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Chair: Mr. Manongi . . . . . (United Republic of Tanzania)

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14-63160 (E)

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

Statement by the President of the General Assembly

1. **Mr. Kutesa** (Uganda), President of the General Assembly, said that international law served as a building block for peaceful and constructive relations among nations. The development and promotion of international law was a critical component of the United Nations mission, and the work of the Sixth Committee was essential for the maintenance of justice and respect for treaty obligations and international law. That work was closely linked to the priorities laid out for the current General Assembly session, including those relating to peace and security. During the Sixth Committee's deliberations on measures to eliminate international terrorism, Member States had confirmed their commitment to condemn and combat terrorism in all its forms and manifestations, and had expressed their ongoing support for the United Nations Global Counter-Terrorism Strategy.

2. The Strategy continued to play a central role in addressing the evolving threat of terrorism. It ensured an integrated and balanced approach to counter-terrorism efforts, consistent with the rule of law and the protection of human rights. In that connection, the agreement reached during the sixty-eighth session, calling for the Strategy to be updated and revised, was highly relevant. He was pleased to note that time had been set aside for the consideration during the current session of the agenda item on the rule of law at the national and international levels, with specific focus on sharing States' national practices in strengthening the rule of law through access to justice. The discussion would help advance the work on a number of aspects of the rule of law in relation to the post-2015 development agenda.

3. World leaders had reaffirmed their commitment to promoting the rule of law in the Declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels, adopted in 2012. In that document, Member States had expressed their conviction that advancing the rule of law at the national and international levels, including through access to justice, was essential. The Declaration had also recognized the important linkages between the rule of law and economic growth, sustainable development, the eradication of poverty and hunger, and the full realization of all human rights.

4. Consideration by the Committee at its current session of two sets of draft articles of the International Law Commission and the Commission's report should underscore the importance of the Commission and the relevance of its contributions to the development and codification of international law. The United Nations Commission on International Trade Law (UNCITRAL) also continued to play an essential role in the formulation of fair and harmonized rules on commercial transactions. Given the strong interlinkages between trade and development, the work of UNCITRAL could greatly contribute to creating favourable environments for sustainable development.

5. The Sixth Committee played an important role in advancing the discussion on the scope and application of the principle of universal jurisdiction. Its efforts in that regard must be guided by the Charter of the United Nations, and the working group on the topic would undoubtedly provide a useful forum to further explore the scope and application of that principle.

6. Lastly, he urged the members of the Committee to continue working in a spirit of consensus. He stood ready to support the Committee to ensure a successful outcome to its deliberations.

Agenda item 84: Effects of armed conflicts on treaties

7. **The Chair** recalled that the topic of the effects of armed conflicts on treaties had been placed on the agenda of the current session pursuant to General Assembly resolution 66/99, with a view to examining, inter alia, the form that might be given to the draft articles on the effects of armed conflicts on treaties.

8. **Mr. Mamabolo** (South Africa), speaking on behalf of the African Group, commended the International Law Commission for its work in clarifying and developing the law pertaining to the effects of armed conflicts on treaties. That said, the African Group was of the view that the Vienna Convention on the Law of Treaties remained the primary instrument for the interpretation of treaties. In determining the effects of armed conflicts on treaties, regard should also be had to the rules of international humanitarian law, which had been developed over a long period of time. Care should be taken to ensure that the draft articles on the effects of armed conflicts on treaties were compatible with established rules and principles of international law, bearing in mind that the definition of "armed conflict" in the draft articles

differed from the definition of the same concept in international humanitarian law, which had been adopted and applied in case law.

9. While the draft articles contributed considerably to the development of international law, the African Group did not support their elaboration in the form of a binding legal instrument. The draft articles sought to clarify an area of law in which there were not many rules, but they might also lead to a fragmentation of international law in that they touched on both treaty law and international humanitarian law without drawing on key concepts in those areas. Instead of including an indicative list of types of treaties that should be presumed not to be susceptible to termination or suspension in the event of an armed conflict, for example, the draft articles should establish a criterion for determining what types of agreements were involved, in order to avoid a situation in which the list changed over time and needed to be amended in the final document. Suffice to say that normally a treaty would expressly state when it could be suspended or terminated.

10. The draft articles should take the form of a set of principles or guidelines that States could refer to should the need arise, rather than a binding convention. The basic principle that armed conflict did not lead to the termination or suspension of treaties was already supported by customary international law, and as such would be binding on States regardless of the status of the draft articles.

