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Chair: Mr. Leal Matta (Vice-Chair) . . . . . (Guatemala)
later: Mr. Afonso . . . . . (Mozambique)

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22-23259 (E)

In the absence of Mr. Afonso (Mozambique), Mr. Leal Matta (Guatemala), Vice-Chair, took the Chair.

The meeting was called to order at 3 p.m.

Agenda item 73: Responsibility of States for internationally wrongful acts (*continued*) (A/77/74 and A/77/198)

1. **Mr. Abdelaziz** (Egypt) said that his delegation welcomed the positive contribution of the articles on responsibility of States for internationally wrongful acts, which addressed the topic from a comprehensive perspective, including such issues as the attribution of conduct to a State, the content of the international responsibility of a State and the invocation of the responsibility of a State. The articles were largely based on customary international law, as reflected in the decisions of international courts, tribunals and other bodies set out in the updated compilation prepared by the Secretary-General (A/77/74).

2. Some delegations advocated negotiating a convention on the basis of the articles to improve stability in practice; others preferred to leave them unchanged in order to avoid disrupting their delicate balance. His own delegation supported holding further consultations and, accordingly, welcomed the working paper submitted by several delegations concerning procedural precedents for action on the Commission's products.

3. **Mr. Hernandez Chavez** (Chile) said that, since the adoption of the articles on responsibility of States for internationally wrongful acts, Member States had regularly been requested to provide their views on future action regarding the articles. The normal conclusion of the trajectory of many of the Commission's products would be the adoption of a multilateral convention that brought together their content in an instrument binding on States. It was clear that that was not necessarily the final outcome of outputs relating to certain topics dealt with by the Commission, which did not diminish their relevance or influence on international law. However, with regard to the articles on State responsibility, it was evident from their structure, important content and wording that the adoption of a convention would be a natural outcome. Conventions tended to provide certainty and clarity to the rules regulating particular areas. The issue before the Committee was to determine by what means it could achieve the adoption of a convention.

4. The significance of the content of the articles could not be overstated; issues such as the rules defining what constituted a wrongful act, the determination of the consequences of such acts and the attribution of conduct to States were of paramount importance in any legal system. The articles were intended to govern the general regime of State responsibility, without prejudice to the fact that State responsibility might in some cases be governed by special regimes, as noted in article 55. In that context, the content of the articles could help fill gaps in such special regimes and assist in their interpretation. His delegation therefore reiterated its willingness to work together with other delegations in deciding what definitive form the articles should take. That decision should be taken by a significant number of States engaged in a codification process that would result in a significant number of ratifications and accessions. During the current session several delegations had expressed their willingness to explore the procedural options available to the Committee in order to make progress under the agenda item. In that regard, his delegation was available to contribute to discussions during informal consultations and in the working group.

5. The time it would take to decide the next steps would not be a fallow period. In the context of the development and consolidation of international law, the articles were not static but were being invoked by various international courts and tribunals, including the International Court of Justice, as reflected in the Secretary-General's report containing the updated compilation of decisions of international courts, tribunals and other bodies referring to the articles (A/77/74). Furthermore, the current deliberation process would facilitate the adoption of a future convention on State responsibility. It should be noted in that regard that some of the provisions were of a declaratory nature and were already part of international law by way of customary law.

6. Any future action on the articles on State responsibility would need to take into account the articles on diplomatic protection, since the two sets of articles were closely linked. Indeed, article 1 of the articles on diplomatic protection provided that diplomatic protection was a means for a State to invoke the responsibility of another State for an injury caused by an internationally wrongful act when the victim was a national of the former State.

7. **Ms. Baimarro** (Sierra Leone) said that it was regrettable that the Committee had had to wait three years before returning to its discussion in plenary of the articles on responsibility of States for internationally wrongful acts, despite the importance of the topic and the need for practical measures to reach consensus on the question of the future adoption of a convention based on the articles. During the period under review,

multilateral courts, tribunals and other bodies representing a range of geographical regions had relied frequently on the articles, as provided in the Secretary-General's report containing the updated compilation of decisions of international courts, tribunals and other bodies referring to the articles (A/77/74).

8. Her delegation continued to believe that the articles represented a balanced and authoritative compromise. Although Sierra Leone had previously taken a precautionary stance on the issue of convening a diplomatic conference with a view to elaborating a convention, it had observed that the articles had, over time, crystallized and become influential in international jurisprudence. It therefore saw value in taking practical steps to consider the adoption of the articles as a convention.

