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Chair: Mr. Ahmad (Vice-Chair) (Pakistan)

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In the absence of Mr. Danon (Israel), Mr. Ahmad (Pakistan), Vice-Chair, took the Chair.

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

Agenda item 77: United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law
(continued) (A/71/432)

1. **Mr. Hassan Ali** (Sudan) said that his Government attached great importance to the Programme of Assistance, which had increased understanding of the purposes and principles of international law among students, jurists and diplomats, and assisted countries in harmonizing their domestic legislation with international law. The Audiovisual Library of International Law had also played an important part in disseminating international law. His delegation was pleased that the General Assembly had provided financial appropriations in the regular budget for the Programme, which was one of the most important components of United Nations rule of law activities. It was also grateful to those States that had made voluntary contributions to the Programme.

2. The regional course on international law in Africa had helped to raise awareness of the purposes of international law in the region. It would also be useful to increase support for the African Institute of International Law in order to enable it to assume a larger role in the teaching and dissemination of international law and in strengthening the participation of African jurists in the development thereof.

3. At the current session, the Advisory Committee on the Programme of Assistance, of which the Sudan was a member, had held fruitful and constructive discussions. His delegation hoped that the Sixth Committee would accept its recommendations and that Member States would continue to support the Programme so that it could continue to fulfil its pioneering role.

4. **Mr. Leonidchenko** (Russian Federation) said that the Programme of Assistance made an important contribution to the promotion of the rule of law at the international level and should be expanded and supported. His delegation was pleased to note that activities under the Programme were financed from the regular budget and hoped that that approach would be

maintained on a sustainable and predictable basis. His delegation also wished to acknowledge the valuable personal contribution of Secretariat staff to the maintenance and development of the Programme.

5. **Ms. Guadey** (Ethiopia) said that, by promoting the concept of international law, the Programme of Assistance strengthened international peace and security and fostered friendly relations and cooperation among States. Her delegation therefore appreciated the additional funding provided for the Programme in the current programme budget and stressed the importance of maintaining such funding in future bienniums. Since, moreover, the Codification Division still depended on uncertain voluntary contributions for the recruitment of temporary staff for the international law training courses, ways of resolving that situation needed to be considered, given the uncertainty of voluntary contributions. Noting that the establishment of permanent venues for the regional courses in international law, as proposed in the Secretary-General's report (A/71/432), would be a cost-saving measure, she recalled that Ethiopia had been hosting annually such courses for Africa since 2011 and reiterated her country's readiness to serve as such a permanent venue.

6. The Audiovisual Library of International Law was another essential tool of the Programme; it provided high-quality training to an unlimited number of individuals and institutions around the world through the Internet, at relatively low cost. To ensure that lawyers in developing countries had easier access to it, her delegation supported the Codification Division's efforts to make the lectures available as podcasts and on flash drives, and encouraged it to strengthen its efforts to promote greater awareness of the Audiovisual Library in those countries. Her delegation welcomed the preparation by the Division of a new handbook on international law and hoped that the Division would be provided with the necessary resources to complete the publication and distribute it to academic institutions in developing countries.

7. **Mr. Gorostegui** (Chile) said that the proper promotion of international law carried benefits for society and therefore gave value to each of the activities carried out by the Codification Division under the Programme of Assistance. His delegation commended the Division for the training opportunities

that it provided thereby for hundreds of young professionals in the legal field and for its constant efforts to improve the publication of academic material, particularly through the preparation of a new handbook of international law, and to optimize the Audiovisual Library of International Law, which was an irreplaceable tool. The inclusion of funding for the Programme of Assistance in the Organization's regular budget had played a key part in its sound management and should be continued in the coming bienniums.

8. His Government, which had hosted the 2017 regional course in international law for Latin America and the Caribbean, remained committed to international law, as a source of guidance in relations with other States and the international community, as part of its development and as a means of guaranteeing international peace and security.

9. **Mr. Hitti** (Lebanon), recalling that one of the core missions of the Programme of Assistance flowed from the preamble to the Universal Declaration of Human Rights, which was to strive by teaching and education to promote respect for the rights enshrined therein, said that his delegation appreciated the Codification Division's efforts to that end. The vitality of the Programme was demonstrated by the increasing number of people benefiting from it and the growing demand for the training and dissemination activities that it offered. It was therefore critical to ensure the Programme's sustainability through greater predictability of its budget. His delegation continued to believe that it should be funded through the regular budget and welcomed General Assembly resolution [70/116](#), which had marked a major step forward in that regard. Although a lack of funding had prevented the holding of a second international law seminar for Arab States, following the first such seminar held in Cairo in 2015, he hoped that the seminar would be organized again and eventually become a regular event.

10. **Ms. Pierce** (United States of America) said that the Advisory Committee should be commended for helping to obtain more sustainable funding for the Programme of Assistance, which had been contributing for more than 50 years to the education of students and practitioners of international law throughout the world. The continuing, strong support it received from Member States was reflected in the General Assembly's decision to include it in the Organization's

regular budget. The Programme of Assistance, by spreading knowledge of international law, helped to advance the work of the United Nations and gave new generations of lawyers, judges and diplomats a deeper understanding of the complex instruments governing many aspects of an interconnected world. Her delegation appreciated the creative ways in which the Codification Division had managed to maintain important programmes despite limited resources and encouraged it to continue its commendable efforts to secure voluntary contributions to supplement programme budget resources. There was no question that the regional courses in international law, the Audiovisual Library and other activities under the Programme were valuable and worthy of support.

