



PORTUGAL

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Statement by

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Ministry for Foreign Affairs of Portugal,
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Sixth Committee

Agenda item 81

Report of the International Law Commission

Cluster II

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Mr. Chairman,

Allow me to address the topic '**Protection of the Atmosphere**' and to congratulate the Special Rapporteur, Mr. Shinya Murase, for his fourth report on this matter.

The level of impact of the degradation of the atmosphere on society, as well as its prevention, mitigation or even reversal, depends on the ability of human communities to change behaviors at political, technological, economic and lifestyle levels. Therefore, in terms of legal analysis, there is an imperative to address the problematic from a 'cause and effect' perspective.

Portugal reiterates the need for a balanced and positive treatment of this topic. We reaffirm our understanding that there is an obligation of States to protect the atmosphere. Only by taking joint action it will be possible to face this pressing and growing demand.

Mr. Chairman,

While we agree with the ideas of "interrelationship" and "mutual supportiveness" between different areas of international law, we still consider it necessary to emphasise that international law should be interpreted and applied in accordance with the relevant principles of international law concerning interpretation and application as expressed in Draft Guideline 9, as adopted by the Commission.

The present work by the International Law Commission is, nevertheless, an important opportunity to develop guidelines and promote mechanisms that could lead States to consider adopting common norms, standards and recommended practices that promote atmospheric protection, in connection with trade and investment law, law of the sea and human rights law.

Mr. Chairman,

I wish to now address the second topic of this cluster which is "**Immunity of State Officials from Foreign Criminal Jurisdiction**".

At the outset, Portugal would like to take this opportunity to thank the Special Rapporteur, Ms. Escobar Hernández, for her work on the topic. This is indeed a topic of the utmost importance and in relation to which we hold high expectations.

Mr. Chairman,

Portugal believes that the basis for this complex and challenging topic has to be a very clear and value-oriented approach. Law is not neutral and it has to reflect the fundamental values of a given society. To best serve the overall interests of the international community a careful balance has to be struck between State sovereignty and equality, the rights of individuals and the need to avoid impunity for serious crimes under international law.

It is our conviction that, to strike this balance, the Commission has to identify the existing rules of International Law, but it has also – as it is foreseen in its mandate – to embark upon an exercise of progressive development.

This progressive development has to take into account that immunities are an important tool for the conduct of foreign relations, but they should be interpreted and applied within the context of the current evolution as far as fundamental human values that have a jus cogens status are concerned.

Mr. Chairman,

For the reasons above, Portugal commends the Commission for having adopted draft Article 7 concerning international crimes in respect of which immunity *ratione materiae* does not apply.

Concerning the international crimes covered by draft Article 7, however, we do believe that the immunity should also not apply to the crime of aggression – a crime that is also recognized in the Rome Statute. Not only the crime of aggression is one of the most serious crimes of international concern, but the rationale behind the inclusion of the other crimes listed applies entirely to the crime of aggression. We thus call upon the Commission to revise its position regarding this matter during the second reading on the topic.

Mr. Chairman,

To conclude, we encourage the Commission to continue its work on this topic and to complete next year its work on first reading, after considering the extremely important issue of procedural aspects and safeguards.

Thank you, Mr. Chairman.