

**Comments of the Portuguese Republic to the request of the  
International Law Commission on  
“Immunity of State Officials from Foreign Criminal Jurisdiction”**

At the outset, Portugal would like to commend the International Law Commission (ILC) for the adoption of the draft articles, together with the commentaries, which have been submitted to Governments for their comments and observations.

As previously stated, Portugal strongly supports the work of the ILC on this highly topical issue, which we consider to be of the utmost importance for the fight against impunity and for the maintenance of international peace and security.

At this juncture, Portugal would like to focus its comments on draft article 7, namely the need for further analysis and elaboration of the list of exceptions provided. We take this opportunity to reiterate our satisfaction with the adoption, by the Commission, of draft article 7 on international crimes for which immunity *ratione materiae* does not apply. As stated before, we share the view that the immunity should also not apply to the crime of aggression, and we recommend that the Commission revise this draft article accordingly. The rationale behind the inclusion in draft article 7 of crimes such as crimes against humanity, war crimes and genocide also applies to the crime of aggression.

Indeed, Portugal firmly believes that this legally complex and politically challenging issue must be based on a very clear, limited and value-laden approach. Serving the interests of the international society means striking a balance between state sovereignty, individual rights, and the need to avoid impunity.

Therefore, there is a level of non-compliance with International Law that can never be exceeded. Atrocities such as genocide, crimes against humanity, war crimes and the crime of aggression cannot simply be ignored by the operation of immunity.

The crime of aggression, under International Law, is of fundamental importance in maintaining peace, promoting global justice, and preventing the abuse of state power. By recognizing and criminalizing the illegitimate use of force between states, the

international society seeks to prevent unnecessary conflicts and preserve a stable global environment. The prohibition of the crime of aggression helps to dissuade states from engaging in actions that could trigger hostilities.

Its recognition as a serious offence in international law highlights a commitment of States to justice. The inclusion of this crime within the jurisdiction of international tribunals, such as the International Criminal Court (ICC), aims to hold those who make decisions that lead to illegitimate aggression individually accountable. This reinforces the notion that no leader should be above the law.

The debate around the immunity of state officials, both within and outside the ILC, is illustrative of a broader debate on the core principles that must underpin international social relations in the face of contemporary complexities. Immunity can never exist as a privileged exception that undermines individual rights and the public order.