11. **Mr. Luna** (Brazil) said that the Programme of Assistance embodied the notion that peace could be achieved through law. The inclusion of funding for the three regional courses in international law in the Organization's regular budget for the current biennium was a significant achievement; there was an increasing demand for such courses, which were important for the training of lawyers from developing countries; it was therefore crucial that they should be funded at the same level in future bienniums. His delegation was grateful to the countries hosting the courses and to the Secretariat for organizing them in parallel with the preparation of materials for the International Law Fellowship Programme and an International Law Seminar for Arab States. His delegation was thankful to Chile and the Economic Commission for Latin America and the Caribbean for agreeing to host a regional course in 2017.

12. His delegation also welcomed the efforts of the Secretariat to continue to seek voluntary contributions for the regional courses and, to improve access to the Audiovisual Library in regions with limited access to high-speed Internet. It was, however, a matter of regret that no legal publication had been issued since 2014, as hard copies remained valuable to persons in such regions. He hoped that the Organization would find the resources needed to resume desktop publishing. Adequate resources needed to be ensured for all activities under the Programme of Assistance, as they had been for the regional courses.

13. **Mr. Win** (Myanmar) said that for 50 years the Programme of Assistance had helped many countries to

achieve better knowledge and understanding of international law as a means of strengthening international peace and security and promoting friendly relations among States, particularly through its various training courses and the Hamilton Shirley Amerasinghe Memorial Fellowship on the Law of the Sea; he hoped that sufficient funds would be mobilized for the Fellowship for 2017.

14. Convinced that the peaceful settlement of disputes was the foundation for building peace, establishing the rule of law, sustaining democracy and achieving socioeconomic development, his Government was striving to overcome decades of internal strife and armed conflict by peaceful means. With that in view, it was promoting and upgrading the country's legal institutions and providing an increasing number of judicial training programmes to bring the rule of law to all citizens. At the international level, it had acted peacefully in accordance with international law in resolving its differences with Bangladesh in regard to the maritime boundary demarcation, at the International Tribunal for the Law of the Sea.

15. As Myanmar had not yet been able to make good use of the opportunities provided by the Programme of Assistance, his delegation hoped that it would benefit from it on a priority basis in the coming years. His delegation shared the concern about the lack of funds available for the Programme and supported the decision to fund it under the regular budget; he welcomed the fact that, after being cancelled for two consecutive years for want of funds, the regional course in international law for Asia-Pacific was going ahead for the current year. His delegation expressed its appreciation to Member States that had made voluntary contributions in support of the Programme and reiterated its support for the Programme's continuation and expansion.

16. **Mr. Elias-Fatile** (Nigeria) stated that his delegation continued to support efforts to maintain the Programme of Assistance, which was one of many tools for providing deeper understanding of the complex legal issues arising in the current interconnected world. His delegation welcomed the additional funding provided for the Programme in the current programme budget and urged that such funding should be continued in future bienniums. While appreciating the efforts of the Office of Legal Affairs,

in particular the Codification Division, to implement the Programme, his delegation noted with concern the continuing dependence on voluntary contributions for the recruitment of temporary staff for the performance of training and publishing functions. In view of the uncertainty of such contributions, predictable sources of income needed to be found. It was also important to provide the Codification Division with the resources needed to resume its desktop publishing and not add to the existing publishing backlog. Similarly, while welcoming the new handbook on international law, his delegation considered that the Division should have the resources needed to distribute it in hard copy to academic institutions in developing countries, particularly those with limited access to the Internet. There was also a need to award additional fellowships from available resources in the regular budget for the Programme of Assistance for the regional courses in international law, in view of the large number of applicants for them.

17. **Ms. Bensmail** (Algeria) said that observance and understanding of international law were essential for implementing the international agenda for peace and security. The Programme of Assistance had become ever more relevant as an effective tool in that context and, notwithstanding several challenges it faced, generated significant benefits for legal professionals from developing countries. It had contributed immensely to the dissemination of international law through its regional courses, fellowships and publications, while the Audiovisual Library of International Law was a rich database for many people in developing and developed countries alike.

18. Her delegation therefore welcomed the inclusion of additional resources under the 2016-2017 programme budget for the further development of the Audiovisual Library and for the organization of the regional courses in international law, while expressing concern about the cancellation of those courses in the current year. Repeated cancellations due to lack of resources jeopardized the planning objectives of the Programme and threatened the survival of several successful initiatives under the Programme. Her delegation appealed once again for stable, predictable contributions and added its voice to the call for the full inclusion of the International Law Fellowship Programme, the seminars and regional training on international treaty laws and practice and legal

publications and training material in the regular budget for 2018-2019, together with the necessary funding for the Hamilton Shirley Amerasinghe Memorial Fellowship.

