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Chair: Mr. Sergeyev .... (Ukraine)

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The meeting was called to order at 3:30 p.m.

Agenda item 79: Report of the International Law Commission on the work of its sixty-third and sixty-fourth sessions (*continued*) (A/67/10)

1. **Mr. Hanami** (Japan), responding to the Commission's request to States for information on their national law and practice regarding immunity *ratione personae* and immunity *ratione materiae*, said that Japanese law did not specify those forms of immunity. In the rare cases in which it had been necessary to determine immunity *ratione personae* or immunity *ratione materiae*, reference had been made to past decisions of the International Court of Justice and to what was generally accepted by international lawyers and State practice. In that connection, he noted that if the Commission were to consider expanding immunity *ratione personae* beyond the *troika*, it would be necessary to discuss the criteria for determining which State officials were covered.

2. The Japanese delegation would continue to follow the Commission's work on the challenging the topic of formation and evidence of customary international law. With respect to the obligation to extradite or prosecute (*aut dedere aut judicare*), it supported the Commission's conclusion that an in-depth analysis of the judgment of the International Court of Justice in *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* should precede and inform any decision to terminate its work on that topic. It would be useful for the Committee's ongoing discussions if the Commission could also examine the obligation from the standpoint of the scope and application of the principle of universal jurisdiction.

3. Referring to the third report prepared by the Chairman of the Study Group on treaties over time, regarding subsequent agreements and subsequent practice by States outside judicial and quasi-judicial proceedings, he said that it revealed the difficulty of collecting evidence of State practice on "subsequent agreements" and "subsequent practice" pursuant to article 31 of the Vienna Convention on the Law of Treaties in the absence of a clear definition of the scope of those terms. Japan applauded the Commission's decision to change the format of the work by appointing a special rapporteur to focus on that subtopic.

4. Turning to the work of the Study Group on the most-favoured nation clause, he said that the proposed final report providing guidelines and model clauses for the negotiation of most-favoured nation clauses could make a huge contribution to assuring greater certainty and stability in the field of investment law. In view of the important role of the most-favoured nation clause in bilateral investment treaties and trade agreements, his delegation would continue to follow the Study Group's discussions closely.

5. **Mr. Appreku** (Ghana), commenting on the topic of the immunity of State officials from foreign criminal jurisdiction, said that the Commission might wish to interact with the African Union Commission on International Law, which was examining related provisions of the Rome Statute. In view of the trend towards prosecuting former State officials in national and international tribunals, the Special Rapporteur for the topic should consider whether the framers of the Rome Statute had intended to create a *lex specialis* for such persons vis-à-vis the fight against impunity; how the International Court of Justice might have decided recent cases if the States in question had complained of attempts to exercise criminal jurisdiction over State officials by the International Criminal Court, rather than by the national courts of other countries; and what should be the attitude of the International Court of Justice or any national or international criminal court in cases where the internal laws or constitution of a State made it possible for a certain category of State officials who were alleged to have committed serious crimes to stay in office for life, thereby avoiding accountability and remaining free to repeat the crime.

6. The obligation to extradite or prosecute was a matter of customary law and, like the related subject, universal jurisdiction, remained controversial except where enshrined in treaties binding on States parties. To resolve the impasse on those twin subjects, it would be necessary to stop referring the issue of universal jurisdiction back and forth between the Committee and the International Law Commission and to place the responsibility for progress on the Committee's Working Group on the scope and application of the principle of universal jurisdiction. In the end, the answer might lie in the universality of the Rome Statute.

7. With respect to the provisional application of treaties, while the Ghanaian Constitution required all agreements to be ratified by Parliament, Ghana had signed a number of treaties requiring provisional entry

into force pending ratification. The Special Rapporteur for that topic might wish to examine the legal effect of non-ratification of Part XI of the Convention on the Law of the Sea. However, any negative consequences of the provisional application of treaties might be mitigated by the signatory's obligation not to defeat the object and purpose of a treaty prior to its entry into force.

