



General Assembly

Sixty-eighth session

Official Records

Distr.: General
6 December 2013

Original: English

Sixth Committee

Summary record of the 28th meeting

Held at Headquarters, New York, on Friday, 8 November 2013, at 11 a.m.

Chair: Mr. Kohona. (Sri Lanka)

Contents

Agenda item 77: Responsibility of States for internationally wrongful acts
(*continued*)Agenda item 82: Diplomatic protection (*continued*)Agenda item 78: Criminal accountability of United Nations officials and experts on mission (*continued*)Agenda item 79: Report of the United Nations Commission on International Trade Law on the work of its forty-sixty session (*continued*)Agenda item 83: Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm (*continued*)Agenda item 84: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (*continued*)Agenda item 86: The scope and application of the principle of universal jurisdiction (*continued*)Agenda item 80: United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law (*continued*)Agenda item 110: Measures to eliminate international terrorism (*continued*)Agenda item 143: Administration of justice at the United Nations (*continued*)

This record is subject to correction. Corrections should be sent as soon as possible, under the signature of a member of the delegation concerned, to the Chief of the Documents Control Unit (srcorrections@un.org), and incorporated in a copy of the record.

Corrected records will be reissued electronically on the Official Document System of the United Nations (<http://documents.un.org/>).

13-55502 (E)



Please recycle The text "Please recycle" followed by a universal recycling symbol.



The meeting was called to order at 11.25 a.m.

Agenda item 77: Responsibility of States for internationally wrongful acts (*continued*)
(A/C.6/68/L.19)

Oral report by the Chair of the Working Group on responsibility of States for internationally wrongful acts

1. **Mr. Stuerchler Gonzenbach** (Switzerland), Chair of the Working Group, recalled that, pursuant to General Assembly resolution 65/19, the Committee had decided to establish a working group to examine the possibility of negotiating an international convention, or any other appropriate action, on the basis of the articles on responsibility of States for internationally wrongful acts. The Working Group had held one meeting, on 21 October 2013, at which the Committee's prior consideration of the agenda item had been recalled. The Working Group had had before it the written comments of Governments contained in the most recent report of the Secretary-General on responsibility of States for internationally wrongful acts (A/68/69 and A/68/69/Add.1), as well as a compilation of decisions of international courts, tribunals and other bodies, taken between 2010 and 2013, that referred to the articles on responsibility of States for internationally wrongful acts and the commentary thereto (A/68/72).

2. Taking into account the differences of opinion expressed during the Committee's plenary debate, the Working Group's primary task had been to obtain the views of Governments on a possible way forward, to be reflected in a draft resolution. Four possible options had been identified: to defer once again the decision on the future of the articles on State responsibility to a future session; simply to conclude the General Assembly's consideration of the fate of the articles; to conclude consideration of the fate of the articles for the time being, while leaving open the possibility of returning to the matter in the future; or to recommend the negotiation of an international convention on the basis of the articles. A preliminary exchange of views on the basis of those four options had revealed that divergences of opinion continued to exist. Those who had spoken in favour of negotiating a convention on the basis of the articles had highlighted, *inter alia*, the extensive reliance of international courts and tribunals on them, as well as the decisions of international courts and tribunals which noted that certain provisions of the articles reflected rules of customary international law.

Several delegations had emphasized that a convention on the basis of the articles would contribute to legal certainty and the international rule of law, and would lessen the selective and inconsistent application of the articles in their current form. Other delegations had continued to oppose the negotiation of a convention, indicating that it would threaten the delicate balance established in the articles by the International Law Commission. Some delegations had also noted that it would be premature to consider the articles in their entirety as settled customary international law.

3. Against that background, it had been decided that the best way forward at the present session was to negotiate a draft resolution that would acknowledge recent developments with regard to the articles on responsibility of States for internationally wrongful acts, and once again defer a decision on their fate to a future session. The exchange of views in the Working Group had formed a basis for subsequent consultations outside the Working Group on a possible draft resolution.

4. **The Chair** said he took it that the Committee wished to take note of the oral report by the Chair of the Working Group.

