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### Sixth Committee

#### Summary record of the 32nd meeting

Held at Headquarters, New York, on Thursday, 3 November 2022, at 10 a.m.

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

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*The meeting was called to order at 10 a.m.*

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

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

1. **Ms. Alomair** (Saudi Arabia) said that Lesotho, Mauritania, Qatar and Uganda had become sponsors of the draft resolution. Granting observer status to the Digital Cooperation Organization would incentivize it to work towards filling the digital gap and to pursue its other objectives, which would in turn support the achievement of the Sustainable Development Goals. Granting such status would also be a recognition of the importance of digital cooperation among countries and of the need to promote digital transformation. The Digital Cooperation Organization would bring benefit to the United Nations through its cooperation with public and private sector entities, research activities and international exchange of expertise and knowledge.

2. *Draft resolution A/C.6/77/L.2 was adopted.*

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

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

3. *Draft resolution A/C.6/77/L.3 was adopted.*

4. **Mr. Pary Rodríguez** (Plurinational State of Bolivia) said that the Amazon Cooperation Treaty Organization worked to preserve the Amazon region, one of the most important regions on the planet. As such, its input would be valuable to the General Assembly.

**Agenda item 75: Report of the United Nations Commission on International Trade Law on the work of its fifty-fifth session (continued)** (A/C.6/77/L.7, A/C.6/77/L.8 and A/C.6/77/L.9)

*Draft resolution A/C.6/77/L.7: Report of the United Nations Commission on International Trade Law on the work of its fifty-fifth session*

5. **Mr. Gorke** (Austria), introducing the draft resolution on behalf of the sponsors, said that they had been joined by Ghana, Honduras and Lesotho. The text was based on General Assembly resolution 76/229 and incorporated the developments and recommendations set forth in the report of the United Nations Commission

on International Trade Law on the work of its fifty-fifth session (A/77/17). In paragraph 2, the Assembly would commend the Commission, among other things, for the finalization and approval of the United Nations Convention on the International Effects of Judicial Sales of Ships and the finalization and adoption of the Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services. In paragraph 5, it would take note of the Commission's decision to task its working groups with different topics, such as the development of a new instrument on negotiable multimodal transport documents, while in paragraph 6, it would welcome the progress of the preparatory work in the area of warehouse receipts.

6. In paragraph 7, the Assembly would take note of the interest of the Commission in holding a colloquium or expert group meeting on the various legal issues surrounding climate change mitigation, adaptation and resilience. In paragraph 8, the General Assembly would note the endorsement by the Commission of the International Standard Demand Guarantee Practice for Uniform Rules for Demand Guarantees 758 of the International Chamber of Commerce. In paragraph 24, the Assembly would note with interest the progress towards a rejuvenation of the system for the collection and dissemination of case law on Commission texts (the CLOUT system), and the focus on developing a more active and productive network of CLOUT system contributors and covering an expanded range of Commission texts.

7. **The Chair** said that action would be taken on the draft resolution at a subsequent meeting.

*Draft resolution A/C.6/77/L.8: United Nations Convention on the International Effects of Judicial Sales of Ships*

8. **Ms. Nachom** (Thailand), introducing the draft resolution on behalf of the Bureau, said that under the terms of the draft resolution, the General Assembly would adopt the United Nations Convention on the International Effects of Judicial Sales of Ships, contained in the annex to the draft resolution; authorize a ceremony for the opening for signature of the Convention to be held as soon as practicable in 2023 in Beijing; and recommend that the Convention be known as the "Beijing Convention on the Judicial Sale of Ships". The Assembly would also call upon those Governments and regional economic integration organizations that wished to strengthen the international legal framework for shipping and navigation to consider becoming a party to the Convention.

9. **The Chair** said that action would be taken on the draft resolution at a subsequent meeting.