8. Lastly, with respect to the topic of formation and evidence of customary international law, he would have preferred that, for consistency and clarity, the Commission had maintained the title used during its second session, "Ways and means of making the evidence of customary international law more readily available". While the methodology proposed by the Special Rapporteur was appropriate, he should place greater emphasis on identifying and reflecting practice, precedents and doctrines in developing countries and developed countries alike and should undertake a rigorous study of *jus cogens*. His ultimate goal should be to bring precision, clarity and certainty to existing rules. The Special Rapporteur might also examine areas where State practice was at variance with established principles. Additionally, he might wish to consider whether there were already established or emerging rules of customary international law supporting the view that the right to life implied a duty to abolish the death penalty or that torture was a crime against humanity. In closing, he drew attention to a case pending in Ghana since October between a private creditor and a foreign State, which illustrated the difficulty of identifying rules of customary international law and underscored the importance of the Special Rapporteur's work.

9. **Mr. Tchiolemba Tchitembo** (Congo), referring to the topic of formation and evidence of customary international law, said that the power to identify the rules of customary law should lie solely with national and international courts and that the formation process should retain its flexibility. As to the scope of the subject, while the Special Rapporteur's proposed final outcome of a providing a set of conclusions with commentaries emphasized practicality, the topic had both theoretical and practical aspects. Given the importance of theory in analysing the formation of customary law, any guidelines, conclusions or commentaries, in order to be regarded as to some degree authoritative, would need to be grounded in a thorough study of the works of a wide range of authors from all regions of the world, as well as in national jurisprudence. In the opinion of his delegation, the emergence of new peremptory norms of international law (*jus cogens*) fell outside the scope of the topic because, as the Special Rapporteur had indicated, such norms arose not only out of international customary law, but also out of treaty law. However, the Commission might usefully consider developing separate guidelines and practical advice on *jus cogens* at a later date.

10. **Mr. Perera** (Sri Lanka), referring to the progress made by the Study Group on the most-favoured nation (MFN) clause, said that his delegation attached considerable importance to its work, which aimed to provide greater certainty and stability in the field of investment law by addressing the post-*Maffezini* inconsistency of arbitral jurisprudence on the scope of MFN clauses in bilateral investment treaties. Sri Lanka, which was developing a new model bilateral investment treaty taking into account features in new-generation treaties and trends in recent arbitral jurisprudence, welcomed the Study Group's timely efforts.

11. The Study Group had considered two important working papers in 2012. The first, on the interpretation of MFN clauses by investment tribunals, which discussed factors and trends in their interpretation that deserved closer study, would have an important bearing on the outcome of its work. The second, concerning the effect of the mixed nature of investment tribunals on the application of MFN clauses to procedural provisions, added an important new dimension and merited further analysis as well. The Study Group had also examined a third, informal working paper on model MFN clauses post-*Maffezini*, which would provide valuable guidance to States negotiating new treaties.

12. He recalled that, in addition to its primary focus, the Study Group had previously identified the need for further study of the question of the most-favoured nation clause in relation to trade in services under the General Agreement on Trade in Services and investment agreements. Given the growing number of free trade agreements and comprehensive economic partnership agreements that incorporated chapters on investment, that aspect warranted particular attention.

13. **Ms. Pham** Thi Thu Huong (Viet Nam), addressing the topic of the immunity of State officials

from foreign criminal jurisdiction, said that given its complexity and political sensitivity, the first step should be a thorough and comprehensive study. The Commission need not draw a sharp distinction between *lex lata* and *lex ferenda*, as both were covered by its mandate. It should take a systemic approach in order to ensure coherence and consistency in the international legal system and allow due consideration of national sovereignty, the protection of human rights and the fight against impunity. While the immunity of State officials from civil jurisdiction fell outside the scope of the topic, it was appropriate to consider the differentiation between immunity from civil and criminal jurisdiction and the extent to which universal jurisdiction might be relevant. She noted that, in the case of immunity *ratione personae*, it was necessary to consider a person's status and role in special circumstances, not just ordinary ones. In determining the scope of official acts under immunity *ratione materiae*, the official acts of a State that enjoyed immunity should be considered. Her delegation supported the Special Rapporteur's intent to undertake a thorough review of national and international State practice, doctrine and jurisprudence and to submit draft articles in her next report to the Commission.

14. With respect to the topic of formation and evidence of customary international law, her delegation agreed with the Special Rapporteur's intent to cover the whole of customary international law. In doing so, he should avoid a general study of *jus cogens* and should focus on State practice and *opinio juris*, including their characterization, weight and possible manifestations in relation to the formation and identification of international customary law. He should also give close attention to the relationship between custom and treaty, including its implications for the formation of custom. Her delegation agreed with him that an appropriate outcome might be a set of guidelines with commentaries.

