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Chair: Mr. Kohona . . . . . (Sri Lanka)

Contents

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The meeting was called to order at 10.05 a.m.

Agenda item 77: Responsibility of States for internationally wrongful acts (A/68/72, A/68/69 and A/68/69/Add.1)

1. **Ms. Carayanides** (Australia), speaking also on behalf of Canada and New Zealand, noted that the Sixth Committee was being asked once again to consider whether to negotiate the articles on responsibility of States for internationally wrongful acts as a convention, to adopt them in the form of a resolution or declaration, or simply to have the General Assembly take note of them with no further action. The report of the Secretary-General on responsibility of States for internationally wrongful acts (A/68/72) noted that decisions, international courts, tribunals and other bodies were increasingly drawing on the articles and the commentaries thereto in formulating their decisions. The articles had thus proven their worth as a persuasive source of guidance for both Governments and courts.

2. Australia, Canada and New Zealand continued to believe that it would be unhelpful to try to negotiate the articles as a convention. They currently served a useful purpose by guiding international bodies and Governments through their analysis of sensitive issues and their efforts to resolve questions of international law. It was important to avoid a scenario whereby the influence of the articles would be diluted and the Commission's work would be undermined. It was even more important to preserve the authority of the articles in practice than to codify them in a convention that might not achieve universality. The three delegations would, however, support the adoption of a resolution endorsing the articles and attaching them as an annex, which would ensure that their integrity was maintained and that the Commission's work was recognized and endorsed by the General Assembly.

3. **Mr. Karstensen** (Denmark), speaking on behalf of the five Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), noted that between February 2010 and January 2013 there had been 55 cases in which international courts, tribunals and other bodies had referred to the articles on State responsibility as established rules or as part of customary international law, thereby reflecting the strong and authoritative impact of the articles on international dispute settlement. The Nordic countries continued to endorse the contents of the articles, which had been widely accepted since their adoption. The strongest possible position for the articles was as an annex to a resolution, as recommended by the International Law Commission. Despite differences of opinion on specific details, the articles reflected a widely shared consensus, and attempting to elaborate a convention might jeopardize the delicate balance built into them. It was thus not advisable at the present time to embark on negotiations toward a convention on State responsibility.

4. **Ms. Dieguez La O** (Cuba), speaking on behalf of the Community of Latin American and Caribbean States (CELAC), said that the articles on responsibility of States for internationally wrongful acts, which had been widely used as a reference by international tribunals and States, contributed to legal certainty in relations between States and to the development of international law. CELAC endorsed the International Law Commission's recommendation that Governments should work towards adopting a convention on the basis of the article. The negotiation of such a convention would be a valuable exercise in addressing existing gaps in international law and promoting legal clarity. CELAC was convinced that the establishment of a working group on the issue was the path to follow on the way to a possible convention. It acknowledged the link between the articles on diplomatic protection and those relating to State responsibility, and that State practice and developments on State responsibility would have a positive impact on the work on diplomatic protection.

5. **Mr. Adamov** (Belarus) said that the principles and norms contained in the articles had already taken their rightful place in the contemporary public international law system, as was shown by the practice of international and national courts and other bodies. Currently, however, they were being applied selectively and their legal force was not universally recognized. It was important to differentiate between the provisions of the articles that codified international customs, which were those overwhelmingly referred to by courts and diplomats, and those that constituted progressive development of international law. To be further entrenched in international law, the articles must be fully and systematically accepted by all States. In that connection, States should clearly express the need and the political will to strengthen the institution of State responsibility through a convention, which

would bring greater consistency and predictability to the topic. On the other hand, there was a risk that negotiations on a convention might lead to a radical transformation of the articles, thereby calling into question their legal significance as a balanced and authoritative document and undermining the prospects for a convention.

6. Consideration should be given to the proposal that the General Assembly should adopt a declaration on the basis of the articles, without ruling out further work on a convention. That had been the approach taken with regard to many other topics, including the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, which had been elaborated on the basis of the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space. It would be helpful if the Commission could set up a mechanism to accompany further discussions on documents that it had already elaborated.

