

CHECK AGAINST DELIVERY



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**EMRIP
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ITEM 5. INTERSESSIONAL ACTIVITIES AND FOLLOW-UP TO THEMATIC STUDIES AND ADVICE.

- Brazil is one of the few countries that have ratified ILO Convention 169 and has supported the adoption of regional and universal instruments on the subject.
- In line with our international obligations, Brazil is committed to consulting indigenous peoples, as appropriate, on issues regarding projects that may affect their lands.
- Brazil has also supported the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
- Nonetheless, there are legal aspects concerning the interpretation of the UNDRIP that we have to address.
- While recognizing the importance of the United Nations Declaration on the rights of indigenous peoples, enshrined in the Brazilian Federal Constitution, we understand that declarations, in general, cannot be considered as having the same legal status of international treaties.

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- These two kinds of instruments are different in their very nature. This is recognized by the OHCHR, and I quote: "While international treaties and customary law form the backbone of international human rights law other instruments, such as declarations, guidelines and principles adopted at the international level contribute to its understanding, implementation and development".

- In this connection, there is a misleading effect in suggesting that a declaration is a binding instrument, which by itself could impose legal obligations on states. As rightly mentioned by the OHCHR, international treaties and customary law are the sources of international law.

- Even recommendations and interpretations from treaty bodies, which is not the case of EMRIP, are not mandatory to states. They express the view of the Secretariat, or of independent experts. Treaty bodies cannot impose their interpretation of legal instruments on states. Nor can the EMRIP.

- Governments will listen to these opinions in good faith and will incorporate it into their legal framework or not, depending on the case.

- This is the reason why countries have to ratify a treaty, but not a declaration or a guideline. This is why Brazil has ratified, for instance, the Convention on the Elimination of All Forms of Racism and Discrimination, passed through our Congress and incorporated into Brazilian domestic legal framework. The same does not happen to declarations.

- We consider this aspect of international law of extreme relevance and one that must not be overlooked. Otherwise, we would be creating a precedent that puts at risk the legal certainty of the system itself.