19. **Mr. Horna** (Peru) said that his Government remained committed to international law, the purposes and principles of the Charter of the United Nations and an international order based on the rule of law, which were essential components of a more peaceful, prosperous and just world. It reiterated its support for the Programme of Assistance which, for more than 50 years, had benefited practitioners throughout the world. He welcomed, in particular, the successful holding in 2016, for the first time in more than 10 years, of the regional course in international law for Latin America and the Caribbean, in Uruguay, and looked forward to the next one, to be held in Chile in 2017. With regard to the activities of the Audiovisual Library of International Law, new forms of dissemination, including social networks, might usefully be envisaged in order to reach larger numbers of interested persons in developing countries; the possible involvement of learned societies engaged in the dissemination of international law in the various regions of the world might also be considered. He welcomed the progress in preparing a handbook of international law and reaffirmed his delegation's conviction that the rule of law and development were closely interrelated, as reflected in Sustainable Development Goal 16, and that the Programme of Assistance could play an important part in achieving the related targets.

20. **Ms. Ji Xiaoxue** (China) said that, since its inception, the Programme of Assistance had played an important and positive role in promoting and disseminating international law and in related capacity-building, particularly in developing countries. Her delegation was pleased to note that funding for the regional courses and scholarship programmes in international law had been secured; that the regional course in international law for Latin America and the Caribbean had been held for the first time in a decade; that the regional course for Africa had been successfully held in 2016; and that the regional course for Asia-Pacific would be held shortly. Her delegation also welcomed the decision to publish a handbook on international law in English and French in 2017 and hoped that other language versions would be made available as soon as possible.

21. China attached great importance to the teaching and study of international law and had always actively supported the Programme of Assistance. In recent years, it had made annual donations to the Programme in support of the regional courses in international law for Asia and Africa, and of the Audiovisual Library. It had also contributed directly to capacity-building in international law in Asian and African countries through cooperative projects, financial support and other means. The second Asian-African Legal Consultative Organization (AALCO) training programme had been successfully conducted in Beijing in 2016. China had also provided support to the African Institute of International Law for a symposium on international law among African universities. China stood ready to strengthen its cooperation with the Programme of Assistance and to contribute to the dissemination of international law and to capacity-building in international law in developing countries.

22. **Mr. Beras** (Dominican Republic), recalling that one of the premises of the United Nations, set out in the preamble to its Charter, was that it should establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law could be maintained, said that his delegation welcomed the activities carried out under the Programme of Assistance. Through that Programme, the Organization made an outstanding contribution both to the development of international law and to the strengthening of the rule of law at the international level. Beyond the goal of disseminating international law, the Programme had played a crucial role in training a critical mass of jurists who had gone on to become champions of the rule of law in their own countries, especially for the most vulnerable. Both the fellowships and the regional courses in international law offered under the Programme were a gateway to the achievement of universal knowledge of international law.

23. His delegation commended the Codification Division for making good use of the resources available to discharge its mandate of the teaching and dissemination of international law, and expressed its appreciation to those countries that had hosted or agreed to host a regional courses in international law, as Uruguay had done in 2016 and as Chile had promised to do in 2017. The number of participants in those academic activities and the hopes placed in them

were a further illustration of the growing interest of Member States in capacity-building in international law and thus of the added importance of the Programme of Assistance.

24. Those activities could not be carried out without funding. It was therefore important to make provision for them in the Organization's regular budget, both in the current biennium, as wisely decided by the General Assembly for the regional courses, and in future bienniums. His delegation also hoped that there would be an increase under the regular budget in the number of fellowships offered for courses and training under the Programme and that an appropriate solution would be found to the uncertain staffing situation of the Codification Division in the area of training, due to its dependence on voluntary contributions.

25. The Audiovisual Library of International Law was the historical memory of the United Nations in the field of international law and a means of promoting related knowledge. His delegation therefore welcomed efforts to make archived lectures in the Division's Lecture Series more accessible in more countries. The preparation of a new handbook of international law was also a welcome development; it would be desirable to bring to it fruition and to distribute printed copies of it to academic institutions in developing countries, just like other publications intended for lawyers in countries with limited access to the Internet. Both in that way and by all the other means available to it, the Programme of Assistance had a crucial impact on the training of lawyers in a significant number of Member States, without distinction. Accordingly, he called on the international community to assume the commitment of continuing the work of teaching and disseminating international law for future generations as a path towards universal knowledge of international law, thereby advancing the cause of peace and fraternity among all nations of the world.

26. **Ms. Beckles** (Trinidad and Tobago) said that her delegation recognized the significant contribution of the Programme of Assistance to strengthening international peace and security and promoting friendly relations among States and remained steadfast in its commitment to supporting and ensuring the full implementation of all the Programme's activities. Her delegation noted with pleasure that, for the first time in the Programme's history, the International Law

Fellowship Programme and all three regional courses in international law had been, or were to be, conducted in one year, thanks to the decision to provide additional funding under the regular budget. While remaining concerned that desktop publishing had been discontinued by the Codification Division since 2014, her delegation was also pleased to note its resumption in the current year on an exceptional basis through voluntary contributions for the preparation of a handbook on international law. It was regrettable, however, that, owing to a lack of such contributions, no award had been made in 2016 for the Hamilton Shirley Amerasinghe Memorial Fellowship on the Law of the Sea, nor possibly in 2017. Her delegation reiterated its call to Member States and interested parties to make voluntary contributions to the financing of the Programme of Assistance so as to ensure its continued effectiveness.

