



Statement by H.E. Archbishop Gabriele Caccia
Permanent Observer of the Holy See to the United Nations
UNGA 76 – Sixth Committee

**Agenda Item 82: Report of the International Law Commission on the
work of its seventy-second session**

CLUSTER III

Madam Chair,

The Holy See reiterates its gratitude to the International Law Commission (ILC) for the work undertaken during its seventy-second session and is pleased to offer some considerations on the topics in the third cluster.

Chapter VII: Succession of States in respect of State responsibility

The succession of States has repeatedly proven to be legally complicated, politically sensitive and fraught with potential for conflict and tension. The Holy See is supportive, therefore, of the International Law Commission's more cautious approach to the topic of *Succession of States in respect of State responsibility*, including the broad agreement emerging on "the subsidiary nature of the draft articles and on the priority to be given to agreements between the States concerned."¹

While caution is well-advised, the continued relevance of the rules on State succession and the apportionment of responsibility between the successor State and the predecessor State or States – in particular concerning different forms of reparation (restitution, compensation and satisfaction), the obligation of cessation and assurances and guarantees of non-repetition – points to the importance of further discussions in the Commission and of engagement among States in this Committee on the topic. Even though agreements among concerned States are key to these discussions, there is a scarcity of State practices. For that reason, gathering of information concerning existing State practices – even when limited in scope or nature – should be pursued. Efforts that are more specific, aimed at clarifying the obligations of cessation of intentionally wrongful acts that have a continuing character, and assurances and guarantee of non-repetition of such acts in the future, are important. The Holy See encourages this Committee to advance discussions on this topic, thereby providing the Commission with further guidance for its considerations and labor.

¹ Report of the International Law Commission on its seventy-second session, n. 134.

Chapter VIII: General principles of law

Madam Chair,

Article 38 of the *Statute of the International Court of Justice* remains the most authoritative presentation of the sources of international law. While scholars have debated and continue to debate the hierarchical or non-hierarchical nature of the principles enshrined therein, reliance on them represents an important characteristic of the work of both the Sixth Committee and the International Law Commission.

The Holy See supports the approach adopted by the Commission in considering the *General principles of law*. This applies, in particular, to the early identification of key parameters, including that *recognition* is the essential condition for the existence of a general principle of law, the importance of establishing derivation of such principles from national legal systems, and the “two-step approach” of *existence* and *transposition*. These basic tenets will provide solid guidance and ensure that the work of the Commission, including on the draft conclusions, focus on clarifying the methodology by which the existence of general principles of law, and their content, may be determined at a specific point in time.

Beyond support for the important work on general principles of law, the Holy See wishes to reiterate the centrality of treaties for international law and the international legal order. In this context, it is crucial that this Committee and the Commission not contribute to the growing confusion in the international community between the legal and legally-binding nature of international instruments, governed by the *Convention on the Law of Treaties*, and the non-binding and non-legal nature of proposals, opinions, reports or private documents advanced by conference secretariats, expert bodies, commissions or other auxiliary entities.

Thank you, Madam Chair.