*Draft resolution A/C.6/77/L.9: Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services*

10. **Mr. Khng** (Singapore), introducing the draft resolution on behalf of the Bureau, said that it was based on the text of the decision that the Commission had adopted at its 1170th meeting, on 7 July 2022. Under the terms of the draft resolution, the General Assembly would request the Secretary-General to publish the Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services together with an explanatory note, and to disseminate it broadly to Governments and other interested bodies; and recommend that all States give favourable consideration to the Model Law when revising or adopting legislation relevant to identity management and trust services.

11. **The Chair** said that action would be taken on the draft resolution at a subsequent meeting.

**Agenda item 80: Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm** (continued) (A/C.6/77/L.11)

*Draft resolution A/C.6/77/L.11: Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm*

12. **Mr. Zukal** (Czechia), introducing the draft resolution on behalf of the Bureau, said that the text was based largely on General Assembly resolution 74/189, with a few updates. The preambular paragraphs of the draft resolution were identical to those of the General Assembly resolution, with only technical updates to include references to resolution 74/189 and to the most recent reports of the Secretary-General. The operative paragraphs of the draft resolution were also identical to those of the General Assembly resolution, with only a technical update to refer to the Assembly's decision to include the item entitled "Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm" in the provisional agenda of its eighty-second session.

**Agenda item 82: Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives** (continued) (A/C.6/77/L.6)

*Draft resolution A/C.6/77/L.6: Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives*

13. **Ms. Laukkanen** (Finland), introducing the draft resolution on behalf of the sponsors, said that Estonia, Ireland, Lesotho and Luxembourg had become sponsors of the draft resolution. The text was largely based on General Assembly resolution 75/139, with the necessary technical updates to extend the reporting mandates for the next biennial and to include the agenda item entitled "Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives" on the provisional agenda of the General Assembly for its seventy-ninth session.

14. **The Chair** said that action would be taken on the draft resolution at a subsequent meeting.

**Agenda item 84: The rule of law at the national and international levels** (continued) (A/C.6/77/L.10)

*Draft resolution A/C.6/77/L.10: The rule of law at the national and international levels*

15. **Mr. Arrocha Olabuenaga** (Mexico), introducing the draft resolution on behalf of the Bureau, said that the text contained new elements when compared with the previous draft resolutions, including the provision that the General Assembly would note the tenth anniversary of the declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels, as adopted by the General Assembly on 24 September 2012. The Assembly would also recall that the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations had been adopted in 1970; and decide to include the item entitled "The rule of law at the national and international levels" in the provisional agenda of its seventy-eighth session, inviting Member States to focus their comments on the subtopic "Using technology to advance access to justice for all".

16. **The Chair** said that action would be taken on the draft resolution at a subsequent meeting.

### Agenda item 145: United Nations common system (*continued*)

17. **Ms. Sverrisdóttir** (Iceland), introducing a draft letter from the Chair of the Sixth Committee addressed to the President of the General Assembly containing a summary of the views of the Committee on the legal aspects of the report of the Secretary-General on the jurisdictional set-up of the United Nations common system (A/77/222), said that those views included underlining the importance of preserving the cohesion and consistency of a single, unified United Nations common system; noting that a meaningful long-term solution was warranted to address the divergence in the jurisprudence of the two tribunals system, which could undermine such cohesion; and taking note of proposals 1 and 2, as set out in the report of the Secretary-General, namely, to facilitate submissions by the International Civil Service Commission (ICSC) to the tribunals, and to facilitate ICSC guidance following relevant tribunal judgments.

18. Some delegations had viewed those proposals positively, as they would not cause any significant legal issues, although a concern had been raised about the possible implications of proposal 2 for the role of ICSC in regulating and coordinating conditions of service and entitlements for all staff under the United Nations common system. Some delegations had expressed preliminary reservations with regard to proposal 3, on establishing a joint chamber of the International Labour Organization Administrative Tribunal and the United Nations Appeals Tribunal, due to the complexity and the outstanding issues, both in legal and financial terms, related to the proposal. Lastly, they had stressed the need for the Secretary-General to carry out further work on the outstanding legal and practical issues in close collaboration with the International Labour Organization and other stakeholders, as well as the need to explore additional steps or proposals.

19. **The Chair** said that it was recommended, as had become the practice, that the Chair of the Sixth Committee send the letter to the President of the General Assembly. Following past practice, the letter contained a request that it be brought to the attention of the Chair of the Fifth Committee and circulated as a document of the General Assembly. He took it that the Committee wished to authorize its Chair to sign the letter and forward it to the President of the General Assembly.

20. *It was so decided.*

### Agenda item 79: Diplomatic protection (A/77/261)

21. **Ms. Likos** (Australia), speaking also on behalf of Canada and New Zealand, said that diplomatic

protection was a valuable tool that enabled States to protect the rights of their nationals against violations of international law, including to provide protection in the event of violation of their human rights. Australia, Canada and New Zealand considered the articles on diplomatic protection adopted by the International Law Commission to be closely bound with the Commission's articles on responsibility of States for internationally wrongful acts and, in the absence of a clear consensus on whether to elaborate a convention on the basis of the articles on State responsibility, it would be premature to commence negotiations on a convention on the basis of the articles on diplomatic protection.

22. As certain aspects of the articles on diplomatic protection went beyond the current understanding of customary international law relating to diplomatic protection, there was unlikely to be a consensus on whether those aspects should be made the subject of a convention. The articles on diplomatic protection were valuable in their current form and provided useful guidance to States and international bodies, to the extent that they articulated important aspects of customary international law. Australia, Canada and New Zealand were, however, concerned that because an international consensus on certain aspects of the articles as they stood was unlikely, negotiating a convention at the current time risked undermining their influence and value by opening the entire set of articles up to debate.

23. The three countries continued to value the Commission's work on the articles, as it served to clarify and develop customary international law on diplomatic protection, and to inform and help to settle State practice in that important area of law.

24. *Mr. Leal Matta (Guatemala), Vice-Chair, took the Chair.*

25. **Mr. Khng** (Singapore) said that insofar as the articles on diplomatic protection reflected State practice and were consistent with customary international law, they provided welcome clarity on the state of that area of law. However, any legal framework on diplomatic protection must ultimately be constructed on the foundation of international consensus and mutual understanding for it to endure the test of time. The aspects of the articles that demonstrated the progressive development of the law would provide a useful reference point for States' continued dialogue on the topic. Any future action on diplomatic protection should track the developments on the closely related topic of responsibility of States for internationally wrongful acts.

26. **Mr. Talebizadeh Sardari** (Islamic Republic of Iran) said that any legal regime on diplomatic protection

must reflect a proper balance among the rights of individuals, the rights and discretionary powers of concerned States, and their national and international obligations. It was doubtful that the current articles on diplomatic protection adopted by the International Law Commission could properly reflect that balance. In addition, a number of critical articles did not reflect customary international law, but rather the progressive development of international law, which made consensus more remote. For instance, articles 7 (Multiple nationality and claim against a State of nationality) and 8 (Stateless persons and refugees) had been formulated on the basis of the case law of regional tribunals or of *sui generis* tribunals, which could hardly reflect existing customary international law.

27. In its commentary to article 7, the Commission explained why it used the word “predominant” instead of “dominant” or “effective” nationality to convey the element of relativity. However, it would be difficult to define a criterion for establishing the predominance of one nationality over another. Thus, instead of proposing a normative solution, article 7 only increased the uncertainty and ambiguity around the topic. It was also contrary to the constitutions of countries which did not accept dual nationality or did not recognize the legal effects arising from the secondary nationality of their citizens. In those cases, the exercise of diplomatic protection by one State of nationality against another State of nationality would create uncertainty and ambiguity about States’ obligations. Furthermore, articles 15 (b) and 15 (d) were vague or hypothetical.

28. Although the Commission had pointed out in its commentaries that the articles would not deal with primary rules, the wording of some provisions suggested otherwise. For instance, it was for each State to decide in accordance with its laws who its nationals were. In that context, the final phrase in article 4, pursuant to which the acquisition of nationality must not be inconsistent with international law, as well as the example cited in the commentary thereto, were not clear. More time was needed to consider the content of the articles and decide on their future.

29. **Mr. Evseenko** (Belarus) said that the articles on diplomatic protection were a suitable basis for the elaboration of a convention on the topic and a discussion of the applicable rules of customary international law and the progressive development of the law in that field. States had a sovereign right to exercise diplomatic protection, which they used to protect their nationals and legal persons and ensure compliance with the international standards for the treatment of foreign nationals, which should be one of the aims of any convention on the topic. The convention should also set

clear limits on the exercise of diplomatic protection, to ensure that the mechanism could not be used to interfere in the internal affairs of States.

30. More time was needed to consider the question of elaborating a convention as well as State positions expressed in the Committee during the current session. The General Assembly or the Committee could establish a working group or a special committee for that purpose. The conclusion of an international convention that set out clear rules for the exercise of diplomatic protection and was founded on the broadest possible consensus of States would reduce the potential for conflict, foster the normal conduct of relations among States and enable them to better protect the rights and lawful interests of their nationals and economic entities.

31. **Ms. Chandoo** (United States of America) said that her Government shared the view that where the International Law Commission’s articles on diplomatic protection reflected State practice, they represented a substantial contribution to the law on the topic and were thus valuable to States in their current form. However, certain articles were inconsistent with well-settled customary international law. One such example was article 15 (Exceptions to the local remedies rule), under which a claimant was not required to exhaust local remedies where no local remedy for effective redress was reasonably available or where the local remedies provided no reasonable possibility of such redress. That standard was too lenient. Under the customary international law standard, the exhaustion requirement was excused only where the local remedy was obviously futile or manifestly ineffective. Other topics that did not necessarily reflect customary international law standards included continuous nationality, corporations that had ceased to exist, protection of shareholders, and recommended practice.

32. Any articles considered in a convention on diplomatic protection should reflect well-established customary international law on the subject. Moreover, negotiating a convention could undermine the Commission’s substantial work to date by reopening topics on which States had reached agreement, raising the risk that a significant number of States might not ratify the convention.

33. **Ms. Jiménez Alegría** (Mexico) said that efforts should be made to elaborate an international convention on diplomatic protection on the basis of the articles on diplomatic protection adopted by the International Law Commission. The convention should reflect the principle that actions taken to exercise diplomatic protection in a State that had committed an internationally wrongful act did not constitute

interference in the internal affairs of that State. The principle derived from the practice of States and, although not codified in the Vienna Convention on Consular Relations, was referred to in the commentaries to the draft articles on diplomatic intercourse and immunities adopted by the Commission in 1958.

34. Article 7, which contained the “predominant nationality” principle, was not supported by sufficient State practice and could lead to disputes. Therefore, any new convention should recognize the general principle that a State could not exercise diplomatic protection in respect of a national who was also a national of the State that had committed the internationally wrongful act. In any event, the “predominant nationality” principle should be governed by *lex specialis* in relations between States that wished to apply it.

35. The Committee should give thorough consideration to the topic of diplomatic protection, as it should to other products and recommendations of the Commission that remained on its agenda, in order to determine the future of the articles. The Committee should also conduct a comprehensive review of all the topics on its agenda, in order to jointly seek a strategy that would enable it to manage its agenda in the most efficient way possible and to make progress. Mexico had proposed convening an informal dialogue to that end.

36. **Mr. Silveira Braoios** (Brazil) said that his delegation supported the elaboration of a convention on the basis of the articles on diplomatic protection adopted by the International Law Commission. The articles reflected customary international law to a large extent, including their provisions affirming the discretionary nature inherent to diplomatic protection and the requirement that local remedies be exhausted prior to its exercise. References to the articles in various forms of State practice as well as in the case law of the International Court of Justice and other international and national courts that applied international law also demonstrated the articles’ continued relevance.

37. Although 16 years had passed since the Commission had concluded its work on the topic of diplomatic protection and recommended the elaboration of a convention on the basis of the articles, the Committee’s engagement with the subject had remained limited. The adoption of such a convention would foster legal clarity and predictability, enhance the rule of law and contribute to the codification and progressive development of international law. Conversely, the lack of progress regarding the future of the articles undermined the authority and importance of the Commission’s contribution to the topic and might have a “decodification” effect in a long-established area of

international law. Furthermore, there was a clear link between the articles on diplomatic protection and those on responsibility of States for internationally wrongful acts.

38. **Ms. Flores Soto** (El Salvador) said that, from a historical point of view, diplomatic protection had been invoked most frequently at a time when no other means existed for the recognition and reparation of injury caused to nationals of another State. In view of developments in international law, particularly with regard to the protection of human rights, affected individuals could now make international claims when their rights were violated by another State or its representatives. However, notwithstanding such significant advances in the progressive development of international law, El Salvador believed that diplomatic protection remained an important remedy for the protection of persons whose rights had been violated in another State. Diplomatic protection was thus an important tool for the protection of human rights.

39. However, difficulties had arisen in State practice as a result of inconsistencies and an absence of consensus regarding the conditions for the exercise and scope of diplomatic protection, in particular in relation to natural persons. Elements that had required thorough assessment included the condition related to the nationality of the natural or legal persons involved, including cases of multiple nationalities; the disconnect between the criteria of incorporation and effectiveness for the purpose of determining the nationality of legal persons; and cases of persons who did not have a formal link of nationality with the State in which they habitually resided. The articles on diplomatic protection provided States with greater clarity on the exercise of such protection, to enable them to effectively safeguard the rights of their nationals in another State when those rights were adversely affected by an internationally wrongful act attributable to that State.

40. Diplomatic protection had an overarching effect in terms of recognition and reparation of injury caused to the nationals of another State, making it an important tool for the protection of human rights. Her delegation therefore supported the International Law Commission’s articles on diplomatic protection, wherein the Commission considered, in a balanced manner, the right of States to exercise diplomatic protection to benefit one of their nationals. It was concerning, however, that although the Commission had submitted its articles on diplomatic protection, like those on responsibility of States for internationally wrongful acts, for consideration by the General Assembly many years earlier, along with its recommendation that a convention be elaborated on the

basis of the articles, to date no progress had been made in that regard.

41. Her delegation continued to believe that the articles on diplomatic protection should be transformed into a legally binding international instrument, something that would require constructive dialogue and negotiation. It stood ready to work towards the adoption of such a convention.

42. **Mr. Amaral Alves De Carvalho** (Portugal) said that the International Law Commission had adopted the articles on diplomatic protection in 2006, less than 10 years after the topic had first been identified as suitable for codification and progressive development, proving that it was indeed ripe for codification. Portugal welcomed that development, as it had always supported the Commission's recommendation to the General Assembly regarding the elaboration of a convention on the basis of the articles. Although there was a recognizable trend for individuals and groups of individuals to ensure that their own rights were protected, States still had an important function to perform in that regard by using the instrument of diplomatic protection to protect their nationals whose human rights had been violated abroad. Diplomatic protection was also one of the pillars of the principle of sovereign equality of States.

43. The articles were suitable for an international convention, although his delegation disagreed with certain aspects of the articles, in particular those relating to their scope and some of their specific provisions, which could be discussed in the negotiations on the convention. However, as the topic of diplomatic protection traditionally went hand-in-hand with that of responsibility of States for internationally wrongful acts, Portugal hoped that the articles on the two topics would lead to the drafting of two parallel conventions, which would represent a major step for the consolidation of the law on international responsibility.

44. **Ms. Antonova** (Russian Federation) said that diplomatic protection was an effective mechanism by which a State could invoke the responsibility of another State for committing an internationally wrongful act in violation of international standards of treatment of natural or legal persons of the former State that resulted in injury to such persons or gave rise to consequences that that State could classify as a violation of its own interests. A State exercising diplomatic protection acted independently, rather than as a representative of a natural or legal person, when addressing a violation of international legal norms that gave rise to international legal responsibility. The International Law Commission's articles on diplomatic protection were a balanced

document that made a valuable contribution to the codification and progressive development of international law governing the right of States to protect the individual and property rights of their nationals when such rights were violated as a result of internationally wrongful acts of other States.

45. Her delegation was satisfied with the definition and scope of diplomatic protection provided in article 1, from which it followed that a State was responsible for injury caused by its action or inaction to a foreign natural or legal person. The exercise of diplomatic protection by the State of nationality was a procedure for assuring the protection of the injured persons and obtaining reparation for the internationally wrongful act. Article 5 set out the important requirement that the natural person in respect of whom a State exercised diplomatic protection must have the nationality of that State continuously from the date of injury until the official presentation of the claim. Such rules precluded a person from seeking out a nationality specifically to obtain diplomatic protection. Her delegation noted with satisfaction that the Commission had set out the criteria for determining the nationality of a corporation in article 9 in an effort to preclude more than one State from claiming the right to exercise diplomatic protection in respect of a corporation.

46. The articles on diplomatic protection were an ideal basis for the elaboration of an international convention on the topic.

47. **Mr. Hernandez Chavez** (Chile) said that in 2016, the States members of the Community of Latin American and Caribbean States had highlighted the importance of diplomatic protection in relations between States and expressed the view that the elaboration of a convention on the topic would help to fill existing gaps in international law and promote legal certainty and predictability. Chile shared that view and therefore believed that the final outcome of the International Law Commission's articles on diplomatic protection should be in the form of a convention. However, work towards a convention on responsibility of States for internationally wrongful acts, a topic that was closely linked to diplomatic protection, should be given priority over the elaboration of a convention on diplomatic protection. The connection between the two topics was exemplified by article 1 of the articles on diplomatic protection, which provided that diplomatic protection was a means for a State to invoke the responsibility of another State for an injury caused by an internationally wrongful act when the victim was a national of the former State. Both topics should nonetheless remain on the Committee's agenda.

48. The articles on diplomatic protection contained some elements that would help to promote a discussion on the progressive development of international law on the topic based on the *pro homine* principle. Indeed, the articles contained proposals that would facilitate the adoption of human-centric provisions, that being a primary objective of the rule of law. Article 8 (Stateless persons and refugees), for instance, enabled States to provide greater protection to people who were particularly vulnerable. Similarly, article 19 (Recommended practice), which set out recommended practices for States entitled to exercise diplomatic protection, provided that States should take into account, wherever feasible, the views of injured persons with regard to resort to diplomatic protection and the reparation to be sought, and transfer to the injured person any compensation obtained for the injury from the responsible State. Should States decide to discuss the substance of those articles, they should bear in mind that the standard for diplomatic protection of natural persons was that State action should be human-centric.

49. **Ms. Noor Azman** (Malaysia) said that there were no novel issues before the Committee on the topic of diplomatic protection. Malaysia remained of the view that the right to exercise diplomatic protection should remain a sovereign prerogative and at the integral discretion of a State. Malaysia also remained aligned with the prevailing position under international law, as reflected in articles 2 and 3 of the articles on diplomatic protection, that a State was not obliged to exercise diplomatic protection on behalf of a national who had been injured by an internationally wrongful act. The articles on diplomatic protection were essential in ensuring the fair treatment of nationals abroad, and specifically in permitting States to intervene on behalf of their nationals whose human rights had been violated. However, as diplomatic protection was closely connected to the agenda item on responsibility of States for internationally wrongful acts, the Committee should not continue its deliberations on the current topic until it had concluded its work on the latter.

