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Chair: Mr. Afonso . . . . . (Mozambique)
later: Ms. Romanska (Vice-Chair) . . . . . (Bulgaria)

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22-23746 (E)

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

Agenda item 82: Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives (*continued*) (A/77/208)

1. **Ms. Antonova** (Russian Federation) said that her Government attached paramount importance to the fulfilment of its obligations under international treaties in the field of diplomatic and consular law and was taking the necessary domestic measures to ensure the smooth operation of accredited diplomatic and consular missions in the Russian Federation. Attacks on representatives of foreign States or staff members of international organizations having the status of internationally protected persons, or on the official premises, residences or means of transport of such persons were punishable by two to six years of imprisonment. When such acts were carried out for the purpose of provoking war or harming international relations, the penalty was set at five to ten years of imprisonment.

2. Diplomatic and consular missions and their staff were facing growing risks and threats around the world in the form of increasingly brazen criminal acts. Under diplomatic and consular law, a receiving State had a duty to take all appropriate steps to protect the premises of diplomatic and consular missions against any intrusion or damage and to prevent any disturbance of the peace of the missions or impairment of their dignity. The receiving State also had a duty to treat diplomatic agents and consular officers with due respect and to take all appropriate steps to prevent any attack on their person, freedom or dignity.

3. Unfortunately, during the reporting period, her Government had recorded 150 acts committed against its diplomatic and consular missions and representatives in other countries, some of which had had tragic consequences. Acts of vandalism, including offensive inscriptions against her country being spray-painted on buildings subject to protection, had become more frequent. In recent days, vandals had defaced the historic building housing the Consulate General of the Russian Federation in New York with red paint.

4. Furthermore, nothing had been done to address the outrageous situation involving the arbitrary and illegal seizure by the United States authorities of properties of the Russian Federation that were part of the premises of its diplomatic and consular missions or trade missions – actions that undermined the very concept of privileges and immunities. The Permanent Mission of the Russian Federation had repeatedly raised the issue of the illegal seizure by the United States authorities of the official premises of its Permanent Mission in Upper Brookville, New York at meetings of the Committee on Relations with the Host Country. On 5 September 2022, two staff members of the diplomatic mission had been killed by an explosion near the entrance to the consular office of the Embassy of the Russian Federation in Kabul, which had also wounded and killed several Afghan citizens. That incident remained under investigation.

5. There was no justification for the aforementioned incidents or those included in the Secretary-General's report (A/77/208), which were in blatant violation of the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations and of universally recognized norms of the inviolability of the person of a diplomatic agent or consular official and the duty of the receiving State to do everything possible to enable a mission to carry out its functions. Subject to its laws and regulations concerning zones entry to which was prohibited or regulated for reasons of national security, the receiving State must also ensure to all members of a mission freedom of movement in its territory. It was therefore extremely important for receiving States to continue to take appropriate steps to enhance the protection of diplomatic and consular missions and representatives, in accordance with international law, including measures aimed at preventing acts of violence against such missions and representatives and at holding to account the perpetrators of such acts.

6. Responding to statements made earlier by representatives of European States accusing her Government of having bombed diplomatic missions and cultural institutions belonging to third States in Ukraine, she said that her delegation considered it unacceptable that the Committee was being politicized and turned into a forum for discussion of the situation in Ukraine. Her country's Armed Forces used highly accurate tactical weapons and did not strike civilian objects, a category that included diplomatic and consular missions. It bore noting that, under the Vienna Conventions, only the receiving State had a special duty to take all appropriate steps to protect the premises of such missions and institutions. The receiving State had a duty to provide the necessary assistance to enable persons enjoying privileges and immunities, other than nationals of the receiving State, and members of the families of such persons, to leave at the earliest possible moment.

7. **Ms. Nze Mansogo** (Equatorial Guinea) said that her delegation noted with concern and strongly condemned the continued violations of the protection, security and safety of diplomatic and consular missions and representatives, as described in the report of the

Secretary-General (A/77/208) It called on States to take all appropriate preventive measures to protect diplomatic and consular missions and representatives from harm, provide a favourable environment to enable them to carry out their functions, and investigate crimes against them and punish the perpetrators.

8. Ensuring the protection, security and safety of diplomatic and consular missions and representatives was crucial to the development and promotion of friendly and cooperative relations between States, which in turn were essential to the promotion of the multilateralism and preventive diplomacy needed to address current challenges to international peace and security. In accordance with the purposes and principles of the Charter of the United Nations, States should strive to ensure that all disputes relating to the fulfilment of international obligations concerning the protection of diplomatic and consular missions and representatives were resolved by peaceful means. They should also seek to foster open and transparent communication and refrain at all times from the use or threat of force and the politicization of such matters. Diplomatic and consular representatives also had the obligation to respect the laws and regulations of the host State, to refrain from interfering in the internal affairs of that State, and to avoid using the premises of diplomatic and consular missions for purposes other than the fulfilment of their functions.

9. **Ms. Effah** (Ghana) said that respect for the universally recognized rules governing diplomatic and consular relations, including the special duty of receiving States to protect diplomatic and consular envoys and their premises and archives from harm or damage, was an important prerequisite for the normal conduct of relations among States and the fulfilment of the purposes and principles of the United Nations. Those long-established rules of customary international law, codified in the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations, served to ensure that representatives of sending States were able to discharge their diplomatic responsibilities without disturbance or interference. Violations of the security and safety of diplomatic and consular missions and representatives affected the development of friendly relations among States, and were unjustifiable, regardless of who the perpetrators might be. Constructive dialogue and a rethinking of conventional protection measures were needed in order to address emerging threats, such as terrorism, cyberattacks and the coronavirus disease (COVID-19) pandemic, while preserving the customary norms concerning the inviolability of diplomatic missions and representatives.

10. Her Government strongly condemned all acts of violence against diplomatic and consular missions and their representatives and stood in solidarity with the victims. It had established a diplomatic protection unit under the national police service to ensure the effective protection, safety and security of diplomatic and consular missions and representatives in Ghana. As security threats widened in range and complexity, sending States must endeavour to enhance the security awareness and responsiveness of their personnel to help mitigate risks. Diplomatic and consular representatives, for their part, must fully comply with the laws and regulations of the receiving State. They should communicate with receiving Governments through formal channels in order to properly preserve their immunities and privileges. Her delegation encouraged all States that had not already done so to become parties to the relevant international instruments concerning the security and safety of diplomatic and consular missions and their representatives.

