



Ministero degli Affari Esteri
e della Cooperazione Internazionale

Sixth Committee
77th Session of the General Assembly
Agenda item n. 74 - Responsibility of States for internationally wrongful acts
Delivered by Mr Enrico Milano

- **Check against delivery** -

Mr. Chairman/Madam Chair,

First of all, my delegation would like to thank and commend the Codification Division for producing the report containing the compilation of decisions of international courts, tribunals and other bodies giving application to the 2001 ILC Draft Articles on State Responsibility. Such decisions speak volumes about the importance and quality of work of the Commission on the topic of State responsibility and its enduring relevance to the settlement of international disputes involving States.

Since the adoption, in 2001, of the Draft Articles on Responsibility of States for Internationally Wrongful Acts, the General Assembly has cyclically commended them to the attention of Member States, without prejudice to the question of their future adoption or other appropriate action. The States' divergent opinions have led to **a continuous postponement of the potential elaboration of a convention on the topic.**

Despite the endorsement provided by many States for initiatives leading to negotiations on the topic, **Italy acknowledges the enduring reluctance of a distinctive group of States that prefer maintaining the current format of the Articles.**

In this regard, Italy believes that **the mere reiteration of “pro-convention” and “anti-convention” positions that do not address the substance of the matter**, is not only ineffective but also counterproductive. Indeed, in the long term, it **may contribute to undermining the international consensus which has crystallized over many provisions of the 2001 ILC Draft Articles.**

Mr Chairman/Madam Chair,

Italy appreciates the importance of preserving the delicate balance and the overall coherence achieved by the work of the International Law Commission. However, we would also like to highlight the risks associated with the fragmentation of the regime arising from **controversial issues related to some of the Draft Articles, such as those concerning the responsibility for grave breaches of *jus cogens* norms**, the role played by States not directly affected by violations and collective countermeasures.

For the reasons outlined above, Italy associates itself to the suggestions, already advanced by some delegations, that a preparatory working group could be established with the main purpose of

negotiating **those articles that are not yet qualified as customary international law and in respect of which State practice shows lack of clear consensus. In this respect, let us make four points.**

First, **we would like to point out that any appropriate action on the basis of the Articles should not jeopardise the content of those provisions, such as those gathered in Part One of the Articles, in respect to which** the wide consensus achieved both domestically and internationally demonstrates **a wide correspondence to customary international law.**

Conversely, **the current international scenario, including Russia's war of aggression against Ukraine, highlights the urgency to address the above-mentioned key issues arising under Part Two and Part Three,** which cover the relations between the responsible State and the injured States, and between the responsible State and third States not directly affected by the violation. For this reason, **a negotiating process should more closely focus on these parts of the Draft Articles.**

Secondly, in view of a persistent degree of uncertainty with respect to the "special consequences" of the breach of obligations protecting fundamental interests of the international community as a whole, Italy would like to recall the distinction made by Special Rapporteur Mr. Roberto Ago between primary and secondary rules of international law, the latter referring to the norms on international responsibility prescribing the consequences of a breach of primary rules.

In this regard, **we wish to underline that a convention on State responsibility should establish clear rules aimed at coordinating the regime of serious breaches of obligations arising under peremptory norms of general international law with that of responsibility arising from the breach of *erga omnes* obligations.** In our view, such an approach is necessary to fill the gap between the regime of international responsibility entailed by serious breaches of obligation arising under *jus cogens* norms, according to Article 40 and Article 41, and the invocation of responsibility of a State other than any injured State if the obligation breached is owed to the international community as a whole, as referred to in Article 48, para. 1, b).

Thirdly, with regard to Article 54, the analysis of the State practice over the last twenty years shows the increasing significance of countermeasures, resulting in their adoption and implementation by a large and diverse number of third States. This is the result of States' will to react to the breach of obligations that protect the fundamental interests of the international community as a whole. For this reason, **it is critical that a binding instrument recognize the legal value of the above practice, while providing procedural and substantive requirements for the exercise of the right of third States to resort to countermeasures.**

Lastly, **Italy suggests that any future convention on State responsibility cover the relevant procedures that are not governed by the existing Articles, but that have been subsequently articulated by the International Law Commission in other codification projects.** For example, Italy would consider with favor the insertion, in a future Convention, of one or more specific provisions on diplomatic protection, as a body of law pertaining to the invocation of State responsibility, which has been the subject of a specific project of the ILC approved in 2006. This approach may contribute also to clarifying the relationship between diplomatic protection *per se* and the invocation of State responsibility by third States, in the face of breaches of obligations affecting the international community as a whole (the mentioned Art. 48, para. 1, b) of the ILC Draft Articles).

We look forward to engaging further on this important topic with other interested delegations during the course of the present session.

Thank you Mr. Chairman/Madame Chair.