: “Subsequent agreements and subsequent practice in relation to the interpretation of treaties”; “Identification of customary international law”; and “Other decisions and conclusions of the Commission”.

Mr Chairman,

The first topic that I will address is “**Subsequent agreements and subsequent practice in relation to the interpretation of treaties**”, which is coming to fruition. Without prejudice to Italy’s position with regard to previous versions of the Draft conclusions, we congratulate the Special Rapporteur, Mr. Georg Nolte, for his Fifth Report, and the Commission as a whole for the intense work on this important topic. My Delegation agrees with the recommendation of the Commission to the General Assembly to the effect of taking note of the draft conclusions in a resolution and commending such conclusions and the Commentary thereto to the attention of States.

Italy supports the Commission’s decision concerning the language of Conclusion 5, paragraph 1, on “Conduct as subsequent practice”. We acknowledge that the rules governing attribution of conducts for purposes of international responsibilities and the one concerning attribution of conducts for purposes of subsequent practice are not the same and should not be confused.

My Delegation can accept the drafting of Conclusion 9, paragraph 2, on “Weight of subsequent agreements and subsequent practice as a means of interpretation”. We deem that “inter alia”, rather than “in addition to”, better fits the purpose of such Conclusion. Italy also deems that the current language clearly implies that consistency and breadth of practice are relevant *criteria* in assessing the weight of subsequent practice as a means of interpretation.

My Government also commends the maintenance of the original proposal by the Special Rapporteur with regard to Conclusion 11, paragraph 3, on “Decisions adopted within the framework of a Conference of States Parties”. Italy welcomes the Commission’s position that a Conference or Meeting of the Parties has a role in expressing subsequent agreement and practice concerning the interpretation of a treaty, irrespective of the procedure followed by that body.

Last, Italy regrets the Commission’s decision not to include the Special Rapporteur’s new proposal concerning paragraph 4 of Conclusion 13 on “Pronouncements of expert treaty bodies”. **My Government deems that such bodies, particularly but not exclusively in the field of human rights, play a major role also in the interpretation of a treaty, and that their pronouncements should be duly considered.**

**Mr. Chairman let me now turn to the topic “Identification of customary international law”.**

With regard to this topic, Italy wishes to commend the work of the Special Rapporteur, Sir Michael Wood, and the adoption by the Commission, on second reading, of a set of 16 draft conclusions.

These conclusions are intended to identify the ways in which the existence and content of rules of customary international law are to be determined, with respect to the two constituent elements of State practice and “opinio juris”. They represent a very useful tool made available to States and all those who are confronted with issues of interpretation of international law. At the same time, we are of the view that, in assessing the existence and content of customary international law, a certain margin of appreciation should be recognized to the interpreter, in light of the multiplicity of expressions of state practice that may be relevant to that effect. **In addition, the reasoning and processes underlying the identification of customary rules and the rules governing such processes are elements that are intrinsically linked to the identification of customary law and will inevitably influence any resort to these conclusions.**

As a result, we agree with the recommendation by the Commission that the General Assembly **could limit itself to** take note in a resolution of the draft conclusions adopted by the Commission, annex the draft conclusions to **such** resolution and ensure their widest dissemination.

Finally, Mr. Chairman,

as regards the aspects relating to “**Other decisions and conclusions of the Commission**”, we took note of the inclusion of the topic “General principles of law” in the programme of work of the Commission. Italy wishes to congratulate Mr. Marcelo Vazquez-Bermudez for his appointment as Special Rapporteur for the topic and looks forward to discussing his initial report.

The Commission also decided to include in its long-term programme of work the two topics of “Universal criminal jurisdiction” and “Sea-level rise in relation to international law”. We believe that both these topics are of considerable interest for the international community and meet the criteria agreed by the Commission for the selection of new topics. In particular, and as a country traditionally engaged in the fight against impunity for international crimes, Italy believes that the question of universal criminal jurisdiction, while quite complex in light of relevant State practice, would deserve to be considered by the Commission in a reasonable time-frame.

Thank you, Mr. Chairman

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