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Responsibility of States for Internationally Wrongful Acts

Statement by

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Mr. Chairman,

It has been nearly 70 years since the International Law Commission decided to embark on what was certainly one of its most important projects. The topic has been maturing since 1949, when the Commission first selected the subject of State Responsibility as being suitable for codification, together with the Law of Treaties and Diplomatic Relations. In 2013, the General Assembly decided again to include the topic in the provisional agenda of its seventy-first session and to further examine, within the framework of a Working Group of the Sixth Committee and with a view to taking a decision, the question of a convention on responsibility of States for internationally wrongful acts or other appropriate action on the basis of the articles on the matter, of which the General Assembly had taken note in 2001 and discussed every three years since then.

The articles have thus undergone a long period of reflection and Portugal feels that time has come to seek agreement on a way forward and that the adoption of a convention could be the best way ahead. This was indeed the second stage the International Law Commission itself recommended, in its Report to the General Assembly in 2001, in light of the importance of the topic. This path is also the one that honors best the work of the ILC and of its Special Rapporteurs, but the one that confers upon States a leading role on international law-making process on such crucial legal domain.

Mr. Chairman,

Portugal recognizes the importance of taking an informed decision on the opportunity of opening negotiations on a Convention on State Responsibility. Past discussions in the Sixth Committee, written comments by Governments, as well several informal panels recently organized by a group of countries, including our own, have helped to identify points in common and of divergence among Member States. Portugal recognizes that Member States have different views as to the future of the articles that range from supporting a convention to merely adopting the articles in a General Assembly resolution or to keeping the *status quo*.

Mr. Chairman,

As Portugal has already had the opportunity to state before the Sixth Committee and in its previous written comments on the matter in 2007, 2010, 2013 and 2016, it continues to believe that this is an area of international law that deserves to be incorporated into a legal instrument that will certainly contribute in a decisive manner to the respect of international law and to peace and stability in international relations.

States must not be overcautious about moving forward in this area since the only concern is to establish the consequences of the international wrongful acts and not to provide a definition of the wrongful act itself. State responsibility pertains only to the secondary rules and not the primary rules which define the obligations of States. If one wants convincing evidence for the opportunity and fundamental need to proceed in this field one only has to turn to State practice and to the decisions of international courts and tribunals, including the case law of the International Court of Justice.

The various reports prepared by the Secretary-General containing a compilation of nearly 300 decisions of international courts, tribunals and other bodies clearly illustrate this. Furthermore, it would be senseless not to proceed in the development and codification of this matter and to continue to proceed in others, also present in the agenda of this Committee such as diplomatic protection, liability and responsibility of international organizations, when the main principles that guide the development of these latter subjects are the same that apply to State responsibility.

Mr. Chairman,

For all these reasons, Portugal considers that the articles on responsibility of States for international wrongful acts should be adopted as a binding international convention.

We remain open to discuss possible intermediary steps in order to better identify the points of agreement and disagreement and to step into a process for the drafting of a convention on a safe ground and on the basis of the current articles. This should be the task of the upcoming Working Group. Among the issues to be discussed could be the following:

- The periodicity of the meetings of the Working Group, which could meet on a yearly basis in order to allow a thorough and

step-by-step discussion on the question of a convention on responsibility of States for internationally wrongful acts or other appropriate action on the basis of the articles;

- The possibility of requesting the Secretary-General to prepare an options paper on the different methods of work and procedures for structuring the discussions, based on the practice of previous codification processes, and without prejudice to any particular outcome;
- How to identify the main concerns of Member States regarding the substance of the draft articles;
- How to delimit (e.g. through a questionnaire for Member States) a list of substantive issues to be put in the agenda of the Working Group for discussion: this should be done having in mind that the draft articles of the International Law Commission should be the basis for an international convention on State Responsibility and bearing in mind that most of the articles reflect customary law and are accepted by States.

Thank you Mr. Chairman.