

Statement of Portugal

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

Agenda Item 77

Mr. Chairman,

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

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Mr. Chairman,

Concerning the topi F 36XFFHV VLRQ RI 6WDWHV LQ UHVSHFW RI
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report, which is devoted to both general issues regarding succession of States and international responsibility for wrongful acts, including the issue relating to the plurality of States in the context of succession.

Mr. Chairman,

Portugal is aware that the lack of a coherent and consistent international practice on the issue of the succession of States in respect of State responsibility complicates any exercise of codification of international law. In this context, Portugal welcomes the decision of turning the draft articles into draft guidelines. Such output can still contribute significantly to greater clarity and understanding on this issue.

We also take good note of the assurances given by the Special Rapporteur that it is not his intention to question or rewrite the general rules on State responsibility. *Although the 2001 Draft Articles on Responsibility of States for Internationally Wrongful Acts have not yet been adopted as an international convention, many international tribunals, including in the context of investor-State disputes, have relied on them in their decisions. The draft articles have proven to be a useful international tool. Portugal therefore believes that they should be used as one of the starting points for analyzing international responsibility in the context of state succession.*

With regard to the importance of the concept of equity in the division of responsibilities among successor States, Portugal joins those who consider it an indispensable mechanism. However, we also consider important to examine more closely how the concept has been used in the various historical examples of State succession, given the underlying uncertainty of the concept. *This may be of particular importance when a decision is to be made on how to proceed with the division of responsibility if the States concerned have not done so at the time of the succession.*

Mr. Chairman,

I would like now to address more specific questions regarding Draft Guidelines 11 and 14, as well as Draft Guidelines 12(2) and 13.

Given the scope of Draft Guidelines 11 and 14, there does not appear to be a defensible reason for using different methodologies and terminology in the two Draft Guidelines.

Furthermore, in both draft guidelines, the only relevant element for the formation of two or more successor States is the parts of the territory of the predecessor State. It is well known that, in addition to the qualification of a "defined territory," States must usually have a permanent population. Therefore, the question arises whether an existing sovereign state that incorporates the population of the predecessor state is covered by Draft Guideline 10bis, paragraph 1, and Draft Guideline 13bis, paragraph 1. FLQDOOI LW LV QRW FOHDU ZKDW ³SDUWLFXODU or more successor states being entitled to invoke the responsibility of the wrongdoing state under Draft Guideline 14. Therefore, we would welcome additional clarification in this regard.

Mr. Chairman,

In what concerns Draft Guideline 12, it is not entirely clear whether the reference to "a successor State" includes the same situation addressed in draft Guideline 13. However, it seems unlikely that this is the case. Therefore, Portugal would welcome further clarification on the exact scope of these two provisions and their interaction.

Mr. Chairman,

Portugal has been following closely the discussions by the Commission on this topic. We are looking forward to its conclusion on first reading.

Mr. Chairman,

Let me now turn to Chapter VIII of the Report of the International Law Commission, **GHYRWHG WR WKH WRS LF RI 3*HQHUDO 3ULQFLSOHV RI** thanking the Special Rapporteur, Mr. Marcelo Vázquez-Bermúdez, for his third report, which addressed the issues of transposition of general principles of law formed within the international legal system and of the functions of general principles of law and their relationship with other sources of international law. Furthermore, it proposed five draft conclusions.

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adopted draft conclusions 3, 5 and 7 and their respective commentaries and also took note of draft conclusions 6, 8, 9, 10 and 11.

Mr. Chairman,

Portugal would like to recall that it believes that this topic gives the Commission a chance for complementing its existing work on other sources of international law and for providing added guidance on the nature, identification, and application of the

general principles of law, as well as on their relationship with other sources of international law.

Being a topic of such great relevance, we welcome the fact that the Commission seems to be mov

Mr. Chairman,

In previous years, Portugal expressed its understanding that, while studying this topic, the Commission should avoid establishing a hierarchy between the several sources of international law. In this sense, we welcome Draft Conclusion 11, paragraph 1, as adopted by the Commission, which affirms the absence of a hierarchy. *Accordingly, we cannot support the opinion expressed by some members of the Commission that Article 38 of the Statute of the International Court of Justice sets an informal hierarchy between sources of international law.*

Mr. Chairman,

To finalize our statement on this topic, allow me a brief comment on the functions of General Principles of Law.

We agree with the view that was expressed by some members of the Commission that the gap-