11. **Ms. Mäkelä** (Finland), speaking on behalf of the Nordic countries, said that the Nordic countries welcomed several of the formulations in the draft articles. For instance, draft article 1 (Scope) reflected the fact that internal armed conflicts could affect the operation of treaties as much as international armed conflicts, and was broad enough to cover cases in which only one of the States parties to a treaty was a party to an armed conflict. The definition of "armed conflict" in draft article 2, paragraph (b), accurately reflected the meaning of that term under international humanitarian law while taking into account the specific context of the draft articles under consideration. The Nordic countries also welcomed the clarification included in draft article 5 (Application of rules on treaty interpretation) that, in the absence of a clear indication in the text of the treaty itself, its meaning should be ascertained through the application of the established rules of international law on treaty interpretation.

12. Nonetheless, the indicative list of treaties annexed to the draft articles should be placed in the commentary to draft article 7 (Continued operation of treaties resulting from their subject matter) or even deleted altogether. There was a presumption of continuity of treaties during armed conflict, subject, however, to the specific provisions of the treaty on its application, taking into account basic treaty principles. Therefore, it would have been appropriate to have included an article containing a statement of principle to that effect.

13. **Mr. Adamov** (Belarus) said that his delegation valued the Commission's work in filling the lacunae in international treaty law on the topic under consideration. It endorsed the broadly shared view reflected in the draft articles that an armed conflict did not *ipso facto* terminate or suspend international treaties. However, it would be useful to clarify the reference to the characteristics and scale of an armed conflict, the arbitrary application of which might endanger the stability of treaty relations between States, above all between parties to an armed conflict and third States. In interpreting the draft articles, other aspects, such as the intensity and duration of the conflict, should also be taken into account. As a rule, only when a conflict continued for a lengthy period characterized by uninterrupted active military operations could there be justification for a party to the conflict not to comply with its international treaty obligations.

14. Draft article 8 (Conclusion of treaties during armed conflict) failed to address the effects of the objection by a State to the termination or suspension of an international treaty. In such a case, ambiguity persisted concerning the fate of the treaty, which in turn resulted in uncertainty as to the rights and obligations of the parties to the treaty and their citizens and legal entities. Discussion of the draft articles, including their final form, should be continued within the framework of the Commission or in a special working group of the Sixth Committee.

15. **Ms. Melikbekyan** (Russian Federation) said that the draft articles covered a wide range of interrelated questions which might arise in connection with the effects on treaties of the outbreak, conduct and termination of an armed conflict. They must clearly

reflect the presumption, as a basis for the stability and predictability of treaty relations, that an armed conflict did not automatically entail the termination or suspension of a treaty. Thus, an armed conflict could be regarded only as a circumstance which, by virtue of its exceptional nature, gave States the possibility of regulating questions concerning the future application or validity of treaties.

16. Non-international armed conflicts should remain outside the scope of the topic because they were adequately covered by the Vienna Convention on the Law of Treaties and could not come under the same regime as international armed conflicts. It was also doubtful whether the same rules could be applied to relations between States in a situation of armed conflict with each other as were applied to their relations with other States parties to a treaty.

17. The replacement in draft article 2 of the definition of "armed conflict" employed in international law by the one used in the case of *The Prosecutor v. Duško Tadić* was too hasty. Moreover, the definition of "internal armed conflict" did not meet the criterion of a particular intensity in the use of force. It was therefore not advisable to include a definition of armed conflict in the draft articles. In any event, the definition in the *Tadić* case was too general in nature.

18. The indicative list of treaties annexed to the draft articles required further discussion. By and large, draft article 7 (Continued operation of treaties resulting from their subject matter) was based on a well-founded premise. The subject matter of a treaty might very well involve an implication that it continued to operate during armed conflict, even if the treaty did not have a clear reference to that effect. On the other hand, there were no clear criteria for determining whether a particular treaty was to be included in the list of treaties that continued in operation. The list included types of treaties of varying importance for the presumption set out in draft article 5 (Application of rules on treaty interpretation).

19. Whereas it might be argued that treaties on the law of armed conflict and international humanitarian law and treaties establishing borders should not be affected by armed conflict, such an assertion could hardly be made for treaties of friendship. The category of multilateral law-making treaties was also problematic, since "law-making" could not be considered to be the subject matter of a treaty. Consequently, the list, even if indicative, was likely to create greater uncertainty. For instance, it placed border treaties on boundaries on the same footing as treaties relating to the protection of the environment, which in a sense undermined the basis for the former's stability.

20. In contemporary international law, customary rules had not yet emerged to make it possible to identify the categories of treaties that would be subject to the effects of armed conflicts, or the nature of such effects and the procedure for the termination, withdrawal or suspension of a treaty in the event of an armed conflict. All in all, the draft articles under consideration could not be regarded as reproducing norms of international customary law on the effects of armed conflicts on treaties. They could be useful as a guide for States and might enable future practice to develop in a more precise framework. It would be premature for the draft articles to take the form of a legally binding document.

