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## Sixth Committee

### Summary record of the 8th meeting

Held at Headquarters, New York, on Friday, 12 October 2012, at 10 a.m.

*Chair:* Mr. Sergeyev ..... (Ukraine)  
*later:* Mr. Chekkori (Vice-Chair) ..... (Morocco)

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

**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/67/33, A/67/189, A/67/190)

1. **Mr. Dahmane** (Algeria) said that the Charter of the United Nations, and particularly its provisions relating to the functions and powers of each principal organ of the Organization, must be fully respected. The Security Council must observe all such provisions and General Assembly resolutions that clarified its relationship with the Assembly and other principal organs, such as the Economic and Social Council. His delegation supported the proposal by the delegation of the Bolivarian Republic of Venezuela to establish an open-ended working group to study the proper implementation of the Charter of the United Nations with respect to the functional relationship of its organs and the Cuban proposal on strengthening of the role of the Organization and enhancing its effectiveness.

2. He welcomed the progress towards greater transparency in the work of some sanctions committees, in particular the Security Council Committee established pursuant to resolution 1267 (1999) and 1989 (2011). However, caution should be exercised in the use of sanctions as a tool to maintain international peace and security so as to minimize their negative impact on civilians and third States. Moreover, the question of the time frame of sanctions was of the utmost importance; the use of sunset clauses should be considered.

3. While he acknowledged the efforts of the Special Committee to enhance the efficiency of its working methods, they were not sufficient without the political will to expedite the long-standing issues on its agenda. He emphasized the importance of the Manila Declaration on the Peaceful Settlement of International Disputes, the thirtieth anniversary of which was being marked in 2012, and recalled the Special Committee's role in its preparation.

4. Lastly, he welcomed the efforts to ensure the continued publication and updating of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*, which were important sources of reference on the Organization's activities.

5. **Mr. Delgado Sánchez** (Cuba) said that the work of the Special Committee had become more important in light of current attempts by a group of countries to reinterpret the principles of the Charter in support of a political agenda of interference in the internal affairs of foreign States, to the detriment of the sovereignty and territorial integrity of developing countries. It was vital to respect the provisions of the Charter and to strengthen the role of the General Assembly as the chief deliberative, policymaking and representative organ of the United Nations. The Special Committee was the appropriate forum for negotiating any Charter amendments that might emerge from the reform process and for ensuring that all Member States and organs of the United Nations acted in conformity with the provisions of the Charter and of international law. The Special Committee should therefore be open to debating all proposals that would help the various organs to fulfil their mandates, which had legal implications for implementation of the Charter.

6. The Special Committee had made significant progress in 2012, although some delegations continued to hinder its work and impede the adoption of valuable documents that would strengthen the rule of law within the Organization. He was confident that the Secretariat would take steps to improve the organization of the Committee's work so as to allow more time for substantive discussion of proposals. Such discussions should not be conducted informally, but rather within the Working Group of the Whole in order to ensure a reliable record of the views expressed by Member States. Proposals should be discussed substantively, paragraph by paragraph, as in other forums such as the Committee of the Whole of the United Nations Commission on International Trade Law (UNCITRAL).

7. The Special Committee's work was being constantly sabotaged by a group of developed States which sought to abolish it or reduce its work to the minimum, citing its failure to produce concrete results when in fact, they were the ones that systematically refused to discuss substantive proposals and obstructed the adoption of decisions without explanation. That situation stemmed directly from the lack of political will of certain States, which was nothing new in an Organization that, for more than 20 years, had been unsuccessful in its attempts to reform the Security Council and to adopt a comprehensive convention on international terrorism.

8. His delegation opposed any suggestion that the Special Committee should meet biennially or that its workload should be reduced, and he urged others to submit proposals for its consideration and to participate constructively in its discussions. He supported the Special Committee's current agenda and welcomed the political will shown by the delegations of the Bolivarian Republic of Venezuela and Ghana to contribute to its work by submitting proposals. During the Special Committee's last session, his delegation had submitted a proposal relating to the maintenance of international peace and security, and it was currently exploring the possibility of a new working paper on the peaceful settlement of disputes.

9. His delegation welcomed the efforts to update the *Repertoire* and the *Repertory* but urged the Secretary-General to address, on a priority basis, the unjustifiable backlog in the preparation of volume III of the *Repertory*.

10. **Mr. Aljadey** (Libya) said that his delegation had been and would continue to be an active participant in the work of the Special Committee. Many elements of the revised proposal submitted by his delegation with a view to strengthening the role of the United Nations in the maintenance of international peace and security had been addressed elsewhere in the Organization. Nonetheless, he would welcome comments on the proposal.

11. He commended the progress in publication of the *Repertory* and the *Repertoire* but noted that the Arabic version of documents was often issued later than the versions in other languages. The issue should be addressed as a matter of priority so as to widen access to that important resource for Arabic-speaking legal researchers, university students and academics.

12. **Ms. Taratukhina** (Russian Federation) said that the Special Committee was capable of addressing complex legal issues relating to the Organization's work and thus helped to ensure the rule of law at the international level. Its methods of work should be optimized and it should continue to meet on a regular basis.

13. The joint Russian-Belarusian proposal on the legal consequences of the use of force by States without prior authorization by the Security Council remained on the Special Committee's agenda and it would be of interest, if there was consensus in that

Committee, to seek an advisory opinion of the International Court of Justice on the matter.

14. Her delegation assumed that, in compiling the *Repertoire*, the Secretariat would continue to follow the rules contained in the Secretary-General's report of 18 September 1952 (A/2170).

