



PERMANENT MISSION OF ITALY
TO THE UNITED NATIONS

Sixth Committee
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Agenda item n. 79 Report of the International Law Commission (2019)

Third Cluster

Statement of Italy

Delivered by Mr. Enrico Milano

Mr. Chairman,

I would like to thank the Chairman of the International Law Commission for his presentation of the third part of the ILC Report.

In our intervention today, we will briefly address the two topics: “Succession of States in respect of State Responsibility”; and “General Principles of Law”.

Mr Chairman,

I will first address the topic of the **“Succession of States in respect of State Responsibility”**.

Italy wishes to congratulate the ILC, its Drafting Committee and the Special Rapporteur, Ms. Pavel Sturma, for the progress made during the latest session of work. Italy shares the view already expressed by other delegations that the subject-matter is characterized by the paucity and sparsity of State practice and that, to that extent, it may be not ready yet for codification.

At the same time, an exercise of progressive development may be useful in indicating to States normative parameters for context-based, mutually agreed

solutions, which are the only realistic solutions to matters of State succession, including in respect of State responsibility. Italy is of the view that in this exercise, as in all exercises undertaken by the ILC, the distinction between those provisions representing existing general international law and those provisions, which seek to progressively develop international law, should be clearly signaled. Italy shares the approach adopted by the Special Rapporteur and by the ILC to consider State practice in different categories of State succession, in order to identify emerging rules regulating State succession in matters of State responsibility, and to fully take into account the views expressed by States within the Sixth Committee.

Italy would also like to manifest its support for the avoidance of any general, sweeping rule or principle, whether in the sense of the *tabula rasa* principle or in the opposite sense of automatic succession. Due regard should be given to the proposal of Austria to give full expression to the principle of unjust enrichment.

Finally, Italy will consider submitting any relevant State practice of its own at a later stage.

Mr. Chairman,

I will now briefly turn to the topic of “**General Principles of Law**”.

Italy would like to thank the Special Rapporteur, Mr Marcelo Vazquez Bermudez, for producing the First Report, which sets out the context of the discussion and provides a clear taxonomy of general principles of law within international practice and doctrine.

Italy takes note of the proposal of the Special Rapporteur to consider both general principles of law *in foro domestico* and general principles of law formed within the international legal system and it is particularly interested in seeing further development of this latter notion. Italy suggests that the ILC identify the essential features of general principles of international law, and, in particular, the distinguishing factors from customary international law and from the rules that regulate the latter’s formation. If the ILC’s conclusion was that that general principles of international law are principles inferred from the rules of customary international law, by way of induction, then the decision to include them in the work should be reconsidered as they would qualify as principles of customary international law “proper” and a qualification as “general principles of law” under Art. 38.1.c) of the ICJ Statute would probably generate confusion between different sources of international law. If, alternatively, a different concept is identified, then

the contours of this different concept should be clearly traced and the rules for the formation of “general principles of international law” should be identified.

Lastly, Italy will consider submitting written comments and offer information at a later stage and looks forward to continuing its work with the Commission on such an important topic.

That concludes our submissions on Cluster 3 of the ILC Report.

Thank you, Mr Chairman.