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Sixty-eighth session

Sixth Committee

Agenda item 77

Responsibility of States for Internationally Wrongful Acts

Report of the Working Group

Oral report by the Coordinator, Mr. Nikolas Stürchler (Switzerland)

Mr. Chairman,

I have the honour to present the report of the Working Group on the Responsibility of States for Internationally Wrongful Acts for this year's session.

Pursuant to General Assembly resolution 65/19 of 6 December 2010, the Sixth Committee decided, at its 2nd meeting, on 7 October 2013, to establish a working group to further examine, in the light of the written comments of Governments, as well as views expressed in the debates held at the sixty-second and sixty-fifth sessions of the General Assembly, the possibility of negotiating an international convention, or any other appropriate action, on the basis of the articles on responsibility of States for internationally wrongful acts. The Sixth Committee also decided to open the Working Group to all States members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency.

At the 14th meeting, held on 18 October 2013, I had the honour of being elected by the Sixth Committee to Chair the Working Group.

The Working Group had before it the written comments of Governments issued in the most recent report of the Secretary-General, contained in document A/68/69 and Add.1, as well as a compilation of decisions in which the articles and their accompanying commentaries were referenced by international courts, tribunals and other bodies between 2010 and 2013, contained in document A/68/72.

The Working Group held one meeting on 21 October 2013, at which time the prior consideration of this agenda item by the Sixth Committee was recalled. Taking into account the differences of opinion expressed during the debate in the Plenary, the primary task of the Working Group was to obtain the views of Governments on a possible way forward, which would be reflected in a draft resolution to be negotiated at the present session. In light of the plenary debate, four possible options were identified: Option 1 was to take the same procedural decision as in the past, whereby a decision on the future articles would be postponed until a future session; option 2 was to simply conclude the General Assembly's consideration of the fate of the articles; option 3 was to decide to conclude the consideration of the fate of the articles, while leaving open the possibility of returning to the matter in the future; and option 4 was to recommend the negotiation of an international convention on the basis of the articles.

The Working Group held a preliminary exchange of views on the basis of the four options presented. The discussion revealed that a divergence of opinion on the question of negotiating a convention continued to exist. Those who spoke in favour of the negotiation of a convention on the basis of the draft articles highlighted, inter alia, the extensive reliance on the articles by international courts and tribunals, as well as the decisions of those bodies which have noted that a number of provisions reflected rules of customary international law. Several delegations emphasized that a convention on the basis of the draft articles would contribute to legal certainty and the international rule of law, and would lessen the selective and inconsistent application of the articles in their present form. Other delegations continued to oppose the negotiation of a convention, indicating that it would threaten the delicate balance established in the articles by the International Law Commission. Some delegations also noted that it would be premature to consider the articles in their entirety as settled customary international law.

Against this background, the best way forward at the present session was to work on the basis of a draft resolution that would acknowledge recent developments in regards to the articles on responsibility of States for internationally

wrongful acts, and once again defer a decision on the fate of the articles to a future session.

The exchanges of views in the Working Group then formed the basis of consultations on a possible draft resolution which I undertook outside of the context of the Working Group, with the assistance of a number of delegations. I will elaborate upon those contacts when I introduce the draft resolution for the present agenda item.

Before concluding my statement, allow me to thank all delegations for their constructive engagement and contribution to the work of the Working Group at this year's session.

This concludes my oral report of the Working Group.

Thank you, Mr. Chairman.