



## **Statement of Portugal**

**at the 74<sup>th</sup> Session of Sixth Committee of the General Assembly**

**Agenda Item 81**

**Consideration of Prevention of Transboundary Harm from  
Hazardous Activities and Allocation of Loss in the Case of such  
Harm**

*Check against delivery*

Mr. Chairman,

Portugal would like once again to acknowledge the adoption by the General Assembly of the draft Articles on prevention of transboundary harm from hazardous activities and of the draft Principles on the allocation of loss in the case of such harm. It was a positive step towards the creation of measures for the prevention, mitigation and compensation of harm and loss caused by incidents involving hazardous activities.

Regrettably, we are still far away from the 2001 and 2006 recommendations by the International Law Commission. We recall that the Commission recommended the elaboration of a convention on the basis of the set of draft Articles on the prevention of transboundary harm from hazardous activities; as well as the endorsement, by the General Assembly, of the draft Principles on the liability aspects.

Mr. Chairman,

We are grateful for this year's Report of the Secretary-General containing a compilation of decisions of international courts, tribunals and other bodies. The report shows – few but interesting – examples between June 2016 and June 2019 on how the draft Articles and the draft Principles were specifically referenced to in the decisions of the national courts of two Member States and in an advisory opinion of the Inter-American Court on Human Rights on the environment and human rights.

This type of information is relevant for our discussions and we hope that the Secretariat can continue updating the compilation.

Mr. Chairman,

Portugal considers that this topic should be analyzed under the light of its own history and of the purposes of codification and progressive development of International Law, which should be harmonious and coherent.

Concerning the progressive development, it must be underlined that, more than “human rights in relation to the environment”, a human right to environment is becoming a staple in International Human Rights Law. We can only expect that regional human rights courts, tribunals and other relevant bodies will be increasingly called upon to deliver decisions and opinions on the recognition and scope of this human right – as shown by the example of the advisory opinion of the Inter-American Court on Human Rights considered in the Report of the Secretary-General.

The draft Articles and draft Principles can indeed serve as a point of departure for progressive development and progressive interpretations of International Environmental Law.

Additionally, it is important to keep in mind that the prevention of transboundary harm, on one hand, and the international liability in the case of loss from transboundary harm, on the other, are included under the same main topic (‘International Liability for Injurious Consequences Arising out of Acts not Prohibited by International Law’). Therefore, the two phases of the main topic – that is, the moment before the transboundary harm (prevention) and the moment following the transboundary harm (loss) –, should be dealt together, with equal legal nature and enforceability.

Mr. Chairman,

Portugal hopes that one day it will be possible to have a single convention on 'Prevention of Transboundary Harm from Hazardous Activities and Allocation of Loss in the Case of Such Harm'. A convention in which State responsibility on this matter is adequately established and under which an effective and fair system of due compensations for the effects of lawful activities of States can be put in place.

Having said that, and in conclusion, Portugal is of the view that, for the time being, it would already be a significant step forward to achieve a whole set of draft Articles or even of draft Principles addressing prevention and allocation of loss together, for the sake of the mentioned need for coherence.

Thank you, Mr. Chairman.