9. States had the primary role in setting norms at the international level, while the mandate of the Commission was to initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification. States, as recipients of those recommendations, played a fundamental role in that process. Having acted on the Commission's first recommendation by taking note of the articles, the General Assembly should act on the Commission's other recommendation that it consider the possibility of convening an international conference with a view to elaborating a convention on the basis of the articles. States should be given more frequent opportunities to discuss the issue, as the current triennial debate cycle hampered effective dialogue and the prospect of reaching consensus. The Committee might wish, for instance, to take up the matter annually, in order to allow States to reach some form of agreement on a negotiation package and to find a compromise on points of disagreement. Indeed, discussing the articles on State responsibility annually would be the minimum action required for the Committee to give the articles the same consideration as it devoted to similar work products of the Commission.

10. The Secretary-General should be requested to continue producing the useful compilations of decisions of international courts, tribunals and other bodies, and of information on the practice of States in relation to the articles. Regardless of the varying positions States held on the question of the adoption of a convention, the usefulness of those reports could not be discounted.

11. **Ms. Motsepe** (South Africa) said that the significance of the articles on responsibility of States for internationally wrongful acts was clear from the references made to them in decisions of international courts, tribunals and other bodies, including the African Court of Justice and Human and Peoples' Rights and the African Commission on Human and Peoples' Rights, of which South Africa was a member. The Secretary-General's report containing the updated compilation of decisions of international courts, tribunals and other bodies (A/77/74) and his report containing the comments and information received from Governments (A/77/198) in relation to the articles not only revealed States' views on accepting the articles and adopting a future convention but also offered evidence that States were making practical use of the articles in their current form and status.

12. Her delegation acknowledged the great efforts made by the General Assembly to examine, within the framework of a working group of the Sixth Committee, the question of a convention or other appropriate action on the basis of the articles. Any decision regarding the future of the articles must be reached by consensus among Member States, particularly in view of the fact that the articles sought to regulate the relationship between States under public international law. Any future work to codify the articles on State responsibility in a convention should endeavour to reflect the balance of Member States' views on the matter. While some States had indicated that it was too soon to codify the articles, her delegation, among others, believed that the delays in taking acceptable action on the articles would potentially undermine the status they had achieved. More than 20 years had passed since the General Assembly had first taken note of the articles; the continued postponement of a decision regarding their future prospects might risk giving rise to a perception of disagreement among Member States and could potentially affect the Committee's work on other projects of the Commission. The extensive debate among Member States and experts on the topic of State responsibility was encouraging and her delegation would continue to participate in discussions to promote consensus among States.

13. **Ms. Margaryan** (Armenia) said that the development of the articles on responsibility of States for internationally wrongful acts had been a major step in the codification and progressive development of the norms and principles of international law, and that a degree of consensus had been reached in respect of basic issues, including legal consequences for breaches of international obligations. It was important to build on that consensus and identify the way forward. While her delegation agreed that there were potential benefits to adopting the articles as a binding legal instrument, such benefits must be carefully weighed against the need for the wide application of such an instrument. In her

delegation's view, the great majority of the articles already reflected customary international law, in particular with regard to the use of armed force.

14. For example, article 4, on the attribution of conduct to State organs, and article 21, on the lawfulness of self-defence measures, applied to situations where one State used force against another, in violation of the obligation to settle disputes peacefully pursuant to Article 2 of the Charter of the United Nations. Likewise, article 16, on aid or assistance in the commission of an internationally wrongful act, which established international responsibility in situations such as where a State assisted another State in the commission of an act of aggression by providing weaponry and other logistical support, was well founded in State practice and international jurisprudence. In addition, it was worth noting that Part Two (Content of the international responsibility of a State) of the articles set out particular consequences for the breach of peremptory norms, such as the prohibitions on aggression or genocide, war crimes and crimes against humanity. Furthermore, with regard to article 48, on invocation of responsibility by a State other than an injured State, the assertion of a collective interest based on an *erga omnes* obligation, as provided in paragraph 1 (a), appeared to have crystallized as customary international law and that standing to assert a collective legal interest on the basis of the Charter for an act of aggression appeared to be sufficiently established. There was, however, less State practice underpinning paragraph 1 (b).