7. **Ms. Dieguez La O** (Cuba) said that the topic of responsibility of States for internationally wrongful acts was of great importance for the progressive development of international law. Cuba supported all initiatives and proposals leading to negotiations on the adoption of the articles in the form of a convention. Although the articles contained important norms of customary international law that enjoyed broad international recognition, efforts should still be made to elaborate a convention. The reports of the Secretary-General (A/68/69, A/68/69/Add.1 and A/68/72) showed that some countries were reluctant to move ahead with the codification of those norms, arguing that opening up the text to negotiation might jeopardize the current consensus on the binding nature and acceptance of the articles and damage the delicate balance in the text. They saw no benefit in adopting or ratifying a convention on the topic. Delaying the adoption of a convention, however, would enable some States to continue acting with impunity and evading their responsibility for internationally wrongful acts. It would also lead to court rulings that were ambiguous and often contradictory because decisions on such a crucial issue were left in the hands of judges who were free to interpret the articles as they chose.

8. Cuba was in favour of elaborating a convention on the basis of the articles which did not affect the delicate balance of the current text. An international convention would establish binding criteria for States, ensure adherence to those criteria by the legal institutions envisaged in the articles and thus enhance their effectiveness and help to curb the dangerous trend towards unilateral action by some States, in violation of the Charter of the United Nations and the principles of international law. It would also help protect States that were the victims of wrongful acts committed by other States, including acts of aggression and genocide. Her delegation urged the Committee to challenge States that were violating international law to sign an international convention on State responsibility and to lend greater support to judges in their pursuit of international justice.

9. **Mr. Hill** (United States of America) said that his delegation continued to believe that the articles were most valuable in their current form and that there was little to be gained in terms of additional authority or clarity through the negotiation of a convention. As evidenced by the Secretary General's report, which pointed to the application of the articles by international courts and tribunals, they already had tremendous influence and importance. For States and for other international actors, the articles had proven to be a useful guide both on what the law was and on how it might be progressively developed. His delegation shared the concern expressed by others that the process of negotiating a convention risked undermining the important work carried out by the Commission over several decades, particularly if the resulting convention deviated from important existing rules or did not enjoy widespread acceptance. The better course would be to allow the articles to guide and settle the continuing development of the customary international law of State responsibility.

10. **Ms. Rodríguez Pineda** (Guatemala) said that the time was right to decide on the future of the articles. Some of the articles had already become customary international law, with some of their provisions forming the basis for decisions adopted by international courts as well as State practice. The transposition of the articles into customary international law constituted considerable progress, because they were binding on all States and the commentaries thereto could be used to determine the meaning and scope of the articles. Guatemala supported the idea of elaborating a multilateral convention of universal scope, which would help to provide legal certainty on the topic. Codification of the

articles would prompt States to seek greater unity in promoting the fundamental values of the Charter of the United Nations and to strengthen multilateralism, protect human rights and consolidate the rule of law. It would add legitimacy to the just conduct of States. The norms contained in the articles on attribution, exceptions and reparation were extremely important for the harmonization of international law and its application by international tribunals. There was a need for clear and uniform guidelines to assist those tribunals and help them avoid legal inconsistencies or political interpretations when they heard cases involving the responsibility of States.

11. The obligations of Member States under the Charter would always prevail when they were in conflict with obligations entered into by virtue of other international agreements. Codification would help to curb the tendency to expand the definition of concepts such as self-defence, which increased the probability of armed conflicts and encouraged States to resort to aggression even when they were not threatened. A treaty would also entail a mechanism for the settlement of disputes, which would guarantee the protection of rights and obligations under the treaty and make binding decisions possible. The world had recently witnessed the inability of States to reconcile their national interests with the requirements of international law, particularly in the area of international humanitarian and human rights law. That, together with complex conflicts involving a wide range of non-State actors, the proliferation of weapons and the development of new technologies, testified to the added value that a treaty would have. Given the importance of the responsibility of States in international law, a binding instrument must be concluded to strengthen the obligations of States and establish guidelines for effective compliance.