5. *It was so decided.*

Draft resolution A/C.6/68/L.19: Responsibility of States for internationally wrongful acts

6. **Mr. Stuerchler Gonzenbach** (Switzerland), introducing draft resolution A/C.6/68/L.19 on behalf of the Bureau, said that, as a result of the consultations held outside the Working Group, a consensus had emerged for a draft resolution based largely on the text of General Assembly resolution 65/19, with a number of technical updates. Paragraph 1, in which the General Assembly would acknowledge that a growing number of decisions of international courts, tribunals and other bodies referred to the articles on responsibility of States for internationally wrongful acts, was new. In paragraph 2, the words "continues to" and "usefulness" had been added. Paragraph 5 provided that the item would be included on the provisional agenda of the seventy-first session. He hoped that the Committee would adopt the draft resolution by consensus.

Agenda item 82: Diplomatic protection (*continued*)
(A/C.6/68/L.16)

Oral report by the Chair of the Working Group on diplomatic protection

7. **Mr. Joyini** (South Africa), Chair of the Working Group, recalled that, pursuant to General Assembly resolution 65/27, the Committee had decided to establish a working group to examine further the question of a convention on diplomatic protection, or any other appropriate action, on the basis of the articles on diplomatic protection and also to identify any difference of opinion on the articles. The Working Group had held one meeting, on 23 October 2013, at which the history of the Committee's consideration of the agenda item had been recalled. The Working Group had had before it the written comments of Governments contained in the most recent report of the Secretary-General on diplomatic protection (A/68/115 and A/68/115/Add.1).

8. Taking into account the differences of opinion expressed during the Committee's plenary debate, the Working Group's primary task had been to obtain the views of Governments on a feasible way forward, to be reflected in a draft resolution. Two possible options had been identified: either to decide to start a process towards the eventual negotiation and adoption of a convention, or simply to defer any decision on the matter to a future session. Several delegations had reiterated the positions they had expressed during the plenary debate. Those who had spoken in favour of the eventual adoption of the articles on diplomatic protection as a convention had stressed, *inter alia*, the important role the articles had played in clarifying and developing rules of customary international law and the legal certainty that a convention would provide. Other delegations had continued to oppose such an outcome, among other reasons because the negotiation of a convention would be premature in the absence of a consensus on the substance of the articles. Reference had also been made to concerns raised during the plenary debate about specific provisions of the articles.

9. He had therefore made the assessment that a number of States supported the possibility of starting a process towards the adoption of an international convention on the basis of the articles; however, some States continued to oppose the conclusion of a convention, in part because of concerns about specific provisions of the articles; and a further group of States

would prefer to defer a decision on how to proceed until the final decision on the fate of the articles on responsibility of States for internationally wrongful acts had been taken. In view of that assessment, there had been agreement in the Working Group that the most feasible way forward was to prepare a draft resolution that would defer a decision on the fate of the articles to a future session. Discussions on the text of such a draft resolution had subsequently been held on the basis of bilateral contacts.

10. **The Chair** said he took it that the Committee wished to take note of the oral report by the Chair of the Working Group.

11. *It was so decided.*

Draft resolution A/C.6/68/L.16: Diplomatic protection

12. **Mr. Joyini** (South Africa), introducing draft resolution A/C.6/68/L.16 on behalf of the Bureau, said that the text was based on General Assembly resolution 65/27, with the necessary technical updates. The proposal to include the item in the provisional agenda of the Assembly's seventy-first session, as reflected in the wording of paragraph 2 of the draft resolution, had been motivated in part by a desire to consider the fate of the articles on diplomatic protection at the same session as that of those on responsibility of States for internationally wrongful acts. He hoped that the Committee would adopt the draft resolution by consensus.