11. **Mr. Nagano** (Japan) said that acts of violence and attacks against diplomatic and consular missions or representatives should never be tolerated. Receiving States must respect the privileges and immunities that diplomatic and consular missions and officials enjoyed under the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations and fulfil their obligation to take all appropriate steps to protect the premises of diplomatic and consular missions against any intrusion or damage and prevent any attack on the freedom or dignity of diplomats and consular officials.

12. The purpose of the privileges and immunities afforded to diplomats and consular officials was to ensure that they were able to efficiently perform their functions as representatives of their respective States, and no infringement of those privileges and immunities could be justified. The principle of inviolability of the person of diplomats and consular officials was at the core of such privileges and immunities. Compliance with the obligations established under the two Vienna Conventions was a basic prerequisite for the normal conduct of diplomatic relations among States. His Government renewed its commitment to the protection, security and safety of diplomatic and consular missions and representatives and called upon all Member States to do likewise.

13. **Ms. De Raes** (Belgium) said that as a host country for many diplomatic missions and consular posts and also headquarters and offices of international organizations, Belgium attached particular importance to the protection and security of diplomatic and consular missions and representatives. Respect for the principles

and rules of international law governing diplomatic and consular relations, in particular those enshrined in the two Vienna Conventions, was imperative for the proper conduct of relations between States and the fulfilment of the purposes and principles of the Charter of the United Nations. Her delegation deplored and condemned the acts of violence committed against diplomatic and consular missions and representatives detailed in the report of the Secretary-General (A/77/208). It commended the States that had recently ratified the relevant international instruments and encouraged those States that had not yet done so to ratify them as soon as possible.

14. The principles and rules of international law governing diplomatic relations applied in all circumstances, including in times of crisis or armed conflict. Her Government was especially concerned about the measures taken by some States in respect of diplomatic personnel in the context of COVID-19. Some of those measures had been disproportionate and had impeded the proper functioning of diplomatic and consular missions. While her Government appreciated the need for public health measures to bring the pandemic under control, a balance must be struck between the obligation of diplomatic and consular representatives to respect the laws of the host State and the duty of that State to accord all necessary facilities to enable them to perform their functions.

15. **Mr. Bouchedoub** (Algeria) said that his Government attached considerable importance to the obligations of all States under the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations, which were based on the purposes and principles of the Charter of the United, including the sovereign equality of States, the obligation to refrain from the threat or use of force in international relations, the maintenance of international peace and security, the strengthening of friendly relations among States and non-interference in the internal affairs of States.

16. Algeria took all necessary measures to ensure the protection of diplomatic and consular missions and representatives as well as missions and representatives with diplomatic status to international intergovernmental organizations. It had adopted laws to give effect to the privileges and immunities guaranteed under international diplomatic law and custom. It expected individuals who enjoyed such privileges to in turn respect the laws of Algeria, maintain high standards of conduct, and refrain from using diplomatic and consular premises in any manner or for any purpose inconsistent with their function. No incidents or violations of the sort referred to in General Assembly resolution 75/139 had occurred in Algeria. His delegation categorically condemned the increasing acts of violence against consular and diplomatic missions in numerous countries and urged all parties to respect and enforce all principles and rules of international law concerning the inviolability of diplomatic and consular premises and their staff.

17. **Mr. Silveira Braoios** (Brazil) said that diplomatic and consular immunities lay at the core of international law, since they protected the channels through which States could dialogue, cooperate and peacefully settle disputes. In accordance with the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations, archives, documents and official correspondence of diplomatic and consular missions and representatives were inviolable at all times, and, as had been clarified by the International Court of Justice and the case law of various national courts and arbitral tribunals, such inviolability was absolute. Under the Vienna Conventions, receiving States had a duty to permit diplomatic and consular missions to communicate freely by all appropriate means and for all official purposes. Those essential safeguards must be upheld by all branches of government.

18. Given the advances in information technology and the expanded use of digital platforms, diplomatic and consular communications, archives and documents must be protected both offline and online. Regardless of any technological changes, the absolute inviolability provided by the Vienna Conventions remained fully applicable. To countenance a contrary view would risk jeopardizing the sovereign equality of States and the main purpose of diplomatic and consular relations: to develop and strengthen friendly relations among States. His delegation remained convinced that the challenges faced in promoting all dimensions of the protection, security and safety of diplomatic and consular missions must be adequately addressed in any resolutions adopted under the current agenda item.

19. **Mr. Giorgio** (Eritrea) said that the reporting procedure established pursuant to General Assembly resolution 35/168 and further elaborated in subsequent resolutions was indicative of the importance of the role of the United Nations in promoting efforts to enhance the protection, security and safety of diplomatic and consular missions and representatives. Eritrea was a party to the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations and attached great importance to the fulfilment of the obligations set out therein, not only to ensure the smooth functioning of diplomatic and consular missions, but also to foster better and friendlier relations among States.

20. Serious breaches of international law in many countries around the world had put the security and

safety of diplomatic and consular representatives at risk. His delegation called for strict adherence to and enforcement of all principles and norms of international law relating to the inviolability of the premises of diplomatic and consular missions and duly accredited international organizations. It noted with concern the serious impediments brought about by the imposition of unilateral coercive measures on the effective functioning of the diplomatic and consular missions of several States. Such aggressive and illegal measures, pursued as part of their foreign policy by some powerful States against other States, were contrary to international law, the Charter of the United Nations and the norms and principles governing peaceful relations among States. They must be removed immediately in order for diplomatic and consular missions to discharge their duties and responsibilities fully and effectively, in accordance with the two Vienna Conventions.

21. **Ms. Aydin Gucciardo** (Türkiye) said that the rules governing diplomatic and consular relations were firmly rooted in the principle of sovereign equality of States enshrined in the Charter of the United Nations. Respect for those rules was a fundamental prerequisite for fulfilling the goals of the Organization, particularly the goal of developing and strengthening friendly relations and cooperation among States. In order to preserve the delicate system of international relations and ensure that States were able to protect their rights and interests, diplomatic and consular missions must be able to function with full protection, safety and security.

22. Unfortunately, as was evident from the latest report of the Secretary-General (A/77/208), threats and attacks against diplomatic and consular missions and their representatives continued around the world. Türkiye was one of the countries whose missions and representatives had been targeted during the reporting period. Her delegation condemned all such attacks. Receiving States had a duty to take all appropriate measures to protect diplomatic and consular missions and their representatives, in line with international law and in close dialogue with the relevant missions. They must take the necessary measures to discharge that obligation in a timely manner, including by putting in place effective preventive measures, with due regard for threat assessments conveyed by the relevant missions.