15. The reports of the Secretary-General (A/77/74 and A/77/198) demonstrated that the articles continued to be widely used for the settlement of international disputes and revealed how the norms and principles of international law had progressed since the adoption of the articles in 2001. The Secretary-General's report containing the updated compilation of decisions of international courts, tribunals and other bodies in relation to the articles (A/77/74) referred to European Court of Human Rights case *Makuchyan and Minasyan v. Azerbaijan and Hungary*. In 2020, the Court had found that the impunity granted to the perpetrator constituted a breach of the right to life under article 2 of the European Convention on Human Rights. It had also found that the measures leading to the individual's impunity were discriminatory because the "glorification of his extremely cruel hate crime" by the authorities of the State concerned "had a causal link to the Armenian ethnicity of his victims", in violation of article 14 of the Convention, which prohibited discrimination. With respect to article 11 (Conduct acknowledged and adopted by a State as its own) of the articles on State responsibility, the European Court of Human Rights had found that the State in question had approved the conduct, notably, through "particularly disturbing statements" given by various political and other public figures during the material time frame.

16. **Mr. Skachkov** (Russian Federation) said that his delegation's position on the articles on responsibility of States for internationally wrongful acts was well known and remained unchanged. The articles, which could serve as an excellent basis for codifying existing norms in that area, had been under consideration by the Committee for more than 20 years, yet delegations had not been able to agree on the way forward. His delegation saw value in collecting the written comments of States regarding the content and future form of the articles.

17. Given the absence of consensus among States, references to the articles by national and international courts should be viewed with caution. Certain provisions needed further consideration, with the direct involvement of States. A consensus-based international instrument on the topic would be of seminal importance.

18. It was regrettable that certain delegations had used the platform offered by the Committee to deliver statements that had no bearing on the item at hand. His delegation, having spoken out repeatedly against such abuses, had no response to such comments.

19. **Ms. Carral Castelo** (Cuba) said that the topic of responsibility of States for internationally wrongful acts was critical to the continuation of work on the progressive development of international law. In that regard, her delegation commended the Commission's efforts to develop the articles on State responsibility with a view to the establishment of a convention on the topic and reiterated its support for all proposals aimed at initiating negotiations towards the adoption of a convention. In that respect, the articles would serve as an important reference as they included major rules of customary international law and other rules enjoying broad international recognition. The reports of the Secretary-General (A/77/74 and A/77/198) indicated that some States were reluctant to progress towards the codification of such rules. However, that should not deter efforts to adopt a convention. While the Commission was not a legislative body, Member States had the legal capacity to conclude a convention in line with the recognized principles on the subject. Enough time had passed and there was sufficient jurisprudence to begin negotiations on a firm foundation.

20. Some delegations argued that reopening the contents of the articles to negotiations would jeopardize the current consensus on the binding nature and acceptance of the articles and upset the delicate balance

of the text. They also argued that there was a risk that some States would not ratify a future convention and that there were no benefits to adopting a convention. In the view of her delegation, the delay in the adoption of a convention on responsibility of States for internationally wrongful acts was caused by the attitude of some Governments which continued to evade their responsibility and acted with complete impunity for their violations of international law. Those States would continue to force ambiguous and often contradictory judicial decisions on State responsibility, as they were being allowed to leave the interpretation of important rules on the subject to the free and varied whims of judges and arbitrators, most of whom were at courts and tribunals based in Western countries. Unfortunately, justice was at times reduced to what two judges decided in a court of three, presided by a president who was almost always imposed by and educated in developed countries and unaware of the realities of the developing world.

21. Her delegation reiterated its support for increasing the frequency of the Committee's consideration of the topic to a biennial basis. By reflecting on the issue in the current international context, the Committee could decisively contribute to improving relations between States, within the framework of genuine application of the purposes and principles of the Charter of the United Nations. Her delegation supported an approach that would seek the adoption of a convention based on the articles without affecting the integrity of the delicate balance achieved in the current text. It would soon be time to seriously consider adopting a clear mandate in that regard. An international convention would ensure the full effectiveness of and compliance with the legal institutions envisaged in the articles and establish binding criteria for States. A convention would also help curb the dangerous trend of unilateral action by some States and would conclude work on a chapter of international law that was as old as the Commission itself. Those States that violated international law should be made to face the dilemma of whether to sign an international convention on State responsibility and judges should be given additional support in the pursuit of international justice. There was no justification for the assertion that customary norms on State responsibility would be lost. All of the legal experts on the Committee knew that.

