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Item 84

Report of the International Law Commission on the work of its sixty-seventh session

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

The Most Favoured Nation Clause
(Chapter IV)

Protection of the Atmosphere
(Chapter V)

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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. You are an experienced delegate of this Committee and we fully trust that this will be another successful session, at this very special moment when we celebrate the 70th Anniversary of the United Nations. Our congratulations are extended to the rest of the Bureau.

Allow us also to thank the Chairman of the International Law Commission, Mr. Narinder Singh, for presenting the Report on the work carried out by the Commission during its sixty-seventh session.

In today's statement, we will begin by making some general comments on the Commission's work. We will then address the topics "Most-Favoured Nation clause" and "Protection of the Atmosphere". The other topics of the Report will be addressed in the coming days, according to the clusters proposed.

Portugal has followed with much interest the work and outputs of the sixty-seventh session of the International Law Commission. Not only we commend the Special Rapporteurs for the comprehensive reports presented, but we would also highlight the work of the Drafting Committee - under the able Chairmanship of Mr. Mathias Forteau.

Mr. Chairman,

Regarding the interaction of the ILC with the Sixth Committee, we would like to share some general comments and offer some ideas on what could be improved.

We continue to believe that Chapter III of the Report of the ILC, where specific issues on which comments of States that would be of particular relevance to the Commission are identified, is most useful. Lately, the requests have been focused on State practice and domestic legislation. It has to be recognized that, for many States, it is sometimes difficult to keep up with such requests, and this is valid also for the comments produced to the Report itself during the Sixth Committee debate. Of course, this should be improved from the side of States, but we encourage the Commission to continue to survey State practice in general for its codification work.

As regards progressive development, we are of the view that the ILC should propose it whenever necessary or justified to address new trends in contemporary international relations. This is one of the added values of the

Commission's work, it is part of its mandate and should not be overlooked. If one recalls Article 13 of the UN Charter and Article 1 of the ILC Statute, the task of promoting progressive development of international law comes before its codification. What should be meant by progressive development and its relation to codification, however, could benefit from a more careful analysis, 70 years past the adoption of the Charter. In any case, when embarking upon progressive development, the ILC should attempt to clearly identify it in its work and should follow the needs of States and respect their concerns.

To increase the participation of States in the task of progressive development and codification of International Law, and to make this process as inclusive and plural as possible, we reiterate our suggestion that, in the context of the UN Programme of Assistance on International Law, priority should be given to aiding the development of national legal services with trained human resources in order to enhance a broader participation on the process of codification and progressive development of International Law. After all, if this is the core mandate of the ILC, it is also a responsibility of the States that are members of the international community and one they should not shy away from.

Mr. Chairman,

Let me restate that we are pleased to note the inclusion in the programme of work of the topic "Jus Cogens". As we had the opportunity to state in the past, "*jus cogens*" is a topic of the utmost importance, since international peremptory norms protect the basic values of the international community. In spite of the contributions by doctrine, case-law and the ILC itself, the content of *jus cogens* and its relation with other International Law norms and principles continues to require clarification. We are very much looking forward to the first report of the appointed Special Rapporteur, Mr. Dire Tladi, and consider that the 2014 Syllabus that he presented is a good working basis.

As to the future work of the Commission and possible new topics, we welcome that the Commission has requested the Secretariat to review the list of possible future topics established in 1996 and prepare for its consideration a list of potential topics accompanied by brief explanatory notes. In the same vein, we note with satisfaction that the ILC has reconstituted its Working Group on Long-Term Programme of Work and that the Secretariat has issued a Working Paper, which we will carefully study.

Mr. Chairman,

To conclude this part of the intervention, we would also reiterate our praise to the contribution of the Secretariat to the work of the ILC. In particular, we pay tribute to Mr. Korontzis for his longstanding contribution acting as Director of the Codification Division and Secretary of the International Law Commission. The Portuguese Delegation wishes him all the best in his future endeavors and congratulates Mr. Huw Llewellyn on his new appointment.

Mr. Chairman,

Allow me now to turn to **Chapter IV of the Commission's Report on the topic of 'The Most-Favoured-Nation Clause'**.

Portugal welcomes the final report of the Study Group on 'The Most-Favoured-Nation clause' and would like to pay a special tribute to the Study Group and its Chairman, Mr. Donald McRae, for their valuable contribution to the development of this topic.

The final report on the work of the Study Group provides an excellent overview and analysis of the contemporary relevance of MFN clauses and the issues concerning their interpretation, including in the context of the major recent trends in investment and trade treaties.

Portugal endorses the conclusions reached by the Study Group underlining the continued relevance of the core provisions of the 1978 draft articles and the Vienna Convention on the Law of Treaties in the interpretation of MFN clauses.

Mr. Chairman,

With regard to the application of MFN clauses to dispute settlement provisions in investment treaty arbitration, we would like to highlight the need to address the potential overlap between substantive and procedural rules, which could be achieved by means of a carefully worded treaty provision.

The outcome of the Commission's work on this topic will provide an important contribution to the ongoing debate on the regime of international investment treaties and the related dispute settlement mechanisms.

Overall, Portugal fully agrees with the approach taken and endorses the outcome of the work of the Study Group. The final report is based on a comprehensive and updated analysis of this highly complex topic and its conclusions are of unquestionable practical value to all stakeholders.

Mr. Chairman,

I will now address the topic **'Protection of the Atmosphere'** included in the programme of work of the ILC in 2013. Allow me to start by thanking the Special Rapporteur, Mr. Shinya Murase, for his second report on this pressing matter.

Portugal supports a balanced and positive approach to this topic and recalls that there is a growing consensus within the international community in relation to the need of addressing critical questions concerning the protection of the atmosphere.

In our perspective, the inclusion of the protection of the atmosphere in the Commission's programme of work has the potential to contribute to the enhancement of international environmental law.

Mr. Chairman,

We support the adoption of the concept of *'common concern of humankind'*, as proposed in the Special Rapporteur's report, as it provides the adequate conceptual framework to address the legal questions of the atmosphere.

The concept of the common concern of humankind has been established in State practice and relevant literature. It found universal acceptance in the first preambular paragraph of the 1992 UN Framework Convention on Climate Change, a legally binding international law treaty, which encompasses the protection of the atmosphere.

More recently, the 2030 Agenda for sustainable development, which characterizes "natural resource depletion and the adverse impacts of environmental degradation (...) as *challenges which humanity faces*", was adopted by consensus.

The principle of 'common concern of humankind' entails on the one hand, the acceptance that harm to the atmosphere resulting from human activities adversely affects all humankind, and on the other hand, the recognition that the international community must take joint action to protect this limited natural resource.

We will continue to follow with interest the forthcoming work of the Commission on this issue.

Thank you Mr. Chairman