Agenda item 78: Criminal accountability of United Nations officials and experts on mission (*continued*)
(A/C.6/68/L.15)

Draft resolution A/C.6/68/L.15: Criminal accountability of United Nations officials and experts on mission

13. **Mr. Hameed** (Pakistan), introducing draft resolution A/C.6/68/L.15 on behalf of the Bureau, said that the text was essentially a technical update of the resolution adopted at the previous session. Paragraph 8 provided that a working group of the Sixth Committee would be reconvened at the seventieth session of the General Assembly to continue its consideration of the report of the Group of Legal Experts. Paragraph 15 had been updated to include a reference to General Assembly resolution 67/88; and paragraph 16 reiterated the request for the Secretary-General to report to the General Assembly at its sixty-ninth session on implementation of the resolution. A new phrase,

“including referrals to appropriate authorities for prosecution and the procedures therefor”, had been included in paragraph 17, bearing in mind the importance of the request in paragraph 9 that the Secretary-General should bring credible allegations that a crime might have been committed by United Nations officials or experts on mission to the attention of the States against whose nationals such allegations were made.

14. He was confident that the draft resolution provided the necessary tools for meaningful dialogue on the topic, and hoped that Governments would respond to the request for information with a reasonable degree of specificity, so that the working group could make informed decisions on the topic at the seventieth session of the General Assembly.

Agenda item 79: Report of the United Nations Commission on International Trade Law on the work of its forty-sixth session (*continued*) (A/C.6/68/L.9, A/C.6/68/L.10, A/C.6/68/L.11 and A/C.6/68/L.12)

Draft resolution A/C.6/68/L.9: Report of the United Nations Commission on International Trade Law on the work of its forty-sixth session

Draft resolution A/C.6/68/L.10: Revision of the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency and part four of the UNCITRAL Legislative Guide on Insolvency Law

Draft resolution A/C.6/68/L.11: UNCITRAL Guide on the Implementation of a Security Rights Registry

Draft resolution A/C.6/68/L.12: United Nations Commission on International Trade Law Rules on Transparency in Treaty-based Investor-State Arbitration and Arbitration Rules (as revised in 2010, with new article 1, paragraph 4, as adopted in 2013)

15. **Ms. Quidenus** (Austria), introducing the four draft resolutions relating to the report of the United Nations Commission on International Trade Law (UNCITRAL) on the work of its forty-sixth session, said that Chile, Georgia and Uganda had become sponsors of draft resolution A/C.6/68/L.9, which was the omnibus resolution on the report of the Commission. The Preamble, as in previous resolutions, stressed the importance of international trade law and recalled the mandate, work and coordinating role of UNCITRAL. Paragraph 2 to 4 referred to the work accomplished and decisions taken during the Commission’s forty-sixth session. Paragraph 9 had

been updated to welcome the activities of the UNCITRAL Regional Centre for Asia and the Pacific. The phrase “to put in place a regulatory and enabling environment for business, trade and investment” had been added at the end of paragraph 10 because of the Commission’s decision at its forty-sixth session to undertake work in the area of micro-, small- and medium-sized enterprises, which did not have as strong a cross-border focus as other areas in which it had worked to date. Paragraph 14 recalled that, in the Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, Member States had, inter alia, commended the work of UNCITRAL and expressed their conviction that the rule of law and development were strongly interrelated and mutually reinforcing; and paragraphs 18 and 20 referred to the work of the Secretariat on the system for the collection and dissemination of case law on Commission texts in the six official languages of the United Nations (the CLOUT system) and on digests of case law related to Commission texts, respectively.

16. As their titles indicated, draft resolution A/C.6/68/L.10 dealt with the revision of the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency and part four of the UNCITRAL Legislative Guide on Insolvency Law, and draft resolution A/C.6/68/L.11 dealt with the UNCITRAL Guide on the Implementation of a Security Rights Registry. Draft resolution A/C.6/68/L.12, among other provisions, recommended the use of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration and Arbitration Rules within the scope of their application as defined in article 1 thereof, and invited Member States which had chosen to include the Rules in their treaties to inform the Commission accordingly.

17. She was confident that all four draft resolutions could be adopted without a vote.

Agenda item 83: Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm (*continued*) (A/C.6/68/L.20)

Draft resolution A/C.6/68/L.20: Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm

18. **Mr. González** (Chile), introducing draft resolution A/C.6/68/L.20 on behalf of the Bureau, said

that the text was based on General Assembly resolution 65/28, with a few technical updates. Paragraph 5 provided that the item would be included in the agenda of the seventy-first session. A footnote made reference to the reports of the Secretary-General that provided the comments and observations received from Governments (A/68/94 and A/68/170).