23. As Türkiye had lost many diplomats to assassinations committed by terrorist organizations and other violent groups in third countries, the current agenda item carried special weight for her delegation. It continued to support the reporting system provided for in the biennial resolutions adopted under the item. It was important for States to continue sharing information and views with respect to any measures needed or already taken to enhance the protection, security and safety of diplomatic and consular missions and their representatives, including information on proceedings undertaken to bring offenders to justice and on the outcome of those proceedings. At the same time, in order to preserve the integrity of the established body of rules governing diplomatic and consular relations, diplomatic and consular premises must not be used in any manner incompatible with their functions, and that those who enjoyed privileges and immunities must respect the laws and regulations of receiving States.

24. **Mr. Musayev** (Azerbaijan) said that, as was evident from the report of the Secretary-General (A/77/208), acts of violence against diplomatic and consular missions and representatives continued. Indeed, a number of violent acts had been committed against the diplomatic and consular missions and representatives of Azerbaijan in seven Member States, where radical members of Armenian communities had targeted diplomatic premises and personnel, causing material damage and, in some cases, physical injury to Azerbaijani representatives. The hatred and racist motivations behind those acts were beyond dispute. The measures taken by the receiving States to prevent such violence and ensure the protection, security and safety of Azerbaijani diplomatic and consular missions and staff had, in most cases, been insufficient. Moreover, to his delegation's knowledge, not a single perpetrator had been held accountable for the violations committed, and only two of the seven States in which the violations had taken place had reported them to the Secretary-General pursuant to General Assembly resolution 75/139.

25. New threats against his country's diplomatic missions and staff had been met with a similar lack of prevention, protection and accountability measures by the receiving States, although, as was clear from resolution 75/139, States had the duty to take all appropriate and timely measures to prevent any acts of violence against diplomatic and consular missions and representatives; ensure their protection, security and safety; and bring offenders to justice. His delegation continued to encourage further efforts to enhance the protection, security and safety of diplomatic and consular missions and representatives, in accordance with the two Vienna Conventions.

26. **Ms. Theeuwen** (Netherlands) said that her Government had taken no measures in response to the COVID-19 pandemic that would infringe on the rights of diplomatic and consular missions in the Kingdom of the Netherlands. Its own diplomatic and consular missions, on the other hand, had faced challenges as a result of measures imposed by other States. It had considered some of those measures unacceptable and

potentially wrongful, not necessarily because they undermined rights and obligations under the Vienna Conventions but because they went beyond the measures to which the circumstances precluding wrongfulness under the articles on the responsibility of States for internationally wrongful acts might apply. Such measures included the imposition of quarantine for diplomatic agents in a location other than their home.

27. As more and more documents were being saved online, cybersecurity was a growing concern in relation to the protection, security and safety of diplomatic and consular missions, their premises and their communications, archives and documents. While her delegation was pleased that the issue was gaining more attention within the United Nations, it considered the matter worthy of further debate and would welcome the views of other delegations on effective cybersecurity measures to enhance the protection, security and safety of diplomatic and consular missions and representatives.

28. **Ms. Tamuno** (Nigeria) said that a robust system of rules related to the protection of diplomatic and consular missions and representatives was an important asset for Member States. Given the close connection between diplomatic protection and State responsibility, it was important for those two areas of international law to be aligned. Her delegation was deeply concerned about the risks and hazards that diplomatic and consular representatives continued to encounter in the course of their duties and called on receiving States to adhere to the provisions of the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations, which established that such States had a duty to protect diplomatic and consular missions and their staff and to abstain from subjecting diplomatic and consular representatives to searches, arrest or detention by law enforcement authorities. The principle of inviolability must be respected.

29. Her Government was committed to ensuring the protection, security and safety of diplomatic premises and personnel and had taken all necessary measures, including providing armed security, to safeguard all diplomatic and consular missions and representatives in Nigeria. Special diplomatic zones had been designated for diplomatic missions and residences, a special diplomatic protection unit had been set up within the national police force, and all foreign envoys and dignitaries arriving in Nigeria were provided with a police escort.

Agenda item 80: Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm (A/77/147 and A/77/148)

30. **Ms. Challenger** (Antigua and Barbuda), speaking on behalf of the Alliance of Small Island States, and recalling that many years had elapsed since the International Law Commission adopted its articles on prevention of transboundary harm from hazardous activities and the principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, which were annexed to General Assembly resolutions 62/68 and 61/36, respectively, said that while States had yet to decide whether the articles and principles should be transformed into a convention, the members of the Alliance saw a pressing need for greater clarity on the obligations of States in the context of overlapping environmental crises. From that perspective, the Commission's work to address environmental problems, including protection of the atmosphere and sea-level rise in relation to international law as well as the issue of transboundary harm, was commendable.

31. The articles and principles, portions of which reflected existing customary law, were particularly helpful in that they clarified States' substantive obligations under customary international law to minimize the risk of environmental harm, and set out a procedural framework for the provision of compensation when harm occurred. In the texts, the Commission had also elaborated on the responsibility of States to prevent transboundary harm by developing the obligation of due diligence.

32. Small island States were particularly vulnerable to transboundary environmental harm with anthropogenic causes such as plastic pollution, the effects of climate change and sea-level rise. Those phenomena were altering every aspect of life for their citizens and would continue to do so. The location of small island States made them particularly susceptible to the dangers associated with the 11 million tonnes of global plastic waste that entered the oceans each year. The climate change-related challenges that they faced included freshwater salinization, an increasing number of extreme weather events, coastal erosion and threats to biodiversity driven by rising temperatures. Sea-level rise, meanwhile, would inundate the territory of small islands, exacerbating the threats to their infrastructure and security. For small islands, all those transboundary harms were significant: their impact on fishing, tourism and other areas of the economy as well as on the health of their people was enormous.

33. The members of the Alliance believed that the articles and principles and existing customary obligations in the area should be interpreted in the light of the general principle of equity in international law. Small island States were responsible for less than 1 per cent of global fossil fuel emissions and less than 1.3 per cent of global plastic waste but the adverse effects of climate change, sea-level rise and plastic pollution had a disproportionately severe impact on their industries, infrastructure, health and culture. Equity was vital, and, since the contribution of small island States to those significant and overlapping transboundary harms was negligible, it was inequitable and unjust to expect them to use their relatively small national budgets to respond to and remediate the effects of transboundary harm caused by others.

34. The articles and principles codified key principles of international environmental law that were already reflected in customary law. States should work together to prevent transboundary harm and deal with losses equitably. The members of the Alliance would welcome discussions with other States to consider how the duties that already existed in international law might be further developed and clarified, how cooperation in preventing transboundary harm might be enhanced, and how an equitable allocation of losses might be achieved.

35. **Ms. Russell** (New Zealand), speaking also on behalf of Australia and Canada, said that the three delegations were pleased to see that international, regional and domestic courts were referring to the articles on prevention of transboundary harm from hazardous activities and the principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, thus confirming their ongoing relevance and significance. In their opinion, the best way to ensure the progressive development of international law in the area of transboundary harm was to maintain the articles and principles in their current form. The two texts provided authoritative guidance and established clear and comprehensive standards for all States to follow and there was little to be gained from attempting to transform them into a convention. In their present form, the articles and principles informed and encouraged national and international best practice, enjoyed widespread support among States Members of the United Nations and were consistently invoked in discussions between States, in bilateral and multilateral forums and in national and international courts and tribunals.

36. The articles and principles represented a significant contribution to the achievement of a consistent, coherent and widely supported international framework for the prevention of transboundary harm from hazardous activities and the allocation of loss, and, as both had been commended to the attention of Governments by the General Assembly, the three delegations encouraged Member States to continue to be guided by their provisions.

37. **Mr. Talebizadeh Sardari** (Islamic Republic of Iran) said that his delegation's position remained that the two by-products of the International Law Commission's work on the issue of international liability for injurious consequences arising out of acts not prohibited by international law, namely, the articles on prevention of transboundary harm from hazardous activities and the principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, contained elements common to domestic civil liability regimes in place in many countries and embodied in international and regional schemes and, as such, were part of *lex lata*. The articles and principles for the most past represented proposals for the progressive development of international law, a characteristic that prevented them from serving as a basis for the development of a comprehensive standard to be followed by all States.

38. However, since the repercussions of climate change and environmental degradation meant that the risk of transboundary harm from such activities was likely to grow, States should endeavour to act in a manner consistent with recognized international practices and applicable general principles. Consistent practice would in turn serve to harmonize legal responses, especially in the prevention of hazardous activities. In the absence of specific rules of conventional or customary international law attributing liability and allocating loss related to transboundary harm arising out of hazardous activities, States had a general duty to observe due diligence in preventing or minimizing transboundary harm. Cooperation, coordination and the exchange of information between States, and especially neighbouring States, were likewise essential; his delegation supported the proposal that international cooperation in building the scientific and technical capacities of developing countries should be enhanced, particularly with a view to helping them to avoid such harm.

39. While the overall perception regarding certain principles derived from existing universal instruments, namely, prevention, cooperation, prior authorization, notification and information, remained undisputed, their implementation seemed likely to be a matter of controversy. Likewise, despite universal agreement on such notions as compensation and response measures, the definitions of the term "damage" and of what constituted "significant" damage were open to

interpretation and therefore controversial. In that context, principle 6 (International and domestic remedies) and principle 7 (Development of specific international regimes) were important, since they could encourage States to improve the existing legal arsenal for preventing and remediating transboundary harm resulting from hazardous activities and pave the way for more harmonized compensation. His delegation shared the cautionary view that the articles and principles required further study, with due consideration given to State practice.

40. **Mr. Bigge** (United States of America) said that the articles on prevention of transboundary harm from hazardous activities and the principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities represented positive, innovative steps towards addressing transboundary harm. Both texts were designed to serve as resources that encouraged national and international action in specific contexts rather than to form the basis of a global treaty. For that reason, his delegation was strongly in favour of retaining them in their current form. It was most appropriate for the articles in particular to be treated as non-binding standards to guide the conduct and practice of States.

41. **Ms. Jiménez Alegría** (Mexico) said that the articles on prevention of transboundary harm from hazardous activities and the principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities represented an important contribution to the progressive development of international law, and that the elaboration of a general binding instrument that covered both topics would help to ensure their effective application. Such an instrument should incorporate basic principles related to transboundary harm, including in particular, the principle of sustainable development, and a clear definition of what constituted "significant" harm to the environment. A detailed analysis of the obligation for States that suffered transboundary harm to exhaust domestic remedies before seeking international reparation and of the circumstances in which there might be more than one State of origin was also important.

42. A reformulation of the term "allocation of loss" was necessary since the current formulation would appear to exclude the possibility of any compensation regime other than that deriving from the polluter-pays principle. A regime that attributed strict liability to the operator would be preferable, besides being in line with international instruments on civil liability, including strict civil liability, and with the nature of hazardous activities. In that context, her delegation suggested that, in the course of the codification work, the concept of transboundary harm caused by activities in areas beyond national jurisdiction, particularly harm caused by submarine activities, should be reviewed.

43. It was important to establish a liability regime that ensured prompt and adequate compensation for those who suffered harm within the national jurisdiction of a State as a result of activities conducted in the Area. Submarine mining activities should therefore be considered hazardous activities with the potential to cause transboundary harm and should be addressed in a context of unlimited liability in order to ensure an appropriate compensation and reparation regime. It was essential that such regime allow for joint liability to be shared between contractors and their holding companies; in that way, the latter could be called upon to respond to any claim that the contractors lacked the financial and material resources to satisfy themselves.

44. The important task of codifying the rules and principles relating to the prevention of transboundary harm and the allocation of loss must continue in order to ensure that prompt and adequate compensation and due reparation were available for those who suffered the consequences of transboundary harm.

45. **Mr. Abdelaziz** (Egypt) said that the obligation to take all appropriate measures to prevent significant transboundary harm or at any event to minimize the risk thereof was now an established customary rule. In order to prevent such harm, it was essential to conduct studies identifying the environmental and social effects of transboundary activities and to establish a general legal framework to clarify the rules governing transboundary harm and compensation for such harm. The articles on prevention of transboundary harm from hazardous activities adopted by the International Law Commission were being accepted more and more as a tool to that end. It would be useful to consider elaborating a binding, comprehensive international convention based on the articles.

46. The provisions for a consultative process set out in the articles could be further developed. For instance, the term "physical consequences" in article 1 (Scope) should be clarified; the term "significant harm" should be better defined; and a new category of human-made disasters should be added, referring, for instance, to large-scale projects carried out without the necessary studies. The obligation to take "appropriate measures", contained in article 3 (Prevention), should be strengthened to focus not on efforts but on results, namely the avoidance of harm. The time frame for negotiations between States under article 9 (Consultations on preventive measures) should be defined in order to avoid stalling tactics.

47. **Ms. Flores Soto** (El Salvador) said that protecting the environment made it possible to systematically uphold human rights and other guarantees, including freedom, equality and adequate living conditions. The right to a healthy environment was enshrined in important international instruments, including the Declaration of the United Nations Conference on the Human Environment, besides being recognized in the case law of regional human rights courts, including the Inter-American Court of Human Rights.

48. Current circumstances had spotlighted the pressing need for greater action and commitment on the part of States and other relevant actors in the international community to strengthen the measures for protecting their environments, ecosystems and cross-border natural resources. The recognition and application of treaty instruments and rules of customary international law were also becoming increasingly necessary to ensure that principles of international environmental law, such as the principle of prevention of transboundary harm, were respected.

49. The outcome of the International Law Commission's work on the current agenda item provided important guidance for States. Indeed, the Inter-American Court of Human Rights had noted, in an advisory opinion on the environment and human rights, that there was a consensus that the obligation of prevention required that transboundary harm or damage attain a certain level, and, in so doing, made direct reference to the articles on the prevention of transboundary harm from hazardous activities prepared by the Commission. The Court had also recognized the need to clarify certain concepts, including what constituted "significant" harm. In the discussions as to the action to be taken in respect of the articles and on the principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, it was therefore important to bear in mind their important contribution to the international legal order, especially in a context where protection of the environment and biodiversity was a priority for human survival.

50. Her delegation was firmly in favour of the elaboration of a binding international instrument that brought greater legal certainty and precision to concepts contained in the articles and principles, served to clarify States' obligations to preserve and respect the environment, and provided for States to be held responsible for significant harm to persons or ecosystems outside their borders caused by activities originating in their territory or under their effective authority or control. The Committee's inability to achieve the desired degree of consensus so far should not be used as an excuse to put the topic aside and abandon efforts to find a way forward. One possible course of action would be to designate a working group to compile a model instrument or model law that might garner some degree of commitment from States.

51. **Mr. Amaral Alves De Carvalho** (Portugal) said that although the adoption of the articles on prevention of transboundary harm from hazardous activities and the principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities represented a positive step towards the establishment of measures for the prevention and mitigation of harm and compensation for loss caused by hazardous activities, much remained to be done to fulfil the recommendations made by the International Law Commission in 2001 and 2006, including its recommendation that a convention be elaborated on the basis of the articles and principles. Nonetheless, his delegation welcomed the Secretary-General's report (A/77/147) and the compilation of examples of specific references to the articles and principles contained therein. As such information was relevant for the Committee's discussions, his delegation hoped that the Secretariat could continue updating the compilation.

52. The articles and the principles should be analysed in the light of their history and of the purposes of codification and progressive development of international law. As the concept of a human right to a clean, healthy and sustainable environment was becoming a cornerstone of international human rights law, it was to be expected that regional human rights courts, tribunals and other relevant bodies would be increasingly called on to deliver decisions and opinions on the recognition and scope of that right.

53. The articles and principles could thus serve as a point of departure for the progressive development and progressive interpretation of international environmental law. In addition, given that the International Law Commission had included the prevention of transboundary harm, on the one hand, and international liability in the case of loss arising from such harm, on the other, under the topic "International liability for injurious consequences arising out of acts not prohibited by international law", it was necessary to ensure that the phases of prevention and allocation of loss were dealt with together, with equal legal force and enforceability.

54. Portugal remained hopeful that it would at some point in the future be possible to develop a single convention on prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm that would adequately establish State responsibility in those areas and provide for the

implementation of an effective and fair system of compensation for the effects of lawful activities of States. In the meantime, however, given the need for coherence, a single set of articles or principles addressing those topics together would constitute a significant step forward.

55. **Mr. Turay** (Sierra Leone) said that it was important to protect the environment and, more specifically, to limit transboundary harm by prioritizing prevention and reaffirming obligations that covered a subsequent stage once a damage had occurred, such as the obligation to guarantee prompt and adequate compensation for victims. The duty of restitution in the event of harm was also very important to ensuring environmental safety and sustainability. His delegation therefore supported the International Law Commission's articles on prevention of transboundary harm from hazardous activities and the principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities. It noted in particular the reliance on the articles and principles in cases before international and regional courts.

56. As to any future action to be taken on the articles and principles, it was worth recalling that the Committee had consistently considered the Commission's outputs to be of an overall authoritative nature. In cases where the Commission had been obliged to strike compromises, States had been urged to respect the balance that it had managed to achieve. The risk of undermining or weakening the work of the Commission was often cited as a reason to defer action and allow adopted products such as articles to mature, especially those that constituted proposals for progressive development or a mix of codification and progressive development. In essence, some States would rather cede the mandate accorded to the General Assembly under Article 13, paragraph 1, of the Charter of the United Nations to courts and tribunals. While there might sometimes be merit to that approach, adopting it as mainstream practice would be to ignore its self-perpetuating nature and would ultimately lead to circularity and inertia. It would also result in a lack of due regard for the mandate of the Committee and the Assembly and a loss of overall trust in the ability of the United Nations to lead and deliver on topics of importance to the international community.

57. The metaphor of the Committee as a graveyard for the Commission's products could only be reinforced by self-perpetuating arguments and inordinate delays in addressing issues of pressing concern, such as protection of the environment, ecosystems and resources. In the context of the articles and principles under consideration, the Committee's inertia allowed for legal fragmentation owing to the resulting reliance on regional instruments and bilateral engagements. In view of the increasing risk of transboundary harm, a consistent and coherent international legal framework setting out relevant standards of conduct and practice was thus an imperative.

58. Irrespective of States' differing positions on products in respect of which the Commission had made similar recommendations to those made for the articles and principles, it was in States' common interest for the Committee to review and rationalize agenda items dealing with outputs of the Commission and schedule meaningful debates on them. The desirable frequency of meetings on the items should also be reviewed to ensure that States had adequate opportunity to engage on the substance of the outputs over time. His delegation was not advocating a one-size-fits-all approach; rather, it was calling for consistency, and, by extension, legitimacy in the work of the Committee. Such an approach would complement the Commission's review of its own working methods following the re-establishment of its Working Group on methods of work.

59. His delegation was of the view that the articles and principles under consideration provided a good basis for the elaboration of a convention and saw merit in combining the two instruments. It looked forward to meaningful discussions on the question of any future action and on the substance of the articles and principles.

