



PERMANENT MISSION OF PORTUGAL
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**Report of the International Law Commission
on the work of its sixty-eight session**

Introduction and other issues

(Chapters I-III and XIII of the Report)

Protection of persons in the events of disasters

(Chapter IV)

Identification of customary international law

(Chapter V)

**Subsequent agreements and subsequent practice in relation to the
interpretation of treaties**

(Chapter VI)

Statement by

Ms. Susana Vaz Patto

Head of the Department of International Law

Department of Legal Affairs

Ministry of Foreign Affairs

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Mr. Chairman,

Let me thank through you the Chairman of the International Law Commission, Mr. Pedro Comissário Afonso, for presenting the Report on the work carried out by the Commission during its sixty-eight session. Allow me also, at the end of their current mandates, to pay tribute to all the members of the ILC, commend the Special Rapporteurs for the comprehensive reports presented and recognize the continued relevance of the work of the Drafting Committee.

In today's statement, we will begin by making some general comments on the Commission's work. We will then address the topics "Protection of persons in the event of disasters", "Identification of customary international law" and "Subsequent agreements and subsequent practice in relation to the interpretation of treaties". The other topics of the Report will be addressed in the coming days, according to the clusters proposed.

Mr. Chairman,

Portugal has followed with much interest the work and outputs of the sixty-eight session of the International Law Commission. It has been a productive session that marks the end of the current quinquennium, and important progress was made on different topics.

We would highlight, in particular, the adoption on second reading of the draft articles on "Protection of Persons in the event of Disasters" and the adoption on first reading of draft conclusions on the topics "Subsequent agreements and subsequent practice in relation to the interpretation of treaties" and "Identification of customary international law".

Mr. Chairman,

Regarding the continued efforts to improve the interaction of the ILC with the Sixth Committee, we note with satisfaction that the Commission recommended to hold the first part of its seventieth session in New York and that a commemorative event be held in 2018 both in New York and in Geneva. We also welcome the more frequent practice of informal briefings by the Special Rapporteurs in New York, before and after the annual sessions of the ILC.

We trust that both these approaches contribute to increase the interaction between States and the ILC and to make this process as inclusive and plural as possible. In this regard, we reiterate the importance of furthering the

development of national legal services with trained human resources in order to enhance a broader participation on the process of codification and progressive development of International Law. After all, if this is the core mandate of the ILC, it is also a responsibility of all of us, States, that are members of the international community and should be encouraged.

Mr. Chairman,

As to the future work of the Commission and possible new topics, we note with satisfaction that the ILC again reconstituted its Working Group on Long-Term Programme of Work and has included two new topics relating to “settlement of disputes to which international organizations are parties” and “succession of States in respect of State responsibility”. We also take good note of the six potential topics mentioned in paragraph 313 of the Report proposed by the Secretariat as well as of the recommendation of the Commission that they should be further considered by the Working Group on the Long-Term Programme of Work at the next session, which will mark the beginning of a new quinquennium.

Portugal continues to study carefully all topics that are proposed and reiterate our view that when including new topics in the programme of work the ILC should continue to be attentive to the needs of States and respect their concerns. At the same time, we maintain our belief that the UN wider membership should also be more vocal and active in guiding the Commission, including regarding the identification of possible new topics that could address the current legal and institutional challenges of today’s world.

Mr. Chairman,

Allow me now to turn to Chapter IV of the Commission’s Report on the topic “**Protection of persons in the event of disasters**” and start by expressing our appreciation to the Special Rapporteur, Mr. Eduardo Valencia-Ospina, not only for the thorough report presented this year, but again for his comprehensive work during these past years, which enabled the Commission to progress steadily in its study and adopt the set of draft articles we have now before us.

The Commission submitted a set of 18 draft articles on the protection of persons in the event of disasters, together with the recommendation to the General Assembly that it elaborates a convention on the basis of these draft articles.

Mr. Chairman,

Portugal maintains its position that, overall, this work constitutes a good framework and is a relevant contribution for this important subject, even though there are some issues we would have liked to see further studied or clarified by the Commission.

We are pleased to see that this final set of draft articles reflects the rights-based approach that the Commission took while conducting its analysis of this topic and we share the view that they contain a balance between State sovereignty and the need to protect human rights.

Mr. Chairman,

Regarding the final form that this set of draft articles should take, Portugal has stated in many instances, as a matter of principle, that the results of the work of the Commission should be translated into legally binding instruments. It is our view that this allows for stronger ownership by States of the work of the Commission. However, as in other cases, due to the complexity and sensitivity of the topic, it could be beneficial to have some more time to reflect on this matter, before taking a final decision.

Mr. Chairman,

Portugal continues to follow with great interest the topic “**Identification of customary international law**” included in the programme of work of the ILC in 2012 and commends the Special Rapporteur, Mr. Michael Wood, for his work and the ILC for the speedy adoption on first reading of 16 Draft Conclusions with commentaries.

As we have stated before, this is a topic of high practical value for legal advisors and practitioners around the world and having a set of practical and simple conclusions, aiming at assisting in the identification of rules of customary law, is certainly a useful tool.

Mr. Chairman,

Portugal thanks the Special Rapporteur for the amendments proposed to the Draft Conclusions in light of the comments received, in particular with regard to Draft Conclusions 3 on “Assessment of Evidence for the two elements” and 12 on “Resolutions of International Organizations and

Conferences”, that are a step in the right direction to alleviate some of the concerns our delegation had expressed last year.

Portugal believes that the draft conclusions can still be improved and we will be looking forward for a second reading. We hope that a further review of the commentaries will also help to address some of the issues that this Committee has discussed and that were well identified in Section II of the Fourth Report of the Special Rapporteur.

As a final remark, concerning the future outcome of the present topic, we welcome the proposal of a further review of ways and means for making the evidence of customary international law more readily available and look forward to the memorandum that the Secretariat was requested to prepare.

Mr. Chairman,

Allow me to turn finally to the topic **“Subsequent Agreements and Subsequent Practice in relation to the Interpretation of Treaties”**. Portugal would like to commend the Special Rapporteur, Mr. Georg Nolte, for the thorough report he presented this year and again for his comprehensive work during these past years, which enabled the Commission to successfully conclude its first reading of the draft conclusions.

Portugal once again states that this work offers valuable guidance in the interpretation of treaties and reflects the existent customary international law. We are pleased to see that the Commission’s work remains creatively within the limits of the Vienna Convention and we welcome the draft conclusion on the role of expert treaty bodies and the extensive commentary on this important question.

To conclude, we will continue to follow with interest this topic and look forward to its second reading.

Thank you, Mr. Chairman.