15. Turning to the topic of the obligation to extradite or prosecute, she said that the judgment of the International Court of Justice in *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* confirmed the established role of that obligation. While it was indeed to some degree pointless to attempt to harmonize the multilateral treaty regimes, further consideration of such harmonization would be useful for the interpretation and implementation of existing treaties. With respect to the feasibility of the topic, she concurred that the absence of a determination on the customary law nature of the obligation would not pose an insurmountable obstacle, since the Commission's mandate included both codification and progressive development. She recommended that, before taking any decision on whether and how to proceed with the topic, the Commission should review the work done since its inclusion in the programme of work and should study the judgment of the International Court of Justice in the above-mentioned case. It should also take into account the proposed general framework for its consideration of the topic, prepared by the Working Group in 2009.

16. On the topic of treaties over time, her delegation welcomed the decision to change the format of the work by appointing a special rapporteur on subsequent agreements and subsequent practice in relation to the interpretation of treaties and applauded the focus on that subtopic. It supported the decision of the Chairman of the Study Group to synthesize its three reports in his first report as Special Rapporteur, as the preliminary conclusions in those reports raised key issues for future consideration.

17. **Mr. Karim** (Israel), referring to the topic of immunity of State officials from foreign criminal jurisdiction, concurred with the view expressed in previous reports that the concept entailed the balancing of a number of principles of international law, including State sovereignty, equality of States and accountability for crimes. He also agreed with the Special Rapporteur on the importance of distinguishing between immunity *ratione personae* and immunity *ratione materiae*. In the view of his delegation, immunity *ratione personae* was absolute. As to immunity *ratione materiae*, it applied equally to all heads of State, heads of Government, Ministers for Foreign Affairs and other State officials who effectively embodied or represented the State, which meant that, given the variation in titles from country to country, the Commission would need to establish general criteria to assist States in determining immunity on a case-by-case basis. Given the divergent views within the international community and the wide differences in national practice, *lex lata* was the appropriate framework for considering the general topic, and a detailed study of national practice was indeed in order. It was as yet premature to discuss the final outcome of the Commission's work.

18. Turning to the new topic of the provisional application of treaties, he indicated that in Israel treaties were applied provisionally only in exceptional circumstances. With regard to the topic of formation and evidence of customary international law, Israel supported its inclusion in the Commission's long-term programme of work and welcomed the appointment of a special rapporteur. In recent years, Israel had followed with concern the simplified process by which certain rules had been characterized as customary. In view of the significant implications that such characterization had on the legal obligations of States, it was important to adopt a careful, responsible approach to the process. With respect to methodology, Israel advocated focusing on actual practice rather than written materials. In addition, the weight given to the resolutions of international organizations should be considered with great caution in view of the highly political environment in which they arose. With respect to scope, it agreed with the Special Rapporteur that, in the initial phase at least, the topic should not include new *jus cogens*. Given the above and the many other aspects of the topic that required careful consideration, it was as yet premature to decide on the final outcome of the Commission's work.

19. With regard to the obligation to extradite or prosecute, while it was an important topic, Israel shared the doubts expressed as to its viability. His delegation wished to reiterate its view that the principle of *aut dedere aut judicare* was entirely treaty-based and that the associated obligation did not extend beyond the binding international treaties that explicitly referred to it. His delegation also wished to reiterate its doubts as to whether the concept of universal jurisdiction should be considered in the context of the very different principle of *aut dedere aut judicare*.

20. With respect to treaties over time, his delegation favoured the position that subsequent practice which was contradicted by the practice of any other party to a treaty should be discounted in order to preserve the fundamental principle of consent, by ensuring that States were not bound by actions by which they had not intended to be bound.

21. **Mr. Gharibi** (Islamic Republic of Iran), commenting on the immunity of State officials from foreign criminal jurisdiction, said that the absolute immunity *ratione personae* of the *troika* was well established under customary international law. The issue remaining for the Commission to determine was which acts were not official acts of the State and therefore no longer covered once a member of the *troika* left office. His delegation agreed with the former Special Rapporteur that the Commission should focus on codification rather than progressive development. Moreover, it was important to distinguish between the two, as well as between *lex lata* and *lex ferenda*. It was also important to avoid confusing the topic with the accountability of State officials or with controversial issues such as universal jurisdiction. With respect to the former, the affirmation of the International Court of Justice in *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*, to the effect that a claim of immunity for a State official was, in essence, a claim of immunity for the State, merited especial attention. Furthermore, in view of the Court's very recent authoritative decision in *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, reaffirming the principle of immunity before national criminal jurisdictions, the Commission should not endeavour to develop its own rule on the subject.