12. **Mr. Kowalski** (Portugal) said that the articles had reached a crucial stage of maturation and the time had come for the General Assembly to take action on them. State practice and the decisions of international courts and tribunals, including the case law of the International Court of Justice, testified to the usefulness of the articles and the need to continue consideration of the topic. There was ample evidence in the literature that showed an increasing tendency to accept the applicability of the articles, which were ready to be submitted to a diplomatic conference with a view to concluding a convention. Given the stability which the articles enjoyed, there was no reason to fear that the Commission's work would be extensively redone.

13. **Ms. AlNaser** (Saudi Arabia) said that the articles on responsibility of States for internationally wrongful acts should be codified in an international convention, as the only way of achieving legal certainty and harmonization on the topic. Codification would, in turn, contribute to the development of international law and promote the peaceful resolution of conflicts. Such a convention must place greater emphasis on State sovereignty and on the interplay between national laws and international law. It should also define the concepts of "internationally wrongful act" and "responsibility of States" in a manner that was consistent with both international law and the domestic laws of States. Her delegation would be submitting further comments on the articles at a later date.

14. **Mr. Pande** (India) said that his delegation welcomed the acceptance of the articles in State practice, scholarly writings and the decisions of courts, tribunals and other bodies. The concepts covered were less complicated than those proposed at the initial stages of drafting. For instance, the concept of State crimes had been replaced by the concept of serious breaches of obligations under peremptory norms of general international law. The commentary to draft article 40 gave several illustrations of such peremptory norms. Some of the most difficult articles had been recast to take into consideration the needs of States in difficult circumstances.

15. His delegation reiterated its view that the articles only addressed secondary rules of State responsibility, which would come into play only if an internationally wrongful act, as defined by a primary rule, was committed. In that connection, it should be noted that international law was still striving to achieve the type of universality that it had achieved in other areas. The text of the articles reflected the balance that the Commission had taken more than forty years to achieve. Accordingly, India considered that no further action on the topic was necessary at the current stage.

16. **Ms. Tomlinson** (United Kingdom) said that the articles on responsibility of States for internationally wrongful acts sought to balance the different views of States and combine elements of strict codification with elements of progressive development. Aspects of the articles had already been, and continued to be, highly

influential in many areas of international law, as was evidenced by the many judgments of both international and national courts and tribunals that made reference to them and also by the frequent recourse that Governments had to them in formulating their legal views. However, the articles did not reflect a settled view of customary international law or even a settled consensus of views among States, and elements within them remained unclear and disputed.

17. The United Kingdom continued to believe that there were dangers in pressing ahead with a convention at a time when the articles were becoming further engrained and State practice was becoming more settled. Taking such a course could provoke differences of views and threaten the very coherence that the articles had sought to achieve. Her delegation believed, therefore, that the Committee would be better advised to acknowledge the importance of the articles once again, but to defer further discussion until it became clear that the time was ripe for further action.

18. **Mr. Gonzalez** (Chile) said that States should be held accountable for their internationally wrongful acts, because State responsibility was a general principle of international law, similar to good faith in relations among States, or the principle of *pacta sunt servanda*. The time that had elapsed since the articles had been brought to the attention of Governments without any progress being made with regard to possible future approval showed how difficult it had been to reach a consensus on the subject. States had invariably acknowledged the importance of the articles, thus reflecting the value which they attached to the Commission's work. The International Court of Justice and many other international courts, tribunals and arbitral panels all had all referred to the articles in their decisions. The failure to establish a binding legal instrument on the basis of the articles or even to take a decision on its future approval more than 12 years after their completion did not augur well for the recognition of the importance of the articles.

