United Nations A/C.3/73/SR.47

General Assembly
Seventy-third session

Official Records

Distr.: General
18 January 2019

Original: English

Third Committee

Summary record of the 47th meeting
Held at Headquarters, New York, on Tuesday, 13 November 2018, at 3 p.m.

Chair: Mr. Saikal . . . . . (Afghanistan)

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18-19212 (E)

The meeting was called to order at 3.05 p.m.

Agenda item 74: Promotion and protection of human rights (*continued*)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/C.3/73/L.44 and A/C.3/73/L.57)

Draft resolution A/C.3/73/L.44: Moratorium on the use of the death penalty

1. **The Chair** invited the Committee to continue its discussion subsequent to the adoption of the amendment to the draft resolution.

2. **Mr. Vieira** (Brazil), speaking on a point of order, said that his point of order should have been admitted before the adjournment of the morning meeting. His delegation's constant calls for the secretariat not to proceed in a manner that might affect the vote on draft resolution A/C.3/73/L.44 had all been ignored.

3. In fact, the decisions taken by the Chair during the forty-sixth meeting, under the guidance of the secretariat, had been completely contrary to the rules of procedure. By deciding to split the voting procedure for the amendment contained in document A/C.3/73/L.57 and the draft resolution to which it referred, the Chair had acted contrary to rule 130, which clearly stated: "If one or more amendments are adopted, the amended proposal shall then be voted upon." Nothing in rule 130 indicated or suggested that the voting on the amended proposal could be suspended or adjourned, since it clearly formed an integral part of the same voting procedure.

4. To make matters worse, the Chair had failed to announce his decision to adjourn the meeting after the vote on the amendment and before action on the draft resolution itself. Rule 106 read: "The Chairman shall declare the opening and closing of each meeting of the committee, direct its discussions, ensure observance of these rules, accord the right to speak, put questions and announce decisions.[…] He may also propose the suspension or the adjournment of the meeting or the adjournment of the debate on the item under discussion." There was a rationale for such a procedure: in announcing his decision or his proposal to adjourn the meeting, especially in the middle of the consideration of a proposal, the Chair must allow delegations the opportunity to react to that decision or proposal. That was the only way to ensure that delegations could exercise their rights under rule 113, which read: "During the discussion of any matter, a representative may rise to a point of order, and the point of order shall be immediately decided by the Chairman in accordance with the rules of procedure. A representative may appeal against the ruling of the Chairman. The appeal shall be immediately put to the vote".

5. The Chair, however, had simply decided to hit the gavel, saying that the meeting was over, despite the evident and eloquent requests for the floor from his delegation. That act had deprived Brazil of its right to challenge the Chair's ruling on the matter. Ultimately, it had deprived the General Assembly of its right to decide on such challenge.

6. The formalistic and biased approach taken by the Chair and the secretariat, both of whom had stated that the Chair had hit the gavel before he could hear or see any delegation raising a point of order, was not in accordance with rules 106 and 113. It was also absolutely unacceptable from a rational and ethical standpoint, since it had deprived a delegation of the right to raise a point of order at the proper moment to do so. Hearing from the secretariat that his delegation "should have taken our shoes off and started hitting their table" in order to catch their attention was unheard of and disrespectful.

7. In conclusion, he deplored the breach of procedure that had taken place during the forty-sixth meeting. Respect for procedure underpinned the United Nations; allowing rules to be ignored and broken jeopardized all the work conducted there.

8. **Mr. Khane** (Secretary of the Committee) said that the point of order just raised by the representative of Brazil was not in line with the rules of procedure governing points of order. A point of order must consist of a question put to the Chair on which he or she could immediately rule.

9. In response to the points raised, rule 130 stipulated the order in which amendments must be acted upon. Nowhere did it state that a draft resolution and the amendment thereto must be acted upon at the same meeting. In fact, when the Third Committee had adopted its first draft resolution on the moratorium on the use of the death penalty several years earlier, the proceedings relating to that single resolution and all the amendments had been spread over at least three meetings. He invited the representative of Brazil to check the record in that respect.

10. Lastly, the secretariat had not seen the delegation of Brazil raise a point of order before the adjournment of the forty-sixth meeting. He and the Chair had seen the name of Brazil appear on the monitor after the meeting had been adjourned. In that context, he had made a

historical reference to Chairman Khrushchev, who, as most Committee members knew, had once taken off his shoe and banged it on the desk to get the attention of the President of the General Assembly. If, as claimed, the representative of Brazil had motioned and clapped to signal a point of order, it was strange that no one on the podium had seen it. In any event, he rejected the accusation levelled at the secretariat. The delegation of Brazil had approached the secretariat earlier on a bilateral basis to say that it disagreed with voting on the draft amendment during the morning meeting because it would skew the result. The secretariat had no business determining when action was to be taken on a draft resolution with a view to affecting the outcome of the result. Towards the end of the forty-sixth meeting, the Chair had indicated that less than 10 minutes of meeting time remained, but the Committee could take action on the draft amendment if there was sufficient time once explanations of vote before the voting had been delivered. There had been three or perhaps four explanations of vote, which had allowed the Committee to take action on the draft amendment at or about 1.10 p.m. If any delegation had been unhappy with that decision, that was the time to say so, not after the gavel had fallen.

11. **Mr. Skoknic Tapia** (Chile) said that his delegation had voted against the amendment. The new paragraph, which had not been included during the consultations in order to reach agreement, set a precedent that his delegation did not wish to be part of. The paragraph undermined the spirit of the draft resolution and weakened the progressive development of international human rights law. Similar proposals had been rejected in other forums, including in the Human Rights Council in September 2017. The adoption of the amendment was regrettable; the General Assembly, as the principal organ of the United Nations, was sending the wrong message by placing other considerations above unconditional respect for human rights. While his delegation regretted the inclusion of the paragraph, it called on other delegations to vote in favour of the draft resolution, including those that had had concerns prior to adoption of the amendment.

12. **Ms. Sorto Rosales** (El Salvador) said that a balanced text had been achieved that mentioned the International Covenant on Civil and Political Rights as one of the main frameworks within which the moratorium should be addressed. El Salvador was committed to upholding the right to life, among other human rights. It had carried out no executions since 1973 and its Constitution of 1983 prohibited the use of the death penalty for civil crimes. It had since maintained a de facto abolition, in accordance with the moratorium, despite the civil war. El Salvador would therefore vote in favour of the draft resolution.

13. **Mr. Mohamed** (Sudan) said that the diversity among "we the peoples of the United Nations" manifested itself in various ways. States were culturally, ethnically and religiously different, but they were united because everyone belonged to humanity. The delegation of Sudan therefore rejected the imposition of the moratorium and the efforts to imbue it with a human rights and moral character. It saw it as a form of standardization and coercion, which ran counter to human rights tenets.

14. It was well known that the International Covenant on Civil and Political Rights did not prohibit capital punishment. Rather, its premise was that all safeguards must be in place and the penalty must not be imposed lightly. Sudan fully subscribed to that position and applied the death penalty only when the commission of a very serious crime had been proven beyond all doubt. The national legal system permitted the family of a murder victim to accept monetary compensation for the non-imposition of the death penalty on the killer, which had reduced its use considerably. A lesser penalty, such as imprisonment, was applied in such cases. The death penalty was used in exceptional circumstances, when innocent lives had been lost or when people's well-being or very existence were under threat from crimes such as drug trafficking. To effectively deter the commission of crimes leading to murder was to preserve life, not deprive it. For those reasons, his delegation had voted in favour of the amendment.

15. **Mr. Kayinamura** (Rwanda) said that, eleven years earlier, Rwanda had made a bold decision to abolish the death penalty. It had been a very difficult decision to make as a country and a people emerging from genocide and had required sacrifices beyond human imagination, particularly from the genocide survivors. However, they had agreed to those sacrifices because they had understood it to be the only way to build a future together. Rwanda had arrived at that decision as a sovereign State capable of determining what was in its best interests. The fact that it had its own legal space had enabled it to make that decision.

16. In that spirit, Rwanda had voted in favour of the amendment, as it recognized the sovereign right of all States to develop their own legal systems, including to determine appropriate legal penalties in accordance with international law obligations. The experience of Rwanda since abolishing the death penalty had shown that it made the right decision. However, his country also believed that the sovereign rights of all States should be used to move closer to abolishing the death

penalty in order to give offenders the opportunity for rehabilitation.

17. **Ms. Fangco** (Philippines) said that her delegation had voted in favour of the amendment. Singapore, as a sovereign State, could choose to retain the death penalty, but it could also decide to abolish it. By the same token, the Philippines, which had repealed its law on the death penalty, could decide to reinstitute it. It was purely a matter of sovereignty, which must be respected by all States if they wished their own sovereignty to be similarly respected. Sovereignty was the ability to stand outside the general norm, if one even existed, and meant that a State could take any measures required to ensure its survival and to ensure peace and security.

18. **Ms. Prizreni** (Albania) said that her delegation had not supported the amendment for reasons of principle and practicality. As a sponsor of the draft resolution, Albania believed that the issue was amply covered by the text. She encouraged those who had supported the amendment to vote in favour of the draft resolution, given that they had secured what they believed to be an important change.

19. **Mr. Al-Mouallimi** (Saudi Arabia) said that it was deeply regrettable that virtually none of the proposed changes to the text of draft resolution A/C.3/73/L.44 had been accepted. Saudi Arabia had voted in favour of the proposed amendment to the draft resolution, contained in document A/C.3/73/L.57, as it believed strongly in the inalienable sovereign right of all Member States of the United Nations to develop their own legal systems, in accordance with international law, with a view to promoting stability and security. Certain States had voted against the proposed amendment in an attempt to impose their social and cultural values on all other countries − an attempt that Saudi Arabia categorically rejected. The use of the death penalty did not contravene the provisions of international law, the International Covenant on Civil and Political Rights or other relevant international instruments, and that penalty was imposed in Saudi Arabia only for the most serious crimes and in the narrowest of circumstances. Saudi Arabian law provided for all requisite procedural safeguards so as to ensure that no death sentence was carried out unless there was irrefutable evidence that the sentenced individual had committed the offence of which he or she had been accused.

20. The imposition of the death penalty by States helped make societies safer, more secure and more stable, could provide justice for victims' families and could reduce the number of reprisals and revenge killings in societies with a strong tradition of tribal justice. Saudi Arabia would therefore vote against the draft resolution.

21. **The Chair** invited the Committee to vote on draft resolution A/C.3/73/L.44, as amended.

22. **Mr. Khane** (Secretary of the Committee) said that Guinea-Bissau had joined the sponsors.

23. **Mr. Gafoor** (Singapore) said that he wished to thank delegations for their strong show of support for the amendment. He believed that, deep in their hearts, those who had not supported it did in fact agree with it, and he hoped to be able to persuade them to be on the side of reason and logic when the issue was considered in the future.

24. Singapore had the greatest respect for countries that had abolished the death penalty or adopted a moratorium. It respected that those countries had made their sovereign decisions to determine their own legal systems. In that regard, the adoption of the amendment was a small step forward for multilateralism, because the Committee had decided that paragraph 1 had a rightful place in the draft resolution and that it was not something to be wished away, dismissed, deleted or ignored. He hoped that the proponents of the draft resolution would take note of that clear message.

25. It had, however, been a great struggle to reinstate previously adopted language in the draft resolution. In fact, it had not been easy for anyone to make any amendments. He wondered why it should be so difficult to make a single change to the text and to reaffirm the important principle of sovereignty. He did not understand why there was no willingness to listen and hoped that the proponents would review their approach to the draft resolution. He invited them to engage in debate and dialogue, not in an exercise to delete and defeat. Singapore and the other sponsors of the amendment would always be ready to engage on the basis of mutual respect and understanding. During the informal consultations, they had negotiated constructively and in good faith, but their proposals had not been accepted. The adoption of the amendment was an important step in the right direction but much more work needed to be done. For instance, paragraph 2 of the amended version, which expressed deep concern about the continued application of the death penalty, contradicted the new paragraph 1, which reaffirmed that countries had the sovereign right to decide for themselves. The draft resolution needed to avoid making value judgements; furthermore, it was far from balanced and it needed to take account of the views of others. For those and other reasons, Singapore would vote against it.

26. **Ms. Pritchard** (Canada), speaking also on behalf of Australia, Iceland and Norway, said that those delegations opposed the use of the death penalty in all cases, everywhere, in line with article 6 of the International Covenant on Civil and Political Rights. They welcomed the increasing number of States that had implemented de jure or de facto moratoriums on the death penalty and encouraged all States to move in that direction.

27. Where the death penalty was still in use, they advocated for adherence to international safeguards, including respect for due process of law and fair trials. Under article 6 of the International Covenant on Civil and Political Rights, the death penalty could only be imposed for the most serious crimes; it must not be imposed arbitrarily, or on persons under 18 years of age or pregnant women; and anyone sentenced to death had the right to seek pardon or commutation of the sentence. All States parties to that instrument must fulfil their international obligations. No justice system was completely infallible, and the implementation of the death penalty meant that any miscarriage of justice or other failure could not be reversed.

28. The adoption of the amendment was deeply regrettable. The draft resolution as presented by its main sponsors was balanced; it took full account of the sovereign right of States to establish their own legal systems and did not infringe on that right in any way. Nevertheless, given its importance, those countries would vote in favour of it.

29. **Mr. Sarufa** (Papua New Guinea), speaking in explanation of vote before the voting, said that the draft resolution addressed several important core issues, including the right to life, the sovereignty of States and national criminal justice systems. However, the persistent calls for a moratorium on the use of the death penalty, with a view to ultimately abolishing it, were highly insensitive to current realities. As demonstrated by the consultations and the tabling of the amendment, it remained a sensitive, contentious and highly divisive issue for the United Nations, given that no international consensus yet existed on the matter.

30. Papua New Guinea was in favour of ongoing dialogue, mutual respect and understanding on the important issue. Nonetheless, that must not be misconstrued as licence for the opponents of the death penalty to impose their will. His delegation welcomed the willingness of the sponsors of the draft resolution to include certain amendments. However, those changes had been few and far between.

31. The draft resolution suffered yet again from several fundamental flaws. First, it was crafted primarily to suit the inherent and parochial interests of delegations opposed to the death penalty. Secondly, it deliberately omitted the fundamental fact that, under international law, the death penalty was not illegal. While the right to life was protected under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and its Second Optional Protocol, capital punishment was not outlawed, as shown by article 6.2 of the International Covenant. The Second Optional Protocol to the Covenant and other relevant conventions left that question to be decided through the democratic processes of each individual Member State. Papua New Guinea respected its international law obligations but was not a party to the Second Optional Protocol.

32. The inflexibility of the sponsors in refusing to consider the amendment during the informal consultations despite repeated calls from many delegations was regrettable, as was its outright rejection even though the same paragraph had been adopted by the Third Committee and the plenary of the General Assembly at the seventy-first session. Papua New Guinea was pleased that the amendment had passed for the second consecutive time in the Third Committee and hoped that all States had learnt important lessons from the proceedings.

33. According to the sponsors of the draft resolution, the amendment on sovereignty was already referenced in the first preambular paragraph and elsewhere in the resolution and was therefore not needed as a stand-alone paragraph. They had also indicated that the amendment was not in the right spirit for the resolution on the moratorium. Such inferences undermined and devalued the Charter of the United Nations, which was referred to in the first preambular paragraph.

34. The death penalty was valid in Papua New Guinea under the Constitution and Penal Code and it was applied following a due process of law. The importance of State sovereignty regarding the moratorium on the use of the death penalty and the criminal justice system needed to be spelt out separately. States could not afford to conveniently tuck it away under an overarching concept and principle. The draft resolution had unfortunately failed to provide that clarity.

35. The international legal framework within which Member States operated was premised on respect for sovereignty, non-interference in the internal affairs of any State under any pretext or any circumstance and in accordance with their international law obligations. That fundamental principle had never been contested by Member States and was well recognized under international law. The death penalty and the use of the

moratorium was an issue for a sovereign State, taking into account the sentiments of its people, the nature of the crime and its criminal legislation.

36. The amendment was specifically intended to balance and strengthen the draft resolution. Regrettably, it appeared that the sponsors of the draft resolution had deemed it too trivial to set out that fundamental principle clearly. Unless and until the law on the death penalty was repealed by his country's Parliament, it continued to remain valid on its statutes and under its Constitution.

37. For all of the above reasons, his delegation had supported the amendment and would vote against the draft resolution. In addition, Papua New Guinea would disassociate itself from the draft resolution should it be adopted.

38. **Mr. Ndong Mba** (Equatorial Guinea), speaking in explanation of vote before the voting, said that, while in previous years his country had voted against the draft resolution or abstained, it would now vote in favour, since the Parliament was considering adopting a law to abolish the death penalty.

39. *A recorded vote was taken on draft resolution A/C.3/73/L.44 as amended.*

In favour:

Albania, Algeria, Andorra, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belgium, Benin, Bhutan, Bolivia (Plurinational State of), Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cabo Verde, Cambodia, Canada, Central African Republic, Chad, Chile, Colombia, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czechia, Democratic Republic of the Congo, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Estonia, Eswatini, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Greece, Guatemala, Guinea, Guinea-Bissau, Haiti, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Kazakhstan, Kiribati, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Mali, Malta, Marshall Islands, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Mongolia, Montenegro, Mozambique, Namibia, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Palau, Panama, Paraguay, Peru, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, Rwanda, Samoa, San Marino, Sao Tome and Principe, Serbia, Seychelles, Sierra Leone, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tajikistan, the former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Tunisia, Turkey, Turkmenistan, Tuvalu, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay, Uzbekistan, Vanuatu, Venezuela (Bolivarian Republic of).

Against:

Afghanistan, Bahamas, Bahrain, Bangladesh, Barbados, Belize, Botswana, Brunei Darussalam, China, Democratic People's Republic of Korea, Egypt, Ethiopia, Grenada, Guyana, India, Iran (Islamic Republic of), Iraq, Jamaica, Japan, Kuwait, Libya, Maldives, Oman, Pakistan, Papua New Guinea, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Sudan, Syrian Arab Republic, Trinidad and Tobago, United States of America, Yemen.

Abstaining:

Antigua and Barbuda, Belarus, Cameroon, Comoros, Cuba, Djibouti, Ghana, Indonesia, Jordan, Kenya, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Mauritania, Morocco, Myanmar, Niger, Nigeria, Philippines, Republic of Korea, Suriname, Thailand, Tonga, Uganda, United Arab Emirates, United Republic of Tanzania, Viet Nam, Zambia, Zimbabwe.

40. *Draft resolution A/C.3/73/L.44, as amended, was adopted by 123 votes to 36, with 30 abstentions.*

41. **Mr. Moussa** (Egypt) said that the draft resolution lacked balance and the changes necessary to reflect the diverging views of Member States. There was no international consensus that the death penalty should be abolished, and none of the key international human rights instruments prohibited its use; it remained an important component of the criminal justice system in many countries. States had a responsibility to protect the lives of innocent civilians and render justice to victims and their families. Arguments against the death penalty tended to focus on the rights of the offender, but those rights must be weighed against the rights of the victims, their families and the broader right of communities to live in peace and security.

42. The Charter of the United Nations clearly stipulated that none of its provisions authorized the Organization to intervene in matters that lay within State jurisdiction. Each State had the right to choose its legal and criminal justice system without interference from other States. Despite the widespread support for the amendment sponsored by Egypt and its incorporation into the text, the draft resolution did not sufficiently address his delegation's concern about respect for the

principle of sovereignty enshrined in the Charter. No country should seek to impose its views on the death penalty on other States. His delegation had voted against the draft resolution, but countries with the death penalty must ensure that it was applied only for the most serious crimes, with a final judgement rendered by a competent court and in accordance with due process. International efforts should focus on strengthening commitments to ensure that no one was arbitrarily deprived of life.

43. **Ms. Tripathi** (India) said that, as all States had a sovereign right to determine their own legal systems, her delegation had voted in favour of the amendment. However, it had voted against the draft resolution as the establishment of a moratorium on executions with a view to abolishing the death penalty was counter to Indian statutory law. The death penalty was exercised extremely rarely in India, and Indian law provided for all requisite procedural safeguards, including the right to a fair hearing by an independent court and the presumption of innocence. There were specific provisions for the suspension of the death penalty in cases of pregnancy, as well as rulings that prohibited the executions of people with mental disabilities. Juvenile offenders could not be sentenced to death under any circumstances.

44. Death sentences must be confirmed by a superior court, and the accused had the right to appeal to a higher court or the supreme court, which had guidelines on clemency and the treatment of death row prisoners. The socioeconomic circumstances of an accused person were among the new mitigating factors considered by courts when commuting death sentences to life imprisonment. The President and the governors of states had the power to grant pardons, respites, reprieves or remissions of punishment, or to suspend or commute the sentence of any person found guilty of committing an offence.

45. **Mr. Dang** Dinh Quy (Viet Nam) said that countries had the right to retain or abolish capital punishment, as their national circumstances required. A moratorium on the use of the death penalty was a criminal justice matter and, as such, should not be part of the human rights discussion. It was regrettable that the constructive proposals and concerns shared during informal consultations on the draft resolution had not been taken on board. In particular, his delegation was concerned that the seventh and twelfth preambular paragraphs and paragraphs 2 and 3 reflected the subjective viewpoint of death penalty abolitionists. Viet Nam therefore welcomed the inclusion of the amendment proposed by Singapore, as it lent needed balance to the draft text. However, his delegation had abstained from voting on the draft resolution.

46. Capital punishment in Viet Nam was restricted to the most serious crimes and only carried out in accordance with international law and standards. As part of ongoing legal reforms, the number of crimes subject to the death penalty had been reduced from 44 in 1995 to 15 in 2015, and the use of the death penalty for pregnant women, mothers whose children were under 36 months of age, juveniles and those over 75 was prohibited.

47. **Mr. Habib** (Indonesia) said that every country had the sovereign right to establish the rule of law in accordance with its international obligations. His delegation therefore welcomed the amendment to the draft resolution. International law recognized the death penalty as a legitimate form of punishment for the most serious crimes, to be applied as a last resort and in accordance with due process. As positive law, capital punishment remained a significant part of State efforts to protect society; against that backdrop, it was unfortunate that the draft resolution contained a biased judgment of the positive law of countries, disregarding the responsibility of States to protect their own citizens. Indonesia continued to review its laws on capital punishment and such options as commutation of the death penalty into a long-term sentence. His delegation had therefore abstained from voting on the draft resolution.

48. **Ms. Suzuki** (Japan) said that her delegation had voted in favour of the amendment and against the draft resolution as a whole, as each Member State had the right to decide whether it retained the death penalty or imposed a moratorium. Such decisions should be made through careful consideration of public opinion, trends in serious crime and the need for a holistic balance in the criminal justice policies of Member States. In Japan, the death penalty was applied only to the most serious crimes and could not be imposed on persons under age 18 at the time they committed an offence. The death penalty was suspended in cases of pregnancy or serious mental illness. The Government made relevant data publicly available, such as the number of people sentenced to death but not executed, and the number of executions that had taken place, in compliance with its international obligations. Capital punishment in Japan was applied in accordance with due process and in a very rigorous and careful manner.

49. **Mr. Hassani Nejad Pirkouhi** (Islamic Republic of Iran) said that his delegation welcomed the amendment. The Islamic Republic of Iran continued to take proactive measures to minimize the recourse to the death penalty and to reserve it for the most serious crimes. Recently enacted legislation on narcotic drugs had brought the number of death sentences imposed for

drug-related crimes down to nearly zero. However, there was neither any commitment under international law on the subject of the draft resolution, nor any agreed definition of the most serious crimes. Governments should decide within their national legal frameworks and international commitments on the best deterrent and punitive measures that would ensure the safety and well-being of their citizens. Any moratorium on or move to abolish capital punishment could only be taken voluntarily by a sovereign State. His delegation had therefore voted against the draft resolution, which aimed to deny countries the sovereign right to develop their own legal systems and establish the penalties they deemed appropriate.

50. **Ms. Tin Marlar Myint** (Myanmar) said that her country's legislature had been conducting a thorough review of existing laws, which would pave the way to strengthening the criminal justice system and ensuring the equal application of the law to all citizens without discrimination. Although the death penalty could be imposed to deter serious crimes, it had not been carried out since 1988. Moreover, offenders under the age of 16 at the time of the offence could not be sentenced to capital punishment. Nonetheless, each State had a responsibility to deter serious crimes in order to maintain the safety and security of citizens. The Committee should not impose a moratorium on the death penalty but encourage sovereign States to apply it at their own pace and in accordance with the requirements of their judicial systems. Her delegation had therefore abstained from the vote.

51. **Ms. Nemroff** (United States of America) said that her Government could not agree with establishing an international moratorium on the use of the death penalty as a criminal punishment, with a view to its eventual abolition. The ultimate decision to abolish or establish a moratorium on the continued use of the death penalty must be addressed through the domestic democratic processes of individual Member States and be consistent with their obligations under international law. Article 6 of the International Covenant on Civil and Political Rights, to which her Government was a party, clearly authorized the use of capital punishment of perpetrators of the most serious crimes, in conformity with the law in force at the time of the offence and when carried out pursuant to a final judgement rendered by a competent court. Imposition of the death penalty must abide by exacting procedural safeguards established under articles 14 and 15 of the Covenant. Judicial enforcement of the Eighth Amendment of the United States Constitution ensured substantive due process at both the federal and State levels and prohibited methods of execution that would constitute cruel and unusual punishment. The United States was firmly committed to complying with its obligations under articles 6, 14 and 15 of the Covenant and strongly urged other countries that employed the death penalty to do the same.

52. Member States that supported the draft resolution should focus on addressing human rights violations that could result from the imposition of the death penalty in an extrajudicial, summary or arbitrary manner. Capital defendants must be given a fair trial before a competent, independent and impartial tribunal established by law, with full fair trial guarantees. