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Chair: Mr. Biang (Gabon)

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The meeting was called to order at 10.20 a.m.

Agenda item 111: Measures to eliminate international terrorism *(continued)*

Oral report by the Chair of the working group on measures to eliminate international terrorism

1. **Mr. Perera** (Sri Lanka), Chair of the working group, recalling that, pursuant to General Assembly resolution [72/123](#), the Sixth Committee had decided to establish a working group with a view to finalizing the process on the draft comprehensive convention on international terrorism and to discussing the question of convening a high-level conference under the auspices of the United Nations, said that pursuant to paragraph 9 of General Assembly resolution [51/210](#) and consistent with past practice, the working group was open to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency. In keeping with its established practice, the working group had decided that members of the Bureau of the Ad Hoc Committee established by the General Assembly in its resolution [51/210](#) of 17 December 1996 would continue to act as Friends of the Chair. The working group had had before it the report of the Ad Hoc Committee on its sixteenth session ([A/68/37](#)) and the annexes thereto, including written proposals relating to the outstanding issues surrounding the draft convention; a letter from the Permanent Representative of Egypt to the United Nations addressed to the Secretary-General ([A/60/329](#)); and a letter from the Permanent Representative of Egypt to the United Nations addressed to the Chair of the Sixth Committee ([A/C.6/60/2](#)).

2. The working group had held three meetings, on 16 and 19 October and 1 November 2018. At its first meeting, it had adopted its work programme and had decided to hold discussions in the framework of informal consultations. At that meeting, the working group had discussed outstanding issues relating to the draft convention and the coordinator of the outstanding issues on the draft comprehensive convention had heard reported on discussions that had taken place intersessionally. At its second meeting, it had considered the question of convening a high-level conference under the auspices of the United Nations. Informal consultations on the draft convention and on the way forward had been held at all three meetings. The coordinator of the draft comprehensive convention had also engaged in informal and bilateral discussions with delegations on the outstanding issues relating to the draft convention.

3. At its third meeting, the working group had considered proposed recommendations of the working group to the Sixth Committee and decided to recommend that the Sixth Committee should include the following two paragraphs in the annual General Assembly resolution on measures to eliminate international terrorism: “[d]ecides to recommend that the Sixth Committee, at the seventy-fourth session of the General Assembly, establish a working group with a view to finalizing the process on the draft comprehensive convention on international terrorism as well as discussions on the item included in its agenda by General Assembly resolution [54/110](#) concerning the question of convening a high-level conference under the auspices of the United Nations”; and “[r]ecognizes the valuable dialogue and efforts of Member States towards resolving any outstanding issues, and encourages all Member States to redouble their efforts during the intersessional period”. The working group had decided to make that recommendation on the understanding that Member States would again work closely with the coordinator during the intersessional period to attempt to resolve outstanding issues related to the draft comprehensive convention, with assistance from the Secretariat.

4. During the informal consultations on 16 October 2018, the Chair had provided a detailed overview on the work undertaken over the years and an update on the status of the negotiations regarding the outstanding issues surrounding the draft convention, including the attempts made to overcome the differences among delegations. While some delegations had reiterated the continuing relevance of their proposals, work had proceeded on the general understanding that further consideration would be given to all written amendments and proposals on the table, together with all other written and oral proposals, in future discussions, including on outstanding issues. The view had been expressed that a new procedural impetus, including the convening of a high-level conference, was required to generate the political momentum needed to bring a swift conclusion to the negotiations on the draft comprehensive convention.

5. At the same meeting, the coordinator on outstanding issues had reported on intersessional efforts to advance the consultations concerning the completion of the draft comprehensive convention, which had included the circulation by the coordinator of a non-paper on article 3 of the draft comprehensive convention. The coordinator’s non-paper, which took into account some of the concerns that had been raised by delegations at previous sessions, was intended solely to stimulate further discussion, and was without

prejudice to any existing proposal under consideration. The coordinator had also explained the rationale underlying his proposal, in particular with regard to the added value of differentiating between “without prejudice” clauses and exclusions per se.

