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Agenda Item 73 “Responsibility of States for Internationally Wrongful Acts”

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Mr. Chair,

Our delegation welcomes today’s deliberations on the principles governing when and how states can be held responsible for violations of international law. Armenia notes that the articles on Responsibility of States for Internationally Wrongful Acts constitute a major step in the codification and progressive development of the norms and principles of international law, and that a degree of consensus has been duly captured in addressing basic issues of responsibility and legal consequences for breaches of international obligations¹. It is important to build upon this consensus and foster further cooperation to identify the way forward.

Whereas we agree that there are potential benefits in adopting the Articles as a binding legal instrument, these must be carefully balanced against the need for its wide application.² It is our view that the great majority of the Articles already reflect customary international law, notably, concerning the use of armed force.³

For example, Article 4 on the attribution of conduct to State organs and Article 21 on self-defense apply to situations when one State uses force against another State in violation of the obligation to settle disputes peacefully under Article 2 of the United Nations Charter⁴. Likewise, in Article 16 on ‘aid and assistance in the commission of an internationally wrongful act’, as when a third State assists that State to commit an act of aggression by providing weaponry and other logistical support, this provision seems to be well-founded in State practice and international jurisprudence⁵. We also

¹ Sarvarian, ‘The Ossified Debate on a UN Convention on State Responsibility’, 70(3) *International & Comparative Law Quarterly* (2021) 769, 794-795.

² *Ibid.*, 779.

³ *Ibid.*, 772-775, 785-789.

⁴ E.g. – Eritrea-Ethiopia Claims Commission, Partial Award: *Jus ad bellum* – Ethiopia’s Claims 1-8 (19 December 2005), XXVI RIAA 457, paras 10-11.

⁵ Sarvarian, above n 1, 774.

note that a breach of a peremptory norm, such as the prohibitions on aggression or genocide, war crimes and crimes against humanity carries with it particular consequences for the content of the international responsibility of a State under Part Two of the Articles⁶. In the context of Article 48 on ‘invocation of responsibility by a State other than an injured State’, we observe that the notion of *erga omnes* for the assertion of a collective interest under Article 48(1)(a) appears to have crystallized as customary international law, and that standing to assert a collective legal interest on the basis of the UN Charter for an act of aggression appears to be sufficiently established, as opposed to the less underpinning State practice for Article 48(1)(b), for example⁷.

Mr. Chair,

As demonstrated in the Secretary-General’s reports, the Articles continue to be applied widely in international dispute settlement, offering an important perspective on the way the norms and principles of international law have progressed since the adoption of the Articles in 2001.

Armenia notes that the report of the Secretary-General containing compilation of decisions of international courts, tribunals and other bodies (document A/77/74) refers to the *Makuchyan and Minasyan v. Azerbaijan and Hungary* case at the European Court of Human Rights, in the context of Article 11⁸. In 2020, the ECHR found that the impunity granted to the perpetrator constituted a breach of the right to life under the European convention on human rights (Article 2)⁹. It also found that such actions were discriminatory because the state authorities’ “glorification of his extremely cruel hate crime... had a causal link to the Armenian ethnicity of his victims”, in breach of Article 14, which prohibits discrimination. Insofar as Article 11 is concerned, we note that the ECHR found the state in question to have ‘approved’ the conduct, notably, through ‘particularly disturbing statements’ given by various political and other public figures during the material timeframe¹⁰.

Armenia reiterates that responsibility of States for internationally wrongful acts continues to be of major importance in inter-State relations. We reaffirm our strong commitment to the discussions on codification and progressive development of international law and stand ready to support efforts towards tangible progress in this regard.

I thank you.

⁶ E.g. – *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)(Reparation)*, Judgment of 9 February 2022, paras 99-109.

⁷ E.g. – *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)(Preliminary Objections)*, Judgment of 22 July 2022, paras 96-105, 106-114.

⁸ A/77/76, p.16

⁹ European Court of Human Rights (17247/13) - Court (Fourth Section) - Judgment (Merits and Just Satisfaction) – Case of Makuchyan and Minasyan v. Azerbaijan and Hungary

¹⁰ Ibid.