21. **Ms. Dieguez La O** (Cuba) said that the definition of "armed conflict" should be sufficiently broad so as to include cases of direct aggression against the sovereignty of a State, the effects of which were similar to those resulting from typical situations of armed conflict. It could, for example, stipulate that the unilateral imposition of an economic, commercial and financial blockade against a State was an act which had an immediate effect on the bilateral treaties between the two States in conflict. To ensure greater clarity, further work was needed on the definition of a number of concepts, including those of "material breach" and "fundamental change of circumstances" set forth in draft article 18. In addition, the draft articles must not contradict the regime of the Vienna Convention on the Law of Treaties, which should guide further deliberations on the topic.

22. Lastly, Cuba attached the highest importance to the progressive development of international law and would continue to work towards the elaboration of a convention on the effects of armed conflict on treaties that reflected issues of greatest relevance for international law and the international community.

23. **Mr. Orozco Barrera** (Colombia) said that an attempt to define "armed conflict" would go beyond the main purpose of the draft articles, which was not to determine the nature of armed conflict as such, but the ability of armed conflict to affect the implementation

and operation of treaties. The definition of "armed conflict" in draft article 2, subparagraph (b), was similar to the one used in the *Tadić* case, except for the exclusion of the phrase "protracted resort to armed force between governmental authorities and organized armed groups" from the *Tadić* definition. That definition implied that "armed conflict", for the purposes of the draft articles, included both international and non-international armed conflicts, but failed to indicate clearly the constituent elements of those concepts.

24. As noted by the Commission in its commentary to draft article 2, the definition of "armed conflict" did not include any explicit reference to "international" or "non-international" armed conflict, so as to avoid reflecting specific factual or legal considerations in the article and, accordingly, running the risk of a *contrario* interpretations. Thus, in referring to international armed conflicts, the phrase "a situation in which there is resort to armed force between States" was employed, with the omission of forms of conflict in which armed force was not used, such as the occupation of a territory without armed resistance, or blockades, which had already been the subject of other international conventions. No specific reference to non-international conflicts was made. The minimum requirement for an armed conflict to fall under the ambit of the draft articles was that it should be "protracted".

25. The failure to include the definition of the constituent elements of a non-international armed conflict, as set out in article 1, paragraph 1, of Protocol II Additional to the Geneva Conventions of 1949, should not be deemed to undermine norms of international humanitarian law, which were *lex specialis* and were applicable to the conduct of hostilities. Nonetheless, it might result in internal tensions, disturbances and the like — which were not internal armed conflicts as such — being interpreted as coming under the scope of the draft articles if governmental authorities and organized armed groups participated therein in a protracted manner.

26. Moreover, the express omission of non-international armed conflicts in draft article 2, subparagraph (b), was in contradiction with draft article 6, subparagraph (b), which established that, "in the case of non-international armed conflict", regard must be had to the degree of outside involvement in order to ascertain whether a treaty was susceptible to termination, withdrawal or suspension. In other words, when draft article 2, subparagraph (b), and draft article 6, subparagraph (b), were taken together, non-international armed conflict was in fact included in the scope of the draft articles. Therefore, it should be specified in the definition of the scope of the draft articles that the draft articles were applicable in cases of "international and non-international armed conflicts, in conformity with international law", and no attempt should be made to define those categories in the body of the text.

27. **Mr. Tang** (Singapore) said that his delegation endorsed draft article 3, which set out the general principle that the existence of an armed conflict did not, in and of itself, cause the suspension or termination of a treaty, thereby establishing the important principle of legal stability and continuity and setting the tone for the rest of the draft articles. For a number of reasons, the draft articles should not take the final form of a convention. First, there was ambiguity regarding non-international armed conflict. On the one hand, the definition in draft article 2 did not explicitly refer to "international" or "non-international" armed conflict because, according to the commentary, the Commission wished to avoid reflecting specific factual or legal considerations, which might cause conflicting interpretations. On the other hand, the term "non-international armed conflict" appeared in draft article 6, subparagraph (b). The approach must be consistent: the term "non-international armed conflict" should either be expressly defined in draft article 2, or it should not be used anywhere in the draft articles.

28. In addition, the term "non-international armed conflict" was meant to be covered by the phrase "protracted resort to armed force between governmental authorities and organized armed groups" in draft article 2. According to the commentary, the qualifier "protracted" introduced a threshold requirement, but in actual fact it created uncertainty, because it was not clear what length of time would be regarded as being "protracted". That in turn introduced ambiguity into the definition of "armed conflict".

29. Second, his delegation had some difficulties with the analytical approach set out in draft articles 5 (Application of rules on treaty interpretation), 6 (Factors indicating whether a treaty is susceptible to termination, withdrawal or suspension) and 7 (Continued operation of treaties resulting from their subject matter). The relationship between draft article 5 on the one hand, and draft articles 6 and 7 on the other, should have been

better articulated. In its commentary to draft article 6, subparagraph(a), the Commission acknowledged "a measure of overlap" with regard to the inquiry undertaken under draft article 5, but then went on to say that ''the object and purpose of the treaty when taken in combination with other factors such as the number of parties, may open up a new perspective". His delegation disagreed with that statement. The rules which draft articles 6 and 7 purported to articulate should be treated as an application of the normal rules of treaty interpretation referred to in draft article 5. They should not be articulated as rules which operated independently, or even partially independently, of draft article 5.