60. *Ms. Romanska (Bulgaria), Vice-Chair, took the Chair.*

61. **Mr. Nyanid** (Cameroon) said that his delegation viewed the issues of prevention of transboundary harm resulting from hazardous activities and allocation of loss in the case of such harm as subcategories of the issues of environmental protection and State responsibility. The issues of prevention of transboundary harm and allocation of loss should be addressed in the light of the principles set forth in the Rio Declaration on Environment and Development and other texts that emphasized the close relationship between environmental and development issues, with special attention being paid to the situation and needs of developing countries.

62. The articles on prevention of transboundary harm from hazardous activities and the principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities were consistent with the need to protect the environment, on the one hand, by emphasizing the preventive component of State's commitment to curb the environmental impact of activities carried out in their territory and avoid causing damage to persons, property or the environment in the

territory or in other places under the jurisdiction or control of a State other than the State of origin, and, on the other hand, by reaffirming obligations that covered a subsequent stage once the damage had occurred, such as the obligation to guarantee prompt and adequate compensation for victims.

63. With regard specifically to the text of the articles, a thorough review was needed to iron out imprecisions, clarify the scope of certain particularly open-ended provisions and better substantiate certain premises. In article 1 (Scope), a reformulation was required since the scope of the articles, as established therein, was too broad and ambiguous. Multilateral international cooperation mechanisms should have a more limited and particular scope, determined by concrete criteria such as the type of activity, the nature of the harm and the geographical area of applicability. In article 2 (Use of terms), the terms "risk", "harm", "probability" and "significant" used to clarify the concept of "risk of causing significant transboundary harm" in paragraph 1 (a) represented subjective criteria that would give rise to differences in interpretation.

64. Although the Commission provided some clarification in that regard in its commentaries to the articles, his delegation believed that the evaluation of the degree of "risk of causing significant transboundary harm" would need to be made in view of each specific case. Accordingly, paragraph 1 (a) should be drafted in a clearer and more detailed manner so as to facilitate a proper legal determination rather than a conceptual one. Greater precision was also needed with regard to the degree of harm that might be caused. The meaning and scope of the qualifier "significant" used in the phrase "significant harm" throughout the articles was vague, and might be interpreted as excluding from regulation harm caused by chemical, biological or radiological hazards, which might arise as a form of transboundary harm. It was important to prevent the occurrence of that type of harm, or at least to reduce the risk of its occurrence.

65. Referring to the principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, he said that his delegation would like to see prevention set out as a guiding principle, specifically in principle 3 (Purposes). Although the principles already provided that States should take the necessary legislative, administrative or other action to implement the provisions and that the States concerned should agree upon other measures by mutual consent, it was important to include a guide to possible measures that States might take to minimize the risk of harm as part of the principles. With regard to paragraph 2 of principle 4 (Prompt and adequate compensation), which envisaged the imposition of strict liability on the operator or other person or entity, his delegation noted that the contours of the notion of strict liability had not yet been clearly established and remained a subject of debate, particularly in the context of environmental protection.

66. **Ms. Antonova** (Russian Federation) said that her delegation held in high regard the Commission's articles on prevention of transboundary harm from hazardous activities and principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities. In the absence of a consensus on the fate of the articles, States could still refer to them when concluding treaties on the subject. Work to find the most acceptable form for the articles should continue.

67. **Ms. Yahaya** (Malaysia), addressing the International Law Commission's articles on prevention of transboundary harm from hazardous activities and the principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, said that the Commission should propose a precise definition of the term "significant", which would facilitate progress on the topic. The term "transboundary harm" was also very general, in that it encompassed various forms of damage to, inter alia, the atmosphere, water, soil and biological resources, so long as the damage caused transboundary harm to persons, property or the environment. Given that the articles and the principles essentially took a one-size-fits-all approach to all categories of transboundary harm, work on the topic should remain focused on the analysis of developments in State practice.

68. Regarding specific articles and principles, her delegation noted that, while paragraph 1 of article 11 (Procedures in the absence of notification) provided that States could request an environmental impact assessment if they had "reasonable grounds" to believe that an activity planned by the State of origin might cause transboundary harm, paragraph 2 of the same article indicated that the State of origin could refuse such requests on the basis that it was not "under an obligation to provide notification" of possible harm. Her delegation believed that the notion of "reasonable grounds" should also apply to the State of origin's right of refusal and should thus also be incorporated into paragraph 2.

69. Lastly, since principle 5 (Response measures) was silent on the question of knowledge of harm, it would be more appropriate and fairer if the principle provided that the obligations in respect of response measures established therein arose only when the incident involving a hazardous activity that resulted or was likely

to result in transboundary damage was within the knowledge of the State concerned.

70. **Mr. Hernandez Chavez** (Chile) said that the articles on prevention of transboundary harm from hazardous activities adopted by the International Law Commission reflected customary law as well as elements of progressive development. For the most part, the obligations in respect of the prevention of harm covered therein were also enshrined in other treaties on the prevention of more specific harm. The articles were part of the international rules on environmental matters that emphasized States' duty of prevention, which had been developed in various instruments of differing legal natures over the years. They had gained increasing prominence with the passage of time as the case law of courts, tribunals and other bodies had reaffirmed their importance and validity.

71. The principles on allocation of loss in the case of transboundary harm arising out of hazardous activities were the logical corollary to the articles, since, even if the articles were fully complied with, efforts to prevent transboundary harm from lawful but hazardous activities would be ineffective in the absence of provisions for determining the allocation of loss and the award of prompt and adequate compensation The effectiveness of efforts to attribute liability to operators and guarantee prompt and adequate compensation for victims encouraged States to extend their preventive efforts still further.

72. Despite the existence of treaties regulating specific forms of hazardous activities and their consequences, the articles and principles before the Committee were not legally binding, although they did reflect customary law. The fact that their provisions were reflected in the domestic laws and regulations of States, which took measures based on them, demonstrated that, while States had a sovereign right to exploit their own natural resources pursuant to their own environmental policies, that right was not absolute. States also had a duty to adopt preventive measures, to attribute liability, to ensure the payment of compensation and to restore the damaged environment to its previous state.

73. The articles and principles thus served to harmonize environmental law and their incorporation in the domestic laws and regulations of States that applied them reflected the conviction that States were acting upon a legal imperative in environmental matters. The articles and principles also made it easier for States to prevent risks by adopting preventive measures, establishing obligations and imposing sanctions in case of violation. They provided important points of reference for States, which invoked them before national and international courts, besides incorporating them in their national legislation.