19. Although Chile believed that the articles should be codified in an international convention, it did not deny the value of other sources of international law, including custom. On the contrary, it believed that much of the content of the articles formed part of customary international law, with many of the articles having been invoked by international tribunals. However, a convention provided a greater degree of legal certainty and was also the appropriate instrument for embodying new contributions in international law. A number of delegations continued to believe that certain aspects of the articles required further observations, but there was no point in bringing up the topic in the Sixth Committee every three years if no progress had been made on deciding how to proceed.

20. The Committee, through an ad hoc or working group, should identify problems which the articles continued to pose in order to consider them at a later date at a conference or similar forum. By way of transition, it might consider having the articles adopted by the General Assembly in the form of a declaration as a step towards their final adoption in the form of a convention. Without such initiatives, the articles might remain in their current form indefinitely.

21. **Mr. Zemet** (Israel) said that the law on State responsibility was a fundamental pillar of public international law, serving to enhance both the rule of law and peace and stability among nations, and that the articles were an undeniable legal accomplishment, notwithstanding his Government's reservations on certain issues. His delegation continued to believe that it would be unadvisable to embark on negotiations for the formulation of a convention at the current time, because that might unravel the fragile balance struck in the wording of the articles. Like other States, Israel was in favour of the progressive development of that important body of law, but believed that the articles should be permitted to develop organically through their affirmation in the marketplace of jurisprudential ideas, not through multilateral treaty negotiations or international conferences. The articles had already begun to gain the respect of scholars and the imprimatur of judicial and arbitral courts and tribunals, as shown in the report of the Secretary-General (A/68/72), and had proved to be a useful guide for States and practitioners in their non-binding form. It was therefore difficult to see what would be gained from the adoption of a convention at the current juncture.

22. **Mr. Leonidchenko** (Russian Federation) said that the updated compilation of decisions by international courts and tribunals in the report of the Secretary-General (A/68/72) confirmed that the articles were being actively applied in practice as norms of international customary law and contributed significantly to the work of international judicial bodies. Despite some provisions that required additional work, in particular articles 25 and 41, on the

whole the articles were well articulated and balanced and were a good basis for further work. Since the goal of the International Law Commission was to promote the progressive development and codification of international law, and relevant General Assembly resolutions had repeatedly drawn the attention of States to the articles, his delegation supported the idea of holding an international conference to elaborate a legally binding convention on responsibility of States for internationally wrongful acts.

23. **Mr. Gharibi** (Islamic Republic of Iran) said that his country attached high importance to the question of State responsibility and was of the view that many provisions of the articles were an expression of customary international law, in particular articles 41, 48, 50 and 54. They not only reflected existing international law but were also consistent with a number of authoritative pronouncements in international case law, including decisions of the International Court of Justice, and prevailing doctrine. The rules on State responsibility were the cornerstone of the rule of law in international relations; they should be clear and known to all subjects of international law, and that was only possible if they were crystallized in a treaty. Accordingly, his delegation believed that the time was ripe to convene a diplomatic conference to adopt a convention on State responsibility. The articles were the best basis for such a legally binding instrument.

24. **Ms. Tajuddin** (Malaysia) recalled that at the sixty-fifth session of the General Assembly, her delegation had not been in favour of initiating negotiations aimed at developing a convention on state responsibility, because such a move might unravel the fragile balance in the wording of the articles. It had also indicated that the articles needed further in-depth consideration and that, as comprehensive as they might set out to be, they should only be considered guidelines.

25. Malaysia remained concerned about draft article 2, which seemed to suggest that fault or wrongful intent on the part of the State was not required in order to establish the existence of an internationally wrongful act. That obligation must be carefully considered by States. It was also concerned about article 7, which dealt with the *ultra vires* acts of State organs. Introducing such an obligation would require States to assume the conduct or wrongdoing of an organ or a person beyond the power given to such organ or person by those States. There would be considerable financial implications for a State found to be in breach of such an obligation. Given that such issues required further consultations among States, the articles should remain in the form of guidelines at the current juncture.