30. His delegation also had difficulty with the broad-categorization approach adopted in the indicative list of treaties referred to in draft article 7. The weakness of that approach was that some of the categories in the indicative list encompassed treaties which should not necessarily fall within the "implication" created by draft article 7. For instance, while the category of "treaties on international criminal justice" was meant to cover treaties establishing international mechanisms for the prosecution of persons suspected of international crimes, such as war crimes and crimes against humanity, it could also be wide enough to include extradition and criminal mutual legal assistance treaties for other offences of a transnational nature, such as corruption, drug trafficking or organized crime.

31. Similarly, the category of "treaties of friendship, commerce and navigation and agreements concerning private rights" used nomenclature that covered a wide range of inter-State arrangements, whereas the clear objective of the Commission, based on the commentary, was to include only those treaties or treaty provisions dealing with "private rights". Thus, his delegation would have preferred an approach that listed specific types of treaty provisions rather than broad categories of treaties.

32. **Ms. Nir-Tal** (Israel) said that her delegation had concerns regarding certain draft articles, and in particular the inclusion of only a topical list of treaties, which needed to contain more substantive criteria on what should remain in effect during armed conflicts. Her delegation supported an approach in which certain general criteria would continue to apply during an armed conflict. With regard to draft article 15 (Prohibition of benefit to an aggressor State), in light of the potential complexity of an extended conflict, the question of possible benefit to an aggressor State should be considered as a relevant factor, but should not necessarily be the only one to be taken into account. Further work was needed on the substance and application of the draft articles before the question of their final form could be examined.

33. **Mr. Madureira** (Portugal) said that his delegation's approach to the effects of armed conflicts on treaties closely followed the initial boundaries established by the Commission on the topic, which were based on the theory that parties were supposed to conclude treaties in good faith and with the intention of complying with them, in line with the *pacta sunt servanda* principle. It was, however, difficult to establish what the parties' actual intention had been at the time of the conclusion of the treaty with regard to the outbreak of hostilities. The point of the topic was to determine the extent to which mutual trust among the parties concerning the implementation of treaty obligations could be compromised in the event of an armed conflict. It was therefore important to strike a balance between trust among the parties, as a prerequisite to treaty compliance, and the need for legal certainty.

34. Although it had voiced doubts concerning certain aspects of the draft articles under consideration, Portugal agreed with them on the whole and considered them to be suitable for an international convention. In that connection, in 2011, it had welcomed the Commission's recommendation to the General Assembly to take note of the draft articles in a resolution and to consider, at a later stage, the elaboration of a convention, assuming that "at a later stage" meant a short period of time. Nonetheless, his delegation did recognize that inclusion of issues such as internal armed conflicts within the scope of the draft articles and the position of third States would be divisive in a diplomatic conference, and that practice, jurisprudence or doctrine did not offer a clear and single answer.

35. It would be useful to establish a working group on the topic, to allow delegations to discuss differing perspectives on key substantive issues and then decide on whether to elaborate a convention.

36. **Mr. Rao** (India) said that his delegation supported draft article 3, which indicated that the existence of an armed conflict did not *ipso facto* terminate or suspend the operation of treaties, and draft

article 4, which preserved the operation of the provisions of existing treaties applicable in situations of armed conflict. It also agreed with the notion in draft article 6 that the termination, withdrawal or suspension of a treaty in the event of an armed conflict would depend on a number of factors, including the nature of the treaty, its subject matter, its object and purpose, and the characteristics of the armed conflict.

37. His delegation's understanding of draft article 1 (Scope) was that the draft articles applied only to treaties concluded between States and not to treaties concluded between international organizations. Similarly, the definition of "armed conflict" in draft article 2, subparagraph (b), did not include internal conflicts, as they did not affect relations between States under a treaty, because it dealt only with situations in which there was resort to armed force between States. The 12 categories of treaties included in the indicative list in the annex could not be combined in one list, because they were different in nature and scope. Some were permanent in character, such as treaties establishing land and maritime boundaries, and should be listed separately from others whose continued existence depended on the intention of the States parties. The list was therefore neither definitive nor exhaustive.

38. Lastly, his delegation's preliminary view was that the draft articles should be considered for adoption as guidelines for States in determining the fate of treaties in a situation of armed conflict of an international character.

