



United Nations General Assembly | Sixth Committee
Report of the International Law Commission (Cluster I)
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Statement by the Principle Legal Adviser of the Ministry of Foreign Affairs
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Madam Chairperson,

I would like to thank the International Law Commission for its Report of its 72nd session and, above all, for its contribution to the codification and progressive development of international law. I would also like to commend Mr. Mahmoud Hmoud for introducing the report to the 6th Committee. Brazil congratulates the ILC members for their continued efforts to strengthen the international law system and to promote more legal certainty for interstate relations. We would also like to recognize the valuable work of the Codification Division of the United Nations Office of Legal Affairs in supporting the ILC in performing its functions.

Before addressing the first cluster of the report, Brazil wishes to highlight its appreciation to all members of the Commission for their efforts to make progress in several complex topics during such a challenging situation. The COVID-19 pandemic generated numerous restrictions to in-person deliberations due to travel restrictions and limitations to large gatherings. This scenario challenged the traditional way in which the ILC conducts its deliberations and performs its functions. Brazil praises the Commission and the OLA Secretariat for the extraordinary efforts made to ensure the ILC could successfully complete its session this year.

The Commission once again showed that it can adapt to a changing world, while maintaining the high quality of its work. We hope that the ILC continues to update its working methods, with a focus on the relationship with the Sixth Committee of the General Assembly. A fluid and constructive relationship between both organs tends to generate products that are relevant to the international community on both its content and its effectiveness. While the current process of written comments and annual debates create space for fruitful interactions, there are still other measures that could be taken in both poles of the relationship.

The General Assembly could provide more guidance on strategic and policy priorities regarding the codification and progressive development of international law, including on the identification of new topics to be examined by the Commission. At the same time, when studying a topic, the ILC could prepare

questions requiring simple and direct answers about State practice. For some countries, especially developing ones, the elaboration of written comments on the work of the ILC can be a challenging task. Addressing this shortcoming could therefore ensure more geographically balanced inputs.

There could also be more opportunities for interaction among ILC members and state representatives, beyond International Law Week. As part of the celebrations for the 70th anniversary of the ILC, for instance, the first segment of its sessions was held in New York. The positive impact of this change of venue encourages us to envisage this approach on more occasions. We hope, therefore, that it becomes a frequent practice of the Commission, since it creates improved conditions for enhancing the interaction of States with the ILC through the early engagement of the Sixth Committee.

Brazil would also like to propose one issue to be taken up by the Working Group on Working Methods. While the statute refers solely to articles as possible outcome of the discussions in the ILC, other types of products were created over the past years: principles, conclusions and guidelines, to name a few. It would be useful if the Commission could provide more clarity on the taxonomy of its products, including by clarifying which are the criteria it applies to decide between one and another form of product.

Madam Chairperson,

Turning now to Chapter IV on “Protection of the Atmosphere”, let me commend the Special Rapporteur, Mr. Shinya Murase, for the valuable contribution in preparing the draft guidelines, which were adopted by the Commission on a second reading, together with a preamble.

While we recognize that the draft guidelines presented by the Commission provides us with a good starting point for our discussions, Brazil is of the view that guidelines 10, 11 and 12 on implementation, compliance and dispute settlement may require further examination, especially taking into account the non-legally binding nature of the guidelines.

It would also be important to ensure consistency in the reference to the principles outlined in guideline 2 and the 1992 Rio Declaration on Environment and Development, including the precautionary approach.

Madam Chairperson,

Let me now turn to Chapter V, on “Provisional application of treaties”. Brazil commends the International Law Commission for the successful conclusion of its work on provisional application of treaties, with the adoption of the guide about this issue. We would like to congratulate the Special Rapporteur, Juan Manuel Gómez Robledo, for his outstanding contribution for the results achieved. Brazil believes that the guide adopted by the Commission sheds light on a practice that is important to several states.

The general commentary to the guide stresses that provisional application constitutes a completely voluntary mechanism, which states are free to resort to or not. Brazil reiterates that it does not join this practice.

According to guideline 6 recently adopted, the provisional application of a treaty produces legally binding obligation to apply the treaty, and a breach of this obligation entails international responsibility, in accordance with article 8 of the guide. However, the Brazilian constitutional system, as a general rule, requires parliamentary approval of treaties that create binding obligations to Brazil. For this reason, when the National Congress approved the Vienna Convention on the Law of Treaties, it objected article 25, related to provisional application. Therefore, Brazil ratified the Vienna Convention with reservation to this article.

As Brazil disassociates itself from the practice of provisional application of treaties, the guide adopted by the ILC, including its guideline 10, related to the internal law of states, is not applicable to Brazil.

This objection does not affect the obligation not to defeat the object and purpose of a treaty before its entry into force, as prescribed in article 18 of the Vienna Convention on the Law of Treaties. It is also without prejudice of 24 (4) of the Vienna Convention, according to which certain provisions regarding matters arising necessarily before the entry into force of a treaty apply from the time of the adoption of the text, as stated in commentary to guideline 5. Articles 18 and 24 of the Vienna Convention were not subject to any kind of reservation by Brazil, and they are not directly included in the guide recently adopted.

Although the Brazilian practice does not include provisional application of international agreements, we do not object other states following this practice, and provisionally applying bilateral or multilateral treaties vis-à-vis Brazil. Brazil may only apply the treaty after the parliamentary approval and subsequent ratification, but we do not object European Union members applying it before its entry into force, based on their own constitutional systems

Madam Chairperson,

On Chapter XI (Other decisions), Brazil notes the recent inclusion, in the long-term programme of work of the Commission, of the topic “ subsidiary means for the determination of rules of international law”. Brazil takes note with interest of the ILC decision, which might offer guidance on the interpretation of Article 38 (1)(d) of the ICJ Statute. We hope that the work on this topic, if and when conducted, will enhance the clarity and predictability of international law, while taking due regard to the contributions of all regions of the world to its development.

Finally, among the topics that were already inscribed in the long-term programme of work, Brazil would favor that the Commission include “extraterritorial jurisdiction” in its active agenda.

Thank you, Madam Chairperson.