22. Since the new topic of provisional application of treaties was related in some respects to the topics of treaties over time and formation and evidence of customary international law, the Special Rapporteur might save time by exploiting the Commission's findings on the older topics. With respect to the identification of new rules of customary international law, it was highly questionable that provisional application per se could be considered a practice evidencing the formation of a customary norm; it lacked *opinio juris*, given that the State did not deem the treaty in question to have legal force for it. Moreover, it would be extremely difficult to extract a unified practice evidencing the formation of such norms as a result of the provisional application of treaties. In determining *opinio juris*, his delegation did not consider it methodologically appropriate to overstate subsequent practice at the expense of State consent.

23. On the topic of formation and evidence of customary international law, it was advisable to take a balanced approach to assessing the role and weight of regional and local practices and decisions. He wished to reiterate the need to distinguish clearly between the jurisprudence of international courts and that of domestic courts and to assign each its proper weight. The Commission should exercise caution in gauging

the role of unilateral acts in the formation of customary international law. Moreover, even if repeated over many years, unilateral acts, and particularly those in violation of general international law, should not be considered evidence of an emerging rule or of change in an existing one.

24. In the light of the recent judgment of the International Court of Justice in *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, it would seem difficult to prove the existence of a general obligation to extradite or prosecute based on customary international law. The inclusion of an extradite-or-prosecute clause in a growing number of international instruments could not in itself be construed as evidence of the formation of a customary rule. The extradite-or-prosecute provisions of the draft Code of Crimes against the Peace and Security of Mankind had not been well received and represented an example of progressive development rather than codification. In the light of the above, the Commission would be well advised to revisit its exercise, bearing in mind the reason for which the topic had been included in its programme of work.

25. The obligation to extradite or prosecute was substantially different from universal jurisdiction, and the two subjects should not be linked. Committee discussions on the scope and application of the principle of universal jurisdiction should not affect any Commission decision on the obligation to extradite or prosecute.

26. On the topic of treaties over time, the role of subsequent practice in the interpretation of treaties should not be overestimated. His delegation was not certain that different State organs should be given equal treatment when identifying subsequent practice and had doubts concerning the meaning, scope and role of the term "social practice". In concluding his comments on that topic, he stressed to the Commission that views expressed orally by Committee representatives during the discussion of the Commission's annual report were as important as written submissions and should receive equal consideration.

27. The issues involved in the most-favoured nation clause were highly intertwined with those of other fields of international law, including private international law, trade law and investment areas that were generally within the purview of the United Nations Commission on International Trade Law and the World Trade Organization. Given the complexity of the topic and the lack of progress thus far, his delegation questioned its ultimate viability.

28. **Ms. Escobar-Hernández** (Special Rapporteur on the immunity of State officials from foreign criminal jurisdiction) said that it appeared from the discussion that her preliminary report (A/C.4/654) had successfully identified the principal points of contention, opening the way for more substantive treatment in her next report. With respect to methodology and her proposed work plan, some representatives had commented on her decision to adopt a deductive, rather than inductive, approach. On the subject of *lex lata* and *lex ferenda*, most representatives had favoured the consideration of both, given the Commission's dual mandate of codification and progressive development. She remained convinced that the best approach was to start with an analysis of practice and *lex lata* and then go on to consider *lex ferenda*. She was pleased by the wide support expressed for a systemic approach, as well as for her intention to begin submitting draft articles in her next report.

29. Regarding the substantive issues, there had been general consensus on the importance of the topic, as well as on its difficulty and political sensitivity, which called for a cautious, consensus-oriented approach. Some saw a close connection between the immunity of State officials from foreign criminal jurisdiction and State immunity, which was related to State sovereignty. Although it had other functional dimensions, the immunity of State officials was seen as a tool for ensuring stable international relations, and it was therefore a matter that required strict attention to the principles of international law. A significant number of delegations had indicated that the topic should be considered in conjunction with other aspects of international law, such as the fight against impunity.