39. **Ms. Stavridi** (Greece) said that her country had consistently supported the principle of the continuity of the operation of treaties during armed conflict, and endorsed the general approach to the draft articles adopted by the Commission in its recommendations to the General Assembly. At the current stage, the General Assembly should adopt a resolution taking note of the draft articles and annexing them to it, thus encouraging States to make use of them in context-specific situations. It should also consider, at a later stage, the elaboration of a convention, which would constitute a complementary instrument with normative effects equal to those of the Vienna Convention on the Law of Treaties.

40. **Mr. Wan Jantan** (Malaysia) said that the draft articles would serve as a practical guidance for States in determining whether a treaty should remain in effect in the event of an armed conflict. The final form of the draft articles should be discussed at a later stage to allow States time to review them and develop sufficient practice on the matter, once further in-depth study on the topic had been conducted and more information on State practice compiled. Malaysia could, however, agree if the draft articles were to serve as non-binding guidelines.

41. **Mr. Estrémé** (Argentina) said that any study of State practice with respect to armed conflicts must be based on consultations with Governments. When that practice necessarily involved two or more States, as it obviously did in the sphere of treaty law, observations were useful only if they were endorsed by all States concerned and therefore ensured the impartiality of the information submitted. Any examination of the effects of armed conflicts on the termination or suspension of treaties must make it clear which obligations remained in force during and after situations of armed conflict. The Commission had considered not only the continuity of treaties to be a fundamental principle, indicating in draft article 3 that the existence of armed conflict did not *ipso facto* terminate or suspend their operation, but also the question of separability of treaty provisions.

42. His delegation would have preferred more clarity from the Commission regarding cases where, on signing a treaty, the parties had recognized de facto and de jure situations whose nature and content made them unlikely to be affected by an armed conflict. The application of the principle of good faith required that the recognition of that sort of situation could not in any way be affected by an armed conflict. One example in that respect was the recognition of the existence of a dispute and of its characteristics by a State to that dispute.

43. Since there was no general practice among Member States on the issue, his delegation hoped that discussions on the draft articles would continue.

44. **Mr. Arbogast** (United States of America) said that the draft articles reflected the continuity of treaty obligations during armed conflict, when reasonable, took into account particular military necessities and provided practical guidance to States by identifying factors relevant to determining whether a treaty should remain in effect in the event of armed conflict.

45. His delegation continued to have concerns about the definition of "armed conflict" in draft article 2,

subparagraph (b). Rather than defining the term, a better approach would have been to make clear that armed conflict referred to the set of conflicts covered by common articles 2 and 3 of the Geneva Conventions (i.e., international and non-international armed conflicts), which enjoyed virtually universal acceptance among States. With regard to draft article 15 (Prohibition of benefit to an aggressor State), his delegation did not support the focus on aggression as defined by General Assembly resolution 3314 (XXIX). Instead, the emphasis should have been on all unlawful uses of force.

46. His delegation continued to believe that the draft articles were best used as a resource to which States might refer when determining the effect of particular armed conflicts on particular treaties. It did not support the elaboration of a convention on the topic, and believed that the General Assembly should encourage States to consider drawing on the draft articles in specific situations and continue to examine them in the Sixth Committee, as appropriate.

Agenda item 85: Responsibility of international organizations

47. **The Chair** recalled that the item on the responsibility of international organizations had been placed on the agenda of the current session with a view to examining, inter alia, the form that might be given to the draft articles on the responsibility of international organizations.

48. **Mr. Karstensen** (Denmark), speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), said that the Nordic countries had always favoured an approach to the responsibility of international organizations that relied on the draft articles on responsibility of States for internationally wrongful acts, while recognizing that the nature of international organizations merited a number of modifications and alternate solutions. On the whole, they endorsed the draft articles on the responsibility of international organizations and the commentaries thereto, which already served as a useful tool for practitioners and scholars.

49. The path taken thus far with regard to the draft articles on responsibility of States for internationally wrongful acts had been to allow them to crystalize through the practice of tribunals and States, rather than initiating work on a convention. Such an approach was all the more persuasive for the draft articles on the responsibility of international organizations. While generally supportive of the substantive content of the draft articles, the Nordic countries were also aware that at the current stage they were not always based on consistent and general practice — probably to a lesser degree than the State responsibility rules. On certain issues, such as aspects of attribution and the precise nature of a dual responsibility for international organizations and their member States, the law was not settled. Consequently, it was questionable whether a diplomatic conference would be able to produce a sufficiently clear result that reflected the broad State support needed to ensure ratification. For those reasons, the Nordic countries were not currently in favour of the elaboration of a convention.

50. In recent years, the issue of settlement of disputes of a private character to which an international organization was a party had gained increasing importance. In the case of dispute settlement procedures in United Nations peacekeeping operations, in particular, the current system was not entirely adequate. Although the Nordic countries were not in favour of changing the general rules of immunity before domestic courts, further work could be done to ensure that private individuals who suffered harm as a consequence of peacekeeping operations were compensated.