6. To address the outstanding issues following the adjournment of the informal consultations, the coordinator had convened informal consultations, which had taken place on 16, 18 and 19 October. The discussions had covered matters such as whether or not the term “armed forces” should be included in the draft comprehensive convention; the different legal regimes that applied during armed conflict and in peacetime; the question of how the draft comprehensive convention would apply to entities such as Islamic State in Iraq and the Levant; and the meaning of some of the terms employed, such as the phrase “inasmuch as”. A number of delegations had expressed the view that it was premature to discuss the specific details of possible drafting solutions in the absence of political agreement on the goals to be achieved through the draft comprehensive convention. In that regard, it had been noted that consideration needed to be given to questions concerning the relationship between the draft comprehensive convention and international humanitarian law, including in relation to foreign occupation, and to the understanding of notions such as “State terrorism”.

7. Delegations had expressed differing views on whether the wording of the annual resolution on measures to eliminate international terrorism was sufficient to ensure that Member States conducted intersessional consultations, which were generally agreed to be necessary. Some had considered that the current wording allowed for meaningful consultations, while others had found it insufficient. Several delegations had made suggestions about actions that could be taken to revitalize intersessional discussions, including the reconvening of the Ad Hoc Committee. It had been generally agreed that it was important that such intersessional efforts continue to take place, to advance substantive discussions on the outstanding issues, especially in light of the difficulty of reaching a consensus in the short time set aside for annual working group sessions. Following careful consideration of the various suggestions, the working group had decided by consensus that the wording of its recommendation to the Sixth Committee would be based on paragraphs 25 and 26 of General Assembly resolution [72/123](#).

8. During the informal consultations held on 19 October 2018, delegations had commented on the question of convening a high-level conference under the auspices of the United Nations to formulate a joint

organized response of the international community to terrorism in all its forms and manifestations. The sponsor delegation of Egypt, recalling that the proposal to convene the conference was now a joint proposal of a large number of Member States, including the members of the Organization of Islamic Cooperation, the Non-Aligned Movement and the African Group, had reiterated its view that the differences in opinion concerning the draft comprehensive convention on terrorism were of a political nature, and could thus be resolved only at such a level; the conference would thus help to advance the process. A number of delegations had reiterated their support for the convening of a high-level conference, while others had expressed the view that the convening of such a conference would be premature until agreement was reached at the technical level.

9. At the outset of the session of the working group, the Chair had called on delegations to discuss outstanding substantive issues rather than focusing on the procedural way forward. The work had mainly focused on the negotiating process. The Chair, the Friends of the Chair and the coordinator had been encouraged by delegations’ renewed intention to engage in intersessional negotiations. The non-paper circulated by the coordinator had achieved its purpose of encouraging States to further explore the means to discuss difficult issues on which progress had remained elusive. The Chair and the Friends of the Chair looked forward to continued efforts by delegations to engage on those issues, including during the intersessional period. It was noteworthy that the working group’s recommendation to the Sixth Committee reflected a general appreciation of the usefulness of intersessional efforts, including in informal settings where the process might be advanced. Indeed, it was crucial for Member States, working together with the coordinator, to redouble such efforts. It was his sincere hope that reinvigorated intersessional efforts would foster the ability and the will of delegations to overcome their differences so that the crucial work on the convention could be completed.

10. **The Chair** said he took it that the Committee wished to take note of the report of the Chair of the working group on measures to eliminate international terrorism.

11. *It was so decided.*

Agenda item 79: Criminal accountability of United Nations officials and experts on mission (*continued*)

Oral report by the Chair of the working group on criminal accountability of United Nations officials and experts on mission

12. **Mr. Molefe** (South Africa), Chair of the working group, said that, pursuant to General Assembly resolution [72/112](#), the Sixth Committee had decided to establish a working group, open to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency, with a view to continuing the consideration of the report of the Group of Legal Experts on ensuring the accountability of United Nations staff and experts on mission with respect to criminal acts committed in peacekeeping operations ([A/60/980](#)), in particular its legal aspects, taking into account the views of Member States and the note by the Secretariat on criminal accountability of United Nations officials and experts on mission ([A/62/329](#))

13. The working group had had before it the report of the Group of Legal Experts, the reports of the Ad Hoc Committee on its first and second sessions ([A/62/54](#) and [A/63/54](#)), the three reports of the Secretary-General on criminal accountability of United Nations officials and experts on mission issued in 2018 ([A/73/128](#), [A/73/129](#), in particular section VI, and [A/73/155](#)), the previous reports of the Secretary-General on the item ([A/63/260](#), [A/63/260/Add.1](#), [A/63/331](#), [A/64/183](#), [A/64/183/Add.1](#), [A/65/185](#), [A/66/174](#), [A/66/174/Add.1](#), [A/67/213](#), [A/68/173](#), [A/69/210](#), [A/70/208](#), [A/71/167](#), [A/72/121](#), [A/72/126](#) and [A/72/205](#)), the note by the Secretariat on criminal accountability of United Nations officials and experts on mission ([A/62/329](#)) and General Assembly resolution [72/112](#).