50. **Ms. Theeuwes** (Netherlands) said that her delegation continued to support the articles on diplomatic protection, but was opposed to initiating negotiations on a treaty on the topic, for two reasons. First, there was no need for such a treaty at the current time, since the vast majority of the provisions included in the articles on diplomatic protection reflected customary international law. Second, her delegation would prefer a joint procedure for the articles on diplomatic protection and the articles on State responsibility. The two topics were so closely intertwined as to make a separate treaty on diplomatic

protection undesirable. However, the fact that the fate of the two sets of articles should be joined did not mean that there were no differences between them. While the articles on State responsibility might benefit from further confirmation in State practice, the same did not apply to the articles on diplomatic protection, which virtually all reflected customary international law. Her delegation's hesitancy with regard to negotiating a treaty on the basis of the articles on diplomatic protection did not stem from uncertainty as to their status: they should continue to be relied on as a reflection of the law on diplomatic protection.

51. **Mr. Ferrara** (Italy) said that his delegation endorsed the individual-oriented approach that the International Law Commission had taken in formulating its articles on diplomatic protection. It particularly appreciated the phrasing of article 1 (Definition and scope), in which the Commission captured the importance of the role of the individual as the victim of the wrongful conduct triggering the invocation of diplomatic protection. Italy likewise welcomed article 19 (Recommended practice), in which the Commission had set out recommended practice to be adopted by States. However, it should be recalled that under current international law, the right to exercise diplomatic protection belonged exclusively to the State, which could exercise it at its discretion, as stated in article 2 (Right to exercise diplomatic protection).

52. To avoid the deferral *ad infinitum* of the decision on what kind of action to take with respect to the articles on diplomatic protection, his delegation proposed two possible courses of action. First, a soft law instrument incorporating the entire set of articles might be adopted. Indeed, a non-binding resolution of the General Assembly might encourage States to apply the rules set forth in the articles, thereby reinforcing the value of the Commission's work and stimulating the further development of State practice on those aspects of diplomatic protection that were not yet recognized as customary international law.

53. Second, the Committee could consider including a chapter on diplomatic protection in part three of the articles on responsibility of States for internationally wrongful acts (Implementation of the international responsibility of a State), in any future convention on State responsibility. That would make sense, given that the two topics were closely linked and diplomatic protection no longer applied only in response to violations of the rules on the treatment of aliens abroad, but was now one of the ways to obtain redress for any internationally wrongful conduct by a foreign State against natural or legal persons, including violations of their fundamental human rights. The proposal would

have the advantage of promoting a systematic approach, involving key provisions of the articles on State responsibility. In that regard, Italy endorsed a broad interpretation of article 48, paragraph 1 (b), of the articles on State responsibility, to encompass the entitlement of any State other than the State of nationality of the injured person to invoke diplomatic protection in the event of a breach of obligations owed to the international community as a whole.

54. **Mr. Bouchedoub** (Algeria) said that diplomatic protection, which was based on the principle of the sovereign equality of States, was an indispensable tool enabling States, within the limits of their domestic law, to protect the rights of their nationals who had incurred an injury owing to an internationally wrongful act attributed to another State. It could apply, in particular, when a State arbitrarily seized and detained a foreign national with a view to applying political pressure on another State, a type of conduct that contravened international law and the purposes and principles of the Charter of the United Nations.

55. The topic of diplomatic protection was thus closely connected to the topic of responsibility of States for internationally wrongful acts. Accordingly, it would be useful for the International Law Commission to harmonize its articles on diplomatic protection with its articles on State responsibility. It would be premature, however, to engage in negotiations with a view to elaborating a convention on the basis of the articles on diplomatic protection, as a clear consensus had not yet emerged. His delegation remained committed to supporting the Commission's endeavours, particularly with regard to topics that met the aspirations of Member States. It would continue to participate constructively in the Committee's deliberations and to consider what action the General Assembly might be able to take in the future on a consensus basis.

*The meeting rose at 11.40 a.m.*