30. There had been general support for the distinction between immunity *ratione personae* and immunity *ratione materiae*, although it would be necessary to clarify the distinction and its practical consequences. Opinion remained divided on the scope of each, confirming her stated intent to study those issues in depth, both theoretically and from the practical standpoint of producing draft articles. A number of delegations had referred to the usefulness of also considering some of the norms and principles of the

responsibility of States for internationally wrongful acts. There had been a clear divergence of opinion on exceptions to immunity, which some thought justified in the case of international crimes. She would therefore devote particular attention to that delicate issue, as planned.

31. While more a careful analysis was needed, her initial summary pointed to the validity of the assumptions in her preliminary report and, consequently, to that of her proposed work plan for the 2012-2016 quinquennium, which was intended to allow the Commission to cover the topic thoroughly and systematically and complete draft articles on first reading by the end of that time. She was grateful for the information on State practice already provided by the delegations and looked forward to the additional details promised, as well as any to other information which the delegations might wish to provide.

32. **Mr. Caflisch** (Chair of the International Law Commission) said that the Commission highly valued the oral and written comments provided by the Committee. In that connection, it would very much appreciate written comments from the members regarding the draft articles on the expulsion of aliens approved in first reading. The Secretariat would be preparing a summary record for the Commission of the Committee's deliberations, and copies of the statements distributed had been sent to the Special Rapporteurs. The Commission would give all of the views expressed its serious consideration.

Agenda item 105: Measures to eliminate international terrorism (*continued*)

33. **Mr. Perera** (Sri Lanka), Chair of the Working Group on measures to eliminate international terrorism, recalled that, pursuant to General Assembly resolution 66/105, the Sixth Committee had decided, at its 1st meeting of the current session, on 8 October 2012, to establish a working group under his chairmanship with a view to finalizing the draft comprehensive convention on international terrorism and continuing to discuss the item included in its agenda by the Assembly in its resolution 54/110, concerning the question of convening a high-level conference under the auspices of the United Nations. In keeping with its established practice, the Working Group had decided that members of the Bureau of the Ad Hoc Committee established by General Assembly resolution 51/210 would continue to act as Friends of the Chair during the meetings of the Working Group. The Working Group had had before it the report of the Ad Hoc Committee on its fifteenth session (A/66/37), together with the report of the Working Group at the sixty-fifth session (A/C.6/65/L.10) and the oral report of the Chairman of the Working Group in 2011 (A/C.6/66/SR.28). It had also had before it the letter dated 1 September 2005 from the Permanent Representative of Egypt to the United Nations addressed to the Secretary-General (A/60/329), and the letter dated 30 September 2005 from the Permanent Representative of Egypt to the United Nations addressed to the Chair of the Sixth Committee (A/C.6/60/2).

34. The Working Group had held three meetings, on 22 and 24 October and 6 November 2012. At its first meeting, on 22 October, the Working Group had adopted its work programme and had decided to hold its discussions in the framework of informal consultations. The Working Group had first discussed outstanding issues relating to the draft comprehensive convention on international terrorism and, thereafter, had considered the question of convening a high-level conference under the auspices of the United Nations. The Chair and the Coordinator of the draft comprehensive convention, Ms. Maria Telalian (Greece), had also engaged in bilateral contacts with interested delegations on the outstanding issues relating to the draft comprehensive convention. At its final meeting, on 6 November, the Working Group had held informal consultations on the draft comprehensive convention and had concluded its work.

35. Presenting an informal summary of the exchange of views in the Working Group on the draft comprehensive convention, he said that delegations had reiterated their strong condemnation of terrorism in all its forms and manifestations and had generally stressed the importance they attached to the conclusion of the draft comprehensive convention. Some delegations had expressed their conviction that, with the necessary political will, the remaining outstanding issues could be resolved. Reference had been made to the call to conclude the convention contained in the 2005 World Summit Outcome document (A/RES/60/1), as well as to similar appeals in the context of the General Assembly and the Security Council. Several delegations, stressing the importance of concluding negotiations, had asserted that they were ready to proceed on the basis of the Coordinator's 2007

proposal (A/62/37), observing that it had not yet been rejected by any delegation.

