



# PORTUGAL

## 71<sup>st</sup> Session of the General Assembly

Item 79

### Report of the International Law Commission on the work of its sixty-eight session

**Protection of the environment in relation to armed conflicts**  
(Chapter X of the Report)

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

**Provisional application of treaties**  
(Chapter XII)

**Statement by**  
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Mr. Chairman,

Portugal continues to follow with great interest the topic “**Protection of the Environment in relation to Armed Conflicts**” included in the programme of work of the ILC in 2013 and commends the Special Rapporteur, Ms. Marie Jacobsson, for her work.

This is a topic that has particular relevance in a world where an increased number of armed conflicts affect the environment. We welcome therefore the drafting of principles that are aimed at enhancing the protection of the environment in relation to armed conflicts through preventive and remedial measures, as well as the minimization of damage to the environment during such conflicts.

Mr. Chairman,

As we have already stated, we strongly believe this topic must be approached in a comprehensive manner and should include the human rights dimension of environmental damages caused in the course of armed conflicts. We share, therefore, the view of the members of the Commission that supported the inclusion of references to human rights in the draft principles.

However, it should not be forgotten that the focus of the work is the protection of the environment and, therefore, references to environmental damages or environmental protection have to be clearly expressed in the text of the draft principles, especially in Principles III.3 and III.4, regarding remnants of war.

Mr. Chairman,

We continue support a temporal approach to the subject, covering all three phases of an armed conflict – before, during and after conflict. However, the systematic of the draft principles does not have to follow strictly that

temporal line and we agree with the Special Rapporteur such systematic could be further analyzed.

On another point, we would also be very much interested if the Commission would focus its attention on the responsibility of non-state actors, and we would also wish to encourage the Commission to keep and foster consultations with other entities, like the ICRC, UNESCO, UNEP and other international organizations with relevant expertise. We strongly believe that in an interdependent world, the connection between related fields of knowledge is crucial for an effective development of the law.

Monsieur le Président,

Nous souhaitons à présent aborder le sujet de **l'immunité de juridiction pénale étrangère des représentants de l'État**, tout en remerciant la Rapporteuse spéciale, Mme Escobar Hernández, pour son cinquième rapport sur ce sujet.

Dans le même esprit que les remarques faites au cours des années précédentes, permettez-nous de réaffirmer notre conviction que les solutions proposées doivent démontrer le caractère exceptionnel du régime des immunités et être fondées sur une évaluation juste, équitable et raisonnable, de manière à traduire juridiquement le compromis entre la sauvegarde du rôle des États et la reconnaissance de la dignité de l'individu au sein du système international.

Monsieur le Président,

Le cinquième rapport et les débats qui se sont suivis au sein de la CDI ont abordé des questions revêtant une importance capitale pour comprendre le sujet, telles que les situations dans lesquelles l'immunité n'est pas applicable, les exceptions et les limitations à l'immunité ou encore la nature juridique de l'immunité. Un premier débat a révélé des points de vue divergents quant à l'approche suivie par la Rapporteuse spéciale, ainsi que sur la voie à suivre para la Commission.

Étant donné que la Commission a décidé de poursuivre le débat sur le rapport de la Rapporteuse spéciale dans sa prochaine session, le Portugal considère que des commentaires substantiels à ce stade seraient prématurés et, par conséquent, réserve sa position sur cette question pour l'année prochaine. Le caractère délicat et la complexité du sujet exige que les

résultats des travaux menés par la Commission découlent d'un débat approfondi et mûri. Ce débat n'a pas été conclu cette année.

Monsieur le Président,

Pour conclure notre intervention sur ce point, nous aimerions - une fois de plus - manifester notre soutien à une approche engagée et rigoureuse sur ce sujet, lequel revêt une importance fondamentale pour la communauté internationale et dont l'évolution nous continuerons à suivre avec énorme intérêt.

Mr. Chairman,

I will now turn to the topic **"Provisional Application of Treaties"** included in the programme of work of the ILC in 2012. Let me commend the Special Rapporteur, Ambassador Gómez-Robledo, for the work conducted so far.

It is a topic that Portugal continues to follow with great interest and of important practical value for legal advisors around the world. It is also a topic of considerable political interest, given the increasing need for rapid responses in international relations that are not fully compatible with the sometimes slow process of entry into force of international treaties.

The aim should be to clarify the legal regime of provisional application contained in the Vienna Conventions on the Law of Treaties. Thus, the objective should remain the development of a set of draft guidelines, possibly with model clauses.

The work of the ILC on this issue, however, should not go beyond Article 25 of the Vienna Convention on the Law of Treaties of 1969, specially having in mind that many States have domestic restrictions, including at constitutional level, as it is the case of Portugal, concerning the acceptance of provisional application of treaties.

Mr. Chairman,

As we had the occasion to state before, we consider that it would be useful for the ILC to undertake a comparative study of domestic provisions and practice on provisional application. In spite of the fact that we understand the complexities of this endeavor, the practice of States is extremely relevant and there are important differences in domestic law from State to

State regarding the possibility of accepting the provisional application of treaties.

In our view, the Commission's work has to base itself in this diversity of solutions that exist at the national level. It is certainly useful that States themselves contribute with examples of their practice and domestic regime, but it seems also necessary that the ILC conducts a comparative study of relevant domestic law and State practice with respect to provisional application.

We thus welcome, as a positive step in this direction, the Commission's decision to request the Secretariat to prepare a memorandum analyzing State practice in respect of treaties (bilateral and multilateral), deposited or registered in the last 20 years with the Secretary-General, which provide for provisional application, including treaty actions related thereto.

It would be likewise useful to include in the study the practice of regional international organizations, as suggested by the Special Rapporteur. In this regard, we very much welcome the addendum to the Fourth Report of the Special Rapporteur that contains examples of recent European Union practice on provisional application of agreements with third States. The European Union has an extensive practice of provisional application, which takes into account the different national regimes of its Member States, thus constituting a helpful example on how to reconcile the recognized interest of a rapid application of an international agreement, with the need to respect the domestic requirements of the involved States.

Mr. Chairman,

To conclude, Portugal welcomes in general the text of the Draft Guidelines 1 to 4 and 6 to 9 provisionally adopted by the Drafting Committee. The revised version of these guidelines meets many of the concerns we have expressed before this Committee. As to Draft Guideline 5 regarding the issue of provisional application by unilateral declaration, we believe that a cautious approach is warranted and we look forward to resuming the discussion on this issue next year.

I thank you, Mr. Chairman.