15. **Mr. Kim Yong Song** (Democratic People's Republic of Korea) said that double standards and ever more high-handed, arbitrary acts such as the use or threat of use of force, interference in the internal affairs of States and the imposition of sanctions were currently prevalent in international relations. No measures had been taken to counter those acts and, worse still, the name of the United Nations was being abused in order to justify them. Important matters before the Security Council were being handled in accordance with the will of certain States in order to advance their own interests; superpowers were conniving in illegal invasions and air attacks against sovereign States; and legitimate measures put forward by developing countries to safeguard sovereignty and development were being denounced as threats to international peace. There were even continued attempts to expand the Security Council's authority to cover issues unrelated to international peace and stability.

16. Such practices weakened the authority of the General Assembly, which should represent the consensus view of all Member States, destroyed the balance between the principal organs of the United Nations and violated the Charter; immediate steps should be taken to halt them and a mechanism for holding the Security Council accountable to the General Assembly should be established. In addition, the Special Committee should strive to reach a conclusion on the proposals before it and should put forward new proposals aimed at strengthening the Charter and the Organization, including through reform of the Security Council.

17. The so-called "United Nations Command" stationed in South Korea was a typical example of abuse of the United Nations by an individual State; it had been illegally invented by the United States of America in 1950 and had nothing to do with the United Nations. It was part of the United States army and was being used by that country as a tool for its hostile policy towards the Democratic People's Republic of Korea. It should be dismantled immediately in

accordance with General Assembly resolution 3390 (XXX).

18. **Mr. Jok** (Malaysia) said that his delegation attached great importance to the Special Committee's work but was concerned about its lack of progress in considering the proposals before it. He therefore hoped that its next session would see an improvement in its working methods.

19. He welcomed the proposal of the Philippines to commemorate the thirtieth anniversary of the Manila Declaration. The importance of the International Court of Justice in settling such disputes could not be overstated; the Court's adherence to its mandate and observance of the rule of law inspired the confidence of Member States. His Government was committed to settling international disputes by peaceful means and, accordingly, had had recourse to the Court on a number of occasions.

20. Sanctions should be considered only as a last resort and where there was a clear threat to international peace and security. While welcoming the Security Council's shift from comprehensive economic sanctions to targeted sanctions, his delegation was disappointed that no concrete recommendations on ways to assist third States affected by the unintended impact of sanctions had been made. In addition, Security Council resolutions adopted under Chapter VII of the Charter should take account of individuals' and entities' rights to receive notice, to be heard and to be represented and should provide for assistance to affected States, individuals and entities. More could be done to enhance the transparency and fairness of listing and de-listing procedures and to ensure compliance with the tenets of natural justice and the rule of law.

21. Lastly, his delegation welcomed the progress in updating the *Repertory* and the *Repertoire* and eliminating the backlog in the preparation of those publications.

22. **Ms. Tijerino** (Nicaragua) said that her delegation strongly supported the work of the Special Committee and welcomed the proposals submitted by Ghana, Cuba and the Bolivarian Republic of Venezuela. It looked forward to discussing both new and existing proposals that would contribute effectively to implementation of the Charter. The Special Committee was likely to face an increased workload in the future, and she urged Member States to support it in the fulfilment of its mandate. It carried out important work and its sessions

should not be shortened; on the contrary, the time currently assigned to it was more necessary than ever.

23. Her Government conducted its international relations on a basis of friendship, solidarity and reciprocity and endorsed the principle of peaceful settlement of international disputes through the means offered by international law, of which it had often availed itself. The International Court of Justice, in particular, played an important role in safeguarding global security through the peaceful settlement of disputes. The topic should therefore remain on the Special Committee's agenda.

24. **Ms. Akilu** (Nigeria) said that her delegation supported the prudent use of targeted sanctions as a last resort when all other peaceful means of dispute settlement had been exhausted. However, a mechanism for evaluating the impact of sanctions on third States and providing them with assistance, particularly with regard to the humanitarian needs of civilians, was required. It might be useful for the International Law Commission to consider the legal consequences of sanctions affecting third States.

25. Her Government attached great importance to the role of the International Court of Justice in implementing the principle of the peaceful settlement of international disputes and was committed to settling any disputes with Nigeria's neighbours through the Court. She urged other Member States to make use of existing procedures for the prevention and settlement of disputes and reiterated her Government's commitment to the principles set out in the Manila Declaration.

26. She welcomed the progress in clearing the backlog in preparation of the *Repertoire* and the *Repertory*, both of which were valuable research tools for the international community, and encouraged Member States to make additional contributions to the two trust funds established for that purpose.

27. With regard to the working methods of the Special Committee, steps should be taken to make funds administration more efficient, transparent and accountable, in accordance with the Financial Regulations and Rules of the United Nations, in order to enhance its efficiency and to support consolidated programmes and activities in areas such as information-gathering and -sharing, publication of relevant materials, promotion of security and peace, and political and legal capacity-building. Most

importantly, information-sharing must include periodic updates on donors' contributions and funding recommendations and allocations. Her delegation would continue to support the work of the Special Committee and encouraged Member States to help to strengthen its working methods.

28. **Mr. Hill** (United States of America) said that his delegation welcomed the proposal, made by the delegation of the Philippines, to commemorate the thirtieth anniversary of the Manila Declaration and supported the draft resolution recommended by the Special Committee in that regard. He also welcomed the positive developments with regard to the Special Committee's efficiency and working methods; it had before it a number of long-standing proposals, some of which showed considerable overlap. Moreover, because many of the issues raised therein had been taken up elsewhere in the United Nations, it had shown little enthusiasm for acting on those proposals or discussing them at length. During the Special Committee's 2012 session, in a welcome step towards the much-needed rationalization of its work, two such proposals had been withdrawn or set aside on the grounds that they were outdated and had been overtaken by events elsewhere in the Organization. Another welcome step was the Special Committee's decision to delete from its annual report a section on recommendations, which contained rote, rollover provisions that had become redundant. The Special Committee should remain focused on ways to improve its productivity and should give serious consideration to reducing the frequency and/or duration of its sessions.