22. **Ms. Papathanassiou** (Greece) said that her delegation reiterated the views it had expressed on the issue of State responsibility at the Committee's seventy-fourth session. The articles constituted a solidly reasoned and balanced text and had become the most authoritative statement available on the topic. They had gained considerable recognition and had been widely referred to in the decisions of the International Court of Justice and other international courts and tribunals. The articles codified customary rules on State responsibility, thus filling a large gap in existing international law. They strengthened the notion of the international community as a whole, promoted the notion of peremptory norms of international law, as envisaged in the Vienna Convention on the Law of Treaties, and the regime of responsibility for grave violations of such norms; they also dispensed with the notion of damage as a condition for the attribution of responsibility.

23. Those positive elements had been highlighted in State practice and international jurisprudence. As it stood, the text reflected a carefully achieved compromise and, ideally, it should take the form of an international convention in order to provide States with authoritative regulatory guidance. However, the elaboration of a convention should not jeopardize the delicate balance of the text, which must remain without any changes to its substantive provisions, some of which contained important compromises with regard to complex and at times controversial legal questions.

24. **Mr. Chrysostomou** (Cyprus) said that the articles on responsibility of States for internationally wrongful acts reflected customary international law and the consensus regarding State responsibility. Since their adoption, the articles had been widely cited by Governments and national, regional and international legal bodies, most notably, the International Court of Justice. Chapter III of the articles outlined the international responsibility that was entailed by serious breaches of obligations arising under peremptory norms of general international law, including the duty not to recognize as lawful a situation created by such a breach, such as the creation of an illegal territorial situation by use of force. His delegation attached great importance to article 41, which set out particular consequences of such serious breaches of obligations. Among those consequences was the obligation to cooperate to bring to an end through lawful means any serious breach. The Committee's substantive discussions of the topic should occur more frequently, at least on a biennial basis, and should cover aspects of State responsibility that went beyond the framework of the articles.

25. **Mr. Dogan** (Netherlands) said that his delegation supported the articles on the responsibility of States for internationally wrongful acts without reservations and attached great importance to the articles as a system and as a whole. It was therefore pleased to note that the articles were being used by national and international courts and tribunals as a resource concerning the law on State responsibility. As with all rules of international

law, various jurisdictions interpreted particular provisions of the articles differently, depending on the context. Such differing interpretations of provisions would not disappear should the articles be codified in a treaty. His delegation therefore continued to call for a cautious approach with regard to initiating negotiations on a treaty in order to preserve the integrity of the Commission's articles, of which the General Assembly had taken note.

26. State practice on the issue was still developing. For example, recent events had caused the international community to recognize the importance of the provisions in the articles on the obligation to cooperate and bring to an end any serious breach of an obligation arising under a peremptory norm of general international law, the obligation not to recognize as lawful a situation created by such a breach, and the obligation not to render aid or assistance in maintaining that situation. The relevance of the latter provision, as well as its implementation in the practice of States, had been clarified. In addition, the continuing development of relevant State practice would also further clarify certain concepts. For instance, the interplay between State organs under article 4, entities exercising governmental authority under article 5, and private persons under instruction, direction or control under article 8, was becoming increasingly clear. The continuing development of State practice would thus strengthen the articles as a whole and reduce the risk of the selective use by States of their preferred provisions to the detriment of other provisions.

27. The fact that the Commission had taken 50 years to develop the articles was indicative of the need for a cautious approach, in line with the comments made by the representative of Canada, also speaking on behalf of Australia and New Zealand. His delegation was not in a position to support taking incremental steps, either on procedure or on substance, that would lead to negotiations on a treaty, as there was currently no need for such a treaty. The fact that the articles on State responsibility were not codified in a treaty had not prevented either national and international courts and tribunals or States from referring to them in practice and thus developing international law in an organic manner. Furthermore, the articles in their current form had served the internationally community well since their adoption in 2001. His delegation reiterated its support for the work of the Commission on the progressive development of international law, and in that regard, called for prudence to prevent the unravelling of the carefully designed articles.

28. **Mr. Bouchedoub** (Algeria) said that the articles on State responsibility made a significant contribution to the codification and progressive development of international law, and would hence facilitate the peaceful settlement of disputes. They provided a balanced overview of customary international law, as they largely reflected the practice of States and of such international bodies as the International Court of Justice, the International Tribunal for the Law of the Sea, the International Court of Arbitration and the Permanent Court of Arbitration. Accordingly, they would serve as a good basis for future work.

