

MISSION OF
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Report of the International Law Commission – Cluster 1
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(check against delivery)

Mr. Chairman,

Brazil aligns itself with the statement delivered yesterday by the Dominican Republic on behalf of the Community of Latin American and Caribbean States (CELAC). I will now deliver some remarks from a national perspective regarding the first cluster of the debate.

As we approach the end of a quinquennium, allow me to take this opportunity to thank all members of the International Law Commission for their contribution to the codification and progressive development of International Law, as well as for the report on its 68th Session.

As stressed by CELAC, the contribution of Member States is critical to the work of Commission. In this regard, Brazil welcomes the recommendation of the Commission that the first part of its seventieth session, in 2018, be held in the UN headquarters in New York. When implemented, this measure will create improved conditions for enhancing the interaction of Governments with the Commission, through early engagement of delegates to the Sixth Committee as observers. We trust that the members of the Commission will be provided, here in New York, with adequate conditions to their work, such as access to library facilities. We are convinced that the positive impact of holding sessions in New York will encourage us to envisage this approach not only in the context of anniversary celebrations or of the beginning of a quinquennia.

Mr. Chairman,

Brazil welcomes the successful conclusion of the Commission's work on the topic "protection of persons in the event of disasters". I take this opportunity to express my appreciation for the efforts of the Special Rapporteur Eduardo Valencia Ospina throughout more than eight years on this subject. When adopting a draft preamble, 18 draft articles and commentaries thereto, the Commission recommended that the General Assembly consider adopting a convention on this issue. Brazil considers that this recommendation should be taken seriously by the General Assembly, since a convention would provide a broader legal framework on this issue, thus filling an existing gap among abundant instruments regarding operational aspects of the protection of persons in the event of disasters.

Brazil is appreciative that the Commission took into consideration not only the views expressed by Member States during debates held in the Sixth Committee, but also consulted closely with organizations that have developed expertise in responding to situations of disasters - such as the UN World Food Programme (WFP), the UN Office for Coordination of Humanitarian Affairs (OCHA) and the International Committee of the Red Cross (ICRC).

Convinced of the centrality of human dignity in international law, Brazil was particularly pleased with the recognition of this concept through a stand-alone article. My delegation agrees with the approach of the Commission on the relationship of a possible convention to other norms of international law, recognizing the precedence of international humanitarian law in case of armed conflict and not precluding development of customary international law in this field.

Mr. Chairman,

With regard to the topic "identification of customary international law", my delegation notes the completion of the first reading of the draft conclusions and expresses its appreciation for the recently circulated survey regarding ways and means for making the evidence of customary international law more readily available. Regarding the question of "persistent objection", Brazil stresses that the commentaries to Draft Conclusion 15 clarify that it is without prejudice to any issues of *jus cogens*.

With respect to the topic "subsequent agreements and subsequent practice in relation to the interpretation of treaties", Brazil took note of the discussions held in the Commission regarding the legal significance of pronouncements of expert bodies for the purpose of interpretation and as forms of practice under a treaty. While the pronouncements of these bodies might not be legally binding, they certainly carry authority and weight. Brazil considers that the debate could benefit from further thought on the definitions currently use for "expert treaty body" and "organ of international organization". When applying them to the reality of some regional organizations, one can identify entities that either do not fall precisely on none of these categories, or fall on both – and whose pronouncements are equally relevant for the purposes of Articles 32 and 33 of the Vienna Convention on the Law of the Treaties.

In conclusion, Mr. Chairman,

Brazil notes the recent inclusion, in the long-term programme of work of the Commission, of the topics "the settlement of international disputes to which international organizations are parties" and "succession of States in respect of state responsibility". I take this opportunity to stress, as did the Chairman of the ILC in his briefing to the Sixth Committee, that the General Assembly itself can also submit topics to be examined by the Commission, contributing to identify areas where useful contributions to the codification and progressive development of international law can be made. We, as General Assembly, could do better in this regard.

Thank you, Mr. Chairman.