29. With regard to the items on the Special Committee's agenda concerning international peace and security, his delegation remained of the view that it should not pursue activities that would duplicate or be inconsistent with the roles of the principal organs of the United Nations as set forth in the Charter, including consideration of a revised working paper calling for a new, open-ended working group to study the proper implementation of the Charter with respect to the functional relationship of its organs and another long-standing working paper that called, *inter alia*, for a legal study of the General Assembly's functions and powers.

30. His delegation welcomed the measures taken elsewhere in the Organization to ensure that the system of targeted sanctions remained a robust tool for

combating threats to international peace and security and noted that the shift to targeted sanctions had led to reductions in unintended adverse impacts on third States; therefore, that issue no longer merited discussion by the Special Committee. His delegation maintained its opposition to the proposal to request an advisory opinion on the legal consequences of the use of force from the International Court of Justice.

31. While his delegation was not, in principle, opposed to exploring new subjects that might warrant consideration by the Special Committee, caution should be exercised; any items added to its agenda should be of a practical and non-political nature and should not duplicate efforts under way elsewhere in the United Nations system.

32. His delegation commended the Secretary-General's ongoing efforts to reduce the backlog in preparation of the *Repertory* and the *Repertoire*, both of which provided a useful resource on the practice of United Nations organs.

33. **Mr. Baghaei Hamaneh** (Islamic Republic of Iran) said that his delegation attached great importance to the work of the Special Committee, which had made significant contributions to the cause of peace and security, justice, the rule of law and the peaceful settlement of disputes at the international level, and welcomed the new and revised proposals submitted for its consideration. The Manila Declaration remained relevant to current international relations and should be implemented fully. States had an obligation to refrain, in their international relations, from the threat or use of force against the territorial integrity or political independence of any other State, yet certain States continued to defy that basic principle by frequently threatening others. States also had an obligation to settle their disputes by peaceful means; adherence to those principles was a necessary prerequisite for the rule of law at the international level. The Special Committee had an important role to play in addressing those concerns and his delegation supported serious consideration of all proposals put forward to that end, including the proposal, submitted by the delegations of Belarus and the Russian Federation, to request an advisory opinion from the International Court of Justice as to the legal consequences of the resort to the use of force by States without prior authorization by the Security Council, except in the exercise of the right to self-defence.

34. Sanctions could be imposed as a last resort where the Security Council had determined — on the basis of valid evidence, not speculation or misinformation — that an actual threat to peace or breach of the peace existed and, even then, only when peaceful means of resolving the situation had been exhausted or proved inadequate. In imposing sanctions, the Council must act in strict conformity with the Charter; it must not seek to deprive any Member State of its legitimate rights under international law, nor could it consider a lawful act by a State to be a threat to international peace and security.

35. As an organ of the United Nations established by intergovernmental agreement, the Council was subject to and obliged to comply with legal obligations established under the Charter and with peremptory norms of international law (*jus cogens*). Its political character did not release it from those obligations, and it must be held accountable for the consequences of sanctions imposed in pursuit of unlawful objectives or as a result of political pressure. Sanctions could not be considered lawful if they resulted from political manipulation of the Council by some permanent members or from arbitrary and politically motivated determination of the existence of a threat to peace and security. States that sought to impose such sanctions bore international responsibility for the wrongful act of the Organization in applying them.

36. The application of unilateral economic sanctions against developing countries as an instrument of foreign policy was cause for serious concern. Such sanctions — which were almost always imposed by one State on many developing countries — were morally wrong; they not only undermined the rule of law at the international level, but also infringed on the right to development, led to the violation of basic human rights and contravened international law and the Charter of the United Nations. In many cases, unilateral sanctions were imposed as a result of the extraterritorial application of domestic law against legal and natural persons in other countries, which also constituted a violation of international law.

37. A number of speakers had tried to downplay the issue by highlighting the targeted nature of such sanctions. In practice, however, they merely targeted the daily lives of ordinary citizens in the hope that they would pressure their Governments into submitting to the illegitimate demands of those imposing the sanctions. Far from being “smart”, such sanctions were

a brutal instrument used to punish nations for insisting on their right to self-determination and political independence; they resulted in untold suffering.

38. The Islamic Republic of Iran had been subjected to various sanctions from the first days of its revolution. Now the United States of America was using his country’s peaceful nuclear programme as a pretext to abuse the Council for the purpose of imposing unilateral measures, despite the fact that there was not a single piece of credible evidence to support the claim that his country’s nuclear programme was being, or even might be, diverted for military purposes.

39. **Mr. Chekkori** (Morocco) said that his delegation attached great importance to the work of the Special Committee and hoped that greater efforts to achieve tangible results would be made. He reiterated his delegation’s firm position that sanctions under Chapter VII of the Charter should be imposed only as a last resort. Every effort must be made to eliminate the negative impact of sanctions not only on non-targeted individuals, but on third States. In addition, sanctions must have a specific time frame and must be regularly reviewed with a view to amending or suspending them when the reason for their imposition no longer existed. He welcomed the improvement in the working methods of the Security Council sanctions committees and the increased emphasis on capacity-building aimed at helping Member States to fulfil their obligations under the relevant Council resolutions.

40. His delegation strongly supported the ongoing role of the United Nations as the international forum for issues relating to the maintenance of international peace and security and the promotion of human rights and sustainable development. It attached great importance to the Manila Declaration and supported the proposal to commemorate its thirtieth anniversary. There was a need to make optimal use of the Special Committee’s resources and consider ways of enhancing its work, in particular with regard to future subjects of discussion.

41. He welcomed the progress in eliminating the backlog in the preparation of the *Repertory* and the *Repertoire*, which helped to preserve the Organization’s institutional memory. He hoped that they would be made available in all official languages of the Organization on the United Nations website so that as many people as possible could use them.