27. **Mr. Radzi Harun** (Malaysia) said that international law was the bedrock of inter-State relations and that it needed to be better understood in order for it to be properly implemented. His delegation therefore supported the Programme of Assistance which, by contributing thereto, strengthened international peace and security. His delegation noted with appreciation that the necessary resources for the International Fellowship Programme and the three regional courses in international law had been approved under the programme budget for 2016-2017. Although the courses offered under the Programme were widely sought after, only a privileged few were able to attend them. Efforts should therefore be made, in particular through the exploration of new approaches, to ensure that the courses and other resources available under the Programme were accessible to a wider audience.

28. Given the lack of knowledge of the existence of the Audiovisual Library among potential users in developing countries, his delegation welcomed the Codification Division's willingness to look into the possibility of making the resources of the Lecture Series available in other more accessible formats. His delegation also commended the Secretariat for its work in preparing a new handbook of international law for distribution to academic institutions and governmental training centres in developing countries. Moreover, the establishment of direct contacts and linkages with institutions of higher learning and bar associations in

developing countries could be instrumental in ensuring the dissemination and wider appreciation of international law.

29. **Mr. Atlassi** (Morocco) said that the Programme of Assistance was an effective tool for strengthening international peace and security and also served to promote friendly relations and cooperation among States and to build the capacity of developing countries in the field of international law. The regional courses in international law were extremely useful to officials in developing and developed countries alike and put in place a solid foundation for the rule of law. His delegation welcomed the important step taken to resume those courses in Asia-Pacific, to hold one for the first time in Latin America and the Caribbean, and to organize training courses in Africa by funding them under the programme budget for the biennium. Morocco had been working with the other Group of 77 countries towards that end and hoped that the Programme of Assistance would continue to benefit from such funding. It continued to support the Programme and stood ready to contribute to its success, including within the framework of triangular cooperation, and commended the Codification Division for its tireless efforts in the service of the Programme.

30. **Ms. Rolón Candia** (Paraguay) said that international agreements carried the same primacy in her country as the national Constitution. Her delegation therefore supported the aims of the Programme of Assistance and welcomed all initiatives to advance them and thereby to strengthen the rule of international law worldwide. The regional courses in international law were particularly valuable in that context, enabling the participants to broaden their knowledge and exchange experiences, while at the same time establishing networks of professionals working towards the same ends. Her delegation supported the proposal in the Secretary-General's report (A/71/432) to establish permanent venues for the courses to ensure that they were organized on a regular basis, while maintaining some flexibility in the matter. While acknowledging the useful role played by the Audiovisual Library her delegation felt that it would be desirable for all the publications of the Codification Division to be issued in all the official languages of the United Nations. Lastly, her delegation called on Member States to ensure the financial resources needed to support the Programme of Assistance in all regions.

31. **The Chair**, paying tribute to the outgoing Secretary of the Advisory Committee on the Programme of Assistance, Ms. Virginia Morris, said that her dedication to the Programme throughout the years had been instrumental in its success. On behalf of the Committee, he thanked her for her decades of hard work in its service and extended his best wishes to her on her retirement.

Agenda item 80: Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm (A/71/98, A/71/136 and A/71/136/Add.1)

32. **Ms. Singh** (Australia), speaking also on behalf of Canada and New Zealand, said that the three delegations welcomed the references by a number of judges of the International Court of Justice to the draft articles on prevention of transboundary harm from hazardous activities and the draft principles on the allocation of loss arising out of harmful hazardous activities, both commended to the attention of Governments by the General Assembly in its resolution 68/114, as well as the references to other work of the International Law Commission in recent multilateral discussions. Given that the risk of transboundary harm from such activities was likely to grow, it was critically important to have a consistent, coherent and widely supported international framework setting out relevant standards of conduct and practice. The draft articles could contribute to the progressive development of international law in the area for the further development of comprehensive standards for all States to follow. While any attempt to consolidate the draft articles and draft principles into a binding convention was likely to take many years, in their current form they informed and encouraged national and international best practice and enjoyed widespread support among Member States; such support was expected to grow as they were increasingly invoked in discussions between Member States, in the negotiation of bilateral and multilateral agreements, and in national and international courts and tribunals. The three delegations therefore encouraged Member States to continue to be guided by them.

33. **Mr. Celarie Landaverde** (El Salvador) said that it was important to consider what legal measures could be taken in response to hazardous activities that could cause harm to other States. Since such harm could

affect not only property but also, and more especially, human beings and the environment, efforts needed to be made both to prevent such activities and to address their consequences.

34. General Assembly resolutions 62/68 and 61/36, which contained the text of the draft articles and draft principles respectively, were highly relevant as they dealt with transboundary harm both before and after its occurrence. The draft articles had the merit of regulating States' duty to assess the risk before authorizing any hazardous activity and to take all appropriate measures to prevent harm or at least to minimize the risk of harm. The draft principles recognized the obligation of prompt and suitable compensation to the victims of transboundary harm, as well as that of mitigating the harm done to the environment and ensuring its restoration or restitution. His delegation accordingly considered it desirable to adopt a consolidated document that would regulate the obligation of the parties to take appropriate steps to prevent transboundary harm and to address its consequences; with that in view it would continue to follow closely the Committee's work on the topic.

