

Mr. Chair,

I am delivering this explanation of position on behalf of Brazil, Colombia, El Salvador, Italy, Mexico, Portugal, Sierra Leone, Uganda and my own delegation, South Africa, to address the negotiations related to a draft resolution on the topic of *jus cogens*.

As we have stated elsewhere, we believe that the institutional relationship between the General Assembly and the International Law Commission is being significantly hampered by the lack of ability of the Sixth Committee to effectively address the recommendations put forward by the Commission. As the inability to reach an agreement on this topic further demonstrates, the existence of divergent views – which has always happened and will continue to happen, as long as there is a free exchange of opinions between delegations – instead of being lauded as a natural and enriching element of our legal debate, is more and more being used as an excuse to depart from practice and prevent this Committee from adequately following up on the ILC recommendations. The work of the Sixth Committee cannot be a zero sum game.

On *jus cogens*, the Commission recommended the General Assembly to (1) take note of the draft conclusions, (2) annex the draft conclusions to the resolution, (3) ensure their widest dissemination, and (4) commend the draft conclusions and annex, together with the commentaries thereto, to the attention of States and to all who may be called upon to identify peremptory norms of general international law and to apply their legal consequences. In our view, none of these recommendations imply an endorsement of their content. They simply aim at making States and other relevant stakeholders aware of the conclusions and it would be their prerogative to evaluate, use, or even disregard them, as they deem fit.

Indeed, this has been the general understanding of the Sixth Committee, as evidenced by the fact that there has been a general practice of taking note, disseminating widely, annexing and commending a wide array of ILC products. And this is so because the premise is always the same: these actions are done without prejudice to State's views on the matter and do not prejudge any collective decision of Member States as to whether and how the outcome of that work will be used in the future.

However, we note with concern the emergence of a consistent attempt by some delegations to reflect their substantive views on the topics in the corresponding resolutions, which in most cases has meant ignoring the recommendations of the ILC altogether, as it was the case with *jus cogens*.

We are thus extremely worried with the prospect of turning what used to be an act of institutional respect for the hard work carried out by the ILC into an exercise of evaluation of the substantive merits of such work. This is even more worrisome since the mandate given by the General Assembly to the ILC is precisely to codify and progressively develop international law through the elaboration of these products that now get to be *de facto* rejected by the Sixth Committee.

We urge all member States to reflect on the trend that is emerging in our Committee and to re-evaluate the responsibility we have to make sure that we work collegially with the ILC. We will also do our part in reflecting on these issues.

To conclude, we reiterate our profound disappointment in the impossibility to reach a compromise on the topic jus cogens and we regret that, despite the best efforts carried out by the coordinator, extreme views informed by considerations on substantive aspects of the topic at hand prevented us from finding a balanced way out of this impasse. We sincerely hope this dynamic changes in the 78th session when we will again be ready and willing to constructively engage to make progress.

Thank you.