



Report of the International Law Commission on the work of its seventy-fifth session
(Agenda item 79)

CLUSTER I

Mr. Chair,

Since I am taking the floor for the first time, I wish to congratulate you on your election as Chair of the Sixth Committee.

Allow me also to thank the Chairperson of the International Law Commission, Mr. Marcelo Vázquez-Bermúdez for presenting the Report on the work carried out by the Commission during its seventy-fifth session.

In today's statement, my delegation will begin by making a few general comments on the Commission's work, including on Chapter XI of the Report, "Other Decisions and Conclusions". We will then address the topics "Immunity of State officials from foreign criminal jurisdiction" and "Sea-level rise in relation to international law".

The other chapters of the Report will be addressed in the next days, according to the clusters that have been proposed.

In the interest of time, my delegation will deliver an abbreviated version of its statements. The full statements will be made available for publishing on the website of the Committee.



General comments and other decisions (*Chapters I, II, III, XI*)

Mr. Chair,

Portugal has followed the work and outputs of the International Law Commission during its seventy-fifth session with great attention. We note in particular the provisional progress made under topic “Sea-level rise in relation to international law” with a view to consolidate and finalize the work undertaken at the Commission’s session in 2025.

My delegation would also like to welcome the Commission’s decision to include in its long-term programme of work the topic “*Compensation for the damage caused by internationally wrongful acts*” and the topic “*Due diligence in international law*”. If put on the active agenda, these topics will be another relevant contribution for the progressive development of the Commission’s work on international responsibility and general principles of law. It would be important, however, not to overburden the agenda of the Commission, so careful consideration should be given on when to take them up considering other ongoing and possible topics.

Mr. Chair,

In our introductory remarks we would also like to refer once again to the broader issue of codification and progressive development of international law under the auspices of the United Nations.

As we all know, the Charter establishes this task as a core function of the General Assembly. And history shows that its contribution to international law has been immense.



However, in cases where the ILC has expressly recommended the adoption of draft articles as a convention, the 6th Committee has chosen not to act and prioritize consensus.

Although highly desirable, consensus frequently paralyses action and often blocks outcomes desired by a very expressive majority. Consensus should be first and foremost a way of achieving a compromise decision. It is an incentive for member states to negotiate and reach common positions to uphold the noble task that the Charter has conferred on the General Assembly.

It seems to us that we should address this issue and seek to improve our working methods so as not to undermine the potential of the contribution of the ILC and the 6th Committee.

As such we believe that we – the 6th Committee, along with the Commission – must engage on a serious reflection on working methods and procedures for following up on the work of the ILC, namely when it comes to codification.

Immunity of State officials from foreign criminal jurisdiction (*Chapter VII*)

Mr. Chair,

Allow me to address the topic **“Immunity of State officials from foreign criminal jurisdiction”**.

My delegation strongly supports the work of the International Law Commission on this topic, which is of the highest importance for fighting impunity and maintaining international peace and security.

Immunity, including at the highest level, can never exist as a privileged exception that undermines individual rights or public order.



Mr. Chair,

We thank the Special Rapporteur, Mr. Claudio Grossman, for his first report, and commend the pragmatic approach under which he decided to cover only draft articles 1 to 6 at this stage.

Portugal takes good note of the work that was achieved this year by the Special Rapporteur, and the Commission, on this topic.

We particularly note the discussions on draft articles 5 and 6, since the relationship between immunity *ratione personae* and immunity *ratione materiae* provides an interesting background for next year's discussions on draft article 7 – which is dedicated to international crimes for which immunity *ratione materiae* does not apply.

Mr. Chair,

In its report, the International Law Commission noted that it would appreciate hearing further from Governments concerning draft articles 7 to 18 and the draft annex of the draft articles on immunity of State officials from foreign criminal jurisdiction.

Earlier this year, my country submitted written information to the Commission focusing on draft article 7. The content of this draft article is key to the success of the whole of the draft articles.

As was stressed on that occasion, Portugal believes that atrocities such as genocide, crimes against humanity, war crimes and the crime of aggression cannot simply be ignored by the operation of immunity.



We thus reiterate our recommendation for the Commission to include the crime of aggression in draft article 7. Under International Law, the prohibition of aggression is crucial for maintaining peace, promoting global justice, preventing the abuse of State power and dissuading States from engaging in actions that could trigger hostilities.

The inclusion of this crime within the jurisdiction of certain international tribunals has already shown that the international society seeks to prevent unnecessary conflicts and preserve a stable global environment by recognising and criminalising the illegitimate use of force between States, holding decision-makers accountable for such internationally wrongful conduct.

Mr. Chair,

To conclude, Portugal looks forward to the next steps in the work of the Commission on these Draft Articles, as it follows on to discuss draft articles 7 to 18 and moves towards completing a second reading.