29. The international responsibility of States was a fundamental principle of international law that derived from the sovereign equality of States. Any binding legal instrument in that area would help strengthen political acceptance of the rules set out in the articles and would provide an appropriate basis for reaching consensus on the international responsibility of States. Any such consensus should be based on clear rules governing breaches of peremptory norms.

30. The deliberations of the Committee had shown that, although there was broad consensus among Member States concerning many of the articles that reflected customary international law, numerous other articles remained controversial. Moreover, the comments and observations of States showed that State practice was not sufficiently harmonized, particularly with regard to countermeasures, measures taken by States other than an injured State, and serious breaches of obligations under peremptory norms. It would therefore be useful to convene preparatory in-depth intergovernmental negotiations. The resulting thorough legal analysis would enable States to find compromise solutions, and hence to develop a consensus-based legal framework that would preserve the delicate balance of the current text, uphold the purposes and principles of the Charter of the United Nations, prevent unilateral measures in breach of international law, and help protect States indirectly affected by State acts. His delegation was prepared to engage in further discussions to choose among the three available options, namely, to convene a diplomatic conference, which would be its preferred option; to adopt the articles in the form of a resolution or declaration; or to take no action.

31. **Mr. Abd Aziz** (Malaysia) said that his delegation had carefully considered the views of other delegations and remained convinced that negotiations to develop a convention based on the articles on the responsibility of States for internationally wrongful acts were not currently necessary as they would risk upsetting the fragile balance of the text. A convention should only be pursued if there was a realistic prospect of universal participation; without universal support, such a convention would defeat its very purpose. The articles

had proved to be useful in their current, non-binding form as a guide for States and international courts and tribunals. His delegation would welcome the continued compilation by the Secretary-General of decisions of international courts, tribunals and other bodies referring to the articles. The existing mechanisms of the International Court of Justice and Security Council resolutions aimed at combating internationally wrongful acts should also be strengthened.

32. **Mr. Mainero** (Argentina) said that it was worth recalling that the Commission had worked on the articles on responsibility of States for internationally wrongful acts for nearly 50 years, which reflected the cross-cutting nature of the topic and the fact that the effectiveness of all international law rested primarily on the existence of State responsibility. While the articles were a product of deep reflection and analysis, in the 20 years since the General Assembly had taken note of the articles little progress had been made. The debate was deadlocked between States that believed it was time to initiate negotiations on a convention based on the articles and those that believed that such negotiations would risk undermining the work accomplished by the Commission.

33. It was clear that the Committee was willing to continue discussing the topic. It was therefore time to consider options that would advance the debate, and, at the same time, accommodate the different views expressed over the years. His delegation, together with other delegations, stood ready to put forward proposals for ways to advance discussions and called on all other delegations to join those efforts. His delegation believed that the adoption of a convention could offer the best means of finding consensus. It welcomed the fact that the articles had been widely used as a reference by international and domestic courts and tribunals; some of the articles had even been considered to be reflective of international customary law. The fact that a convention had not yet been concluded did not detract from the value garnered by the articles to date.

34. **Ms. Padlo-Pekala** (Poland) said that the articles on responsibility of States for internationally wrongful acts were important at both the practical and theoretical levels. The articles informed the decisions of international courts and tribunals and had had an enormous influence on international State practice; that was evident from the Secretary-General's report containing the updated compilation of decisions of international courts, tribunals and other bodies (A/77/74), which covered 332 cases referring to the articles and 680 references to the articles in submissions by Member States before courts, tribunals and other bodies in the period 2001–2022. However, the fundamental value of the articles should not lead to the automatic understanding that each and every provision should be considered an established principle of law. The inclusion of a given rule in the articles did not alter the requirement under general public law to evaluate State practice and *opinio juris* in order to ascertain whether that rule held customary status. Thus there might be cases where a provision should not have been considered to constitute progressive development of international law back in 2001, when the articles had been adopted by the Commission, and where its legal status had not changed since then. Conversely, there were instances where international law had evolved, as had been the case with the issue of collective countermeasures in response to the violation of *jus cogens* norms, and such measures were, under the current state of international law, a valid means of action. Given that the articles strongly influenced State practice and jurisprudence, regardless of whether or not they were adopted as a convention in the future, they already were and would continue to be a living instrument of international law.