14. The working group had held two meetings in 2018. At the first meeting, held on 10 October, the working group had set out the relevant materials to frame its debate. Pursuant to paragraph 16 of resolution [72/112](#), representatives of the Secretariat had been present at the first meeting to brief delegations and engage in an informal discussion. Senior officials from the Disciplinary Unit of the Administrative Law Section of the Office of Human Resources Management, the Conduct and Discipline Unit of the Department of Field Support, the Ethics Office, the Office of the Special Coordinator on Improving the United Nations Response to Sexual Exploitation and Abuse, and the General Legal Division of the Office of Legal Affairs had given a briefing, followed by a question-and-answer segment. In their briefings, the Secretariat representatives had

presented the roles and responsibilities of their respective units in relation to the item under consideration and provided updates on relevant policies and procedures and other developments. They had then engaged in a fruitful and constructive question-and-answer session with the working group. They had provided factual and analytical information in response to questions from delegations and described the processes and mechanisms in place to address criminal accountability within the United Nations. As in previous years, the briefing and interactive dialogue had been much appreciated.

15. A number of delegations had asked question about investigations and disciplinary measures taken against United Nations officials and experts on mission, and about the measures in place to protect whistle-blowers who reported unsatisfactory behaviour or misconduct or cooperated with investigators and auditors. Several delegations had inquired about assistance provided to victims of criminal conduct by the United Nations officials and experts on mission. The representatives had also been asked how recent measures and initiatives to ensure that victims received adequate support and assistance related to the findings of the evaluation of the enforcement and remedial assistance efforts for sexual exploitation and abuse by the United Nations and related personnel in peacekeeping operations conducted by the Office of Internal Oversight Services in 2015. Some delegations had requested information about the process whereby the United Nations referred credible allegations to Member States and conducted follow-up, which had been required since the adoption of General Assembly resolution [62/63](#). Specifically, they had asked whether the territorial State would be informed of allegations that a crime might have been committed and sought clarification about situations that could give rise to a waiver of immunity.

16. At its second meeting, held on 15 October, the working group had focused on three interrelated questions: first, whether (and, if so, when) the criminal accountability of United Nations officials and experts and mission should be addressed in a convention; second, which substantive issues should be addressed in a convention; and third, whether there were any matters that should be included in the annual General Assembly resolution to further enhance the mechanisms of accountability initially developed in resolutions [62/63](#) and [63/119](#) and give delegations a more comprehensive picture of the relevant empirical data. Delegations had remained divided on the first question. Some had reiterated their position that it was premature to commence such negotiations. Others had expressed the view that the criminal accountability of United Nations

officials and experts on mission would be best addressed comprehensively in a General Assembly resolution, rather than in a convention subject to ratification by Member States. However, other delegations had expressed more readiness to begin working towards the elaboration of a convention. It had been highlighted that jurisdictional gaps existed and that the short-term measures set out in General Assembly resolutions since the sixty-second session of the General Assembly had not as yet adequately dealt with the problem.

17. With regard to the second question, it had been pointed out that Member States had provisions in their domestic laws for establishing jurisdiction over crimes committed abroad, but that there was a need for harmonization. It had been suggested that the active personality principle and the double criminality principle could be addressed in the convention. During the discussion, some delegations had advocated holding working group meetings more frequently and for some form of intersessional activity. Others had considered that any discussions on the content of a potential convention would prejudice the question of whether the issue of criminal accountability of United Nations officials and experts on mission should be addressed in the form of a convention at all. It had also been suggested that, before addressing the details of a convention, it might be helpful to identify the barriers to commencement of prosecution faced by some States to which credible allegations had been referred.

18. As for the third question, enhancing accountability mechanisms and providing empirical data to delegations would permit a more informed discussion of the issues raised in the report of the Group of Legal Experts to take place. Proposed measures had included continuous and possibly more detailed requests for information from the Secretariat, follow-up by the Secretariat with Member States that had received referrals, provision of capacity-building to Member States, and more regular meetings of the working group to build momentum.

