

MISSION OF
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**United Nations General Assembly I Sixth Committee (item 78)
Report of the International Law Commission – Clusters 2 and 3**

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(check against delivery)

Mr. Chairman,

I take this opportunity to share some brief comments regarding topics contained in Clusters 2 and 3 of the report of the International Law Commission.

Concerning the topic "crimes against humanity", Brazil concurs with the importance of including such crimes in domestic legislation and of promoting the harmonization of national legislation in this regard. A future convention could indeed be beneficial for facilitating much-needed judicial cooperation in this realm, since a number of legal systems, such as the Brazilian one, generally allow exceptional to the principle of territoriality in the application of criminal rules when there is a conventional basis. As a proud founder of the International Criminal Court, Brazil believes that prominence should be given to the language already contained in the Rome Statute in this regard, including in relation to the non-exclusion of responsibility on account of a superior order.

Regarding the topic "protection of the atmosphere", I would like to focus my observations on the proposed language for a preambular paragraph that reads "aware of the special situation and needs of developing countries". Brazil notes that such language is based on the preamble of the 1997 Convention on the Law of the Non-Navigational Uses of International Watercourses and would also suggest that the Commission give careful consideration to language stemming from the 2015 Paris Agreement on Climate Change, including the expression "common concern of humankind". We also believe that, at a later stage, the Commission should examine attentively the applicability of the concept of "common heritage of mankind" to the atmosphere.

Turning to the topic "*jus cogens*", I take this opportunity to thank the Special Rapporteur for his first report. Considering that is an issue of evident conceptual complexity, Brazil appreciates that the Commission will first focus on identifying the general nature of *jus cogens* and the process for its creation. Regarding draft conclusion 3, we consider the reference to "fundamental values of the international community" to be an extremely important one, as well as the recognition that such norms are hierarchically superior to others and that they are universally accepted and applicable. It is our expectation that, at a later stage, the Commission be in a position to present an indicative list of *jus cogens* rules.

Finally, in relation to the topic "provisional application of treaties", Brazil considers it crucial that the Commission continues giving adequate consideration for fact that some States are not in a legal position to apply provisionally any sort of treaty, in light of constitutional regulations related to the separation of powers. This is the case of Brazil, that has therefore made a reservation to Article 25 of the 1969 Vienna Convention in the Law of Treaties. It is important that constitutional differences are borne in mind when the Commission drafts its upcoming guideline regarding the relationship with domestic law.

Thank you, Mr. Chairman.