36. However, the point had also been made that it would not be beneficial to proceed hastily in the negotiations, and that the remaining issues should not be minimized or resolved on the basis of competing interpretations. Some delegations had asserted that the outstanding issues were not only political but also legal; that the 2007 proposal did not resolve all of the problems raised during the course of the negotiations; and that, while it should not be rejected, a true compromise solution on the draft convention might require additional elements and concessions. Other delegations had emphasized that the negotiations had been going on for many years and that the 2007 proposal made by the Coordinator, as a compromise text, had been on the table for five years.

37. Concerning the outstanding issues surrounding the draft convention, several delegations had reaffirmed their full support for the Coordinator's 2007 proposal and considered that it constituted a viable, legally sound compromise text that effectively sought to address the various concerns raised. It had been reiterated that the draft convention should be viewed as a criminal law instrument dealing with individual criminal responsibility. Moreover, it had been noted that the proposal properly respected the integrity of international humanitarian law; it did not prejudice any of the norms of international humanitarian law applicable to terrorist acts committed during armed conflict, but rather sought to reinforce that body of law.

38. While some delegations had reiterated their preference for the 2002 proposal of the Organization of Islamic Cooperation, they had also stated their continuing willingness to consider the Coordinator's 2007 proposal. They had nevertheless stressed that it was essential to address the pending substantive legal issues, which, in their view, were not satisfactorily addressed by the 2007 proposal. In that context, the need for a clear legal definition of terrorism, which distinguished terrorism from the legitimate struggle of peoples fighting in the exercise of their right to self-determination, had been emphasized. It had been further asserted that the draft convention could, if properly conceived, address elements such as the root causes of terrorism that to date had received insufficient attention in efforts to eliminate international terrorism, without necessarily relegating them to an accompanying resolution. In order to take those elements of the draft convention into account, it had been emphasized that the negotiations on the instrument should not be rushed.

39. The view had also been expressed that the draft convention should cover acts by individuals that effectively controlled armed groups, whether during armed conflict or in peacetime, when those acts were not covered by international humanitarian law, and previous proposals on that point had been recalled (A/C.6/65/WG.2/DP.1 and A/AC.252/2005/WP.2). The necessity of including activities undertaken by military forces of a State in peacetime, as well as the need to address the issue of State terrorism, had also been underlined.

40. Some delegations had reiterated their preference for the 2002 proposal submitted by the previous Coordinator (A/57/37, annex IV), which was based on previously accepted language drawn from the International Convention for the Suppression of Terrorist Bombings and other recent counter-terrorism instruments. They had nonetheless indicated that they would be willing to consider the 2007 proposal, without modification, if that proposal would result in the successful conclusion of the negotiations. It had been noted that what was needed was a flexible approach to solving the impasse among delegations. A meeting of minds at the conceptual level was necessary, and that meant tackling the misconceptions that had bogged down the negotiations, particularly those concerning the scope of the draft convention. It had also been stressed that no cause could legitimize terrorist acts, and thus it was improper to draw a dichotomy between self-determination and terrorism.

41. Concerning future work, some delegations had been of the view that if the impasse in the negotiations continued into the meetings of the Ad Hoc Committee envisaged for 2013, then it might be time to reconsider the working methods and overall framework of the negotiation process. Some delegations had expressed frustration that, despite the continued calls of the international community for the conclusion of the draft convention, the necessary political will did not seem to exist. Given that impasse and an apparent reluctance to engage in substantive discussions on outstanding issues, it had been suggested that delegations needed to think seriously about whether to continue in the same manner, or to formulate a clear plan of action on how to move forward.

42. Summarizing the comments made by the Coordinator, he said that she had noted that the delegations' statements during the meeting indicated that political agreement on the draft convention remained elusive. Disagreement continued to centre on the exclusionary elements of the draft convention covered by draft article 3. In that connection, the Coordinator had once again recalled the rationale behind the elements of an overall package that she had presented in 2007 during the eleventh session of the Ad Hoc Committee (A/62/37), which consisted of an additional preambular paragraph, an addition to paragraph 4 and a new paragraph 5 of draft article 3 (former draft article 18). The elements of the package were the outcome of intensive deliberations among delegations spanning several years and had emerged from an effort to find consensus. The Coordinator had further reminded delegations that draft article 3 had to be read as a whole and together with the other provisions of the draft convention, in particular draft article 2.

43. The Coordinator had noted that the draft convention was intended to fill gaps in the law and enhance cooperation in the prevention and prosecution of terrorist acts. The definition of acts of terrorism contained in draft article 2 would represent the first time such a comprehensive definition had been included in an international legal instrument. Despite the substantial attention that had been paid to the issue of terrorism by the international community, agreement on what exactly constituted terrorism still did not exist, and the draft convention would add considerable value in that regard.