42. **Mr. Al-Adhami** (Iraq) said that the purpose of sanctions imposed by the Security Council was to maintain international peace and security and ensure that the targeted country respected international law; they should not be used to inflict damage on its infrastructure and economy. Having suffered the catastrophic effects of sanctions, Iraq attached great importance to examining their impact in order to ensure that they did not result in collective punishment of a country's most vulnerable people while leaving its leadership unaffected. Human rights principles and international humanitarian law must be respected, sanctions must have a specific time frame and, where the Security Council wished to extend them, it must give clear reasons for doing so.

43. His delegation supported the draft recommendation of the Special Committee on the thirtieth anniversary of the Manila Declaration. Member States should be reminded of their legal obligation to use mechanisms for the peaceful settlement of disputes and not to resort to the threat of force.

44. With regard to the *Repertory* and the *Repertoire*, his delegation supported the recommendation contained in paragraph 71 of the report of the Special Committee (A/67/33).

45. Regional organizations had an important role to play in the maintenance of international peace and security, particularly in the context of regional conflicts. His delegation therefore supported the proposal, submitted to the Special Committee by the delegation of Ghana, which sought to promote cooperation between the United Nations and regional organizations on such matters.

46. **Mr. Nikolaichik** (Belarus) said that his delegation attached great importance to the Special Committee as the only body of the whole whose purview encompassed the legal aspects of reform of the United Nations. When participating in its work, States must show political will to achieve results. The increasing involvement of the Special Committee in current questions of international law required it to improve its efficiency; at the same time, its practice of taking decisions by consensus should continue.

47. The Special Committee's consideration of matters relating to reform of the Organization in no way hindered the discussion of those matters elsewhere in the United Nations system. As a subsidiary body of the

General Assembly, it had the authority to make recommendations to the Assembly, including on the interpretation of the Charter and proposed amendments thereto.

48. The Security Council was the appropriate forum for the imposition of coercive measures, including sanctions, and his delegation welcomed the efforts to minimize their negative impact on third States and ensure that they were proportionate and conformed to the norms of international law. Work on the draft document relating to basic conditions and standard criteria for the introduction and implementation of sanctions and other coercive measures should continue. His delegation shared the view that sanctions should not be applied as a pre-emptive measure. They should also be subject to ongoing review in order to safeguard the interests of third States and uphold the rule of law in international relations.

49. All proposals aimed at enhancing the legal framework for the Organization's work, including the joint Russian-Belarusian proposal, were worthy of discussion and could contribute to the process of reform of the Organization. The Venezuelan proposal to establish an open-ended working group to study the proper implementation of the Charter of the United Nations with respect to the functional relationship of its organs and the Cuban proposal concerning the relationship between the General Assembly and the Security Council merited serious study. The Organization's response to threats to international peace and security must be consistent with the Charter and with the competence of the respective organs.

50. He welcomed the thirtieth anniversary of the Manila Declaration and hoped that all States would abide by its provisions, which could form the basis of a new treaty system for the peaceful settlement of disputes. Lastly, he expressed his delegation's appreciation for the work carried out on the *Repertory* and the *Repertoire*.

51. **Ms. Diaz Mendoza** (Bolivarian Republic of Venezuela) said that it was vital to ensure that the Charter was properly implemented and that each of the organs of the United Nations was carrying out its functions appropriately, without detriment to any of the others. The Special Committee had an important role to play in making the United Nations an organization that effectively promoted friendship and peace among the world's peoples and Governments and encouraged

international cooperation in efforts to achieve the goals of development and social justice established in the Charter. Democratization, including urgent reform of the Security Council's membership and decision-making process and strengthening of the General Assembly's role as the Organization's democratic and universal organ, was essential.

52. It must be borne in mind that the Assembly had the power to encourage the progressive development of international law and its codification. Article 24 of the Charter did not necessarily empower the Security Council to take up issues that fell within the purview of the Assembly or the Economic and Social Council, including the establishment of norms. The trend of usurpation of such issues by the Council must be reversed since it weakened the role of the Assembly, and thus of all Member States, and undermined the rule of law within the Organization. As the only United Nations organ with the power to consider any issue that it chose, the Assembly should formulate the Organization's principal policies and decisions and deal with major global issues.

53. The Special Committee should play a more active role in legal matters and should consider measures aimed at revitalizing the General Assembly and enabling it to exercise its powers, in particular with regard to international peace and security. She welcomed the Special Committee's continued consideration of the working paper submitted by her Government.

54. Member States had both a duty, under Article 2, paragraph 3, of the Charter, to settle their international disputes by peaceful means and the right to choose the means of dispute settlement. The Organization, for its part, should strengthen its capacity to help prevent conflicts.

55. She reiterated her delegation's position that sanctions imposed under Chapter VII of the Charter should not be used as a preventive measure. They were justified only when all mechanisms for peaceful dispute settlement had been exhausted and must be consistent with the Charter and international law. The conditions for their lifting should be established and humanitarian considerations should be taken into account. They should not be imposed indefinitely or with the aim of overthrowing legitimately constituted State authorities, nor should they be used to punish a population. Their objectives should be clearly defined

and based on tenable legal grounds and they should be imposed for a specific time frame and lifted when their objectives had been achieved. The United Nations should remain alert to the adverse impact of sanctions on civilians; assistance to third States should remain a priority on the agendas of the General Assembly and the Economic and Social Council; and the Assembly should ensure that certain countries did not use sanctions as a cover for applying unilateral coercive measures broader than those established by the United Nations.

56. The *Repertory* and the *Repertoire* were valuable tools for research and for preservation of the Organization's institutional memory. Her delegation therefore urged the Secretariat to eliminate the backlog in preparation of volume III of the *Repertory*.