51. The Nordic countries were well aware that the risks inherent in situations of conflict and instability raised important issues, and that the effective and independent functioning of United Nations peacekeeping operations must not be jeopardized. However, consideration should be given to whether the current system and procedures were adequate for handling legitimate claims from private individuals.

52. **Ms. Melikbekyan** (Russian Federation) said that the draft articles on the responsibility of international organizations were similar to the draft articles on State responsibility in terms of logic, structure and wording, and that they took into account a number of particularities of international organizations. Although several provisions required further discussion, for example those on the existence of a right of self-defence for international organizations, a number of important issues had been resolved.

53. Her delegation endorsed the Commission's view that being a member of an international organization did not, in and of itself, entail the responsibility of a

State if the organization committed an internationally wrongful act. It also supported draft article 14, which provided for the international responsibility of an organization that knowingly aided or assisted a State or another international organization in the commission of an internationally wrongful act.

54. Draft article 17 (Circumvention of international obligations through decisions and authorizations addressed to members) was a new development, in that it considered the circumvention by an international organization of its international obligations through decisions and authorizations addressed to members to be an internationally wrongful act. Draft article 32 (Relevance of the rules of the organization) contained an important rule. By analogy with the draft articles on State responsibility, an international organization could not rely on its rules as justification for failure to comply with its obligations.

55. Draft article 40 (Ensuring the fulfilment of the obligation to make reparation) was particularly important. It provided that if an international organization which committed an internationally wrongful act was under an obligation to make reparation, its members must take all appropriate measures in order to enable the organization to fulfil that obligation (i.e. to finance it). Given the practical importance of the topic, her delegation was prepared to support the idea of elaborating a legally binding convention.

56. **Ms. Dieguez La O** (Cuba) said that, given the current international context, the topic of responsibility of international organizations was of great importance. Defining the term "international organization" was not an easy task from a technical and legal point of view. The draft articles on the responsibility of international organizations reflected the considerable effort made to regulate the responsibility of international organizations in a uniform manner. In her delegation's view, the Vienna Convention on the Law of Treaties should serve as a guide for any legal definition on the topic.

57. The concept of "injury" was an essential element of the definition of an internationally wrongful act of an international organization, because it established the obligation to make reparation, to cease the violation and to offer guarantees of non-repetition. Another important concept was that of necessity (draft article 25), which should be defined as "essential interest". The draft article concerning "collective countermeasures" should be reworded to include a reference to the collective security system envisaged in the Charter of the United Nations. A mechanism for the settlement of disputes relating to the interpretation of responsibility would provide a guarantee of peaceful dispute settlement, essentially for the underdeveloped countries that were often the victims when conflicts were resolved by the use of force.

58. Lastly, despite their complexity, the draft articles reflected important principles of international law. Her delegation was prepared to continue discussions on the topic with a view to the elaboration of a convention.

59. **Ms. Chigiyal** (Federated States of Micronesia) said that the wide variety of international organizations currently in existence challenged the notion of having a set of articles applicable to them all. Indeed, the draft articles on the responsibility of international organizations noted the possibility of special rules applying only to certain types of international organizations, but they also identified a significant number of rules and principles that were applicable to all. Given the diversity and broad reach of international organizations and the power that they wielded in international relations, the need for those rules and principles was clear.

60. As a small island developing State, Micronesia relied heavily on the generous assistance and guidance of international organizations to develop its economy, and in particular its energy, agricultural and fisheries sectors. In rare but notable instances, some of those international organizations had acted in ways that were contrary to their obligations vis-à-vis Micronesia under relevant international agreements. In the absence of language in those agreements that directly imposed responsibility on those organizations, Micronesia would invoke the draft articles on the responsibility of international organizations to press its case and secure reparation.

61. Although the draft articles reflected, on balance, the progressive development of international law rather than its codification, the rules and principles contained therein were sound and deserved to be widely employed. Micronesia therefore encouraged States and international organizations to study the draft articles closely and to use them, even if they were never converted into an international convention by the United Nations or some other body. The Secretary-General should also produce a report that surveyed the

use of the draft articles by Governments, international organizations and judicial bodies.

62. Over the past decade, Governments, international organizations and judicial bodies had had ample opportunity to consider various versions of the draft articles and to decide whether and how to utilize them in their international relations. The European Court of Human Rights had grappled with the draft articles in a number of cases, as had national courts, such as the Supreme Court of the Netherlands and the House of Lords in the United Kingdom

63. Recently, the International Tribunal for the Law of the Sea had called for written statements from States and international organizations regarding a request for an advisory opinion submitted by the Subregional Fisheries Commission, a group of West African States that managed fisheries resources in their region. If issued, the advisory opinion would address the liability of an international organization for violations of the fisheries legislation of a coastal State by a fishing vessel operating under a fishing licence issued pursuant to an international agreement between the coastal State and the international organization. The Tribunal's advisory opinion would be closely watched to see how it filled the lacuna in international law on that issue.

