

Statement of Portugal

at the 77th Session of Sixth Committee of the General Assembly

Agenda Item 80

**Consideration of Prevention of Transboundary Harm from Hazardous
Activities and Allocation of Loss in the Case of such Harm**

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Mr. Chairman,

Portugal would like to take this opportunity to again acknowledge the adoption, by the General Assembly, of the draft Articles on prevention of transboundary harm from hazardous activities and of the draft Principles on the allocation of loss in the case of such harm. It was a positive step towards the creation of measures for the prevention, mitigation and compensation of harm and loss caused by incidents involving hazardous activities.

However, we must recall the recommendations made by the International Law Commission in 2001 and 2006. The Commission recommended the elaboration of a convention on the basis of the set of draft Articles on the prevention of transboundary harm from hazardous activities; as well as the endorsement, by the General Assembly, of the draft Principles on the liability aspects.

Sadly, we remain far away from following up on these recommendations.

Mr. Chairman,

We would like to thank the Secretary-General for its report containing a compilation of decisions of international courts, tribunals and other bodies. Consistent with previous reports, it has identified another example between June 2019 and June 2022 on how the draft Articles and the draft Principles were specifically referenced to.

This type of information is relevant for our discussions and we hope that the Secretariat can continue updating the compilation.

Mr. Chairman,

Portugal considers that this topic should be analyzed under the light of its own history and of the purposes of codification and progressive development of International Law, which should be harmonious and coherent.

Concerning the progressive development, it must be underlined that, more than “human rights in relation to the environment”, a human right to a clean, healthy and sustainable environment is becoming a staple in International Human Rights Law. We can only expect that regional human rights courts, tribunals and other relevant bodies will be increasingly called upon to deliver decisions and opinions on the recognition and scope of this human right.

Also in this sense, the draft Articles and draft Principles can serve as a starting point for progressive development and progressive interpretations of International Environmental Law.

Additionally, it is important to keep in mind that the prevention of transboundary harm, on the one hand, and the international liability in the case of loss from transboundary harm, on the other, are included under the same main topic (‘International Liability for Injurious Consequences Arising out of Acts not Prohibited by International Law’). Therefore, the two phases or dimensions of the main topic – that is, the moment before the transboundary harm (prevention) and the moment following the transboundary harm (loss) –, should be dealt together, with equal legal nature and enforceability.

Mr. Chairman,

Portugal remains hopeful that one day it will be possible to have a single convention on 'Prevention of Transboundary Harm from Hazardous Activities and Allocation of Loss in the Case of Such Harm'. A convention in which State responsibility on this matter is adequately established and under which an effective and fair system of due compensations for the effects of lawful activities of States can be put in place.

Having said that, and in conclusion, Portugal is of the view that, for the time being, it would already be a significant step forward to achieve a whole set of draft Articles or even of draft Principles addressing prevention and allocation of loss together, for the sake of the aforementioned need for coherence.

Thank you, Mr. Chairman.