44. The Coordinator had reiterated that the draft convention was a law enforcement instrument, ensuring individual criminal responsibility based on the obligation to extradite or prosecute (*aut dedere aut judicare*). Accordingly, its focus was the individual and not the State, an approach followed consistently in the sectoral counter-terrorism instruments. The Coordinator had nevertheless noted that other fields of law, including the Charter of the United Nations, international humanitarian law and the law of the responsibility of States for internationally wrongful acts, addressed the obligations of States. Moreover, the draft convention contained some provisions concerning the obligations of States. The Coordinator had also pointed out that paragraph 1 of draft article 2 was concerned with any person who committed an offence unlawfully and intentionally. The phrase "any person", together with the term "unlawfully", were the key to the understanding of the scope *ratione personae* of the draft convention.

45. The Coordinator had also recalled that draft article 3 was aimed at carving certain activities out from the scope of the draft convention, essentially because they were already regulated by other fields of law. It was a safeguard clause framed as an applicable law clause. In that context, the Coordinator had emphasized that the draft convention would not operate in a vacuum but would be implemented in the context of an overall legal framework. It was thus essential to respect the integrity of those other fields of law, and there was case law supporting that approach. The additional elements of the overall package were intended to fortify the understanding that no impunity was intended and that the integrity of other fields of law, including international humanitarian law, was safeguarded. The Coordinator had also recalled an important, undisputed understanding, namely, that civilians would under no circumstances constitute a legitimate target, either during armed conflict or in peacetime.

46. With reference to the draft resolution proposed during the 2011 session of the Working Group (A/C.6/66/SR.28, para. 89), the Coordinator had indicated a willingness to discuss the matter with delegations at any time. The draft resolution, which would accompany the legal instrument and should be considered part of the overall compromise package, had been presented in order to capture the remaining outstanding issues that seemed intractable and facilitate consensus.

47. The Coordinator had noted that, during the informal consultations on 6 November 2012, discussions during the bilateral contacts had revealed that positions among delegations were not yet gravitating towards a possible compromise, despite a lull of one year for reflection. Without a demonstration of political will among delegations, the impasse would be difficult to overcome. There would seem to be little purpose in continuing to convene meetings in the apparent absence of the requisite will for real compromise. The continuing efforts to find a solution to the outstanding issues were constrained by a seeming reluctance to move forward, as interested delegations maintained their preferred positions despite repeated attempts to explain the rationale of the

elements of the overall package. That position stood in marked contrast with the declared desire to engage in open and constructive dialogue on the difficult questions concerning the draft comprehensive convention, and the Chair and the Friends had expressed optimism that a solution to the legal issues was not far away. However, it was important to muster the necessary political will to surmount the final hurdle.

48. Turning to the question of convening a high-level conference, he said that during the informal consultations on 24 October 2012, the Egyptian delegation had reiterated its 1999 proposal concerning the convening of a high-level conference under the auspices of the United Nations. It had again explained that a plan of action was needed in order to address the legal and procedural aspects of the fight against terrorism effectively. Such a conference would provide a forum for addressing all relevant issues, including the root causes of terrorism, and could contribute effectively to the negotiations on the draft convention. The sponsor delegation had reiterated that the convening of a conference should be considered on its own merits and should not be linked to the conclusion of the draft comprehensive convention. It had further recalled that the proposal had been endorsed by the Movement of Non-Aligned Countries, the African Group, the Organization of Islamic Cooperation and the League of Arab States.

49. Some delegations had reiterated their support for the proposal. They had reinforced the position that the conference should be considered on its own merits and should not be linked to the conclusion of the draft convention. It had been mentioned that the conference represented a new way forward, providing an opportunity to address outstanding issues and facilitating the conclusion of the draft convention. Some delegations had noted that the time had come to hold the high-level conference, and that it should be convened as soon as possible without any preconditions. Other delegations, while supporting the convening of the conference in principle, had questioned its timing and effectiveness. They had suggested that the draft convention should continue to be the priority and that the Working Group of the Sixth Committee and the Ad Hoc Committee established pursuant to General Assembly resolution 51/210 were the appropriate forums to continue negotiations on the outstanding issues. Thus, the convening of a high-level conference was as yet premature and should be discussed only following the conclusion of the draft convention.