64. A fairly large number of States and international organizations, including Micronesia, had responded to the Tribunal's call for statements. Of those entities that had chosen to address the question of the liability of an international organization, New Zealand, Somalia, Micronesia, the International Union for the Conservation of Nature and other entities had specifically and favourably cited the draft articles on the responsibility of international organizations. As Micronesia had noted in its written and oral statements in response to the Tribunal's invitation, and as reflected in draft articles 35 to 37 of the draft articles, if an international organization acted, or failed to act, in a manner that was attributable to that organization under international law and that violated an international legal obligation of the organization, it incurred responsibility and must provide reparation in the form of restitution, compensation or satisfaction. Even if the Tribunal decided not to issue an advisory opinion, the references made to the draft articles by various States and international organizations already established their normative value in international law.

65. The proliferation of international organizations over the past half century should not detract from the State-centric character of international law. Indeed, the only international organizations covered by the draft articles were those that had States as members. No wonder the draft articles so closely mirrored the Commission's draft articles on State responsibility: the lifeblood of international organizations had been and would always be the State. Thus, States had an obligation to ensure that the international organizations which they created were held accountable for their internationally wrongful acts.

66. **Mr. Scullion** (United Kingdom) said that there was as yet no pressing need for a convention on the topic of the responsibility of international organizations, nor was there a clear indication that there was sufficient consensus on the law in that area. It was also unlikely that negotiations, which inevitably would be a long and complex process, would result in a sufficient consensus for the adoption of a convention. Indeed, limited availability of pertinent practice moved several of the draft articles into the area of progressive development rather than codification and, although one of the drafts articles in the text on State responsibility might be considered to reflect customary international law, that would not necessarily be the case with the corresponding draft article in the text on the responsibility of international organizations.

67. There was comparatively little settled practice in the area and it was not clear how the draft articles on the responsibility of international organizations were being applied in practice. They should, therefore, not yet be seen as having the same authority as the corresponding draft articles on State responsibility. International organizations were incredibly varied, and their practice might often be based on their own constitutive instruments rather than their acceptance of general principles as set out in the draft articles. For all of those reasons, the draft articles should be left in their current form.

68. **Ms. Morris-Sharma** (Singapore) said that although the International Law Commission had recommended that the Sixth Committee should consider, at a later stage, the elaboration of a convention on the responsibility of international organizations on the basis of the draft articles, the time was not ripe for such an exercise. Certain aspects of the draft articles which were designed to progressively develop the applicable rules, for example in relation to

countermeasures and the derived responsibility of States, continued to pose problems. There was still a dearth of practice to be drawn upon from across the diverse spectrum of international organizations, and it remained unclear whether the application of the draft articles to international organizations would not lead to unforeseen complications.

69. At the current stage, the draft articles should be brought to the attention of States and international organizations for their consideration and reception, where appropriate. Although not yet ripe to be developed into a convention, the draft articles did provide a useful lens through which the practice of international organizations and States could be assessed. Such practice could even be informed by the draft articles. As recognized in the general commentary to the draft articles, the authority of the draft articles would depend upon their reception by those to whom they were addressed; with the passage of time, a growing body of practice would emerge that would make it possible to give the draft articles their due weight.

70. Her delegation was open to including further consideration of the topic in the provisional agenda of a future session, but that should be accompanied by clear actionable items that facilitated future examination of the form which the draft articles might take. Such actionable items might include a request to the Secretary-General to invite international organizations and States to submit their written comments on any future action regarding the draft articles and information on their practice of relevance to the topic, including the decisions of courts, tribunals and other bodies that referred to the draft articles.

71. Given that they were the subject of the draft articles, international organizations should also be invited to submit information and comments. It was to be hoped that a further invitation to international organizations would expand the pool of those which replied; the small number of comments thus far provided on the topic might reflect either a lack of relevant practice or of a lack of interest. A range of sources of inputs from among international organizations would improve the ability to evaluate the universal applicability of the draft articles, taking into particular account the institutional diversity of international organizations.

72. **Ms. Nir-Tal** (Israel) said that the fact that the draft articles on the responsibility of international organizations relied on the draft articles on State responsibility without taking into account the inherent differences between States and international organizations might have undesirable consequences. Her delegation doubted whether a convention could apply uniformly to all international organizations, because they differed from one another substantially. For example, there was a great difference between international organizations established as discussion forums purely for conference purposes, and those designed to conduct activities such as peacekeeping operations. Responsibility in the former case would be incurred primarily by the member States of the organization, and in the latter case by the sponsor organization itself.

