



Side event in the context of the 70th anniversary of the International Law Commission

Articles on the responsibility of States for internationally wrongful acts: *quo vadis?*

May 22nd, from 1.15 to 2.45pm, CRs 11 and 12

Opening remarks

Mr. George Galindo, Principle Legal Adviser of the Foreign Ministry of Brazil

Panel

Mr. Sean Murphy, ILC member

Mr. Georg Nolte, ILC member

Mr. Gilberto Vergne Saboia, ILC member

Ms. Patrícia Galvão Telles, ILC member

Mr. Dire Tladi, ILC member

Mr. Michael Wood, ILC member

Moderator

Mr. Patrick Luna

Chair of the Working Group of the Sixth Committee on the Responsibility of States for internationally wrongful acts established the 71st Session of the General Assembly

When the International Law Commission was established in 1948, State responsibility was among the first fourteen topics to be considered by the Commission in its future work. As is well known, it took five Special Rapporteurs and almost fifty years for the Commission to conclude its work on the draft articles on the responsibility of States for internationally wrongful acts in 2001. The General Assembly took note of the articles in its resolution 56/83 of 12 December 2001 and annexed the articles to the resolution. The Assembly also commended the articles to the attention of Governments without prejudice to the question of their future adoption or other appropriate action. Since then the Sixth Committee of the General Assembly has considered the agenda item "Responsibility of States for internationally wrongful acts" on a triennial basis, including through the establishment of a working group at its sixty-eighth and seventy-first sessions.

While the Commission's work on the articles on State responsibility has been widely considered a success, the General Assembly has continuously postponed the question of the future form of the articles. On the one hand, several Member States continue to emphasize that the Articles should be allowed to develop organically in their current form and that the time for codification is not ripe. On the other hand, an increasing number of Member States are of the view that continued postponement of action of the General Assembly would not further strengthen the Articles. In fact, continued postponement itself might risk giving rise to the perception of disagreement among States on the articles, thereby potentially undermining their status. Prolonged indecision regarding the fate of the articles is already affecting the work of the Sixth Committee on other projects of the International Law Commission, such as the articles on diplomatic protection and the articles on the responsibility of international organizations. These diverging positions explain the lack of progress made with regard to the future form of articles.

in the form of a convention generally share the view that any decision on the question of a convention or other appropriate action with regard to the future form of the articles should be taken on the basis of sufficient information and by consensus.

Considering the diverging positions of Member States as expressed in the Sixth Committee, the challenge is to find a compromise between the different views regarding the form of the articles on the responsibility of States.

Relevant questions are: What are the procedural options other than the adoption of the articles in the form of a Convention? Would it be possible to adopt a convention on State responsibility by using sufficient procedural safeguards to appease the concerns of the opponents of adopting the articles in the form of a treaty? What are the repercussions of the current impasse with regard to the future form of the articles on other projects on the agenda of the Commission and the Sixth Committee?