35. **Mr. Heumann** (Israel), referring to draft article 1 and draft principle 1 relating to activities not explicitly prohibited by international law, said that it was his delegation's understanding that the proposed articles and principles would be subject to general trans-substantive principles of international law, including the principle of *lex specialis*, and that where therefore those articles and principles contradicted a specific legal regime, such as the law of armed conflict, the principles of the specific legal regime would prevail.

36. His delegation continued to believe that there would be no added value in formally codifying the principles and articles in the more binding form of a convention and that they should remain in their current form as mere recommendations. Each case of transboundary harm caused by hazardous activities should be considered in its specific context, taking into account the practical aspects of prevention and liability.

37. **Mr. Bailen** (Philippines) said that his delegation agreed that it might be premature to attempt to transform the draft articles or indeed the draft principles into an international instrument. While some parts of the draft articles codified customary

international law, they mostly represented progressive development of international law. The draft principles, however, were of a general and residual character and a non-binding declaration, in the estimation of the International Law Commission. Accordingly, they could not yet be said to reflect customary international law; rather, they were an exercise in progressive development, although they remained useful standards for the conduct of States. In the absence of specific rules of conventional or customary international law imposing liability and allocating loss for transboundary harm arising out of hazardous activities, States had the general duty to observe due diligence in order to prevent or minimize transboundary harm. In the meantime, international cooperation should be enhanced to build the scientific and technical capacities of developing countries in particular, in order to help them prevent such harm arising, failing which there could be no viable global convention of the kind envisaged.

38. **Mr. Medina Mejías** (Bolivarian Republic of Venezuela) said that the International Law Commission's work on the topic contributed to the progressive development of international law and its codification, as called for in article 13, paragraph 1, of the Charter of the United Nations. The draft principles reflected a significant advance in the implementation of principles 13 and 16 of the Rio Declaration on Environment and Development. Before a decision could be reached on the adoption of a convention on the prevention of transboundary harm from hazardous activities, the implementation of the draft articles should be considered in the light of the bilateral relations of States and at the regional multilateral level. With regard to the draft principles, his delegation recommended that a compilation should be made of the relevant decisions of States in order to provide official information on their practice, at both the domestic and the international levels.

39. **Mr. Stephen** (United Kingdom) said that there had not been any developments in the previous three years that would necessitate a change in his delegation's position that there was no need for a convention on the prevention of transboundary harm or the allocation of loss in the case of such harm. Those topics were already covered by a number of binding, sector-specific and regional instruments. His delegation also questioned the benefit of adopting a

convention that took a “one-size-fits-all” approach to all categories of transboundary harm. There was an obvious advantage in subject-specific initiatives tailored to address different activities and potential harms. In that context, a convention on the topic is neither necessary nor desirable; the draft articles and draft principles should remain as non-binding guidance.

40. **Mr. Pham Viet Ha** (Viet Nam) said that transboundary harm was an important issue in inter-State relations that should be addressed within a strong legal framework in the form of a treaty, which should reflect the legitimate interests of all States. The draft articles and the draft principles represented a significant step in the development of international law on the topic. His delegation welcomed the purpose of the draft articles of encouraging States to strengthen cooperation, seek assistance from international organizations, facilitate the exchange of information and undertake consultations with a view to preventing transboundary harm from hazardous activities. It also welcomed their focus on achieving an equitable balance of interests, under draft article 10, as well as the draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, in particular draft principles 3, 4 and 5.

41. **Ms. Pierce** (United States of America) said that her delegation’s position on the topic under discussion had not changed since its last statement in the Committee in that connection, in 2013 (see [A/C.6/68/SR.16](#), paragraph 4).

42. **Ms. Ji Xiaoxue** (China) said that both the draft articles and the draft principles fully reflected the progressive development of the relevant principles of international law, complemented the existing regime on national liability and served as a useful reference for States in addressing issues of transboundary harm from hazardous activities. After years of deliberation on the topic, the difference of views was mainly on the final format of the draft instruments. Those differences, however, did not prevent States from referring to them or international judicial organs from invoking them whenever appropriate. Since the two draft instruments related to two aspects of the same issue, they should be placed within a unified format; as they were part of progressive development of international law, they should both be regarded as *lex ferenda*, to be tested in

future practice. If, for example, territory or effective jurisdiction or control were the sole criteria for determining country of origin, they might in practice be unfair to many developing countries where many industrial plants belonging to transnational corporations were located.

43. The current work should therefore focus on the collection and analysis of national practices, and the elaboration of an international convention should not be contemplated until the requisite conditions were in place. The Chinese Government was ready to work with other countries in the common effort to address the issue of transboundary harm; stronger cooperation and consensus-building were the keys to resolving it.

44. **Ms. Ramly** (Malaysia) said that her delegation shared the cautionary view that the draft articles and draft principles should remain in their current recommendatory form pending further study of developments in State practice, and continued to consider that a comprehensive analytical study by the Secretariat of States’ responses and of their issues and concerns was necessary before further action could be contemplated. The global effort to enhance the regulatory regime against transboundary harm from hazardous activities could be further advanced through a preventive code and principles for the allocation of loss and the creation of a harmonized compensatory scheme at the national level. One of the ways whereby a State could ascertain any risk of significant transboundary harm was by conducting a preliminary assessment; the obligation to conduct an environmental impact assessment was an important constituent element of States’ international obligation under international environmental law to act with due diligence to avoid or mitigate such harm, rather than a separate obligation under general international law.

