



Ministero degli Affari Esteri
e della Cooperazione Internazionale

Sixth Committee
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Agenda item n. 79 – Report of the International Law Commission
Cluster II
Statement of Italy
Delivered by Stefano Zanini, Head of MoFA Legal Service

Mr. Chair,

I will now address the topic of the **“Settlement of disputes to which international organisations are parties”**.

As a preliminary remark, we would like to reiterate our appreciation for the work carried out by the Special Rapporteur. We welcome the provisional adoption, by the Commission, of Draft Guidelines 3 to 6 together with the relevant commentary.

Italy supports the drawing up of Guidelines in this field, with a view to clarifying the legal aspects surrounding the possible occurrence of disputes involving International Organizations, also in their relations with States, and the instruments available for their peaceful settlement. This is also reflected in Draft Guidelines 3 and 4, together with reference to the principles of good faith and cooperation – which we regard as cornerstones of international relations. As far as Guideline 4 is concerned, emphasis should also be placed on the recognition of the possibility, for the parties to a dispute, to freely choose the most appropriate means of settlement, in light of the circumstances, including the option to settle the said dispute amicably.

With regard to Draft Guideline 5, Italy holds the view that – besides amicable means – preference should be granted to binding means of dispute settlement, to ensure legal certainty and a clear recognition of the respective rights and obligations. Therefore, we agree that arbitration and judicial settlement should be made more easily available and more widely used for the resolution of international disputes involving international organizations. We follow with great interest the work of the Commission on this important point.



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On Guideline 6, we welcome the reference to the rule of law, including the independence and impartiality of adjudicators, and due process, as they constitute essential pillars underpinning also the Italian legal system.

Finally, Italy looks forward to the continuation of discussions on this important topic within the ILC. In this regard, concerning disputes of a private character such as those related to wrongful conducts of international organisations, we reiterate our support for seeking to strike a balance between, on the one hand, the independent functioning of international organisations and their privileges under applicable international agreements and, on the other, the right of private parties to an effective remedy.

We stand ready to engage in constructive discussions on the topic with interested delegations during and after the present session.

Mr Chair,

I will now address the topic of "**Subsidiary means for the determination of rules of international law**".

First of all, I would like to commend the International Law Commission for its work on the subject, as it provides better understanding of article 38, paragraph 1, letter d) of the Statute of the International Court of Justice. As we know, article 38 is the main point of reference to navigate through the complex architecture of the sources of the international law and the delicate task of determining the existence and content of rules of international law.

We welcome the provisional adoption of Draft Conclusions 4 to 8 along with the relative commentaries. Against this backdrop, we positively underline the organic approach followed so far, with the draft conclusions needing to be read in close coordination with one another in order to express their full meaning and scope. We look forward to the adoption of the complete set of draft conclusions, and we encourage the Commission to continue along this path.

I will now briefly consider some aspects of the draft conclusions more in detail.



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Concerning draft conclusion n. 6, Italy agrees with the suggested role of the subsidiary means in relation to the actual sources of international law. We are convinced of the auxiliary nature of the subsidiary means, as clearly reflected in the Statute of the International Court of Justice.

Turning now to draft conclusions n. 7 and n. 8, Italy considers that a balance should be found between the non-binding nature of the precedent and the authoritative value inherent to decisions of international courts or tribunals. Such an aspect is also reflected in draft conclusion n. 4 elaborating on courts' or tribunals' decisions as subsidiary means for the determination of rules of international law. Attention should also be paid to the position of third parties and the interest of countries in not being affected by decisions settling disputes to which they are not a Party, in line with article 59 of the Statute. Lastly, regarding the possible relevance of decisions of national courts, consideration should be given to the inherent difference but also to possible similarities between systems of civil and common law.

Italy looks forward to continuing its engagement with the Commission on this topic and encourages the continuation and completion of this important work.

Thank you, Mr Chair.