

PORTUGAL

United Nations Conference on the Law of the Sea

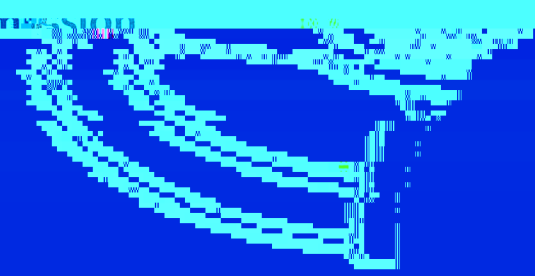
Final Act of the Conference on the Law of the Sea

Part II: High Seas

Section 1: Freedom of the High Seas

Article 87: Freedom of the High Seas

1. All States have the freedom of the high seas, and every State has the duty to join with others in safeguarding, conserving and making the best use of the high seas for the benefit of all States.



Article 88: The High Seas are Open to All States

1. The high seas are open to all States. Freedom of the high seas shall be exercised by all States in conformity with the provisions of this Part.

2. The high seas are those parts of the sea that are not included in the territorial sea or the exclusive economic zone of any State.

Mr. Chairman,

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

As Chairman of the International Law Commission, Mr.

held to celebrate the occasion, notably the commemorative events held in New York and in Geneva.

As the Commission turns seventy, it is mandatory to recall its important legacy to International Law as we know it today. ILC's achievements have become such part of the daily life of International Law practitioners that one can easily forget their origin. It

international order and has contributed immensely to peace, security, justice and the protection and promotion of human rights throughout the world for the past seven decades.

Portugal avails itself of this opportunity to praise the contribution of the Office of Legal Affairs, an inseparable partner of the Commission, to the codification and progressive development of International Law.

Mr. Chairman,

As with any celebration, this anniversary should also be an opportunity to reflect on the future of the Commission. Every now and then we hear that the ILC mission is accomplished and that there are no further matters to deal with. We wish to disagree. The new challenges we face within the increasingly fast pace of international relations demand a constant adaptation of the International Law framework. This constant adaptation is crucial, and the Commission is a relevant setting to address those

Rapporteur, Mr. Michael Wood, for his work on this subject, which enabled the Commission to successfully conclude the draft conclusions.

Portugal commends the draft conclusions as a whole and considers that they will be of the utmost importance and of high practical value to scholars and practitioners alike. Having a set of concrete and simple conclusions, aiming at assisting in the identification of rules of customary law, is certainly a useful tool.

Considering the relevance of this topic and the draft conclusions thereto, we would like to offer some brief comments on it, essentially focused on methodology.

Mr. Chairman,

We are in the context of a spontaneous form of formulation of legal norms. Its specific meaning can only become visible through an empirical social process.

The *opinio juris sive necessitates* as the psychological or subjective element of customary International Law is not easy to be inferred. But without this element, what

bodies, statements delivered and compliance with International Humanitarian Law. They should also reflect the contribution of State activity to the development of international customary law, namely by detailing the circumstances in which such resolutions may be evidence of customary international law or contribute to its development.

To conclude, Mr. Chairman, Portugal wishes to praise again the Commission for this accomplishment. We would like to convey our hope that these conclusions may help in

practice to provide more certainty and clarity in the identification of Customary International Law.

Mr. Chairman,

I will now turn to the topic **Subsequent agreements and subsequent practice in relation to interpretation of treaties**. I would like at the outset to congratulate the Special Rapporteur, Mr. Georg Nolte, on his final report and to praise his work on this topic.

~~Now that the work on this topic has been concluded, Portugal extends its appreciation to~~

the International Law Commission for having risen up to the challenge of debating such a ~~difficult and complex topic. The Commission's last take on the topic was an effortful~~