Agenda item 82: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (*continued*) (A/C.6/67/L.3)

Draft resolution A/C.6/67/L.3

50. *Draft resolution A/C.6/67/L.3 was adopted.*

51. **Mr. De Vega** (Philippines), speaking in explanation of position, thanked all who had been instrumental in the adoption of draft resolution A/C.6/67/L.3, which would honour the memory of the Special Committee's forerunners and would affirm the centrality of the peaceful settlement of disputes in promoting the rule of law and maintaining international peace and security.

52. **Mr. Nazarian** (Armenia), speaking in explanation of position, recalled the historic significance of the Manila Declaration on the Peaceful Settlement of International Disputes, which had been approved by the General Assembly on 15 November 1982. The resolution honouring it was both timely and appropriate.

Agenda item 77: Report of the United Nations Commission on International Trade Law on the work of its forty-fifth session (*continued*) (A/C.6/67/L.7 and L.8)

53. **Ms. Quidenus** (Austria), introducing draft resolutions A/C.6/67/L.7 and L.8 relating to the report of the United Nations Commission on International Trade Law (UNCITRAL) on the work of its forty-fifth session, said that owing to technical difficulties caused by Hurricane Sandy, the sponsors of the draft omnibus resolution on the report of the Commission (A/C.6/67/L.8) were not listed. They were Albania, Argentina, Armenia, Australia, Austria, Belarus, Bulgaria, Canada, Chile, China, Colombia, Croatia, Cyprus, Czech Republic, Denmark, El Salvador, Estonia, Finland, France, Gabon, Germany, Greece, Guatemala, Hungary, India, Ireland, Israel, Italy, Jamaica, Japan, Kenya, Latvia, Liechtenstein, Lithuania, Luxembourg, Mexico, Montenegro, Netherlands, New Zealand, Nigeria, Panama, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation,

Serbia, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, Thailand, the former Yugoslav Republic of Macedonia, Trinidad and Tobago, Turkey, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela (Bolivarian Republic of).

54. The text followed that of the previous year's resolution with the exception of a few paragraphs. Paragraphs 2 to 8, on the work of the Commission's forty-fifth session, commended the finalization and adoption of the UNCITRAL Model Law on Public Procurement and the UNCITRAL Arbitration Rules as revised in 2010; noted the Commission's progress in the areas of arbitration and conciliation, online dispute resolution, electronic commerce, insolvency law and security interests, as well as its discussions on possible future work in public procurement and related areas; also took note of UNCITRAL projects aimed at promoting the uniform and effective application of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards and noted the Commission's decision to commend the use of the 2010 edition of the International Institute for the Unification of Private Law (UNIDROIT) Principles of International Commercial Contracts, as well as of Incoterms 2010, and its publication of "UNCITRAL, Hague Conference and UNIDROIT texts on security interests".

55. Paragraph 11 referred to a note by the Secretariat on issues for the Commission's consideration in setting the parameters for a strategic plan and to the Commission's agreement to consider and provide guidance on the strategic considerations at its forty-sixth session. Paragraph 13 welcomed the January 2012 opening of the UNCITRAL Regional Centre for Asia and the Pacific in the Republic of Korea, as well as expressions of interest in hosting regional centres received from other States. Paragraph 17 noted the briefing by the Rule of Law Unit and the Commission's subsequent contribution to the high-level meeting. Paragraph 20 confirmed that good-quality summary records remained the best available option for preserving complete and accurate *travaux préparatoires* while endorsing the Commission's agreement to assess at its forty-seventh session the experience of using digital records. Paragraph 21 dealt with the Commission's consideration of the proposed strategic framework for the period 2014-2015 and its review of the proposed biennial programme plan and also recalled paragraph 48 of General Assembly resolution 66/246 regarding the rotation scheme for meetings. Paragraph 23 stressed the importance of promoting the use of UNCITRAL texts, and paragraph 24 welcomed the publication of several such texts.

56. Draft resolution A/C.6/67/L.7, on the recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules as revised in 2010, expressed appreciation to UNCITRAL for the formulation and adoption of those recommendations (A/67/17, annex I) and endorsed their use in the settlement of disputes arising in the context of international commercial relations.

The meeting rose at 5:35 p.m.