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STATEMENT

BY
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HONOURABLE MEMBER OF PARLIAMENT
AND MEMBER OF THE INDIAN DELEGATION

ON
AGENDA ITEM - 77
“RESPONSIBILITY OF STATES FOR INTERNATIONALLY WRONGFUL
ACTS”

AT THE
SIXTH COMMITTEE OF THE SIXTY-EIGHTH SESSION OF THE
UNITED NATIONS GENERAL ASSEMBLY

NEW YORK

21 OCTOBER 2013

Mr. Chairman,

Allow me to begin by extending to you my hearty felicitations on your election as Chairman of the Sixth Committee. My felicitations are also due to other members of the Bureau.

Mr. Chairman,

The Draft Articles on “Responsibility of States for internationally wrongful acts” were adopted by the International Law Commission at its fifty-third session in 2001. The ILC submitted the Draft Article to the General Assembly, with the recommendation for taking note thereof; and further recommended for the possibility of convening an international conference to examine the Draft Articles, with a view to conclude a convention on this topic.

Pursuant to the consideration of draft articles in the Sixth Committee and its recommendations, the General Assembly took note of Draft Articles in its resolution 56/83 of 12 December 2001.

Mr. Chairman,

This topic was also taken up by the Sixth Committee later in 2004, 2007 and 2010. Pursuant to the Sixth Committee recommendations and the resultant General Assembly resolutions, the Secretary-General has submitted several reports containing compilation of decisions of international courts, tribunals and other bodies referring to the ILC Draft Articles on responsibility of States for internationally wrongful acts; and containing comments and information received from Governments concerning the Draft Articles.

We are grateful to the Secretary-General for his commendable efforts put in making available all these reports.

Mr. Chairman,

Once again, we take this opportunity to acknowledge the excellent work done by the International Law Commission on Draft Articles on responsibility of States for internationally wrongful acts; and once again also express appreciation for Mr. James Crawford, the Special Rapporteur for this topic, while also recognizing the contribution of the other four Special Rapporteurs to the subject of State responsibility.

Mr. Chairman,

Regarding the text of Draft Articles, we have commented on the various aspects of the law of State responsibility at various stages of the development of the Draft Articles; and in the Sixth Committee sessions after their adoption by the ILC. The Draft Articles are concise. The concepts involved therein are now less complicated for application than as they existed at the initial stages of the development of Draft Articles. For instance, the concept of State crimes was replaced by the concept of serious breach of an obligation arising under a peremptory norm of general international law. The commentary on draft article 40 gives several illustrations of such peremptory norms. Some of the most difficult articles were refashioned and they exhibit sensitivity to the needs of States in difficult circumstances. So, as finally adopted by the ILC, the draft articles have several merits and present a delicate balance reached with difficulty.

Mr. Chairman,

We reiterate our view that the Draft Articles address only secondary rules of State responsibility. These would come into play only in case an internationally wrongful act as defined by a primary rule is committed. In this connection we may note that international law is still striving to achieve the type of universality that is essential in different fields.

The international structure is still in the making and we cannot rush ahead of institutional developments and the development of the international legal system, without risking counterproductive effects.

Mr. Chairman,

Given this background, we are of the view that, at this stage, it will be prudent to maintain the careful balance in the text of Draft Articles that the ILC struggled for more than forty years to achieve.

We are happy to note the reception of the ILC's Draft Articles on State responsibility into international law, through State practice, scholarly writings, decisions of courts, tribunals and other bodies.

Thank you.