

Statement of Portugal

at the 77th Session of Sixth Committee of the General Assembly

Agenda Item 73

Responsibility of States for Internationally Wrongful Acts

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Mr. Chairman,

The time has come once again to discuss the future of the work of the International Law Commission on *Responsibility of States for Internationally Wrongful Acts*, which has been in the agenda of this Committee since 2001. As others, Portugal is fully engaged in finding constructive solutions that would allow the General Assembly to take a decision and move forward on this important topic.

The complexity of international relations continues to increase and recent developments have shown that International Law has a prominent role in the regulation of international relations and the edification of an international order according to the principles of peace and justice.

The regime of the Responsibility of States for Internationally Wrongful Acts is key in making existing International Law effective and more operational.

Mr. Chairman,

Since the last time this topic was on the agenda of the General Assembly, during its 74th Session, and despite the impacts of the COVID-19 pandemic, we have sought to continue the informal debate ahead of the current session, as foreseen in Resolution 74/180. We particularly note informal events celebrating the 20th anniversary of the adoption of the Articles, which provided opportunities to reflect on the importance and standing of the draft articles, as well as on the future of its consideration in the Sixth Committee.

Portugal would like to thank the Secretary-General for updating the compilation on the decisions of international courts, tribunals and other bodies and for the updated version of the technical report listing. This compilation continues to be an outstanding contribution to understand how the draft Articles on the Responsibility of States are being interpreted and applied, and hope that these various elements will help the discussions at the 6th Committee.

Mr. Chairman,

Portugal position on this subject is clear. The draft Articles have gone through a long period of discussion, maturation and there is a relevant body of practice and case-law regarding the articles. The time has come, we believe, to reach a decision on the topic.

Indeed, failing to do so may have a negative impact not only on the draft Articles themselves, but also on the Sixth Committee for its perceived lack of ability, or willingness, to both *advance* a discussion on such an important topic, and *reflect* the intention of several delegations to use this forum as the setting for a substantive debate on the subject. The continuous postponement of a decision on the way forward can be understood as a lack of interest on or even as irrelevance of the draft Articles.

Furthermore, as we have stated in the past, we consider that the inaction by States contributes to the fragmentation of jurisprudence, which may in turn represent a step back in the codification and consolidation of the law on the Responsibility of States.

Mr. Chairman,

My delegation has heard the concerns expressed by some States about the potential uncertainty of convening a diplomatic conference. Namely, we have taken careful consideration of the argument on the possible negative impact that a failed negotiation process might have on the draft Articles, as well as on the work of the International Law Commission. These are not irrelevant concerns. Even so, we feel that those risks can be minimized by defining very clearly the scope of the conference, as well as by conducting a comprehensive and participated preparatory work, and we remain convinced that the benefits of codification far outweigh the risks.

Practice shows that the codification of International Law under the auspices of the United Nations is a step-by-step process that may benefit from the work of different bodies and follow different procedures, including with a view to addressing and minimizing potential concerns by Member States and making progress in a balanced and stepwise manner.

To that end, and to feed into the debate at the Working Group this year, Portugal, together with Argentina, Lebanon, the Federated States of Micronesia, and Mexico, will be presenting a document that provides an overview of the options the GA has used in the past when dealing with ILC products. We hope that it may be useful for the discussions on the future of different topics on the 6th Committee's agenda, including on the topic Responsibility of States.

Mr. Chairman,

We believe the time has come for States to take action on this topic and a negotiation process is, in our view, the way to address any remaining outstanding issues and give States the ownership of the final outcome of the process.

Portugal would like to encourage all delegations to engage with an open mind in the discussions, which hopefully will allow us to set a concrete roadmap on the procedural requirements necessary to move forward.

I thank you, Mr. Chairman.