

United Nations General Assembly | Sixth Committee

Report of the International Law Commission

(Agenda item 79)

CLUSTER II

24 October 2024

(check against delivery)

Mr./Madam Chair,

All protocol observed,

Brazil recalls that ~~W K H G U D I W J X I S E t t l e m e n t O f D i s p u t e s W K H~~
to which

While noting the clear preference for amicable methods of dispute settlement, such as consultations and the limited availability of institutionalized means of dispute resolution including third-party adjudication, such as arbitration and judicial settlement, we stress the need to avoid impunity for breaches of obligations attributable to international organizations.

Brazil acknowledges that disputes between States and international organizations can range from issues related to headquarters agreements, privileges and immunities withdrawal from membership and the scope and limits of the powers and mandates of organizations.

The SRVVLELW\RIDGGUHVVLQJGLVSWHV of international law deserves further reflection, as these entities are not explicitly mentioned in draft guideline 3.

Brazil asserts that disputes between States and international organizations should be settled in good faith and in a spirit of cooperation, as outlined in draft guideline 4.

We welcome draft guideline 6, which emphasizes the need for arbitration and judicial settlements to meet the requirements of independence and impartiality of adjudicators and due process.

Diplomatic means of dispute settlement such as consultations, presuppose a formal balance between the parties, without any legal subordination between them.

In this regard it is essential that the commentaries to the guideline emphasize that an international organization endowed with judicial bodies should not engage in consultations with States parties while acting simultaneously as judge and party to a certain dispute

Mr./Madam Chair,

I now turn to chapter V R I W K H & R P P L V V L S U S P L A R Y U H S R U
means for the determination

In this context, Brazil calls upon the Commission to redraft paragraphs 8, 9 and 10 of the commentary and draft conclusion 8 in order to delete references to findings of non-judicial bodies such as human rights commissions. Although such work may sometimes assist in determining rules of international law, reference to them is misplaced in the commentary to a conclusion on the weight of decisions of courts and tribunals.

Caution is also warranted when considering the decisions of national courts, as per draft conclusion 4 paragraph 2, especially given that

Draft conclusion 7 and its commentaries also require further consideration. Although titled "absence of legally binding precedent in international law," it focuses on instances where precedents are followed or even considered binding.

The Commission may consider redrafting conclusion 7 to state upfront that such decisions do not constitute legally binding precedent, in line with its title.

Additionally, WKH DEVHQFH RI ³VWDUH GHFLVLV ' be further developed in the commentaries. In regard, we note that the conventionality control by the Inter-American Court of Human Rights does not establish formally binding precedent.

Regarding draft conclusion 8 my delegation emphasizes that the weight of decisions of courts and tribunals as subsidiary means depends on their specific competence.

In this vein, while the authority of the International Court of Justice on general international law should be prioritized, statements by bodies with specific "ratione materiae" jurisdiction should be considered only within the scope of that competence.

I recall, in this regard, instances where specialized tribunals have adopted interpretations of general international law that are incompatible with the jurisprudence of the International Court of Justice such as the customary international law avenue adopted by the Appeals Chamber of the International Criminal Court in 2019

In this context, Brazil also supports draft conclusion 8 (b) which highlights that the weight of decisions as a subsidiary means depends on whether it is part of a body of concurring decisions.

In this regard, we also refer to the expansive interpretation of the concept of marine pollution recently advanced by the International Tribunal for the Law of the Sea.

Finally, Brazil calls upon the Commission to include in draft

In this respect I recall 025 706.22 Tmm 0 g 0 G [(,)-218(l)5()-218(r)-10(