



PORTUGAL

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**Statement by
Legal Counsellor
Permanent Mission of Portugal to
the United Nations
Mr. Paulo Pinto Machado**

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Report of the International Law Commission
Cluster III**

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Mr. Chairman,

I will start my intervention by addressing the topic of **'Protection of the environment in relation to armed conflicts'**.

I wish to begin by expressing our deep appreciation to the Special Rapporteur, Ms. Marja Lehto, for her concise and focused report on the protection of the environment in situations of occupation throughout the conflict cycle.

Mr. Chairman,

The discussions on this topic confirm Portugal's view that armed conflicts are not exclusively ruled by norms and principles of International Humanitarian Law.

Indeed, the environmental impact of hostilities and other acts related to armed conflicts compromises the full enjoyment of human rights in the present and future of affected areas and regions.

As such, norms and principles of International Human Rights Law, Law of the Sea and Environmental Law must also be taken into account when considering the rights and duties of States, combatants and non-combatants, as well as those of neutral States in the region.

Mr. Chairman,

Although occupation is supposed to be a temporary situation, the fact is that even the shortest unsuitable administration of a foreign territory can result in profound and even irreversible damage to ecosystems. Resources, landscapes, human, animal and plant health can be jeopardized by policies put in place without a thorough assessment of the environmental effects of their use for soils, water, atmosphere and living organisms. Consequently, the lives and livelihoods of entire populations can be affected, not only during occupation, but also long after that occupation or the armed conflict itself has ended.

In short, the principles of discrimination and neutrality are violated when the occupying power fails to preserve the occupied territory's natural resources or to make a sustainable use of them.

Mr. Chairman,

The protection of the environment in situations of armed conflict derives from a legal framework put forward at a time when the knowledge on the environmental impact of an armed conflict and the available technology were very different from those we have nowadays. In the specific case of the protection afforded to the environment by the law of occupation, the legal framework lacks specificity and therefore calls for extraordinary

interpretative efforts on the part of military commanders. This exercise is often incompatible with the quick response needed in situations of belligerent occupation.

Nevertheless, we underline that any environmental change may have consequences on the exercise of human rights as basic as the right to life, food and safe water. In this sense – and in line with Draft Principles 19 to 21 and applicable international law –, Portugal agrees that the occupying power has positive and negative obligations concerning the management of the occupied territory and its resources.

An occupying power must therefore administer the territory in a way that takes into account the essential link between a sustainable environment and the full enjoyment of human rights of the population under its control. The present and future development of occupied areas depends on a sustainable management of its resources by the occupying power.

Mr. Chairman,

The protection of the environment by the occupying power is not in the exclusive interest or benefit of the occupied territory and its population. Such protection is in the interest of all humankind. Draft Principle 19 underlines the obligation of an occupying power to respect and protect the environment of the occupied territory. This obligation, which derives from customary and conventional law, takes into account transnational environmental concerns and universal interests.

Indeed, the environment is a common good of humankind. It should therefore be a common endeavor of States, international organizations and individuals to fight environmental degradation and to cooperate in the protection of the environment, including in situations of occupation.

Mr. Chairman,

Portugal is looking forward to next year's report and discussion on the protection of the environment in non-international armed conflicts.

As the majority of active or latent armed conflicts are of a non-international character, the work by Commission may result on a particularly useful set of draft principles on complex issues related to the responsibility and liability of non-State actors for environmental harm.

Mr. Chairman,

Let me now address the topic '**Succession of States in matters of State Responsibility**'. I would like to begin by thanking the Special Rapporteur, Mr. Pavel Šturma for the work accomplished in his second Report. We also want to thank the Commission for the stimulating debate held during its seventieth session on this topic.

Mr. Chairman,

Taking into account the report of the Special Rapporteur and the Report of the Commission, Portugal considers that the information available at this stage is not sufficient to ascertain the existence of a general rule of non-transmission of responsibility in cases of succession. We believe that this understanding is somehow reflected in the text of the proposed draft articles 6 to 11. The exceptions to the general rule of article 6 and the specific rules governing the different cases of succession of States tend to cover the majority of the known cases of succession, voiding the content of a general rule on non-transmission.

Moreover, practice shows that, in cases of succession, States tend to negotiate the questions related to responsibility. This indicates that States are able to agree on the way responsibility is allocated to each State without the need of predetermined rules on this issue. Therefore, we welcome the new paragraph 2 of draft article 1, stressing the subsidiary nature of the rules.

Against this backdrop, Portugal supports the approach followed by the Drafting Committee of changing the title and drafting of the proposed draft article 6, changing it to a provision on the attribution of responsibility instead of affirming a general rule of non-succession.

Mr. Chairman,

We would also like to see further developments on what is to be understood by particular circumstances” and “direct link” in draft articles 7, 8 and 9. It would be helpful to have the scope and meaning of these expressions explained in the Commentaries.

Mr. Chairman,

In what concerns the name of the topic, Portugal does not have any issue with changing it. However, the proposed name – State responsibility “problems” in cases of succession of States – has a negative connotation. Thus, we would suggest that the word “problems” be substituted for a more neutral one – such as “aspects” or “dimensions”.

As to the final form that the work of the Commission on this topic should take, we believe it is still premature to discuss it. Portugal thus continues to approach this project with an open mind.

Mr. Chairman,

I will 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 sixth report and to commend her once again for the contribution to the development of this topic.

Mr. Chairman,

We understand that the Commission did not have the occasion to have a thorough discussion on the procedural aspects of immunity. We thus reserve our position on this part of the topic until we have the opportunity to consider a complete set of draft articles on procedural aspects, which we hope may happen next year.

At this moment, we wish 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.

Mr. Chairman,

We also thank the Special Rapporteur for her summary of last session's debate on draft article 7.

We take this opportunity to reiterate our satisfaction with the adoption, of draft article 7 by the Commission, concerning international crimes in respect of which *immunity ratione materiae* does not apply. It is our view that the immunity should also not apply to the crime of aggression and we recommend the Commission revisiting this draft article accordingly.

Mr. Chairman,

It is Portugal's firm view that the basis for this legally complex and politically challenging topic has to be a very clear, restricted and value-laden approach. Serving the interests of the international society means a balance between State sovereignty, the rights of individuals and the need to avoid impunity.

Therefore, there is a level of non-compliance with International Law that cannot ever be exceeded. Atrocities like genocide, crimes against humanity, war crimes or even the crime of aggression cannot simply be disregarded by the operation of immunity, even if committed by a head of state, a head of government or a minister of foreign affairs.

The discussion around the immunity of State officials, both inside and outside of the ILC, is illustrative of a broader debate on the core principles that must frame the international social relations and its normative structure in the 21st century. Immunity cannot ever exist as a privileged exception that undermines individual rights and the public order.

Mr. Chairman,

To conclude Portugal's statement on this topic, we would like to encourage the Commission to continue its work and to complete its work on first reading in its

upcoming session, after considering the extremely important issue of procedural aspects and safeguards.

Thank you, Mr. Chairman.