45. Several concerns already voiced by her delegation with regard to the draft principles also applied to the draft articles. In draft articles 1 to 3, the term “significant” needed to be clarified and more precisely defined. In draft article 9, it remained unclear, in the absence of a compliance mechanism, how States would comply with the proposed requirement of preventive consultations or, if such consultations were unsuccessful, how they would take into account the interests of the State likely to be affected. The key to achieving workable solutions to

prevent transboundary harm from hazardous activities, especially between bordering States that would be most affected by them, lay in the establishment of cooperative networks and joint response measures at the regional level. There was therefore a continuing need to reflect on the application of the draft articles and draft principles in the regional and bilateral contexts.

46. **Mr. Garshasbi** (Islamic Republic of Iran) said 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 draft articles and draft principles currently under consideration, 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*. However, because of the progressive nature of some of their elements, it would be long before States could adapt to them and fully incorporate them into their domestic legislation; the time did not, therefore, seem ripe for adoption of the draft instruments as conventions. 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, draft principles 6 and 7 were important in that they could encourage States to improve the existing legal arsenal to prevent and provide remedy for transboundary harm resulting from hazardous activities and pave the way for more harmonized compensation.

47. The Islamic Republic of Iran was a party to a number of relevant international instruments, including conventions regulating liability regimes for oil pollution damage, for the purpose of which specific domestic regimes had been developed in recent years; efforts were also under way to complement them with liability regimes for hazardous activities. Were all Member States to show due diligence in cases of transboundary harm, such as that to which vast swaths of his country had been exposed, no State would

remain injured or uncompensated and no victim would remain without remedy.

Agenda item 86: The law of transboundary aquifers

48. **Ms. Bourhil** (Tunisia), speaking on behalf of the Group of Arab States, said that the topic of transboundary aquifers was particularly important for the Arab States, in view of the scarcity of water in most of those States. The International Law Commission's work on the topic had enabled it to draft a flexible set of draft articles that would act as a valuable point of reference for States in their endeavour to use and protect transboundary aquifers. However, more information was needed, bearing in mind that State practice in that regard varied greatly. States' experience in negotiating bilateral or regional arrangements on the sound management of shared aquifers demonstrated the need to take into account a number of factors, including the characteristics of the reserve in question, the climate and environment, and the sociocultural fabric of the countries involved.

49. She reiterated the view expressed by the League of Arab States in the Secretary-General's report (A/66/116) that the title of the draft articles should read "Law on shared international aquifers". A draft article on the settlement of disputes should be included, as should a draft article on the situation of developing countries and countries under occupation. Draft article 4 (c) ("Equitable and reasonable utilization") should take into consideration the current and future needs of States in respect of aquifers and alternative sources of water. Draft article 18 ("Protection in times of armed conflict") should include a reference to the applicable rules and principles relating to armed conflict, non-international conflicts and territories under occupation, and should state that transboundary aquifers should not be used in violation of those principles and rules. In view of the principle of historically acquired rights, the law of shared aquifers should not apply to projects already under way. She hoped that the relevant draft resolution on the topic would take into consideration the comments made by the League of Arab States on behalf of its member States.

50. **Mr. Garcia Moritán** (Argentina), speaking also on behalf of Brazil, Paraguay and Uruguay, commended the International Law Commission and of

the Special Rapporteur for their work on the topic of the law of transboundary aquifers; it had drawn attention to transboundary aquifers in the world and to their specificity, including the extensive Guarani aquifer system, which fell under the national jurisdictions of Argentina, Brazil, Paraguay and Uruguay. The Commission's draft articles were the first systematic formulation of international law at the global level applicable to such aquifers. They defined, in a clear, objective and balanced manner, a set of principles and basic rules for harmonizing the use of underground water reservoirs intersected by international boundaries, indicated cooperation mechanisms for the responsible management of aquifers by neighbouring States in order to avoid disputes and preserve the freshwater reserves for current and future generations.

51. The four delegations shared the approach followed by the Commission in formulating general rules for such harmonization as normative propositions, starting with the recognition that the States in whose territory the aquifers were located had sovereignty over the part of the aquifer or aquifer system within their territory. States must exercise that sovereignty in accordance with international law and, in particular, with the principles and rules developed in the draft articles. That provision confirmed that aquifers and their resources belonged to the States in which they were located, without prejudice to existing obligations incumbent on such States to cooperate to ensure their rational use and preservation. Under the draft articles, aquifer States were required to establish joint mechanisms of cooperation for their equitable and reasonable utilization; in addition, they were assigned environmental obligations and were called on to extend technical cooperation to developing States in respect of transboundary aquifers.

