



**Sixth Committee**  
**77th Session of the General Assembly**

**Agenda item n. 78 - Report of the International Law Commission**

**Third Cluster**

**Statement of Italy**

**Delivered by Mr Walter Ferrara**

Mr. Chairman/Madam Chair,

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

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

Firstly, Italy would like to commend the Special Rapporteur, Prof. Pavel Šturma, for producing a comprehensive and detailed fifth report, which deals with a number of essential issues, namely the plurality of States in the contest of succession, especially in cases of continuing or composite acts, and the reparation for injuries resulting from wrongful acts committed by the predecessor or against the predecessor State.

Italy would also like to congratulate the Commission for provisionally adopting draft guidelines 6, 10, 10 *bis* and 11 - which had been provisionally adopted by the Drafting Committee in 2018 and 2021 - as well as draft guidelines 7 *bis*, 12, 13, 13 *bis*, 14, 15 and 15 *bis* - provisionally adopted by the Drafting Committee at the recent 73<sup>rd</sup> session, together with commentaries thereto.

In this respect, turning to the format of the work on the subject matter, Italy welcomes the decision of the Commission to provisionally adopt the texts formerly referred to as draft articles in the form of draft guidelines, in consideration of the scarce State practice on the topic.

It is our view that the preference expressed for “a softer outcome”, in the words of the Special Rapporteur, has the potential to **preserve the consistency of the general rules of State responsibility** and to further promote the development of guidelines in fields that have not yet been regulated by international law.

**We strongly support the *lex specialis* principle** affirmed in Guideline 1 and share the view expressed in the report’s conclusion regarding the priority and the privileged *status* of international agreements between the States concerned over the present draft guidelines.

Moreover, Italy once again commends the effort of the Special Rapporteur in seeking a balance between the continuity of rights and obligations from the predecessor State to the successor State

and the “clean State” doctrine. In this vein, we agree with the language adopted in Guidelines 10, and 10 *bis* and 11, which highlights the crucial role of agreements between concerned States addressing injuries deriving from internationally wrongful acts.

Finally, **Italy takes note of the scarcity and inconsistency of State practice** with reference to particular forms of wrongful conduct, including – *inter alia* – the actions or omissions defined in aggregate as wrongful, mentioned under Guideline 7 *bis* on composite acts.

Mr. Chairman/Madam Chair,

I will now address the topic of “**General principles of law**”.

First of all, allow me to commend the International Law Commission for its work on the subject. Italy would like to thank the Special Rapporteur, Mr Marcelo Vázquez Bermúdez, for producing the Third Report, which clearly sets out the context of the discussion.

Italy welcomes the adoption of draft conclusions 1, 2, 3, 4, 5 and 7 and follows with interest the debate on the other draft conclusions.

In general terms, **Italy is of the view that the discussion on the nature of general principles as an independent source of international law and on the methodology to identify them should continue.** We emphasize the importance of the definition of a shared methodology to identify the general principles, particularly concerning those that may be formed within the international legal system. The establishment of a specific method is in fact essential to clarify if a distinction exists between general principles of law and customary international law. Consequently, particular attention should be devoted to the different requirements needed to establish the emergence of a norm of customary international law and a general principle, namely the existence of *opinio iuris*, as regards customary law, and the criteria laid down in draft conclusion no. 7, as regards general principles.

Allow me now to address some more specific aspects. Firstly, last year Italy took note of the consolidated view of the Special Rapporteur to consider as basis of the ILC work both general principles of law in *foro domestico* and general principles of law formed within the international legal system. As regards the first ones, **Italy shares the view that the process of ascertaining the transposition of principles of domestic law into the international legal system should be made taking into due account the risk to override the will of States in the creation of norms of international law.** As regards the latter, Italy underlines that the debate on the existence of general principles formed within the international legal system as an autonomous source of law, other than customary law, is still ongoing. Since the main objective of the adoption of the conclusions is to provide guidance to interpreters, on the one hand, Italy invites to proceed with caution about the mention of general principles formed within the international legal system in the draft conclusions. On the other hand, if, at the outcome of further study, such principles shall be deemed to exist, we suggest to reconsider the use of expression “that may be formed” in conclusion 3, b and 7.1, and reconsider the insertion of paragraph 7.2, in order to ensure clarity while guaranteeing the necessary flexibility.

Secondly, **Italy takes note of the view expressed by the Special Rapporteur that, assuming that treaties, customary international law and general principles are not in a hierarchical relationship, antinomies should be solved in the light of the *lex specialis* principle.** Italy follows with attention the debate concerning draft conclusions 10 to 12, dedicated to the functions of general principles and their relationship with other sources of international law. In Italy’s view these points are the heart of the matter. In fact, these aspects seem essential to clarify the nature of general principles as autonomous sources of law or as interpretative tools. Italy welcomes the proposals to

merge and rephrase draft conclusions 10 to 12 and shares the proposal to omit any reference to hierarchy between sources.

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

Thank you Mr. Chairman/Madam Chair