Sea-level rise in relation to international law (*Chapter X*)

Mr. Chair,

I will now turn to the topic “**Sea-level rise in relation to international law**”. In doing so, Portugal would like to commend the Commission once again for its outstanding contribution to this topic and, in particular, to thank and acknowledge the co-Chairs of the Study Group, Ms. Patrícia Galvão Teles and Mr. Juan José Ruda Santolaria, for their thorough and enlightening work.

Mr. Chair,



This topic remains of great importance — of existential importance, I would say. For the first time, global warming exceeded 1.5° C across an entire year in 2023, according to the EU's climate service. Global mean sea level reached a record high. Portugal is aware that many SIDS currently face frightening and burdensome risks, including rising sea levels, food and water security, natural disasters, pollution, loss of unique biodiversity and in some instances threats to statehood. Indeed, increasing global warming amplifies the exposure of small islands, low-lying coastal areas and deltas to the risks associated with sea level rise and extreme sea level events. Moreover, this situation is particularly unfair for SIDS, whose carbon emissions have historically been among the lowest in the world.

The effects of sea-level rise can vary significantly for different reasons. One distinguishing feature is whether the land surface of the affected state is only partially or completely flooded. In the first case, the land surface may be affected by erosion and salinization and may become uninhabitable because there is no adequate freshwater supply. In this case, the population may be forced to relocate within the territory or migrate to another State. The second scenario is that of total submersion, in which the land surface of the State becomes completely covered by the sea. Depending on which scenario the State in question finds itself in, the measures to be adopted differ.

In any of the scenarios, it is necessary to promote and strengthen the resilience of communities and ensure that ecosystems can adapt to the new circumstances. International cooperation is an essential principle of international law enshrined in many international instruments, including the UN Charter, UNCLOS, the UNFCCC, the Paris Agreement and more recently the BBNJ Treaty.

Innovative and practical cooperation requires technical and logistical assistance, human resources, and financial support, especially for States that are particularly affected by the phenomenon of climate change induced sea-level and do not have sufficient capacities of their own.



In similar circumstances, Portugal has worked with partner countries to help alleviate the adverse impacts of climate change, such as for example in Cape Verde, São Tomé and Timor-Leste.

Mr. Chair,

Allow me to address specific issues discussed in this year's report of the Commission.

As far the legal implications of sea-level rise are concerned, the aim should not be to grant new rights, but to ensure the preservation of existing rights that are legitimate under international law, including the preservation of statehood, of the maritime zones and the rights over the natural resources present in such areas and the protection of persons affected by sea-level rise.

Portugal supports the search for legal solutions to the challenges posed by rising sea levels associated with climate change that fully respect structural principles and rules of international law, such as the principles of self-determination, sovereign equality and human rights law. Legal stability, certainty and predictability, the maintenance of peace and security, and equity should be guiding principles to any legal solutions.

In this context, I would like to focus on one specific issue discussed in the Commission's report, namely that of the presumption of continuity. Portugal agrees that the objective criteria provided for in the Montevideo Convention are relevant for the establishment of a State and that the fact that an internationally recognized State no longer meets all these criteria is a sufficient reason for it to automatically cease to exist.

There are convincing legal arguments in favor of this position, including the need to preserve international peace and security and the principles of stability, certainty, and predictability. Indeed, the sudden disappearance of a State — any State — with all the ensuing legal



consequences would jeopardize the existing delicate balance of the international community with unpredictable geopolitical, economic, and social consequences. Such a degree of uncertainty is intolerable, which is why international law cannot and does not tolerate it and the presumption of continuity is legally sound.

Mr. Chair,

In addition to the problems concerning statehood and maritime zones, sea-level rise not only affects person in vulnerable situations, but as the capacity to place others in such a state of vulnerability. As regards the protection of persons, the international legal framework potentially applicable to the protection of persons affected by sea-level rise is fragmented and does not specifically address sea-level rise. Be that as it may, Portugal believes that human rights in general and human dignity as an overarching principle in particular must be upheld at all times. In this context, the protection of cultural heritage can only be seen as an expression of the rights of indigenous peoples and must be upheld and developed.

Portugal fully supports international and regional initiatives that seek to obtain more political and legal clarification on the obligations of States in relation to climate change, including through advisory opinions of international courts and tribunals and high-level initiatives. Accordingly, Portugal has actively participated in the advisory proceedings before the International Tribunal for the Law of the Sea (ITLOS) in the request brought by COSIS (Commission of Small Island States) and is currently involved in the advisory proceedings before the International Court of Justice following the initial initiative of Vanuatu regarding the obligations of States in respect of climate change. Portugal particularly welcomes the conclusions of ITLOS and considers them an important exercise that clarifies the obligations of States to protect and preserve the marine environment under UNCLOS.



In addition, Portugal participated in the high-level plenary meeting of the General Assembly that will take place on September 25, 2024, on the topic of “Addressing the threats posed by sea level rise”. Portugal is committed to creating a common understanding, mobilizing political leadership, and promoting cooperation between different sectors and stakeholders as well as international cooperation to address the threats posed by sea level rise.

We look forward to receiving and analyzing the final report of the Commission on this relevant topic.

I thank you, Mr. Chair.