26. **Mr. Aprianto** (Indonesia) said that the articles on State responsibility would make an important contribution to strengthening the commitment of States to the rule of law and would be instrumental in governing relations between States, in particular with respect to the peaceful settlement of disputes. Discussions should continue on whether to convene a diplomatic conference to elaborate an international convention on the basis of the articles. Such a conference would give all States the opportunity to present their views in a more exhaustive manner and would enrich the progressive development of international law.

27. **Ms. Cabello de Daboin** (Bolivarian Republic of Venezuela) said that the topic of responsibility of States for internationally wrongful acts was of primary importance for preserving international order, developing relations among States based on respect and equality, and strengthening the rule of law internationally. The Committee should decide at the current session either to adopt a declaration as a first step towards codification, or to call for the convening of an international conference to adopt the articles in treaty form. Nonetheless, the adoption of such a declaration or the convening of such a conference did not mean that areas in which countries were not in agreement could not be further developed at a later stage.

Agenda item 82: Diplomatic protection (A/68/115 and A//68/115/Add.1)

28. **Mr. León González** (Cuba), speaking on behalf of the Community of Latin American and Caribbean States (CELAC), said that diplomatic protection was an important area with a long-standing tradition in international relations between States. The articles on diplomatic protection generally reflected the most frequently recognized State practice on the topic and were consistent with international customary norms. It was therefore important to work towards the adoption of an international convention to permit the harmonization of State practice and jurisprudence on the topic. The negotiation of such a convention would

be a valuable exercise in addressing existing gaps and bringing legal clarity and predictability to the topic. The convention would also serve to enhance the rule of law and contribute to the codification of international law in the area of human rights, including the protection of refugees and stateless persons. It would also guarantee the right of States to protect their nationals by invoking the responsibility of other States for injuries caused by internationally wrongful acts committed against those nationals.

29. The establishment of a working group on the question within the Sixth Committee would be the right path to take for the possible elaboration of an international convention. The articles on diplomatic protection and those relating to State responsibility were linked. Further State practice and development on State responsibility would have a positive impact on the work on diplomatic protection. The Community of Latin American and Caribbean States stood ready to contribute to that debate.

30. **Ms. Aas** (Norway), speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), said that the articles on diplomatic protection made an important contribution to international law. The reports of the Secretary-General (A/68/115 and A/68/115/Add.1) had confirmed the existence of diverging views on the articles, including the question of their final form. The Nordic countries stood ready to consider all options that would safeguard the core elements of the articles and ensure their position as a source of inspiration and guidance for States in exercising the right to diplomatic protection. However, bearing in mind the current situation, they were concerned that attempts to negotiate a convention at the current stage risked opening a debate that might undermine the already substantial contributions of the articles. It was therefore preferable, at the current juncture, to take note of the articles and to take them fully into consideration as guidance and inspiration for State practice.

31. **Ms. Al Shebel** (Saudi Arabia) said that persons and entities that were outside their country of nationality were entitled to protection by their State of nationality, acting through its diplomatic or consular agencies. Nationals of other States were also entitled to the same protection in the host State, based on the principle of reciprocity and in accordance with international law. Her Government was committed to ensuring that its nationals were treated in a humane manner when they were abroad, and that foreign nationals in Saudi Arabia were afforded the same treatment. Diplomatic protection was a means of protecting the rights of persons and entities and the interests of States at the international level. When exercising diplomatic protection, the rights and interests of the injured party must be safeguarded. However, the State should not intervene to protect its nationals if they had not made any attempt to seek redress through the laws of the State in which they claimed to have been injured. Saudi Arabia was fully aware of the importance of reaching agreement on an appropriate and satisfactory text for the rapid conclusion of an international convention on diplomatic protection. It would be submitting further observations regarding the articles on diplomatic protection at a later stage.

32. **Mr. Hill** (United States of America) said his delegation endorsed the view that, insofar as the articles reflected the large body of State practice on diplomatic protection, they were valuable to States in their current form. However, it was also concerned that a limited number of the articles were inconsistent with well-settled customary international law. As in the case of the articles on State responsibility, the negotiation of a convention on diplomatic protection might undermine the substantial contribution already made by the articles. Therefore, it would be preferable to allow time for the articles to influence and help settle State practice. The General Assembly should take no further action on the articles at the current time.