74. The articles and principles were two sides of the same coin; the articles covered the cause while the principles covered the effects. They should therefore be contained in the same instrument. Although not legally binding, the articles and principles were an example of the progressive development of international law. Since several years had elapsed since their adoption, a working group should now be set up to examine their incorporation in State legislation and their application by national and international courts and tribunals with a view to harmonizing the two texts within a single instrument and determining what their legal nature should be.

75. **Mr. Lippwe** (Federated States of Micronesia) said that, as a State composed of hundreds of small islands, his country was keenly aware of the dangers of transboundary harm. Since the damaging effects of human activity on its maritime and coastal areas could have potentially devastating consequences, his country was committed to pursuing all available avenues to address the risk, including through the full and equitable implementation of relevant international law.

76. The articles on prevention of transboundary harm from hazardous activities adopted by the International Law Commission in many important respects reflected customary international law, including the principle of international cooperation, the polluter-pays principle, the notification requirement, the related principles of prevention and due diligence and the precautionary principle. Every State had an obligation of due diligence under international law to take all necessary steps to prevent the physical harm that its hazardous activities or hazardous activities under its jurisdiction or control were likely to inflict on another State's environment, persons and property.

77. The duty of prevention had a clear application in multiple multilateral forums, processes and instruments related to the environment, including those that addressed the triple planetary crises of climate change, biodiversity loss and plastic pollution. In part to discharge that duty, his country had engaged in a number of initiatives aimed at addressing the impact of State activities on the environment and peoples of other States, including the Alliance of Countries for a Deep Sea Mining Moratorium. In addition, it had joined the Pacific Islands Forum and other groups of States in calling for the General Assembly to adopt a resolution requesting the International Court of Justice to provide an advisory opinion clarifying the obligations of States

under international law to protect the rights of present and future generations against the adverse impacts of climate change.

78. A related rule of customary international law, which was also reflected in the articles, was the requirement to undertake a comprehensive environmental impact assessment whenever there was a degree of risk that a proposed activity might have a certain level of adverse impact in a transboundary context, whether between States or between a State and an area beyond national jurisdiction. That requirement was reflected in a number of treaties to which Micronesia was a party, including the United Nations Convention on the Law of the Sea, the Convention on Biological Diversity and the Noumea Convention. It was also a key element of ongoing negotiations for an instrument on biodiversity beyond national jurisdiction; it was essential that the instrument ultimately elaborated establish a requirement to assess all potential anthropogenic harms to areas beyond national jurisdiction, including harms emanating from activities in areas within the national jurisdiction of States. Such a requirement was likewise a key element of ongoing negotiations to elaborate a set of exploitation regulations to form part of the Mining Code of the International Seabed Authority that contained, inter alia, robust, comprehensive and legally binding provisions on environmental impact assessments.

79. The principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, meanwhile, underscored the importance of ensuring that those who suffered harm as a result of incidents involving hazardous activities were not left to shoulder their losses and were able to obtain prompt and adequate compensation. They provided useful and authoritative guidance for the development of more specific agreements, including international legally binding instruments. His delegation was open to the elaboration of a convention incorporating the articles and principles. In the absence of such a convention, States themselves regulated and would have to continue regulating transboundary harm related to specific risks.

80. The Commission would continue to play an important role in ensuring the consistent and coherent development of international law, including the adoption and implementation of international legally binding instruments such as those on climate change, biodiversity loss and plastic pollution. States should continue to be guided by the articles and principles in the development of such instruments and other specific regulations addressing transboundary harm and the losses arising from such harm.

81. **Mr. Bouchedoub** (Algeria) said that the articles on prevention of transboundary harm from hazardous activities were a positive step towards developing legal and procedural measures to provide immediate and appropriate compensation for transboundary harm. The articles responded to current needs by setting out obligations to protect the environment, prevent pollution and avoid harming individuals, property or the environment in other States, by incorporating the polluter-pays principle, and by covering the period following the occurrence of a harm.

82. His delegation believed that the articles would contribute to the progressive development of international environmental law. The prevention of transboundary harm was consistent with principle 21 of the Declaration of the United Nations Conference on the Human Environment and principle 2 of the Rio Declaration on Environment and Development, both of which provided that States had the sovereign right to exploit their natural resources in accordance with their own environmental and development policies, but also had a responsibility to ensure that such activities did not harm States or areas outside their jurisdiction.

83. His delegation hoped that the Committee would consider the issues of transboundary harm and the distribution of losses arising from such harm in the light of those two Declarations. In view of the principle of joint but differentiated responsibility, due consideration should be given to the situation and needs of developing countries, particularly their technical and scientific capacities. The articles could not impose obligations so long as they had not become the basis for a binding international agreement. It would therefore be useful for the Committee to continue discussing the item so that States could draft a harmonized text incorporating the articles to accompany established and widely accepted customary laws. That text could then serve as a basis for intergovernmental negotiations.

84. **Mr. Kayalar** (Türkiye) said that, as documents of a guiding nature that provided standards of conduct for States, the articles on prevention of transboundary harm from hazardous activities and the principles on allocation of loss in the case of transboundary harm arising out of hazardous activities would serve their purpose better if retained in their current, non-binding form. That form would allow the necessary flexibility for State practice and law in the field to develop. To date, the articles and principles had not been invoked by his country before any international court, tribunal or other body.

85. **Ms. Theeuwen** (Netherlands) said that her delegation was in favour of the further development, in

an integrated manner, of the articles on the prevention of transboundary harm from hazardous activities and the principles on allocation of loss in the case of transboundary harm arising out of hazardous activities harm. Its position remained that the form of the Commission's work on the liability aspects of the topic should not differ from the form of its work on the prevention aspects. A differentiation between the prevention and liability aspects was not desirable; rather, the obligation of States to take the measures necessary to ensure the provision of prompt and adequate compensation for victims of transboundary harm caused by hazardous activities should be incorporated in the articles on prevention of transboundary harm from hazardous activities. Her delegation remained fully committed to continued discussion of the topic, given the need to further develop the articles and principles.

Agenda item 86: The law of transboundary aquifers

86. **Mr. Fox Drummond Cançado Trindade** (Brazil), speaking also on behalf of Argentina, Paraguay and Uruguay, said that the draft articles on the law of transboundary aquifers were the first systematic formulation of international law at the global level on that topic. The four delegations endorsed the Commission's approach of formulating general rules on the topic of transboundary aquifers as normative propositions. The draft articles stipulated that each aquifer State had sovereignty over the portion of a transboundary aquifer or aquifer system located within its territory, and that it should exercise its sovereignty in accordance with international law and, in particular, with the principles and rules set out in the draft articles. They also set out the obligation for States not to cause significant harm to other aquifer States, to prevent or control the pollution of aquifers and aquifer systems, and to protect and preserve ecosystems. Moreover, they provided for the possibility of international technical cooperation with developing States in managing a transboundary aquifer or aquifer system.

