



Statement of Portugal

at the 74th Session of Sixth Committee of the General Assembly

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Agenda Item 79

**Report of the International Law Commission on the work of its
Seventy-First Session – Cluster II**

Check against delivery

Protection of the Environment in Relation to Armed Conflicts

(Chapter VI of the ILC Report)

Mr. Chairman,

Allow me to first address the topic 'Protection of the Environment in relation to Armed Conflicts'.

I will begin by expressing my delegation's appreciation for the work of the Special Rapporteur, Ms. Marja Lehto, in her second report. Allow me to also acknowledge the Commission's efforts leading to a successful conclusion of the first reading of 28 Draft Principles on this topic and to congratulate it for this important achievement.

Portugal will submit its written comments and observations in due time as requested by the Commission. At this time we would like to offer just a few remarks.

Mr. Chairman,

These draft Principles strike an interesting balance between the codification of International Law and elements of its progressive development, which Portugal welcomes.

Moreover, the discussions on this topic echo a progressive perspective of armed conflicts and their impact and continue to confirm the view that armed conflicts are not exclusively ruled by International Humanitarian Law. It is thus particularly encouraging to note that the draft Principles incorporate rules and

recommendations relating to International Human Rights Law, Law of the Sea, International Criminal Law and International Environmental Law.

We would also like to underline the reference to non-state actors in the draft Principles, recognizing its relevant role in humanitarian assistance and in the protection of the environment.

Mr. Chairman,

In her opening statement at the 42nd session of the Human Rights Council, Ms. Michelle Bachelet said she was "(...) encouraged by the increasing recognition of the right to a healthy and sustainable environment, in over 100 national and regional laws, which defines the relationship between the environment and human rights". The High Commissioner for Human Rights also recalled that "all people, everywhere, should be able to live in a healthy environment and hold accountable those who stand in the way of achieving it.". The human right to a healthy and sustainable environment calls for positive action on the part of States in the different stages of the armed conflict cycle.

We welcome the scope *ratione temporis* underlying the International Law Commission's choice to address the protection of the environment before, during and after an armed conflict, through preventive and remedial measures. This approach is similar to the one characterising the international legal framework on the protection of cultural heritage in relation to armed conflicts. In fact, Draft Principles 4 and 17 bring together the concepts of "environmental importance" and "cultural importance". *Portugal sees this approach as favouring a systematic and integrated international legal framework on the protection of values and objects that are of significant interest and need to all of*

Humanity – and not only to the people inhabiting the sites where those objects are located at.

Mr. Chairman,

Even though the majority of the codified law of armed conflict refers to international armed conflicts, most current armed conflicts are of a non-international nature. Additionally, and according to the United Nations Environment Programme, over the last 60 years, at least 40 percent of all internal conflicts have been linked to the exploitation of natural resources. Therefore, and regarding the scope *ratione materiae* of the Draft Principles, Portugal welcomes the fact that the Commission makes no general distinction between international armed conflict and non-international armed conflict, thus covering both types of armed conflict.

Nevertheless, a suitable concept of “environment” should not be reduced to the natural resources available at a given area and at a given time. The Commission has made this clear, for example in Draft Principle 19 on “Environmental modification techniques”. It is important, in our view, to reiterate that the environment is a common good of all Humanity. It should hence be a common endeavour of States, international organisations, corporations and individuals to fight environmental degradation and to cooperate in the protection of the environment everywhere and at all times, including in relation to armed conflicts, whatever their nature or how long they last.

Mr. Chairman,

We understand that an absolute protection of the environment is not viable. Indeed, a conditional protection of the environment is necessary to guarantee a

balance between military, humanitarian, and environmental concerns. In general, the Principles as they are currently drafted reflect the possible balance.

Nonetheless, Portugal would hope for a more ambitious text in Draft Principle 17. Draft Principle 17 provides that an area of major environmental and cultural importance designated by agreement as a protected zone shall be protected against any attack, as long as it does not contain a military objective. Draft Principle 4, on the “Designation of protected zones”, provides that States should designate, by agreement or otherwise, areas of major environmental and cultural importance as protected zones. Paragraph 3 of Draft Article 13 states that “No part of the natural environment may be attacked, unless it has become a military objective”.

