



**United Nations General Assembly | Sixth Committee
78th Session
Report of the International Law Commission
(Agenda item 79)**

CLUSTER I

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(check against delivery)

Mr./Madam Chair,

I would like to thank the International Law Commission for its Report on the work of its 74th session, and to commend Madam Patrícia Galvão Teles for introducing the report to the 6th Committee.

Before addressing the first cluster, Brazil wishes to highlight its appreciation to all members of the Commission for their efforts to advance several complex topics, to strengthen the international legal system and to promote the codification and progressive development of international law.

I would also like to express our recognition for the valuable work of the Codification Division of the United Nations Office of Legal Affairs in support of the ILC.

Mr./Madam Chair,

I now turn to the topic of general principles of law. Brazil commends the Special Rapporteur, Mr. Marcelo Vázquez-Bermúdez, and the ILC for the adoption of 11 draft conclusions and commentaries thereto on first reading.

On the one hand, Brazil welcomes the ILC's choice to avoid the expression "general principles of law recognized by civilized nations", which, despite being referred to in the Statute of the International Court of Justice, is outdated. On the other hand, we believe that "community of nations" may not be the most appropriate expression to the extent that it may be interpreted as including international organizations in the formation of these principles, according to the commentaries to draft conclusion 2, paragraph 5.

As these principles derive from national legal systems, Brazil suggests that the International Law Commission adopts the term "general principles of law recognized by the community of States".

Brazil welcomes conclusions 3(a), 4, 5 and 6, which acknowledge general principles of law derived from national legal systems. We reiterate our understanding that these principles must be common to different legal systems around the world, and reflect language diversity. Brazil attaches great importance to multilingualism, and we regret that materials from Portuguese

speaking countries are often absent from UN documents, with only sparse references that do not properly reflect the importance of our legal tradition.

A comparative analysis as to the determination of the existence of a principle common to the various legal systems of the world can only be truly wide and representative when including linguistic diversity.

In this context, Brazil encourages the International Law Commission to add an explicit reference to the different languages of the world in draft conclusion 5 paragraph 2.

Mr./Madam Chair,

Draft conclusions are mainly aimed at systematizing existing rules of customary international law. However, Brazil notes that draft conclusions 3(b) and 7 reflect an exercise of progressive development in a topic related to the sources of international law. The negotiating history of the ICJ Statute does not support the conclusion that principles formed within the international legal system were referenced in Article 38(1)(c). Last year, many States have expressed that they were not persuaded of the existence of this second category of general principles of law. Furthermore, there is not sufficient State practice, case law or teachings in this regard.

The ILC has mentioned a number of decisions of international courts that appears to support the existence of this category in its commentaries to draft conclusion 3. However, Brazil notes that these decisions recognized the normative value of some principles, but they did not ascertain their existence as

an independent source of international law. Although recognized as binding norms, these principles are better identified as other sources of international law.

Therefore, Brazil suggests that the International Law Commission refrains from including principles of law formed within the international legal system, when adopting the draft conclusions on second reading.

The ILC could consider as a better course of action the inclusion of a “without prejudice” draft conclusion, in case state practice is to support in the future principles formed in the international legal system as general principles of law.

Mr./Madam Chair,

As regards chapter VIII on sea-level rise in relation to international law, Brazil commends the co-chairs for the additional paper to the first issues paper on the topic.

Brazil reiterates that solutions to the complex problems arising from the topic should be in accordance with the United Convention on the Law of the Sea. Regarding baselines and maritime zones, Brazil notes, while reaffirming the importance of legal stability, that current State practice is not sufficient to identify a clear rule on ambulatory or fixed baselines. At the same time, we acknowledge that the Convention does not set out explicitly any obligation to update published baselines. In this respect, it is crucial that any future rule on the topic be established on the basis of State consent.

Mr./Madam Chair,

The principle of common but differentiated responsibilities is ever more relevant in guiding obligations of States in respect of individual and collective action against climate change and its consequences, including sea-level rise. Aligned with both Science and Equity, CBDR stems from the universal recognition that the largest share of historical global emissions of greenhouse gases has originated in developed countries.

As acknowledged by the Intergovernmental Panel on Climate Change, because of the long-time residence of some greenhouse gases in the atmosphere and its accumulation overtime, past emissions contribute exponentially more to the global temperature increase than current emissions.

The principle of common but differentiated responsibilities is well-established in treaty law and in customary international law. First inscribed as principle 7 of the Rio Declaration, CBDR is also enshrined as the fundamental guiding principle of the UNFCCC, its Kyoto Protocol and its Paris Agreement.

Mr./Madam Chair,

On Chapter X (Other decisions), Brazil commends Mr. Claudio Grossman Guillof for his appointment as Special Rapporteur for the topic “Immunity of State officials from foreign criminal jurisdiction”. We look forward to the future adoption of these important draft articles following due consideration of the comments and observations to be sent by States.

We also welcome the inclusion of the topic “non-legally binding international agreements” in the program of work of the Commission, and we commend Mr. Mathias Forteau for his nomination as Special Rapporteur. Considering the topic’s non-binding nature and in order to avoid ambiguity that may arise from the use of the term “agreements”, Brazil would like to recommend that the ILC change the title of the topic to “non-legally binding instruments”.

Brazil also encourages the Special Rapporteur to use as an important basis for his work the guidelines on the same topic adopted in 2020 by the Inter-American Juridical Committee, the advisory body of the Organization of American States on the codification and progressive development of international law.

Among the topics that were already inscribed in the long-term program of work, Brazil reiterates that it would favor the inclusion of “extraterritorial jurisdiction” in the Commission’s active agenda.

Brazil welcomes the recommendation of the ILC that its seventy-seventh session be held in New York. We believe a closer relationship between the ILC and the Sixth Committee tends to generate products that are relevant to the international community on both its content and its effectiveness.

Mr./Madam Chair,

We could not conclude our comments without making reference to chapter IV of the ILC Report on its 73rd session, when the Commission adopted the draft conclusions on identification and legal consequences of peremptory norms of

general international law (*jus cogens*). Brazil reiterates its support to the recommendation of the ILC that the General Assembly should take note of the draft conclusions, annex them to a resolution, ensure their widest dissemination, and commend them together with the commentaries to the attention of States.

I thank you, Mr/Madam Chair.