33. **Mr. Kowalski** (Portugal) said that the fact that the Commission had completed its work on diplomatic protection in less than ten years proved that the topic was indeed ripe for codification. Diplomatic protection served an important function as a means of last resort for the protection of human rights. There was a recognizable trend towards giving individuals and groups greater autonomy and the power to protect their own rights; his Government endorsed that trend. Despite its disagreement with certain aspects of the articles pertaining to both scope and content, Portugal found the articles on diplomatic protection amenable to transformation into an international convention. It hoped that the articles on diplomatic protection and those on State responsibility could soon become parallel conventions, representing a major step towards consolidating the law of international responsibility.

34. **Mr. Katota** (Zambia) said that the rules on the protection of ambassadors and other diplomats, which were among the oldest and most fundamental obligations of international law, made it possible for them to discharge their vital functions in the development of friendly relations between States. Violence committed against the security and safety of diplomatic and consular missions and representatives was a serious concern that needed to be addressed effectively through a legal instrument. Efforts must be redoubled to fulfil the obligation to protect diplomats and consular officials and to prevent attacks against them, as well as arbitrary arrest by security officers of host countries. Zambia looked forward to the negotiation of a convention on diplomatic protection and would be commenting on the articles at the meeting of the working group on the topic.

35. **Mr. Bailen** (Philippines) noted that the exercise of diplomatic protection had long been one of the most fertile if not controversial areas for the development of international law. Unfortunately, that discretionary sovereign prerogative had sometimes been misused as a pretext for intervening by force in other countries' domestic affairs. Although diplomatic protection existed under customary international law, consideration should be given to codifying and clarifying such customs through a convention.

36. Under customary international law, there were two main requirements for the exercise of diplomatic protection: the exhaustion of local remedies, and effective and continuous nationality. The local remedies rule was clearly codified in the articles. However, exceptions to that rule, set out in article 15, including exceptions (c) and (d), should, if necessary, be construed *in strictissimi juris*. Concerning the effective and continuous nationality requirement, the injured person or entity should, as a general rule, maintain the nationality of the espousing State from the moment of injury until at least the presentation of the claim. Specific rules were also outlined in Part Two of the articles, including with respect to direct injury to shareholders, stateless persons and refugees, and persons with dual or multiple nationality. The latter category was particularly important for the Philippines, which had passed a dual nationality law that affected many of its citizens living abroad. In that connection, his delegation would like more information on the practical application of the concepts of "predominant nationality" in article 7 and "direct injury" in article 12, in a manner that would make it possible for the State of nationality to exercise diplomatic protection.

37. As set out in article 18 (Protection of ships' crews), the right of the State of nationality of the members of the crew of a ship to exercise diplomatic protection was not affected by the right of the State of nationality of a ship to seek redress on behalf of such crew members. That provision was of particular importance to his country, which accounted for one quarter of the estimated one million seafarers worldwide. Lastly, while there was no provision in the articles regarding the time period for exercising diplomatic protection, it might be useful to consider applying the principles of prescription, estoppel or laches to diplomatic protection, without which both human relations and international relations would always be unstable.

38. **Mr. León González** (Cuba) said that the adoption of a convention based on the articles would contribute to the codification and progressive development of international law, in particular the consolidation of norms concerning conditions that must be met for a request for diplomatic protection. It was unfortunate that some States, rather than making appropriate use of diplomatic protection as a supplementary means of protecting their nationals, employed it to exert pressure on States and promote transnational economic interests. The exercise of diplomatic protection was a sovereign right of States and of vital importance for the promotion of the rule of law at all levels. Its application to refugees and stateless persons contributed to the protection of the rights of those highly vulnerable groups. The articles on diplomatic protection were closely related to those on responsibility of States for internationally wrongful acts, and both texts should be handled in the same way. In order to promote the broadest possible consensus, the articles should be referred to a Sixth Committee working group, which would work out the final details of an international convention on diplomatic protection.

