Statement of Portugal

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

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Agenda Item 79

Mr. Chairman,

Since I am taking the floor for the first time, let me congratulate you on your election as Chair of the Sixth Committee.

Allow me also to thank the Chairman of the International Law Commission, Mr. Šturma for presenting the Report on the work carried out by the Commission during its seventy-first session.

In today's statement, I will begin by making some general comments on the Commission's work. I will then address the topics 'Crimes against Humanity' and ' '. The other topics of the Report will be addressed in the coming days, according to the clusters proposed.

Introduction and other issues (Chapters I-III and XI of the Report)

Mr. Chairman,

Portugal has followed the works and outputs of the seventy-first session of the International Law Commission with much interest. We would like to note in particular the adoption on second reading of the draft Articles on 'Crimes against Humanity', as well as the adoption on first reading of the draft Conclusions on ' ' and of the draft Principles on 'Protection of the Environment in Relation to Armed Conflicts'.

We would also like to thank the oral report of Mr. Gómez Robledo on the topic 'Provisional Application of Treaties'. Portugal will submit its comments to the draft model clauses as requested.

In this sense, we find it useful that the International Law Commission has decided to include this topic in its long-term programme of work.

Mr. Chairman,

In what relates the combined work of the General Assembly and the Commission, we wish to convey the concerns – that we share with others – regarding the fulfilment by the Sixth Committee of its role in the codification and progressive development of international law. The Charter of the United Nations confers on the General Assembly this responsibility. We fear that for the past years the Sixth Committee has not been up to the task.

The Sixth Committee has to make an increased effort to favourably consider, as a principle, the recommendations of the Commission regarding its products. Otherwise interested States will look into other frameworks to negotiate and adopt international conventions. We should not outsource functions that lie primarily with the United Nations.

Moreover, although highly desirable, consensus frequently paralyses action and often blocks outcomes desired by a very large majority. Consensus should be first and foremost a way of achieving a compromise decision. It is an incentive for member states to negotiate and reach common positions to uphold the noble task that the Charter has conferred on the General Assembly.

Crimes against Humanity (Chapter IV of the ILC Report)

Mr. Chairman,

I will now turn to Chapter IV of the International Law Commission's Report and the set of draft articles adopted by the Commission, on second reading, on "crimes against humanity".

Allow me to express my delegation's appreciation to the Special Rapporteur, Mr. Sean Murphy, and to the Commission for their thorough work on this. In our view, it represents a significant advancement in the prevention and punishment of crimes against humanity.

Mr. Chairman,

fight against these crimes. In our view, these proposals are complementary and there are different ways in which they can be developed together.

However, the existence of these two projects should not be used as an excuse to not proceed with any of them.

Mr. Chairman,

To conclude, it is Portugal's position that this is the right moment to convene an international conference to negotiate and adopt a convention on 'crimes against humanity' on the basis of the draft Articles produced by the Commission.

We sincerely hope that the General Assembly rises to its responsibility under the Charter of the United Nations to codify and progressively develop international law and thus decides on the necessary steps to bring these draft Articles into life.

(Chapter V of the ILC Report)

Mr. Chairman,

I would like to address now the topic of Peremptory norms of general international law ( ).

My delegation wishes to congratulate the Special Rapporteur, Mr. Dire Tladi, on his fourth report. We would also like to commend the International Law Commission for adopting the set of 23 draft Conclusions and commentaries on this topic on first reading.

The discussion on contributes to upholding the stability of the international legal system. Adding clarity to the subject is instrumental in helping States to better identify peremptory norms of general international law and comply with them.

Portugal will submit commentaries and observations in due time, as requested by the Commission. We would like nevertheless to offer at this moment some brief remarks on the draft Conclusions.

Mr. Chairman,

Portugal has conveyed in the past some concerns regarding the identification of regional and the need for a careful approach. In our view, discussions on regional should not impair the integrity of peremptory norms of general international law as norms that are universally recognizable and applicable. They should also not lead to a confusion between the concepts of and of regional customary law.

We are thus pleased that the Commission has reached a compromise solution regarding regional . Like the Special Rapporteur, we believe that International Law does not recognize regional as it is defined by the Commission. We also support the decision of not including a draft conclusion on this matter and relying on the commentaries of the Commission.

Mr. Chairman,

Portugal has often spoken at the Sixth Committee in favor of the idea of an illustrative list of norms and, in this sense, we understand the pragmatic method used by the Commission on the non-exhaustive illustrative list.

However, although being illustrative, this list seems to be too condensed. There are other widely recognized norms that could have been listed. Moreover, as a defender of the progressive development of International Law, Portugal regrets that this list is not more ambitious – neither in number nor