Agenda item 84: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (continued) (A/C.6/68/L.18)

Draft resolution A/C.6/68/L.18: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

19. **Mr. Salem** (Egypt), introducing draft resolution A/C.6/68/L.18 on behalf of the Bureau, said that the text was based on General Assembly resolution 67/96. The phrase “including the frequency of its consideration” had been added to paragraph 3 (b); the phrase “and utilization of resources” had been added to paragraph 3 (e); and paragraph 9 no longer included a reference to contributions made to the Trust Fund for the elimination of the backlog in the *Repertory of Practice of United Nations Organs*, as no such contributions had been made in 2013. In addition, the dates of the 2014 session of the Special Committee were provided in paragraph 2. He hoped that the draft resolution could be adopted without a vote.

Agenda item 86: The scope and application of the principle of universal jurisdiction (continued) (A/C.6/68/L.17)

Draft resolution A/C.6/68/L.17: The scope and application of the principle of universal jurisdiction

20. **Mr. Afande** (Togo), introducing draft resolution A/C.6/68/L.17 on behalf of the Bureau, said that the text largely replicated General Assembly resolution 67/98, with some slight technical modifications. He was confident that the draft resolution could be adopted by consensus.

Agenda item 80: United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law (continued) (A/C.6/68/L.14)

Draft resolution A/C.6/68/L.14: United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

21. *Draft resolution A/C.6/68/L.14, as orally revised at the 27th meeting, was adopted.*

Agenda item 110: Measures to eliminate international terrorism (continued) (A/C.6/68/L.13)

Draft resolution A/C.6/68/L.13: Measures to eliminate international terrorism

22. *Draft resolution A/C.6/68/L.13 was adopted.*

23. **Mr. Aldahhak** (Syrian Arab Republic) said that, while his delegation supported all international efforts aimed at combating international terrorism, it had reservations concerning the twenty-third preambular paragraph insofar as it included a misplaced reference to the North Atlantic Treaty Organization (NATO), which, as a military alliance, differed in nature and activities from the other organizations listed.

24. **Ms. Cabello de Daboin** (Bolivarian Republic of Venezuela), **Ms. Dieguez La O** (Cuba) and **Ms. Ramírez Sanchez** (Nicaragua) said that their delegations also had reservations concerning the reference to NATO.

Agenda item 143: Administration of justice at the United Nations (continued)

25. **Mr. Fitschen** (Germany), presenting an oral report on the Committee’s informal consultations on the agenda item, for which he had been the coordinator, said that discussions had centred on the proposals and observations contained in the report of the Secretary-General on administration of justice at the United Nations (A/68/346), the report of the Internal Justice Council on administration of justice at the United Nations (A/68/306) and the report of the Secretary-General on activities of the Office of the United Nations Ombudsman and Mediation Services (A/68/158). A fruitful question-and-answer session had been held with staff members from the Office of Legal Affairs, the Internal Justice Council and the Office of the United Nations Ombudsman and Mediation Services. Owing to the success of the dialogue, he recommended that the exercise should be repeated at the next session and include other stakeholders, such as the judges of the United Nations Dispute Tribunal and

the United Nations Appeals Tribunal. The Secretariat had also provided prompt written replies to questions on the report that had been submitted by delegations.

26. In the debate on the report of the Secretary-General on administration of justice at the United Nations (A/68/346), delegations had noted with satisfaction that the new system of administration of justice was stabilizing and was trusted by staff members and had commended the Management Evaluation Unit for effectively handling a high number of complaints despite the tight timelines established for delivery of its decisions. Delegations had expressed satisfaction that only a small number of the total number of requests had required a formal decision. The fact that, in the majority of its cases, the United Nations Dispute Tribunal had confirmed or partly confirmed the Unit's recommendations indicated that the Unit's decisions were well-founded.