52. Argentina, Brazil, Paraguay and Uruguay were mindful of the need for the homogeneous development of water resources and had accordingly concluded in 2010 the Guarani Aquifer Agreement, which aimed to expand the scope of concerted action for the conservation and sustainable use of the transboundary resources of the Guarani aquifer system. That Agreement was an important contribution of the region to the topic and was one of the first instances of the implementation of General Assembly resolution [63/124](#), whereby the Assembly had taken note of the

draft articles and encouraged the States concerned to enter into bilateral or regional arrangements for the proper management of their aquifers. The next appropriate step by the General Assembly on the issue would be the adoption of 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.

53. **Ms. Al-Qahtani** (Qatar) said that the shared groundwater reserves were a significant source of water and should be seen as an opportunity for international cooperation. However, given the risk posed by their growing exploitation, it was more important than ever to develop a legal framework for that purpose. His delegation supported the institutional mechanisms underpinned by United Nations entities, including the United Nations Educational, Scientific and Cultural Organization (UNESCO), to encourage States to share transboundary aquifers. It particularly appreciated the role of the International Hydrological Programme of UNESCO and the Internationally Shared Aquifer Resources Management Initiative. It urged States to provide funding, assistance and institutional support for the exploitation of shared aquifers and the implementation of the relevant United Nations resolutions.

54. His delegation welcomed the efforts that had been made towards the adoption of a binding legal instrument on the topic and hoped that any such instrument included provisions regarding equitable and reasonable utilization; the obligation to cooperate; the protection, preservation and management of aquifers; and the prevention of damage. It supported the General Assembly resolutions calling for bilateral and regional arrangements, which would ultimately promote socioeconomic development.

55. **Mr. Celarie Landaverde** (El Salvador), recalling that water was a basic element in sustainable development and could help to address various global challenges, including poverty, health protection and food security, said that the draft articles were of particular importance for the entire international community, and not just for aquifer States, since the proper use of water resources would ensure their conservation and protection for present and future generations. However, the right balance must be struck between rights and duties in that the sovereign right of

States to use the natural resources under their jurisdiction must be recognized, but also the limits to such use, according to the effects it might have and to the nature and capacity of the aquifers. Such a balance could be ensured through the adoption of an international instrument that would regulate the utilization of aquifers and seek to prevent their destruction; accordingly, the elaboration of an international convention on the subject should not be excluded. The central concern in the debate on the form to be taken by such an instrument should be to protect transboundary aquifers in view of their importance for all humanity. Moreover, such provisions should be supplemented by rules on State responsibility, whether for internationally wrongful acts or for lawful acts causing significant harm to the environment.

56. **Mr. Musikhin** (Russian Federation) said that, in the draft articles on the law of transboundary aquifers, the International Law Commission had struck the right balance between the sovereign rights of States and the equitable and reasonable utilization of such aquifers and had recognized the importance of the requirement that States should cooperate in that regard. While the possibility of the draft articles becoming a legally binding document in the future was not to be ruled out, it would be premature to consider it for the time being. It would be logical to recommend that States should take the draft articles into consideration in their practice and should conclude the corresponding bilateral, multilateral or regional agreements. Any consideration of the elaboration of a convention should take into account existing international instruments pertaining to transboundary aquifers, in particular the 1997 New York Convention on the Non-Navigational Uses of International Watercourses and the 1992 Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes.

57. **Ms. Kato** (Japan) said that positive developments with regard to water management issues over the previous three years had included the adoption in 2015 of the 2030 Agenda for Sustainable Development, a regional memorandum of understanding concluded in 2014 on the establishment of a consultative mechanism for the integrated water resource management of the Iullemeden-Taoudeni-Tanezrouft aquifer system and the adoption of General Assembly resolution 68/118 commending to the attention of Governments the draft

articles on the law of transboundary aquifers as guidance for related bilateral and regional agreements and arrangements. Those draft articles did indeed provide a valuable platform for the establishment of such agreements and arrangements. They adequately reflected a wide range of State practices, they were well supported by scientific evidence and they could serve as a common basis for negotiation.

58. His delegation proposed that the Committee should hold informal consultations on the agenda item on the basis of the draft resolution that it had prepared with a view to achieving a consensus. The draft resolution reflected several positive developments in the international community since the adoption of the last resolution on the subject and referred to the General Assembly's discussion on the issue at its seventy-sixth session, at which time further developments in State would allow a suitable decision to be taken on the final form of the draft articles.

59. **Mr. Gorostegui** (Chile) said that his delegation was committed to the guiding principles of the draft articles on the law of transboundary aquifers, namely, exercise of sovereignty in accordance with the principles of international law, equitable and reasonable utilization, the obligation not to cause significant harm and the obligation to cooperate. The draft articles could make a positive contribution to the proper management of such aquifers and should therefore be further developed and used as a basis for a multilateral framework agreement that States could use for the adoption of specific agreements on transboundary aquifers. Equitable and reasonable utilization needed to be determined in the light of all relevant factors, identified on a case-by-case basis and without preconceived ideas, with due regard for basic human needs. His delegation supported all initiatives to promote scientific knowledge and information exchange concerning transboundary aquifers and stressed the need for States to respect the independence and neutrality of international technical bodies called on to give advice on related matters.

