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STATEMENT BY
MS. FARHANI AHMAD TAJUDDIN, REPRESENTATIVE OF MALAYSIA

ON AGENDA ITEM 77 ENTITLED
“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,

Malaysia records its appreciation for the efforts taken by the Secretary-General in updating the compilation of decisions of international courts, tribunals and other bodies pursuant to the General Assembly Resolution 65/19 of 6 December 2010 and in inviting the Government to submit their practices in that regard. Malaysia takes note that consultations with States to seek feedback on their practices pertaining to the ILC's draft Articles have been made and further notes that many States have yet to express their views on the ILC's draft Articles.

2. At the 65th session in 2010, Malaysia's position was that negotiations on the draft Articles to develop a Convention should not be initiated as such a move may unravel the fragile balance in the text of the Articles, and that attempting to negotiate a Convention was unnecessary and undesirable at the present time. Malaysia was also of the view that further in-depth consideration of the draft Articles was needed before a decision could be made as to whether to adopt the draft Articles as a Convention. Malaysia has reviewed with interest the draft Articles and notes that as comprehensive as they may set out to be, they should only be used to guide States.

3. Hence, Malaysia would like to reiterate its position in 2010 and take a similar stance that the readiness of States have to be further sought to enable them to voice their concerns on the draft Articles' onerous obligations. We take note of Resolution A/65/19 of 6 December 2010 and we welcome the Working Group's continued deliberations.

4. On that note, Malaysia would like to reiterate its concerns on draft Article 2 which stipulates that fault or a wrongful intent on the part of the State is not required in order to ascertain the existence of an internationally wrongful act. Malaysia is of the view that this obligation merits careful consideration by States.

5. In addition, draft Article 7 provides for the *ultra vires* act of an organ. Malaysia is of the view that adopting such an obligation would require States to assume the conduct or wrongdoings of an organ or a person beyond the power authorized to such organ or person by those States. In the event that a State is found to be in breach of this obligation, this would entail, among others, great financial implications to the State concerned.

Mr. Chairman,

6. In light of the fact that issues such as the above would still require further consultations among States, Malaysia is of the view that at this juncture, the draft Articles should remain as a guide.

Thank you.