

United Nations General Assembly | Sixth Committee
78th Session
Report of the International Law Commission

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ILC to avoid the expression which, despite being referred to in the Statute of the International Court of Justice, is outdated.

On the other hand 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

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.

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

to the future

adoption of these important draft articles following due consideration 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.