27. Delegations had acknowledged the importance of the Office of the Ombudsman, the Management Evaluation Unit and the Office of Staff Legal Assistance in the informal resolution of work-related disputes. Note had been taken of the information provided by the Secretary-General on measures to encourage informal dispute resolution, and delegations had called for further efforts to solve conflicts at the lowest possible level while ensuring respect for staff members' basic right to pursue a case within the formal system. Attention had also been drawn to measures developed by the funds and programmes for the purpose of managing and settling conflicts.

28. Delegations had noted with satisfaction that the number of new cases brought before the Dispute Tribunal, as well as the number of judgments it delivered, appeared to be stabilizing, which had decreased the time needed to decide a case at the first instance to about 12 months. However, delegations had stressed — as the Committee had done in its letter to the Fifth Committee during the sixty-seventh session — that any reduction in the judicial capacity of the Tribunal would lead to a significant increase in the length of time needed to conclude a case. The sustained efficiency of the formal system must be guaranteed, and in that regard, the question of maintaining judges continuously in the three duty stations must be resolved. Delegations had noted with appreciation the investments made in improving the Tribunal's courtrooms. Such technical measures, which also included improving the case management system,

would allow the Tribunal to work more efficiently and could potentially further reduce the time needed to decide a case. Delegations had also expressed support for the measures to improve access to the jurisprudence of the Tribunals. In that regard, he noted that the representative of the Internal Justice Council had argued strongly in favour of a better search engine that would allow staff members, managers, the Office of Staff Legal Assistance and others working on internal justice issues to determine the relevant jurisprudence.

29. Some delegations had expressed concerns about the relatively high number of judgments of the Dispute Tribunal that had been appealed to the Appeals Tribunal. Two-thirds of the appeals had been brought by staff and one third on behalf of the Secretary-General, with markedly different success rates. Recalling that the Appeals Tribunal itself had warned that the steady influx of new cases might push the new system into crisis, delegations had stressed that a backlog of appeals, which had plagued the old system, must be avoided. In that regard, the Fifth Committee was encouraged to consider the proposals made by the judges of the Appeals Tribunal.

30. Discussion had also focused on the issue of moral damages and compensation for non-pecuniary losses. In that regard, delegations had taken note of the practice of the two Tribunals and the principles developed by the Appeals Tribunal in its jurisprudence over the past four years, as described in the Secretary-General's report (A/68/346). Some delegations had recalled that the statutes of the two Tribunals did not contain any specific provision on compensation for immaterial loss and had encouraged further study of relevant national legislation. Delegations had also pointed out that the compensation figures provided in the report deserved special consideration that should not simply focus on the amount of the award.

31. Delegations had welcomed the proposals to conduct an interim independent assessment of the formal system for the administration of justice, which would take stock of the system's development over its first five years of operation and might assist delegations in their decision-making on a number of pending issues. It had been suggested that the assessment should also address the relationship between the formal and informal systems and include issues related to non-staff personnel. Delegations had agreed that the assessment as envisaged by the General Assembly called for, inter alia, a thorough analysis not

only of the managerial functioning of the tribunals, but also of their jurisprudence and working methods under the statutes and the rules of procedure. It was recommended that the entity responsible for conducting the assessment should be enabled to draw on sufficient and independent legal expertise, including from outside the system, and that it should be given an adequate amount of time. Some delegations had requested additional information from the Secretariat regarding how the entity would measure the cost-effectiveness of the formal system and the criteria to be applied.

32. Delegations had commended the work of the Office of Staff Legal Assistance and underlined the importance of providing sound and independent legal advice to staff in all phases of a dispute. It had been noted that the Committee had already expressed the view at the sixty-seventh session that the Office should be allowed to continue to represent staff in proceedings before the Tribunals; staff members should be encouraged to avail themselves of the Office's services. Delegations had recalled that the Committee had stressed at the sixty-seventh session that the United Nations must ensure that effective remedies were available to all categories of personnel. Some delegations had emphasized that the issue of better redress for non-staff personnel remained unresolved.

