

Effects of Armed Conflicts on Treaties

Portugal

Mr. Chairman,

First of all, Portugal would like to, once again, congratulate the Commission for the work done on the subject of "Effects of Armed Conflicts on Treaties", and to commend Mr. Caflisch for his guidance in the completion of the draft articles. Portugal would also like to remember and praise the late Ian Brownlie for his valuable contributions to the development of this subject.

Mr. Chairman,

Portugal's approach to this topic follows closely the initial boundaries established by the Commission. Parties are supposed to conclude treaties in good faith and with the intention of complying with them (the *pacta sunt servanda* principle). It has, however, been proven difficult to establish what the Parties' actual intention was, at the time of the conclusion of the treaty, in regard to the outbreak of hostilities.

The whole point of this topic is to determine the extent to which mutual trust among the Parties over the fulfillment of treaty obligations can be compromised in the event of an armed conflict. Consequently, the key and only ratio of this subject is to discover how to strike a balance between the trust amongst the Parties, as a prerequisite of treaty compliance, and the need for legal certainty.

While we have voiced some doubts, during the debates of the Sixth Committee, concerning certain aspects of the draft articles, Portugal agrees with them in general, and believes they are suitable for an international convention. Any further issues and comments can be raised at a later stage, within the body preparing the convention.

Mr. Chairman,

Portugal is of the opinion that the draft articles concerning the effects of armed conflicts on treaties should take the final form of a convention. Yet, we understand Mr. Caflisch's advice for

prudence in his note of 2011 on the matter. Issues like the inclusion of internal armed conflicts within the scope of application of the draft articles and the position of third States would certainly be divisive in a diplomatic conference. These are some of the issues where neither practice, jurisprudence nor doctrine offer a clear and single answer.

Nevertheless, we do not foresee that, in the short term, giving more time to States will convince them of the adequacy of all the solutions adopted by the Commission. We should strive to attain a balance between preserving the work of the Commission and insuring the stability of International Law through the adoption of a convention. Engaging in dialogue and collective thinking is often the best path.

This is why, in 2011 Portugal welcomed the Commission's recommendation to the General Assembly to take note of the draft articles in a resolution and to consider, at a later stage, the elaboration of a convention, assuming that "at a later stage" means a short period of time. Following that recommendation, the General Assembly deferred the discussion on the final form of the draft articles to the present session.

Consequently, we would like to suggest the establishment of a working group in order to allow delegations to discuss in detail their different perspectives on key substantive issues, and then decide on the possible elaboration of a convention on the basis of the draft articles.

Thank you, Mr. Chairman.