60. **Mr. Heumann** (Israel) said that Israel remained committed to bilateral and regional cooperation in the management of shared water resources and that the ongoing challenges of desertification and the increasing shortage of potable water, while most evident for those living in areas like the Middle East,

were a problem for all humanity. As aquifers were a primary source of potable water, damage to the quality and quantity of their water content harmed those who depended on them for their water supply and must be prevented. However, the general guidelines that shaped States' attitudes to the management of transboundary aquifers, in particular to the principle of reasonable and equitable use and the no-significant-harm rule, needed to be sufficiently flexible for them to be applied in a variety of circumstances so that an appropriate balance could be struck between them. A practical, non-dogmatic approach was required. His delegation therefore considered that the time was not ripe to codify the draft articles on the law of transboundary aquifers in the binding form of a convention.

61. **Mr. Momen** (Bangladesh) said that his Government recognized the importance of the proper use, management and conservation of aquifers as vital groundwater resources. Bangladesh was a climate-vulnerable country with a fast-evolving population; its natural groundwater was under considerable pressure, making it susceptible to over-exploitation, depletion and pollution. His Government had therefore taken a host of measures to ensure viable sources of safe drinking water for the entire population and attached considerable value to the principles set out in the draft articles, particularly equitable and reasonable utilization, the obligation not to cause significant harm and the general obligation to cooperate. While supporting those principles, his delegation nevertheless considered that, in view of varying water-related needs and practices in different parts of the world, the issue of transboundary aquifer management should be addressed in a context-specific manner and not through a broad-based international convention. The draft articles should continue to serve as guidance, as recommended by the General Assembly at its sixty-eighth session, particularly those concerning protection, preservation and management. Such ecological and precautionary approaches were critical in addressing the challenges of arsenic contamination of groundwater and increasing industrial discharge into the water-based ecosystem. In conclusion, he recommended that the Secretariat should bring the Committee's work on the subject to the attention of the High-level Panel on Water in relation to its recently adopted Action Plan.

62. **Mr. Medina Mejías** (Bolivarian Republic of Venezuela) said that his Government was committed to the sustainable management of its natural resources and had a strategy in place, under its domestic law, for the conservation, management and utilization of aquifers as important sources of freshwater. In the light of the significance of the law on transboundary aquifers for inter-State relations and the need to ensure for present and future generations, through international cooperation, the proper management of such aquifers, as a vital natural resource, his delegation urged States to continue to give priority to Millennium Development Goal 7, which was to ensure environmental sustainability. It was also important to support the 2030 Agenda for Sustainable Development, in particular Sustainable Development Goal 6, and to ensure the availability and sustainable management of clean water for all by achieving target 6.6 thereof, namely to protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes, by 2020. Sustainable Development Goal 6 was also relevant, particularly its target 6.a, which called for expanded international cooperation and capacity-building support to developing countries in water- and sanitation-related activities and programmes. The Bolivarian Republic of Venezuela, mindful of the need to maintain good relations with neighbouring countries and to ensure the sustainable management of water resources, had taken a number of legislative measures to promote such management at both the national and international levels.

63. The provisions of the draft articles on the law of transboundary aquifers had been taken into account in relevant instruments, such as those referred to in the third preambular paragraph of General Assembly resolution 68/118. Nonetheless, the draft articles contained no reference to aquifers located in the territories of two States whose borders were still to be defined. His delegation therefore suggested the inclusion of an article establishing the responsibility to provide some kind of compensation by States whose use of an aquifer had affected other aquifer States. His delegation also felt it necessary to harmonize the 1997 Convention on the Law of the Non-navigational Uses of International Watercourses and the 1992 Convention on the Protection and Use of Transboundary Waters and International Lakes by including a section on transboundary groundwater to guard against the risk of

legal conflict, with a view to further strengthening the instruments in line with the related customary law practice.

64. Draft article 11, paragraph 2, contradicted draft article 2 (d), which stated that an “aquifer State” meant a State in whose territory any part of the transboundary aquifer or aquifer system was located. According to that draft article, therefore, if a recharge or discharge zone was located, in whole or in part, in the territory of a State, it was because that State was a party to an agreement. In any event, the concern could be to establish the moral responsibility of those States that, without being parties to a multilateral agreement on aquifer management, would be under an obligation to protect the resource and the related ecosystems, given that their territory would form an integral part thereof.

65. His delegation suggested that, in draft articles 4 and 5, the term “equitable utilization” should be replaced by “egalitarian utilization”, reiterating the principle of access to water being a fundamental right; that, in draft article 6, between paragraphs 1 and 2, the following additional paragraph should be inserted: “Aquifer States shall make a prior assessment of hydrogeological characteristics and conditions and water quality in order to substantiate and prove any environmental change or alteration that may have been caused by another aquifer State”; that, in draft article 8, between paragraphs 1 and 2, the following additional paragraph should be inserted: “Formats for the exchange of information between aquifer States shall be established, with tables containing common information, in order to ensure standardized data exchange”; that, in draft article 15, paragraph 1 should be replaced by the following: “When a State has reasonable grounds for believing that a particular planned activity in its territory may affect a transboundary aquifer or aquifer system, it shall submit the planned activity to the other State and the existing baseline information on the aquifer, together with the possible environmental impacts that may be produced by the planned activity, for which it shall be required to reach agreements with the other aquifer State”; and that, in both draft article 8 and draft article 13, the explicit reference to “international organizations” should be removed, since that was a sovereign matter for each State.

The meeting rose at 1 p.m.