

Statement of Portugal

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

Agenda Item 75

Responsibility of States for Internationally Wrongful Acts

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Mr. Chairman,

We are here today to discuss once again the future of the work of the International Law Commission on *Responsibility of States for Internationally Wrongful Acts*, which has been in the agenda since 2001.

Portugal is, as others, fully engaged in finding constructive solutions that would allow the General Assembly to move forward in this important topic.

The fast globalization and the extraordinary technical and scientific progress of the last decades have brought an increased complexity to international relations. Nowadays, International Law has, more than ever, a prominent role in the regulation of international relations and the edification of an international order according to the principles of peace and justice.

The regime of the Responsibility of States for Internationally Wrongful Acts is key in making existing International Law effective and more operational. In fact, the draft Articles concern secondary rules – that is, the general conditions for a State to be considered responsible for wrongful acts and the corresponding legal consequences. Those rules are, therefore, a fundamental for a robust international legal system.

Mr. Chairman,

Since 2016, the last time this topic was on the formal agenda of the General Assembly, the debate has intensified and developed.

In this regard, we would like to thank Brazil for its leadership in facilitating the substantive informal dialogue called by the General Assembly at its 71st Session. The resulting report is an important basis for our discussions and for future decisions on this matter.

Portugal would also like to thank the Office of Legal Affairs for its most recent update to the compilation on the decisions of international courts, tribunals and other bodies. The compilation is an excellent contribution to understand how the draft Articles on the Responsibility of States are being interpreted and applied. We believe it is now time to request the Secretariat for another important contribution: a report on all procedural options regarding possible action on the basis of the draft Articles, as foreseen in Resolution 71/133 of the General Assembly.

Mr. Chairman,

We sincerely believe that we are moving in the right direction and hope that those elements will help Member States to overcome the impasse in the 6th Committee.

Mr. Chairman,

Portugal's position on this matter is that the draft the draft Articles have gone through a long period of discussion, maturation and there is a relevant body of practice and case-law regarding the articles.

The continuing postponement of this decision can actually backfire against the 6th Committee and have a negative effect on the draft Articles. By simply doing nothing, this community of States is signaling a lack of interest or even the irrelevance that may as well impact the so called “organic development” of the articles. In fact, inaction by States contributes to the fragmentation of jurisprudence, which may in turn represent a step back in the codification and consolidation of the law on the Responsibility of States.

We acknowledge and understand the concerns expressed by some States about the potential uncertainty of conveying a diplomatic conference. We have carefully considered the argument on the possible negative impact that a failed negotiation process might have in the text of the articles as it stands, and that could somehow “damage” the work of the International Law Commission. Still, we believe that those risks can be minimized by defining very clearly the scope of the conference, and by conducting a comprehensive and participated preparatory work.

Portugal is therefore of the view that a Convention would provide the international system with clear rules about State responsibility for internationally wrongful acts, particular those that have serious negative effects for other members of the international society, including the threat and use of force in violation of the UN Charter, human rights violations or illegal exploitation of natural resources.

Mr. Chairman,

A negotiating process is the best way to address outstanding substantive issues and close potential gaps in International Law, and to provide all States with the ownership of the final outcome of the process.

Portugal encourages all delegations to engage with an open mind in the discussions that, hopefully, will allow us to set the procedural requirements necessary to move forward and bring onboard the remaining concerns of States.

Thank you, Mr. Chairman.