73. The draft articles also glossed over the difference between the responsibility which an organization had toward its member States and the responsibility which it had toward third parties. Her delegation wondered whether the principle of self-defence, an inherent right of States, was applicable in the context of international organizations, and whether the notion of countermeasures by international organizations against States should be included within the scope of the draft articles, since many questions remained about the relationship between international organizations and non-member States and between international organizations and their members.

74. Lastly, the draft articles should take into account the essential difference between States and international organizations with regard to the notion of necessity. As currently phrased, draft article 25 (Necessity) was too vague, especially since that notion, which was a well-developed doctrine in relation to States, had not yet been encountered by an international organization.

75. **Mr. Madureira** (Portugal) said that the codification of the responsibility of international organizations was the logical counterpart of that of responsibility of States, but that did not necessarily mean that the former must derive from the latter. In fact, the draft articles on the responsibility of international organizations followed the draft articles on State responsibility too closely. It would therefore seem preferable to focus on a set of draft articles dealing with issues that were specific to the responsibility of international organizations by searching for general and

abstract rules that fit the "typical" international organization. Moreover, the analysis undertaken should reflect not only existing differences between States and international organizations, but also the fact that, unlike those of States, the competence and powers of international organizations, as well as their relations with member States, could vary considerably from one organization to another.

76. For the time being, the General Assembly should again take note of the draft articles in a resolution. There was no point in convening a diplomatic conference to adopt a convention on the responsibility of international organizations as long as there were no further developments on the draft articles on State responsibility. Only at a later stage should the General Assembly contemplate the adoption of a convention based on the 2011 draft articles. His delegation suggested that the topic of the responsibility of international organizations should be included in the agenda of the seventy-second session of the General Assembly, after the consideration of the draft articles on State responsibility at its seventy-first session.

77. **Ms. Stavridi** (Greece) said that the draft articles on the responsibility of international organizations would provide useful guidance to national and international courts in dealing with claims for internationally wrongful acts committed by international organizations. However, many of the draft articles, given the scant availability of pertinent practice, fell within the category of progressive development rather than codification of international law. They should, therefore, not be seen as having acquired the same authority as the corresponding draft articles on State responsibility, which reflected existing customary international law. The General Assembly should take note of the draft articles, but at the current stage, and given the need to revisit them in the future in the light of new developments, they should not serve as the basis for the elaboration of a convention on the topic.

78. **Mr. Arbogast** (United States of America) said his delegation was pleased that the general commentary to the draft articles on the responsibility of international organizations recognized the scarcity of practice in the area and acknowledged that many rules contained in the draft articles fell within the category of progressive development rather than codification of international law. His delegation agreed with the Commission's assessment that the provisions of the draft articles did not reflect current law in the area to the same degree as the corresponding provisions on State responsibility. That must be kept in mind when considering cross-references from the draft articles on the responsibility of international organizations to the draft articles on State responsibility and the commentaries thereto, and when determining whether the draft articles under consideration sufficiently reflected the differences between international organizations and States.

79. His delegation also agreed with the general commentary that there was great diversity among international organizations, which operated at the global, regional, subregional, and even bilateral levels, with important structural differences and an extraordinary range of functions, powers and capabilities, typically driven by each organization's unique charter. Given those differences, the principles described in some of the draft articles — for example, those addressing countermeasures and self-defence — probably did not apply to all international organizations in the same way that they applied to all States. Indeed, the *lex specialis* rule set forth in draft article 64 was of great importance for all the draft articles. Moreover, there might be differences in the way that the rules on responsibility operated between an international organization and its members, as opposed to how they operated for the international organization in other settings.

80. His delegation continued to believe that the draft articles should not be transformed into a convention.

Agenda item 171: Observer status for the Developing Eight Countries Organization for Economic Cooperation in the General Assembly (*continued*) (A/C.6/69/L.2)

Draft resolution A/C.6/69/L.2: Observer status for the Developing Eight Countries Organization for Economic Cooperation in the General Assembly

81. *Draft resolution A/C.6/69/L.2 was adopted.*

Agenda item 172: Observer status for the Pacific Community in the General Assembly (*continued*) (A/C.6/69/L.3)

Draft resolution A/C.6/69/L.3: Observer status for the Pacific Community in the General Assembly

82. **Mr. Thomson** (Fiji) said that the adoption of draft resolution A/C/6/69/L.3 was a step in the right

direction for sustainable development, as it would greatly help the members of the Pacific Community, in particular the Pacific small island developing States, to synchronize their development programmes with those of United Nations agencies and programmes. It also came at an important juncture for the Pacific Community as it looked ahead to the implementation of the outcomes of the Third International Conference on Small Island Development States, held in Samoa, from 1 to 4 September 2014, and to the post-2015 development agenda.

83. He announced that Cuba, Ireland, the Netherlands and Palau had become sponsors of the draft resolution.

84. Draft resolution A/C.6/69/L.3 was adopted.

The meeting rose at 12.05 p.m.