



Statement of Portugal

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

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Agenda Item 79

**Report of the International Law Commission on the work of its
Seventy-First Session – Cluster III**

Check against delivery

Succession of States in respect of State Responsibility (Chapter VII of the ILC Report)

Mr. Chairman,

Let me begin by addressing the topic "Succession of States in matters of State Responsibility".

My delegation would like start by thanking the Special Rapporteur, Mr. Pavel Šturma for his third Report. We would also like to commend the Secretariat for the Memorandum providing information on multilateral and bilateral treaties, which is of relevance not only to the future work of the Commission but also as a repository of information for States, academia and others.

We would like to recall that, among the information used by the Secretariat for this Memorandum, is the one provided by Portugal in 2018 in the context of a previous request for information made by the Commission in a previous session. At the time, Portugal researched on materials related with the decolonization process in the 1970s, including national legislation passed at the time, relevant decisions of the higher courts and independence agreements concluded with the then new States. None of those elements addressed the specific issue of the succession or the distribution of rights and obligations arising from internationally wrongful acts of the predecessor State.

Mr. Chairman,

Portugal appreciates the several clarifications made by the Special Rapporteur in its Report, in particular in what concerns the exclusion of

both the automatic extinction of responsibility and the automatic transfer of responsibility in cases of succession of States.

In addition, we are pleased to note that the Commission acknowledges that State practice is diverse, context-specific and sensitive. Indeed, State practice on these matters does not offer enough basis for affirming the existence of a general rule in connection with State succession.

In light of this, Portugal agrees that the draft articles should be of a subsidiary nature and that priority should be given to agreements between the concerned States. We are pleased that paragraph 2 of Draft Article 1 makes this clear.

Such agreements have, of course, to be concluded in good faith and taking into consideration the principle of sovereign equality. The draft Articles can be a useful reference for the negotiation of those agreements.

Mr. Chairman,

Portugal keeps an open mind regarding the title and final outcome of this topic.

However, the title and final outcome of a topic are important guides for defining the object and scope of the work the Commission is to develop on that same topic. We understand that bringing more clarity to the title and final outcome could be beneficial, especially for the discussion of those issues where there are differences among Members of the Commission.

Mr. Chairman,

We will continue to follow closely the work of the Commission on this matter, with the hope that the topic can soon be completed on first reading.

General Principles of Law (Chapter IX of the ILC Report)

Mr. Chairman,

Moving on to the topic of General Principles of Law, I would like to start by thanking the Special Rapporteur, Mr. Marcelo Vázquez-Bermúdez, for his work in producing the first report on this subject. We find the report to be well structured and with a good level of in-depth research, providing a solid basis for the work to be carried out in the future.

My delegation also wishes to recognize the effort of the Commission in having a solid and constructive discussion on General Principles of Law as a source of International Public Law and for presenting the first draft conclusions on this matter.

Mr. Chairman,

The subject is of course not new; but Portugal welcomes the fresh approach to it. We thus deem the inclusion of General Principles of Law in the programme of work of the Commission as being opportune, complementing the existing work on other sources of international law and providing guidance on its nature, identification, application and relation with other sources of international law.

As mentioned in the report of the Special Rapporteur, there is a long history of references to the General Principles of Law - whether we look at international instruments or at the judicial practice across different jurisdictions - which shows their strong relevance to international law.

Although it is important to study the relationship between the several sources of international law, it should be avoided the establishment of a hierarchy among them. It should also be taken into consideration that the General Principles of Law, besides setting the ethical-normative scene for other norms, they have a supplementary role of filling the gaps and avoiding rulings of *non liquet*.

In the light of the above, Portugal cannot but concur with draft Conclusion 1.

Mr. Chairman,

Regarding the elements that comprise the General Principles of Law, Portugal agrees with the fundamental and general nature of the principles. It also takes good note of the two-step analysis proposed by the Special Rapporteur regarding recognition with respect to general principles of law derived from national legal systems.

We are convinced that further study should be carried out on what the element of recognition entails. This is an exercise with a certain methodological complexity.

Finally, the term "civilized nations", expression already used in the Statute of the Permanent Court of International Justice dated from almost 100 years ago, is clearly outdated and has no relevant meaning today.

We would nevertheless recommend some caution in simply interpreting the term “civilized nations” as “States” as provided for in draft Conclusion 2. In our view, one of the relevant developments in the last 100 years is precisely the role that international organizations have in the formation of international law. Therefore, before reaching any conclusion regarding this matter, we would encourage the Commission to study further the role of international organizations in the formation and recognition of general principles of law.

Mr. Chairman,

In what concerns draft Conclusion 3, Portugal agrees with the two categories of General Principles of Law as proposed by the Special Rapporteur: general principles derived from national legal systems and general principles formed within the international legal system.

We look forward to the work of the ILC regarding the elements for the identification of principles in each of those two categories. It would be of particular interest to us learning the Commission’s views on what qualifies as a principle “common to the majority of national legal systems or to principal legal systems of the world”.

Mr. Chairman,

In conclusion, it is Portugal’s opinion that the three draft Conclusions on General Principles of Law submitted by the Commission constitute a solid first step to revisit with a fresh look this source of International Law, showcasing the Commission’s fundamental role as an active interpreter and guiding body in what concerns International Law.

Thank you Mr. Chairman.