33. In the debate on the report of the Internal Justice Council (A/68/306), many delegations had underlined that the Council carried out an important function in ensuring independence, professionalism and accountability, and the views and advice provided by the Council to the General Assembly were essential for the proper functioning and improvement of the justice system. Great interest had been shown in the Council's proposed long-term work programme for the remainder of its term of office to 2016. Delegations had noted that parts of the work programme might overlap with the mandate to be given to the interim assessment and had urged close coordination. The Council had stated that a number of problems faced by the system were not legal in nature and could be addressed through technical or administrative measures. In that regard, delegations had stressed that, while the concrete proposals made by the Council were for the Fifth Committee to examine and decide, the general concern about the efficiency of the system and the timely and professional disposal of cases at all levels was relevant to the Sixth Committee.

34. Some delegations had seen merit in the Council's proposal to treat the judges of the two Tribunals

equally in respect of their privileges and immunities and had agreed with the Council that, for the sake of legal clarity, their immunities should be clearly specified. Whereas some delegations had welcomed the proposal to extend the privileges and immunities of section 19 of the Convention on the Privileges and Immunities of the United Nations (General Convention) to both groups of judges, or, at the least, to extend the privileges and immunities provided in section 18, which currently applied only to the Dispute Tribunal judges, to the Appeals Tribunal judges, other delegations had requested more time to study the legal repercussions of any change in that regard. After a lengthy discussion, it had been agreed that the issue required further examination before a decision was taken.

35. Concerning the Council's proposal to broaden the criteria for eligibility of persons to the post of an Appeals Tribunal judge, some delegations had agreed that the statute of the Appeals Tribunal should be amended accordingly, while others had recalled that there had not been agreement on the issue in previous discussions in the Sixth Committee. While those delegations had considered that it would be helpful if Appeals Tribunal judges possessed any of the qualifications proposed by the Council, they preferred not to change the respective provisions of the statute to include them.

36. Delegations had expressed appreciation for the Council's thoughtful analysis of the practice of both Tribunals concerning measures against abuse of proceedings and had recalled that it was an issue of considerable concern to the General Assembly. Delegations had taken note of the Council's conclusion that the absence of a comprehensive definition of the term "abuse of proceedings" had not created any difficulties in practice, as the judges had handled the issue carefully and according to the practical needs of each individual case. Some delegations had drawn attention to the Appeals Tribunal's statement that its rules of procedure were adequate to deal with manifestly inadmissible cases. Some delegations had agreed with the Council that the problem of abuse of proceedings should be addressed through further practical measures and had expressed interest in the options proposed by the Council, in particular because they could be implemented without additional costs to the system. Others had expressed doubt whether additional measures were called for.

37. Delegations had emphasized that for the sake of legal clarity and predictability, a clear code of conduct for external counsel was urgently needed. It was recalled that, in its resolution 67/241, the General Assembly had already stressed the need to ensure that all individuals acting as legal representatives were subject to the same standards of professional conduct. Delegations had expressed satisfaction that the Secretariat had started consultations with all stakeholders and was preparing a draft text and had encouraged early submission of the text to the General Assembly so that a decision could be taken at its next session.

38. Concerning the proposal by the judges of the Dispute Tribunal to address the General Assembly directly in a report of their own, delegations had shown reluctance to change the current system of formal reporting, but had acknowledged the difficulties in processing all of the relevant information from all stakeholders within the informal and formal systems in time for consideration by the Assembly. Many had expressed regret that not all entities had had the opportunity to consider and respond to the reports of their respective counterparts in the system prior to the Committee's consultations. Delegations had encouraged all parts of the complex United Nations system of administration of justice to interact better and share any information relevant to the conduct of their business to ensure its smooth functioning.

39. It was clear from the comments reported above that the debate should continue in the Sixth Committee at the sixty-ninth session. A draft letter from the Chair of the Sixth Committee, addressed to the President of the General Assembly with a request that it should be brought to the attention of the Chair of the Fifth Committee, had been prepared on the basis of the Sixth Committee's informal consultations under the current agenda item.

40. **The Chair** said that, if there was no objection, he would take it that the Committee wished to authorize him to sign and send the draft letter to the President of the General Assembly.

41. *It was so decided.*

The meeting rose at 12.50 p.m.