35. **Mr. Bae** Jongin (Republic of Korea) said that, at the time of their adoption, the articles on responsibility of States for internationally wrongful acts had been a major contribution to a less-developed subject of international law, and their relevance had only grown since then. Indeed, many of the articles had often been cited in the jurisprudence of international courts and tribunals and had served as a useful reference in inter-State relations for invoking, ascertaining and addressing breaches of international obligations. The articles were especially pertinent to current challenges to the international order. Their core provisions delivered the clear and compelling message that any violation of international law entailed legal consequences and set out the steps a responsible State should take to put an end to its internationally wrongful act.

36. Notwithstanding their current relevance and widespread acceptance, when adopted in 2001 the articles had reflected a combination of codification and progressive development of international law. Although some of the articles had since gained the status of customary international law, it was premature to consider all the articles as having that status. There were still gaps in the understanding of what constituted customary international law. Additionally, it was unclear whether the articles would enjoy wider acceptance if they were adopted as a convention, as proposed. While the articles had been adopted by consensus, that had been based on the delicate balance achieved in the format and the substance of the articles. For instance,

the procedural steps an injured State should take before taking countermeasures, set out in article 52, would not have been agreed by consensus if they had been intended for inclusion in a binding treaty.

37. His delegation continued to doubt that there could be consensus on the adoption of a convention based on the articles without revisiting pending issues and addressing emerging ones, such as the question of attribution and cyber-based countermeasures. Such controversies could even risk eroding the standing the articles had achieved as an authoritative restatement of international law. His delegation advised a measured approach based on forethought, including consideration of what practical changes the adoption of a convention would bring. Embarking on negotiations towards a treaty would not be desirable unless there was certainty that the proposed convention would be ratified widely, if not universally, and, more importantly, that such a format would be more effective than the articles in their current form at improving the compliance of responsible States with their international obligations and helping injured States better seek redress. It would be preferable for the articles to remain in their present form until the time was right for a change. His delegation requested the Secretary-General to continue to compile the decisions of international courts and State practice relating to the responsibility of States and suggested that the Commission should be requested to update its commentary to the articles based on the existing compilations and State practice over the last two decades.

38. **Ms. Sayej** (Observer for the State of Palestine) said that the practices of States either advanced or undermined international law and it was their responsibility to uphold it. The articles on responsibility of States for internationally wrongful acts rightly defined breaches of international law, and, most importantly, the legal consequences of such breaches. The articles, whose wide scope spanned all fields of international law, were frequently invoked by national and international courts, bodies and experts, reflecting their customary nature and universally binding force. Her delegation strongly supported the authority, advancement and crystallization of customary international law. It was therefore in favour of the eventual codification of the articles and would contribute to discussions in that regard.

39. Her delegation took pride in the fact that one of the first uses of the articles as a reference had been in the advisory opinion of the International Court of Justice concerning *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* of 2004, which was considered to be one of the most authoritative reviews of the articles. In the advisory opinion, the Court had addressed the legal obligations of Israel arising from its wrongful acts and breaches of peremptory norms and *erga omnes* obligations, including the right of the Palestinian people to self-determination. The Court had also reaffirmed the principle that restitution, compensation and satisfaction were the primary forms of reparation for continuing serious breaches of obligations under peremptory norms, as set out in articles 34 to 37 of the articles on State responsibility. Moreover, the Court had analysed the legal obligations of third States arising from the breaches by Israel and had outlined the mechanisms available to third States to uphold their obligations, based not only on international humanitarian law but also on human right treaties and customary law.

40. Furthermore, with regard to article 41 of the articles on State responsibility, the Court had explained that all States could be held to have a legal interest in the protection of the peremptory norms and rights involved; that it was for all States to put an end to any impediment to the respect of such norms and rights; and that all States were under an obligation not to recognize the illegal situation or render aid or assistance in maintaining that situation. The Court's advisory opinion had been instrumental in promoting the articles and had supported the position that every State not only had a duty to abstain from committing breaches but also a positive duty to act as required in order to put an end to such breaches. The Court had also made it clear that its analysis of the articles could be applied to other situations of serious breaches of peremptory norms of customary international law.

41. As noted in the Secretary-General's report containing the updated compilation of decisions of international courts, tribunals and other bodies (A/77/74), the Committee on the Elimination of Racial Discrimination, in its decision on jurisdiction regarding the inter-State communication *State of Palestine v. Israel*, had noted that "the peremptory norms (*jus cogens*) that are clearly accepted and recognized include the prohibitions of aggression, genocide, slavery, racial discrimination, crimes against humanity and torture, and the right to self-determination" and that such obligations of States were owed to the international community as a whole; breaches of those norms might also amount to international crimes. Her delegation looked forward to engaging in discussions of the articles and ensuring their durability and efficacy.