57. **Mr. De Vega** (Philippines) thanked all those who had expressed support for the draft recommendation of the Special Committee on the thirtieth anniversary of the Manila Declaration on the Peaceful Settlement of International Disputes (A/AC.182/L.132), proposed by the Philippines. The Working Group of the Whole of the Special Committee had discussed the draft recommendation extensively and reached consensus on it. He therefore wondered whether it was possible, as a matter of procedure, for the Committee to endorse its adoption by the General Assembly.

58. **The Chair** said that he would consult the Bureau on the matter.

59. **Mr. Kim Saeng** (Republic of Korea), speaking in exercise of the right of reply, said that Security Council resolutions 84 (1950) and 88 (1950), which officially recognized the United Nations Command as the entity responsible for maintaining peace in the Korean peninsula, had been duly adopted in accordance with all relevant legal procedures; in particular, the use of the United Nations flag by the United Nations Command had been authorized by resolution 84 (1950). In addition, it was misleading and inappropriate to refer to only one aspect of General Assembly resolutions 3390 (XXX) A and 3390 (XXX) B without placing it in the context of the two resolutions taken as a whole. Regarding the position of the Secretary-General on the matter, a letter dated 24 March 2006, released to the Korean press, had stated that the United Nations Secretariat did not take a formal position with regard to the United Nations Command on the Korean peninsula.



60. **Mr. Kim Yong Song** (Democratic People's Republic of Korea), speaking in exercise of the right of reply, said that the remarks made by the representative of South Korea relating to the United Nations Command were misleading; Security Council resolution 84 (1950) had no legal basis because it had been adopted in the absence of the representative of the former Soviet Union in violation of Article 27, paragraph 3, of the Charter of the United Nations. The Soviet Government had stated that it could not accept resolutions adopted without the participation of its representative.

61. Resolution 84 (1950) recommended the establishment not of a "United Nations Command" but of a unified command under the United States of America. It was the United States that had effectively changed the name of the unified command to "United Nations Command" by referring to it as such in its reports to the Security Council. The Secretary-General had referred to that matter in a letter dated 21 December 1998 addressed to the Minister for Foreign Affairs of the Democratic People's Republic of Korea. The intention of the United States Government had been to use the name of the United Nations to realize its ambition for world supremacy.

62. The fact that the Security Council was not involved in the control and command of the "United Nations Command" constituted a violation of Articles 46 and 47 of the Charter. In addition, General Assembly resolution 3390 (XXX) A stated that alternative arrangements should be made for the maintenance of the Armistice Agreement prior to the dismantlement of the United Nations Command. The fact that the United States was ignoring that provision clearly reflected its ambition to occupy South Korea indefinitely under the name of the United Nations and to dominate the Asia-Pacific region. Moreover, the representative of South Korea's remarks about the resolution were indicative of that country's desire to legalize the indefinite United States presence there and of its anti-unification stance. The Government of South Korea should instead join in putting an end to the history of foreign interference in the national affairs of the Democratic People's Republic of Korea by dismantling the United Nations Command.

63. **Mr. Kim Saeng** (Republic of Korea), speaking in exercise of the right of reply, reiterated that the United Nations Command had been established in accordance with all legal procedures for Security Council

resolutions. Moreover, the Committee was not the appropriate forum in which to discuss its status; such discussions hampered the efficiency of the Committee's work.

64. **Mr. Kim Yong Song** (Democratic People's Republic of Korea), speaking in exercise of the right of reply, said that his delegation considered that the Committee was indeed an appropriate forum in which to discuss the issue. Moreover, there was no justification for South Korea's involvement in the matter as it did not have control and command of the United Nations Command.

65. *Mr. Chekkori (Morocco), Vice-Chair, took the Chair.*

**Agenda item 76: Criminal accountability of United Nations officials and experts on mission (A/67/213)**

66. **Mr. Gonzalez** (Chile), speaking on behalf of the Community of Latin American and Caribbean States (CELAC), said that criminal misconduct by United Nations officials and experts on mission must not go unpunished as it harmed not only the victims, but also the reputation of the Organization and had a detrimental effect on the fulfilment of mandates. While the report of the Secretary-General on the criminal accountability of United Nations officials and experts on mission (A/67/213) showed that some States had taken steps to establish jurisdiction over such offences, it also made it clear that more needed to be done in order to ensure that impunity was not tolerated.

67. It was important for the Committee to continue to be informed of allegations of criminal activity or abuse by United Nations officials and experts on mission, although it was doubtful that the number of reported cases reflected the true extent of the problem. It would also be helpful to have more information on the reporting and tracking methods used and the criteria applied in distinguishing serious misconduct from criminal behaviour. CELAC noted the Secretariat's efforts to establish a standard procedure for notifying the Member States concerned of serious allegations of misconduct involving uniformed personnel deployed as experts on mission but stressed that the same procedure should be followed for incidents involving United Nations officials and non-uniformed experts on mission.

68. CELAC reaffirmed its full support for the policy of zero tolerance of sexual exploitation and abuse and other criminal conduct, while reiterating the need to respect the rule of law in the implementation of that policy; the United Nations should be setting the standard for assistance to those whose rights had been violated. CELAC also welcomed the practical measures described in the report of the Secretary-General concerning training and awareness-raising on United Nations standards of conduct and endorsed the three-pronged strategy of preventive measures, the enforcement of standards of conduct and remedial action to address sexual exploitation and abuse. Discussions between the Secretariat and Member States on the training of United Nations officials and experts on mission and on exercise of the waiver of privileges and immunities should continue. There were many areas where cooperation could be improved but some, such as investigations in the field and during criminal proceedings and the provision and assessment of evidence in administrative and jurisdictional proceedings, presented particular challenges.