87. Argentina, Brazil, Paraguay and Uruguay had signed the Agreement on the Guaraní Aquifer on 2 August 2010, along with a joint declaration for its implementation. In so doing, they had become the first countries to implement General Assembly resolution 63/124, wherein the Assembly had recommended to States concerned to make appropriate bilateral or regional arrangements for the proper management of their transboundary aquifers on the basis of the principles enunciated in the draft articles. Following its ratification by all four countries, the Agreement on the Guaraní Aquifer had entered into force on 26 November 2020. The Agreement was a highly relevant political and technical instrument that sought to strengthen cooperation and integration among the parties and expanded the scope of concerted action for the conservation and sustainable utilization of the transboundary water resources of the Guaraní aquifer system.

88. The four delegations remained convinced that the next appropriate step by the General Assembly on the issue of transboundary aquifers would be to adopt the draft articles in the form of a declaration of principles, to be taken into account in bilateral or regional agreements on the proper management of transboundary aquifers.

89. **Mr. Bigge** (United States of America) said that the International Law Commission's work on transboundary aquifers constituted an important advance in providing a possible framework for the reasonable use and protection of underground aquifers, which were playing an increasingly important role as water sources for human populations. The issues arising from transboundary aquifers were highly context-specific, and State practices varied widely. His delegation remained of the view that context-specific arrangements, as opposed to a refashioning of the draft articles into a global framework treaty or into principles, provided the best way to address the pressures on transboundary groundwaters in aquifers. States concerned should take into account the provisions of the draft articles in negotiating appropriate bilateral or regional arrangements for the proper management of transboundary aquifers.

90. **Ms. Jiménez Alegría** (Mexico) said that her delegation attached great importance to the progressive development of the law of transboundary aquifers and welcomed the continued inclusion of the topic in the Committee's programme of work. The International Law Commission's draft articles on the law of transboundary aquifers, in general, struck a balance between vital human needs, the interests of States and the need to protect and preserve ecosystems associated with transboundary aquifers. They also introduced modern notions of sustainable management of the environment and shared resources, and covered issues of great importance and complexity, including matters related to international cooperation, exchange of information, reciprocal consultations, monitoring schemes and joint management of groundwater.

91. In the consideration of issues related to the law of transboundary aquifers, it was important to take into account the practice of States as manifested in the conclusion of bilateral and regional agreements, and to interpret and apply such practice in accordance with the

principles of general international law, including those of good faith and respect for the sovereign equality, territorial integrity and sovereign rights of States. It was necessary to further reflect on and analyse the practice of States with a view to negotiating a legally binding international instrument based on the draft articles.

92. **Ms. Flores Soto** (El Salvador) said that the consideration of the current agenda item reflected the importance of international environmental law for relations between States and the need to ensure for present and future generations a reasonable and adequate management of natural resources through international cooperation. The draft articles on the law of transboundary aquifers could serve as guidelines for bilateral and regional agreements and arrangements for the proper management of such aquifers and could ensure better use and conservation thereof. They could also serve as useful guidance for bilateral and regional agreements on the management of watersheds, an issue closely related to the management of aquifers, and could make an even more substantial contribution if they were transformed into a binding convention.

93. It was of great importance to El Salvador that the draft articles have a binding effect on the practice of States, as they would thus harmonize regulations pertaining to water resources and promote better governance of transboundary aquifers. It was important to share scientific and technical knowledge on the matter in order to strengthen the capacities of entities that might implement a binding regulatory framework on the subject.

94. **Mr. Amaral Alves De Carvalho** (Portugal) said that the transboundary sharing of water affected relations between States and was thus extremely relevant to current international relations, as was demonstrated by the attention paid to the issue, its potential to cause conflict and its political, economic and environmental ramifications. The draft articles on the law of transboundary aquifers were a valuable contribution to the proper management of transboundary aquifers and hence to the promotion of peace. They incorporated principles of international environmental law and, through references to “vital human needs”, reflected significant aspects of the human right to water.

95. That the draft articles were similar to some provisions of the Convention on the Law of the Non-navigational Uses of International Watercourses and the United Nations Convention on the Law of the Sea demonstrated their consistency with developments in contemporary international law. The draft articles were also compatible with relevant European Union law, which was binding on Portugal. His delegation encouraged all States to contribute actively to the development and universal codification of the law of transboundary aquifers. It reaffirmed its view that the articles should evolve into a framework convention.

96. **Mr. Nyanid** (Cameroon) said that transboundary aquifers constituted a vital natural resource for present and future generations. Given the scarcity of water resources and the resulting tensions between States, the development of the law of transboundary aquifers was of critical importance for peaceful relations between States. The draft articles on the law of transboundary aquifers recognized the importance of groundwater as a resource essential to life and the need to develop, protect and manage such resources in the face of growing demand for fresh water and the vulnerability of aquifers. His delegation welcomed the recognition in the draft articles of the sovereignty of States over water resources located within their territory, while also acknowledging the importance of regulating the use of shared aquifers and aquifer systems. Although it questioned the meaning of the term “significant harm” in the draft articles, it recognized the need for due diligence to prevent harm to transboundary aquifers or aquifer systems.

97. Given the sensitivity of the issue of aquifers, his delegation welcomed the emphasis in the draft articles on the duty of aquifer States to cooperate, including through the conclusion of bilateral and regional agreements and arrangements for the management of transboundary aquifers or aquifer systems. Such cooperation was a prerequisite for the sharing of natural resources. In a context of water scarcity, it was important to have legal instruments to improve water governance. While the Convention on the Protection and Use of Transboundary Watercourses and International Lakes and the Convention on the Law of Non-Navigational Uses of International Watercourses reflected the growing force of international law with respect to transboundary waters, they were incomplete.

98. The draft articles offered a credible avenue to be patiently explored with a view to overcoming the differences between delegations that advocated the adoption of a legally binding instrument and those that favoured a non-binding instrument. In any case, the framework for the governance of transboundary aquifers should be strengthened through an instrument that would facilitate the achievement of groundwater resources management objectives, including resource sustainability, water security, economic development and equitable access to benefits related to water and ecosystem conservation.

The meeting rose at 6 p.m.