



**United Nations General Assembly | Sixth Committee**  
**Report of the International Law Commission (Cluster 1)**  
25 October 2022, Trusteeship Council Chamber

*(Please check against delivery)*

Mr. Chair,

I would like to thank the International Law Commission for its Report on the work of its 73<sup>rd</sup> session, and to commend Mr. Dire Tladi for introducing the report to the 6th Committee.

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 challenging times, in hybrid format meetings. Brazil congratulates the ILC members for their efforts to strengthen the international legal system and to promote the codification and progressive development of international law. I 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.

We hope that the ILC continues to update its working methods, with a focus on the relationship with the Sixth Committee. 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.

Mr. Chair,

Turning to Chapter IV on “peremptory norms of general international law (*jus cogens*)”, let me congratulate the International Law Commission for the adoption of the draft conclusions on a second reading. We would like to congratulate the Special Rapporteur, Mr. Dire Tladi, for his outstanding contribution for the results achieved.

Brazil believes the draft conclusions provide an adequate basis to the identification and legal consequences of peremptory norms of general international law. *Jus cogens* norms entail the inapplicability of other norms, regardless of whether they arise from treaties, customary international law, unilateral acts of states or decisions of international organizations. These norms protect essential values of the international community, and their universal applicability gives rise to *erga omnes* obligations. It prevents the application of the persistent objector rule, and the invocation of circumstances precluding

wrongfulness. Furthermore, *jus cogens* leaves without effect reservations to treaty provisions that reflect these norms.

My delegation would like to reiterate that, as stated in draft conclusion 7, the relevant acceptance and recognition for the purposes of identifying peremptory norms are those of the vast and representative majority of states. This means that we can only identify these norms from the manifestation of all regional groups and all the main legal systems and cultures in the world. It also means that mere silence may not be interpreted as acceptance or recognition of the peremptory character of a certain norm.

Mr. Chair,

Brazil would have preferred an explicit mention to Security Council resolutions in draft conclusion 16, but we note with satisfaction the reference to them in the commentaries. Taking into consideration the nature of *jus cogens* norms in international law, Security Council resolutions must also be in accordance with them. Without prejudice to the obligations provided for in article 103 of the UN Charter, the Security Council cannot be considered a *legibus solutus* when it comes to peremptory norms of international law.

Regarding draft conclusion 19, on the consequences of serious violations of *jus cogens*, I would like to emphasize that cooperation to put an end to this violation must be carried out in multilateral institutions and should be focused on the peaceful – not coercive – settlement of disputes. Brazil rejects unilateral sanctions adopted under the pretext of reacting to serious violations of international law. We also believe that merely coercive or condemnatory multilateral measures that do not contribute to the peaceful settlement of disputes are not included in the scope of the obligation provided for in draft conclusion 19 (1). It is also important to emphasize that the measures adopted as a result of a serious violation of *jus cogens* must not affect the populations of the responsible states, in particular, their human rights.

Brazil welcomes draft conclusion 23 and the annex with a list of *jus cogens* norms. As a non-exhaustive list, it does not exclude other existing *jus cogens* norms, such as the right of access to justice, recognized as a peremptory norm by the case-law of the Inter-American Court of Human Rights, nor does it preclude the identification of other norms as cogent in the future, such as the obligation of nuclear disarmament.

To conclude our comments on this topic, Brazil supports the recommendation of the ILC and believes 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.

Mr. Chair,

I turn now to Chapter V on the “protection of the environment in relation to armed conflicts”. Brazil congratulates the ILC for the adoption on a second reading of the draft principles, together with a preamble. Let me commend the Special Rapporteur, Ms. Marja

Lehto, for the valuable contribution in preparing the draft principles, and also recognize the contribution of previous Special Rapporteur, Ms. Marie Jacobsson.

In the Brazilian perspective, the draft principles concern the international law of armed conflicts (*jus in bello*), not being directly applicable to the law on the use force (*jus ad bellum*). We welcome the non-binding recommendations made by the ILC, such as those contained in principles 4, 6 and 8. My delegation also welcomes draft principle 13, regarding the general protection of the environment during armed conflicts, and principle 15, prohibiting reprisals against the environment. We also reaffirm the need to apply the principles of distinction, proportionality and precaution to the environment, according to principle 14, as well as the prohibition of the looting of natural resources, as established in principle 16. We also welcome the inclusion of the Martens clause, in principle 12.

At the same time, Brazil would like to reiterate the non-binding nature of the draft conclusions. The draft should neither create new norms of international law nor change current international humanitarian law. In this context, the legally binding language that was preserved in several provisions of the draft could only reflect international obligations to the exact extent of the provisions of binding instruments, such as treaties, and only for States parties to those obligations.

Finally, the Brazilian delegation supports the ILC's recommendations that the conclusions be annexed to a resolution, and that they be commended to the attention of States.

Mr. Chair,

On Chapter X (Other decisions), Brazil welcomes the Commission's decision to include the topic "Subsidiary means for the determination of rules of international law" in its program of work and to appoint Mr. Charles Jalloh as Special Rapporteur. Brazil believes this work might offer guidance on the interpretation of Article 38 (1)(d) of the ICJ Statute. We hope it 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.

We also welcome the inclusion of the topic "non-legally binding international agreements" in the long-term program of work of the Commission. Finally, among the topics that were already inscribed in the long-term program of work, Brazil would favor that the Commission include "extraterritorial jurisdiction" in its active agenda.

I thank you.