69. **Mr. Salem** (Egypt), speaking on behalf of the Group of African States, said that the agenda item under discussion was of great importance to African countries as a large number of United Nations officials and experts were currently deployed in Africa. While commending the contributions and sacrifices of United Nations peacekeepers, officials and experts on mission, the Group noted with concern the instances of sexual exploitation and abuse committed by a few of them. Such irresponsible conduct undermined the Organization's image, integrity and credibility and caused grave harm to the victims. It was of paramount importance to ensure that criminal acts never went unpunished and that the perpetrators were prosecuted. A zero-tolerance policy with regard to sexual abuse and other criminal acts should remain the guiding principle.

70. Jurisdictional gaps could lead to a rise in criminality and suffering and must be addressed. The Group therefore welcomed the efforts of many Member States to establish jurisdiction over crimes of a serious nature committed by their nationals while serving as United Nations officials or experts on mission. Many Member States had also indicated their readiness to afford assistance in criminal investigations and extradition proceedings. The Group stressed the importance of cooperation through information-sharing, exchange of experience and the provision of

legal assistance with a view to strengthening national judicial capacity.

71. The Group commended the improved predeployment training materials developed by the Conduct and Discipline Unit and encouraged troop-contributing countries to highlight the issues of sexual abuse and other criminal acts during the mandatory predeployment training. Past General Assembly resolutions on the subject contained important policy and remedial measures which, if fully implemented, would be useful in addressing the issue. The obstacles to holding United Nations officials and experts on mission criminally accountable must be overcome in accordance with the principles of the rule of law, due process and the Charter of the United Nations.

72. **Mr. Baghaei Hamaneh** (Islamic Republic of Iran), speaking on behalf of the Movement of Non-Aligned Countries, said that, as major contributors and recipients of peacekeeping personnel, the countries of the Movement attached great importance to the issue of accountability. While acknowledging the outstanding contributions and sacrifices of United Nations peacekeepers, it stressed that all United Nations peacekeeping personnel should perform their duties in a manner that preserved the image, credibility, impartiality and integrity of the Organization. It also emphasized the importance of maintaining a policy of zero tolerance in all cases of sexual exploitation and abuse committed by peacekeeping personnel.

73. Implementation of the United Nations Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by United Nations Staff and Related Personnel, adopted by the General Assembly in its resolution 62/214, would help to mitigate the suffering endured by victims of sexual exploitation and abuse. General Assembly resolution 61/291 on the comprehensive review of the whole question of peacekeeping operations in all their aspects should be implemented without delay as it would strengthen accountability mechanisms and help to ensure due process in the investigation of sexual exploitation and abuse.

74. In that connection, full implementation of General Assembly resolutions 62/63, 63/119, 64/110 and 65/20 by all Member States could help to eliminate any jurisdictional gaps. Subsequently, an assessment could determine whether further action by the

Assembly was required. Important policy and remedial measures had been agreed upon but still needed to be implemented. The Movement continued to believe that progress on short-term measures was needed and that it was premature to discuss a draft convention on the criminal accountability of United Nations officials and experts on mission.

75. **Mr. Marhic** (Observer for the European Union), speaking also on behalf of the acceding country Croatia; the candidate countries Iceland, Montenegro, Serbia and the former Yugoslav Republic of Macedonia; the stabilization and association process countries Albania and Bosnia and Herzegovina; and, in addition, Armenia, Georgia, the Republic of Moldova and Ukraine, said that the European Union and its Member States continued to support a zero-tolerance policy for crimes committed by United Nations officials and experts on mission for the sake of the victims, the host State and the reputation and effectiveness of the Organization. He therefore welcomed the indication, in the Secretary-General's report on special measures for protection from sexual exploitation and sexual abuse (A/66/699), that allegations of criminal conduct against staff members and experts on mission would be properly investigated.

76. Training and awareness-raising on United Nations standards of conduct should remain at the centre of the preventive measures adopted by field missions. He welcomed the implementation of such additional measures at Headquarters level by the Department of Peacekeeping Operations and the Department of Field Support.

77. Cooperation between States and the United Nations in investigating allegations of criminal conduct was essential. It was also crucial for the State of nationality of a person who committed a crime of a serious nature to establish the necessary jurisdiction to investigate and prosecute such crimes. States must fully implement their obligations under international law, including applicable agreements.

78. The European Union and its member States supported the dual-track approach, combining short-term and long-term measures in order to deal with existing jurisdictional gaps. They stood ready to consider a comprehensive legal framework within which alleged crimes could be investigated and prosecuted if necessary and encouraged other delegations to do the same.

79. **Ms. Robertson** (Australia), speaking on behalf of Canada, Australia and New Zealand (CANZ), said that accountability was a fundamental aspect of the rule of law. The principle that all persons must be answerable to the law was especially important for United Nations officials and experts on mission; they were the "face" of the United Nations to the outside world and their work embodied the Organization's commitment to promote security, development and human rights. When they engaged in criminal conduct, they undermined that work and tarnished the Organization's reputation.

80. The CANZ group applauded the referral of the cases of 17 United Nations officials to the relevant States of nationality for investigation and possible prosecution. However, more needed to be done to close jurisdictional gaps that could be used by individuals to escape accountability. The CANZ group called on all Member States to consider establishing jurisdiction over serious crimes committed by their nationals while serving as United Nations officials or experts on mission and to report on efforts to investigate and, where appropriate, prosecute their nationals for such crimes. The CANZ group supported the proposal to draft a convention requiring Member States to exercise criminal jurisdiction over their nationals participating in United Nations operations abroad as a way of strengthening the integrity of the United Nations system and promoting the highest standards of professionalism among its personnel.