39. **Mr. Desta** (Eritrea) said that his country attached great importance to the subject of diplomatic protection and to developing effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives. Failure to respect the inviolability of diplomatic and consular missions and their representatives was a matter of great concern to his delegation. Eritrea took its

responsibilities under the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations and other relevant instruments seriously and ensured the protection of the representatives of diplomatic and consular missions as well as the inviolability of their premises and communications. It called for vigilance and cooperation in order to prevent criminal acts and to ensure the protection of diplomatic and consular missions and their personnel in all States.

40. **Ms. Tomlinson** (United Kingdom) said that in previous discussions her delegation had agreed with the Special Rapporteur that the fate of the articles was closely bound up with that of the articles on State responsibility. The former could be seen as giving content, in the specific context of diplomatic protection, to the admissibility requirements of article 44 of the latter. Thus, in the absence of consensus on the elaboration of a convention on State responsibility, any decision to begin negotiating a convention on diplomatic protection would be premature. Moreover, the articles on diplomatic protection went beyond the straightforward codification of current law and contained elements that would amount to progressive development of customary international law on the topic. Some of those elements would conflict with her country's current practice and were undesirable. In that connection, the apparently non-binding draft article 19, (Recommended practice) seemed inappropriate for inclusion in a treaty and risked undermining the discretion which States had to decide whether or not to exercise diplomatic protection. A convention on diplomatic protection should not be seen as the only possible conclusion to the work on the topic. In the absence of a convention on State responsibility, the best approach would be to allow the articles to inform and influence State practice. Consideration of the agenda item should be deferred until it was clear that the time was ripe for further action by the Committee.

41. **Mr. Gonzalez** (Chile) said that diplomatic protection was a topic of major importance for the codification and progressive development of norms of international law. The articles on diplomatic protection should therefore take the form of a convention, which would enhance legal certainty on the topic. Although Chile was in favour of the elaboration of a convention on diplomatic protection, it believed that priority should be given to the development of a convention on responsibility of States for internationally wrongful acts, which was also being considered by the Committee.

42. **Mr. Leonidchenko** (Russian Federation) said that the articles on diplomatic protection struck a good balance between codification of the existing practice of States and progressive development of international law. They helped to clarify and develop norms of customary international law with regard to the protection by States of their nationals and legal entities, as well as refugees and stateless persons from the wrongful acts of other States. They provided a satisfactory answer to a number of questions relating to diplomatic protection, including the definition and scope of the concept, the right of States to exercise it, the nationality of persons subject to diplomatic protection, and the protection of corporations. On the whole, they complemented the articles on responsibility of States for internationally wrongful acts and could serve as a basis for the elaboration of a convention. Nonetheless, his delegation was willing to consider other ways of making the articles legally binding, including in the context of a discussion on the fate of the articles on State responsibility.

43. **Mr. Gharibi** (Islamic Republic of Iran) said that any legal regime on diplomatic protection must observe a delicate balance between the rights of persons or entities and those of States. It was doubtful that the current articles could allay those concerns. They had been adopted in a considerably shorter period of time than other texts developed by the Commission, and that was perhaps why not all of them could be said to reflect customary international law. For instance, articles 7 (Multiple nationality and claim against a State of nationality) and 8 (Stateless persons and refugees) had been formulated on the basis of the case law of regional tribunals or of sui generis tribunals, which could hardly reflect general international law. Some areas of diplomatic protection were not covered and some provisions, for instance draft article 15, paragraphs (b) and (d), were vague or hypothetical.

44. The fact that States had differing views on the future of the articles indicated that they needed more time for further consideration of its content. More time would also provide an opportunity to assess the extent to which the articles reflected State practice. It would accordingly be premature to develop the articles as a legally binding instrument.

The meeting rose at 12.05 p.m.