42. **Mr. Musayev** (Azerbaijan), speaking in exercise of the right of reply and responding to the comments made by the representative of Armenia concerning a case of the European Court of Human Rights, said that

article 1 of the articles on responsibility of States for internationally wrongful acts stated that "Every internationally wrongful act of a State entails the international responsibility of that State." In the early 1990s, Armenia had launched a full-scale war against Azerbaijan and had seized a significant part of its territory, which had remained under occupation for nearly 30 years. International organizations, including the Security Council, and courts had recognized the gravity of those violations of international law. The European Court of Human Rights, in its judgment of 16 June 2015 in the case of *Chiragov and others v. Armenia*, which it described in its 2016 judgment on *Muradyan v. Armenia* as "its leading case on the matter" of the responsibility of Armenia, established that Armenia had exercised effective control over the occupied territories of Azerbaijan and thus was responsible for violations of international law in those territories.

43. Over the years, Azerbaijan had actively encouraged transparent discussions on issues of State responsibility for internationally wrongful acts, including within the United Nations, and had brought to the attention of the international community the authoritative neutral opinions of eminent international experts. Thus, a series of comprehensive legal analyses concluding that Armenia bore responsibility for violations of international law, under both general international law and the European Convention on Human Rights, had been circulated in the Committee under the current agenda item and other agenda items. In respect of those violations, Azerbaijan had instituted inter-State legal proceedings, including within the International Court of Justice and the European Court of Human Rights under the International Convention on the Elimination of All Forms of Racial Discrimination and the European Convention on Human Rights, respectively. Those cases were ongoing. Azerbaijan would continue its efforts to ensure accountability and invoke State responsibility for flagrant violations of international law.

Agenda item 177: Observer status for the Digital Cooperation Organization in the General Assembly (A/77/141; A/C.6/77/L.2)

Draft resolution A/C.6/77/L.2: Observer status for the Digital Cooperation Organization in the General Assembly

44. **Mr. Alwasil** (Saudi Arabia), introducing the draft resolution on behalf of the sponsors, which had been joined by Egypt, said that the Digital Cooperation Organization had been established in 2020 and had 11 member States. Its purpose was to accelerate digital development and strengthen collective action related to the global digital economy. The Organization coordinated with Governments and private sector stakeholders to bridge the digital divide and, in so doing, to promote the realization of the Sustainable Development Goals. It drew on international expertise and the rich knowledge of the United Nations to develop the digital economy through targeted initiatives and to formulate action-oriented international policy.

45. **Mr. Al Shehhi** (Oman) said that the Digital Cooperation Organization provided apolitical technical support to States. As an observer, it would be in a better position to work with the United Nations for that purpose.

46. **Ms. Ijaz** (Pakistan) said that digitalization was driving profound change in how economies and societies functioned. For example, digital technologies had made possible an agile and focused response to the coronavirus disease (COVID-19) pandemic. Coordination with the Digital Cooperation Organization to provide digital facilities in urban and rural areas and offer investment opportunities for information technology start-ups would help meet the challenges of digital transformation and expedite the achievement of the Sustainable Development Goals. By granting observer status for the Digital Cooperation Organization, the General Assembly would gain a rich resource offering knowledge and practice on such complex issues as Internet governance, data protection and monetization, cybersecurity and the digital economy, which would also be relevant to the discussions of the Global Digital Compact in 2023. Her delegation hoped that Member States would adopt the draft resolution by consensus.

Agenda item 178: Observer status for the Amazon Cooperation Treaty Organization in the General Assembly (A/77/191; A/C.6/77/L.3)

Draft resolution A/C.6/77/L.3: Observer status for the Amazon Cooperation Treaty Organization in the General Assembly

47. **Mr. Pary Rodríguez** (Plurinational State of Bolivia), introducing the draft resolution on behalf of the sponsors, said that they had been joined by the Bolivarian Republic of Venezuela. The Amazon Cooperation Treaty Organization was the only entity that represented the eight countries whose territories contained more than half of the tropical forest in the world: Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela. The Amazon Cooperation Treaty Organization was a forum for cooperation and dialogue between governments,

multilateral organizations, cooperation agencies and the scientific community with the aim of promoting the peaceful, sustainable and inclusive development of the Amazon region. It also supported cooperation on a number of issues including the integrated management of water resources, forest resources, health, protected areas, matters affecting Indigenous Peoples, and management of species threatened by international trade or climate change.