81. **Mr. Stuerchler Gonzenbach** (Switzerland) said that United Nations officials and experts must be held accountable for crimes committed because such acts undermined the credibility and legitimacy of the Organization. Member States and the Secretary-General had an obligation both to the victims and to the people of the host country to prevent and punish such offences. States should ensure that their nationals who committed a crime while on mission for the United Nations could be brought to justice, if necessary by adapting their legislation to include the active personality principle. His delegation welcomed the adoption of General Assembly resolution 66/93, which strongly urged States to consider establishing, to the extent that they had not yet done so, jurisdiction over crimes committed by their nationals while serving as United Nations officials or experts on mission; however, it regretted that the resolution did not refer to military personnel.

82. The reporting system required improvement; perhaps the Secretary-General could draw up a list of States that were already applying the active personality principle with regard to their officials and experts on mission in order to encourage other States to do the same. In the long term, the most appropriate solution would be to draft an international convention covering all categories of personnel on peacekeeping operations and missions.

83. **Mr. Kalala** (Democratic Republic of the Congo) said that his Government greatly appreciated the efforts of United Nations peacekeeping personnel, who often worked in dangerous conditions. It was grateful to the international community for the sacrifices made over the years and deplored the fact that they had been tarnished by the scandalous behaviour of a number of individuals. Since sexual exploitation and abuse by a substantial number of United Nations peacekeeping personnel in his country in 2004 had seriously damaged the image of peacekeeping, the Secretary-General had rightly adopted a policy of zero tolerance of sexual exploitation and abuse.

84. To date, however, practically no such acts had been the subject of appropriate disciplinary action and penalties. His delegation was therefore forced to draw the same conclusion as in the past: despite all the rhetoric on the subject of criminal accountability, in practice impunity was assured. Host States were often constrained by headquarters agreements and had no room to manoeuvre; at best, they could refer issues to the United Nations. Since the United Nations could not punish them, they were sent back to their countries of origin, which often did not want to publicly admit the misconduct of their nationals and were therefore reluctant to prosecute them.

85. Referring to the Secretary-General's report (A/67/213), he noted that only four Member States had responded to the request of the General Assembly, in its resolution 66/93, for information concerning the status of their efforts to deal with crimes of a serious nature and the assistance they might wish to receive from the Secretariat. Moreover, of the 17 cases involving United Nations officials that had been referred to the States of nationality for investigation and possible prosecution, none related to sexual crimes and the report did not mention any cases in which the United Nations had decided to waive immunity for those who had sullied its reputation.

86. His delegation supported the efforts of the Department of Peacekeeping Operations and the Department of Field Support to enforce the United Nations standards of conduct and welcomed the training and awareness-raising activities carried out to that end; however, there had been little progress in that regard over the past year. His delegation therefore reiterated its call for an international convention on the criminal accountability of United Nations officials and experts on mission and urged troop-contributing countries to investigate allegations of sexual misconduct reported by United Nations investigators and to report to the Secretary-General on the outcome of those investigations. The perpetrators of such acts should pay compensation to their victims, including support payments for the children born as a result of their actions.

87. **Mr. Choi Yong Hoon** (Republic of Korea) said that failure to bring to justice United Nations officials and experts on mission who committed serious crimes created the false impression that they used the immunities given to them for personal benefit; recurring abuses could seriously damage the credibility and impartiality of the Organization. In that context, his delegation welcomed the referral, during the most recent reporting period, of the cases of 17 United Nations officials to the States of nationality for investigation and possible prosecution. Those States should take the necessary steps, including thorough investigation, with regard to the cases within their jurisdiction and should inform the Organization of the progress and final outcome of the cases.

88. His delegation welcomed the practical measures taken to strengthen existing training on United Nations standards of conduct, including through predeployment and in-mission induction training. The prevention of offences through such measures was the responsibility of both the Secretary-General and Member States. His country provided a three-month intensive training course for specially selected peacekeeping personnel, who appreciated the enhanced professional ethics element of the training programme.

89. **Mr. Maza Martelli** (El Salvador) said that criminal acts by United Nations officials and experts on mission must not be allowed to go unpunished. Under Salvadoran law, crimes committed on national territory by Salvadoran nationals and those committed under other jurisdictions could be tried in accordance with the principles of territoriality, nationality and

universality where the crime impaired internationally protected legal rights or entailed a serious breach of human rights.

90. All States should take the necessary measures to establish jurisdiction over crimes committed by United Nations officials and experts on mission. However, the establishment of new criminal offences was not necessarily required; as serious crimes against life, integrity of the person and sexual freedom were already prohibited under most penal systems, it was merely necessary to ensure that acts that were punishable when committed on national territory were also punishable when committed by persons on mission. It was also important to provide for cooperation in gathering evidence and prosecuting crimes committed wholly or partly outside the national territory. Salvadoran law provided for the possibility of setting up joint investigation teams with foreign or international institutions where the alleged perpetrator had links with an international organization.

91. Pursuant to paragraph 8 of General Assembly resolution 66/93, his delegation considered that 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) recognized that a host State should not necessarily be considered incapable of exercising jurisdiction merely because a peacekeeping operation was taking place there. It shared the view that each State's capacity in that regard should be evaluated on a case-by-case basis. The report contained important legal principles, but any future codification of the topic should first establish precisely which individuals were included in the category of officials and experts on mission. A broad approach was essential in order to cover all individuals involved in missions and a broad range of crimes. His delegation considered it premature to begin discussing the development of an international convention on criminal accountability but stood ready to continue its cooperation in that regard.

92. **Mr. Sharma** (India) said that his Government was concerned about crimes alleged to have been committed by United Nations officials and experts on mission. His delegation therefore welcomed General Assembly resolution 66/93, the implementation of which would help fill jurisdictional gaps in Member States that did not currently exercise extraterritorial

jurisdiction over crimes committed by their nationals abroad.