Agenda item 87: The scope and application of the principle of universal jurisdiction (*continued*)

Oral report by the Chair of the working group on the scope and application of the principle of universal jurisdiction

19. **Ms. Duncan Villalobos** (Costa Rica), Chair of the working group, recalling that, pursuant to General Assembly resolution 72/120, the Sixth Committee had decided again to establish a working group, open to all Member States and relevant observers to the General Assembly, to continue to undertake a thorough discussion of the scope and application of universal

jurisdiction, said that the working group had had before it the reports of the Secretary-General on the scope and application of the principle of universal jurisdiction issued since 2010 (A/73/123, A/72/112, A/71/111, A/70/125, A/69/174, A/68/113, A/67/116, A/66/93, A/66/93/Add.1 and A/65/181), the records of the oral reports of the Chair on the work of the working group in 2017 (A/C.6/72/SR.28), 2016 (A/C.6/71/SR.31), 2015 (A/C.6/70/SR.27), 2014 (A/C.6/69/SR.28), 2013 (A/C.6/68/SR.23) and 2012 (A/C.6/67/SR.24), and an informal paper of the working group (A/C.6/66/WG.3/1), commonly referred to as the “road map”, containing agreements on methodology and a list of issues for discussion. The working group had also had before it the informal working paper that had been discussed in previous sessions of the working group.

20. The working group had held two meetings, on 11 and 17 October 2018. It had conducted its work in the framework of informal consultations. At its first meeting, the Chair had presented an overview of past proceedings, including the discussions that had led to the drawing up and refinement of the informal working paper; the points listed in the working paper were for illustration purposes only and without prejudice to future written or oral proposals made by delegations or to the positions of delegations. The Chair had also recalled that no changes had been made to the informal working paper since 2016 and stressed that input from delegations would be required to determine the way forward for the working group. In response to questions circulated by the Chair prior to the meeting, a number of delegations had shared information concerning the crimes to which universal jurisdiction would apply under the laws of their countries and, in some cases, the conditions attached to such application. Delegations had also been asked to share any examples of universal jurisdiction serving as the basis of jurisdiction for the prosecution of crimes in their countries, but no such instances had been mentioned. The discussion had revealed a diversity of views but also possible areas of convergence. One delegation had questioned the relevance of the discussion, given that, in its view, the concept of universal jurisdiction did not enjoy a consensus.

21. At the second meeting, some delegations had shared their views on the decision taken by the International Law Commission to include the topic “Universal criminal jurisdiction” in its long-term programme of work, and the potential implications of that decision on the consideration of the scope and application of the principle of universal jurisdiction by the Sixth Committee and the working group. At previous sessions, the working group had discussed whether the

item, in whole or in part, should be referred to the Commission. At the most recent session, some delegations had noted that the inclusion of a new topic in the Commission's long-term programme of work did not necessarily mean that the Commission would take it up. One delegation had pointed out a possible distinction between the topic as formulated by the Commission and the item under consideration by the working group. Some delegations had voiced support for the decision taken by the Commission and expressed a hope that the Commission would work on the item. Others had suggested that the Commission's work could be limited to the consideration of certain technical questions relevant to the scope and application of the principle of universal jurisdiction, with a view to contributing to the work of the Sixth Committee. Still others had maintained that consideration of the topic by the Commission would be premature and that the working group remained the proper and, for some delegations, the exclusive forum for discussion of the item. Opinions had remained divided throughout the discussion, and the working group had not reached a consensus.

22. The working group had also considered the related question of how to proceed with the item in the Sixth Committee. Some support had been expressed for the rationalization of the work of the General Assembly, which would lead to the consideration by the Sixth Committee of the item on a biennial basis and/or the biennial establishment of the working group. However, a number of delegations had stated that the annual consideration of the item and yearly establishment of the working group should be maintained. Some delegations had also reiterated that they considered the dialogue within the working group to be useful, as it was part of the confidence-building exercise that was central to the working group's work on the item.

23. There was a certain impasse in the work of the working group partly due to the lack of a consensus on the intended output of the working group. The impasse might be unavoidable, given the lack of agreement on the issues that had informed the road map. That said, there was no doubt that the item encompassed issues that were important to Member States, and the function of the Sixth Committee was to provide the necessary guidance on such issues. She urged interested delegations to use the intersessional period to consult with each other with the aim of identifying the potential outcome of the working group that would not only represent a wise use of the working group's time but also be appropriate, given the nature of the topic.

Agenda item 85: 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.6/73/L.10)

Draft resolution A/C.6/73/L.10: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

24. *Draft resolution A/C.6/73/L.10 was adopted.*

The meeting rose at 11.15 a.m.