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Seventy-seventh session
Sixth Committee
Agenda item 73

Responsibility of States for Internationally Wrongful Acts

Report of the Working Group

Oral report by the Chair, Mr. Vinícius Trindade (Brazil)

Mr. Chair,

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 74/180 of 27 December 2009, the Working Group is currently negotiating an international convention

Several delegations expressed appreciation for the working paper as it

this regard, delegations exchanged views on both the risks and the benefits of either moving towards a convention or maintaining the *status quo*.

Some delegations considered that a consensus among States on the content of the articles could contribute to legal certainty, others suggested that reopening the text for an eventual negotiation could pose some risks to the delicate balance achieved at the Commission and undermine the content of the draft articles, without necessarily resulting in a convention enjoying wide ratification. Nonetheless, a number of delegations called for a discussion on procedural options, so as to find a pragmatic solution forward.

A proposal was made to request the Secretary-General to prepare a report setting out the procedural options, based on the existing text (i-516-50 (s) 1994/670 1c 7 (iv) 11 (c) 1102)

deliberative process so as to protect their integrity, and focusing the discussion instead on other articles that did not enjoy such legal nature. It was noted in that vein, that while some provisions were being referred to and applied by States, that did not necessarily preclude their future further development or codification. Some delegations referred to the possibility of inviting experts and practitioners to provide views on the customary international law basis of the articles and on possible safeguards that could be put into place, including in advance of a treaty negotiation.

Reference was also made to the examples of the procedural safeguards put in place in advance of the two conferences on the law of treaties held in Vienna, including in particular those agreed to in advance of the second Vienna Conference, in which the General Assembly adopted a “package” identifying groups of provisions, drawn from the 1969 Vienna Convention on the Law of Treaties, which were to be excluded from the negotiation of the subsequently adopted Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, of 1986. The possibility of establishing different voting requirements for the modification of provisions based on the 2001 articles, as opposed to new provisions proposed at a future conference, was also referred to.

3. Criteria for ascertaining the necessary “critical mass” of opinion

During the debate, both in the plenary and in the Working Group, the view was expressed that after more than twenty years since their adoption, there had not
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as was being made out, in light of their status of customary international law and, subsequently, of the general agreement among states as to the rules in question..

Concerning the possible criteria, a doubt was expressed if it would be feasible to require general agreement as the customary international law status of the entire set of articles. It was argued that the very point of a treaty negotiation would be to reach agreement on possible remaining issues. As such, in terms of that view, it would be sufficient if there were a convergence of opinion around most of the articles, particularly those dealing with Part One.

Other suggestions for criteria for assessing whether such “critical mass” of opinion had been attained, included assessing the extent and nature of the discussion, and the frequency of the consideration of the topic on the agenda of the Committee, as well as the fact that a Working Group continued to be established. The information provided in the reports requested from the Secretary-General on the topic was also considered to be relevant in any such assessment.

4. Structure of the Working Group

The Working Group was also invited to comment on how best to structure its work and improve its working methods. Some delegations referred to the value of maintaining continuous discussion under the current arrangement of the Working Group. Others raised the need for a more structured exchange on the topic, including during the inter-sessional period.

Some delegations referred to a need for more predictability and suggested that there be an indication provided in advance of when the inter-sessional discussions would take place so as to ensure an effective interactive dialogue. A suggestion was made that the views of technical experts could be solicited, and the interactive discussions could be guided by concept notes or lists of questions. Reference was made to the need for continuity between sessions, since the composition of delegations was not the same from one session to the next, in light of the triennial

periodicity of the agenda item. It was said that having intersessional discussions could contribute to continuing the exchanges, without needing to revert to points that had been addressed at previous sessions, and it could thus help delegations from smaller missions.

5. Frequency of the consideration of the agenda item

Delegations were further invited to express their views on the question of the frequency of the consideration of the agenda item by the General Assembly. Various delegations acknowledged the importance of the matter and noted that the fact that there was a discussion with multiple views confirmed its relevance.

A number of delegations considered that the agenda item should be discussed more frequently, preferably on an annual basis, so as to allow meaningful interaction and exchanges on all possible procedural action to be taken on the basis of the articles. The need for consistency with the treatment of other outputs of the International Law Commission, which required similar continuous discussion, was also referred to. Some delegations also noted that having more frequent discussions did not necessarily imply support for a treaty negotiation.

Other delegations expressed a preference for the periodicity of the consideration of the agenda item to be decreased, to a five-year cycle from the current three years

6. Future work

The Working Group was also invited to

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

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This concludes my oral report of the Working Group.

Thank you, Mr. Chair.