93. The Indian Penal Code covered extraterritorial offences committed by Indian nationals serving at home or abroad, and the Government was committed to punishing those found guilty of misconduct. The Code of Criminal Procedure provided for mutual legal assistance in criminal matters; India had entered into some 40 bilateral agreements on mutual legal assistance and the Extradition Act provided for the extradition of persons guilty of extraditable offences. In the absence of a bilateral treaty on extradition or mutual assistance in criminal matters, the Government could offer assistance on a reciprocal, case-by-case basis or could use an international convention as the legal basis for considering extradition.

94. His delegation welcomed the Organization's efforts to provide training and raise awareness of the standards of conduct required of its officials and experts on mission. Addressing the issue of accountability for misconduct did not require the development of an international convention; instead, Member States must ensure that their laws established jurisdiction for the prosecution of such conduct by their nationals serving as United Nations officials or experts abroad and provided for international assistance in the investigation and prosecution of such crimes.

95. **Ms. Enersen** (Norway) said that her delegation welcomed States' efforts to establish jurisdiction over crimes committed by their nationals while serving as United Nations officials or experts on mission and to cooperate in the exchange of information in order to facilitate investigations and prosecutions. Serious crimes committed by United Nations personnel, including sexual exploitation and abuse, damaged the Organization's integrity and undermined support for its work. Her delegation therefore fully supported the policy of zero tolerance of such crimes.

96. While awareness-raising and training on standards of conduct were necessary, provision must be made for reparation in the event that crimes were committed despite such training. Criminal accountability of United Nations personnel must be addressed by the Organization both in individual cases and on a broader scale. The United Nations umbrella should not be used as a cover for criminal conduct; one case of impunity was one too many.

97. Further action was therefore needed at both the national and international levels. The low number of cases reported should not be used as justification for maintaining the legal status quo. Her delegation urged all States to establish jurisdiction over serious crimes committed by their nationals while serving as members of a United Nations mission. It supported the development of an international convention to ensure that criminal conduct was addressed and urged States to cooperate with one another and with the United Nations in the event of an allegation of serious crime; a number of General Assembly resolutions offered concrete recommendations for strengthening such cooperation. Clearly, such cooperation was governed by domestic law, which, however, could not serve as a justification for refusal to cooperate.

98. **Mr. Pavlichenko** (Ukraine) said that crimes committed by United Nations officials or experts on mission must be properly investigated and any guilty parties brought to justice in order to preserve the credibility and authority of the Organization. Investigations and prosecutions must, of course, be conducted in accordance with international law and with respect for human rights and due process. The United Nations should continue to encourage States to establish and exercise criminal jurisdiction over their nationals participating in United Nations operations who committed serious crimes in a host State, and to cooperate among themselves and with the Organization in the investigation of such crimes. In the longer term, the proposal to negotiate an international convention to fill jurisdictional gaps merited consideration by the Committee.

99. Training and awareness-raising on United Nations standards of conduct should remain at the centre of the preventive measures adopted by field missions, and his delegation welcomed the implementation of such additional measures at Headquarters level by the Department of Peacekeeping Operations and the Department of Field Support. In March 2013, Ukraine would host a regional workshop as part of the Department of Peacekeeping Operations initiative to develop a strategic guidance framework for United Nations police. The prevention of crimes by United Nations officials and experts on mission would be one of the issues addressed at the workshop.

100. In recent years, the number of deliberate attacks on United Nations peacekeeping personnel had increased and the death toll since 1948 had reached

more than 3,000, including one Ukrainian national killed in 2008 while serving in the United Nations Interim Administration Mission in Kosovo (UNMIK). He urged Member States to continue to pay due attention to the safety and security of national contingents deployed to peacekeeping missions and to participate in good faith in the investigation of crimes committed against them. His delegation welcomed the Secretary-General's comprehensive report on all processes involved in the investigation and prosecution of crimes committed against deployed United Nations peacekeepers (A/66/598) and looked forward to being briefed further by the Secretariat on the Organization's policies, rules and procedures relating to internal investigations.

101. **Mr. Kalinin** (Russian Federation) said that his delegation welcomed the preventive measures implemented by the Department of Peacekeeping Operations and the Department of Field Support, including training and awareness-raising activities. However, further efforts to prevent sexual exploitation and abuse were needed. His delegation attached particular importance to the induction of new personnel and predeployment training on the United Nations standards of conduct, which were the joint responsibility of States and the Organization.

102. United Nations officials and experts on mission who committed crimes must be held accountable for their acts through effective and fair trials that conformed to international standards. The State of nationality of United Nations staff suspected of misconduct should play the leading role in exercising criminal jurisdiction. The Secretary-General's report (A/67/213) showed that, as in the past, the majority of the crimes reported had been motivated by the prospect of financial gain, chiefly fraud and theft. Further reflection on appropriate ways of dealing with that problem was needed.

103. It was encouraging to note that the Secretariat had received detailed information from States on the progress of cases previously referred to them. The Secretariat should provide States with timely and full information on cases in which their nationals serving with the United Nations were suspected of crimes, and mechanisms for international cooperation in that regard should be strengthened. Appropriate measures should be taken to facilitate the use of information from internal United Nations investigations for the purposes of criminal proceedings initiated by States, bearing in

mind due process considerations. While his delegation understood the Organization's policy with regard to confidentiality and privileges and immunities, the Secretariat should cooperate constructively with the law enforcement and judicial authorities of prosecuting States.

104. His delegation was not convinced of the existence of legal gaps or other obstacles that could be eliminated only by developing a legally binding document on criminal accountability, such as an international convention. However, it would strive to find the best ways of addressing problems in that regard. For the time being, States should focus on applying the existing norms in full and on implementing the practical measures approved by the General Assembly.

*The meeting rose at 1 p.m.*