48. The Amazon region played a critical role in the response to climate change as it was home to the largest tropical forest on the planet, made up of some 7 million km^2, representing more than 40 per cent of the territory of South America. The Amazon River, with more than 1,000 tributaries, was one of the largest freshwater reserves in the world, while its source in the Andes was possibly the largest groundwater reserve on the planet. The river supplied more than 20 per cent of the world's fresh water and nearly 70 per cent of fresh water in South America. The Amazon region was also home to more than 400 Indigenous Peoples.

49. The Amazon Cooperation Treaty Organization based its work and strategy on multilateral agreements within the framework of the United Nations, such as the 2030 Agenda for Sustainable Development, the Paris Agreement and the United Nations Declaration on the Rights of Indigenous Peoples. Granting it observer status in the General Assembly would strengthen its work with the United Nations system and its specialized agencies. Joint activities between the Amazon Cooperation Treaty Organization and the United Nations would be mutually beneficial and support the preservation of the environment and the conservation and rational use of natural resources in harmony with Mother Earth, in a region of great importance to Latin America and the world. His delegation affirmed that the Amazon Cooperation Treaty Organization met the criteria set out in General Assembly decision 49/426 for the granting of observer status in the General Assembly and called on Member States to join the sponsors of the draft resolution and support its submission to the General Assembly for prompt adoption.

50. *Mr. Afonso (Mozambique), took the Chair.*

51. **Mr. Ugarelli** (Peru), speaking on behalf of the Andean Community, said that the Community called on Member States to grant observer status for the Amazon Cooperation Treaty Organization in the General Assembly. The draft resolution was of particular significance to the member States of the Andean Community as their territories not only spanned the Andes Mountains, where the Amazon River originated, but were also part of the Amazon region. Forty per cent of the territory of Colombia, 50 per cent of the territory of Ecuador and more than 60 per cent of the territories of Bolivia and Peru were in the Amazon, which was also home to the majority of those countries' Indigenous Peoples, whose ancestral knowledge enriched their cultures.

52. In view of the tremendous carbon absorption capacity and diversity of its ecosystems, the protection and conservation of the Amazon was vital to meeting both regional and worldwide goals related to climate change and biodiversity. In that regard, the Andean Community had served as a forum to develop efforts to fight deforestation, environmental degradation and illegal mining, which threatened the existence of the Amazon rainforest. At the same time, lessons could be learned from the wisdom of the Indigenous Peoples that inhabited the rainforest on how to achieve the fundamental balance between the sustainable use of the rainforest and its protection and conservation. The effective involvement of all levels of government of the member States of the Andean Community, in cooperation with Amazonian peoples, would contribute to that knowledge.

53. The member States of the Andean Community, which were also members of the Amazon Cooperation Treaty Organization, were committed to coordinated processes for the implementation of major multilateral agreements, such as the 2030 Agenda, the Convention on Biological Diversity and the Paris Agreement, for the benefit of the Amazon region. They therefore fully supported the draft resolution to grant observer status to the Amazon Cooperation Treaty Organization. Its adoption would have a positive impact on the work of the United Nations, benefit Member States, create greater synergy between the Amazon Cooperation Treaty Organization and the specialized agencies of the United Nations, and facilitate the sharing of lessons learned with the international community.

54. **Mr. Fox Drummond Cançado Trindade** (Brazil) said that the Amazon Cooperation Treaty Organization had been implementing cooperation projects in the Amazon region related to the protection of biodiversity, forests, water and the rights of Indigenous Peoples. Those projects considered the economic, social and environmental dimensions of sustainable development in a balanced and integrated manner, in line with the 2030 Agenda. The Amazon Cooperation Treaty Organization had been implementing initiatives in cooperation with global and regional partners including the Global Environment Facility, the United Nations Environment Programme, the KfW Development Bank, the German Agency for International Cooperation, the Euroclima plus programme and the Development Bank

of Latin America. It also had observer status with the United Nations Forum on Forests and participated in its activities. With observer status, the Amazon Cooperation Treaty Organization would bring added value to the work of the General Assembly and contribute its expertise to discussions related to forests, biodiversity and water.

The meeting rose at 4.50 p.m.