In fact, when Draft Principles 4, 13(3) and 17 are read together, in the case where a major environmental and culturally important area was designated by a mean other than an agreement between the parties at war, under Draft Principle 17 that zone would no longer be protected against attacks, even if it is not a military object.

Even if the term “agreement” is understood in a broad sense, Draft Principle 17 could still impair the protection of a site that would otherwise be protected under Draft Principle 4 or pursuant to Draft Principle 13. Portugal is not convinced that, as the Commission argues, Draft Principle 17 enhances the protection conferred under Draft Principle 13. We would recommend that these Draft Principles be harmonized so that the status and protection of a site under international law is respected as long as it is not used as a military object and regardless of how that designation took place, whenever such site has been designated as being of major environmental and cultural importance.

**Immunity of State Officials from Foreign Criminal Jurisdiction
(Chapter VIII of the ILC Report)**

Mr. Chairman,

Allow me to now address the topic 'Immunity of State Officials from Foreign Criminal Jurisdiction'.

Portugal would like to thank the Special Rapporteur, Ms. Escobar Hernández, for her seventh report which, together with last year's sixth report, formed the basis for the Commission's work on the topic this year.

Mr. Chairman,

My delegation wishes to convey our support to the approach suggested by the Special Rapporteur regarding the procedural aspects of immunity. These aspects are key in making the immunity framework operational and in guarantying a balance between, on the one hand, the prevention of politically motivated proceedings and the abuse of jurisdiction and, on the other hand, the rights of victims.

Therefore, in our view, elaborating on the procedural safeguards cannot result in an undesired reinforcement of the immunity of high officials. Safeguards should not be conceived just as a means to strike a balance between the forum State and the State of the official; they have also to take into consideration the rights of victims.

We also recognize that many of the proposals put forward by the Special Rapporteur constitute progressive development of international law. We would nevertheless recommend a further review of State practice from more diverse regions. A streamlining of the draft Articles 8 to 16 would also be welcomed.

Mr. Chairman,

My delegation agrees, in general, with draft Article 8 and welcomes the flexible approach taken.

In what concerns draft Article 9, we underline the view that the participation of different organs in the determination of immunity of State officials depends on the national law of each State. In Portugal's case, the strict separation of powers foreseen in our Constitution implies that only the courts have the competence to determine the immunity, while the Government is strictly barred from any kind of intervention in such determination.

Regarding draft Article 11, the diplomatic channels are the preferred means to communicate the waiver of immunity, and not a secondary means as the draft Article seems to imply. In fact, the waiver is in principle a decision taken by the State organ responsible for the foreign policy. We would therefore recommend that draft Article reflects the international practice of communicating a waiver of immunity through diplomatic channels. The diplomatic channels should also be the preferred means regarding the communications referred to in draft Articles 12 to 15.

Also in relation to draft Article 11, we wish to support the irrevocability of the waiver as a general rule. In our opinion, the waiver can only and exceptionally be revoked by agreement between the State of the official and the forum State.

Mr. Chairman,

We ask the Commission to take a clear position on the final form of these draft Articles in its next report, which at this moment is already an important element for consideration by Member States.

To conclude, Portugal encourages the Commission to continue its deliberations on this relevant topic and to complete its work on first reading at its upcoming session of 2020.

Sea-Level Rise (Chapter X of the ILC Report)

Mr. Chairman,

Allow me now to address the topic 'Sea-Level Rise in Relation to International Law'. My delegation would like at the outset to praise the Commission for including the topic in its programme of work.

Seas are rising and we must address this complex issue that is already a major threat to low-lying island nations.

Mr. Chairman,

In this vein, Portugal fully supports the Commission's decision to establish a Study Group to identify and analyse the legal questions of this topic, including the proposed programme, procedures and working methods. We look forward

to the work of the Study Group on the three proposed sub-topics on the Law of the Sea, statehood and protection of persons affected by sea-level rise.

We have taken good note of the requests for information regarding this topic and referred to in Chapter III of the Commission's Report, which we intend to reply in due course. This would be an important opportunity for Member States and other relevant stakeholders to contribute to the analysis that the Study Group will undertake by sharing information on their practice.

Thank you, Mr. Chairman.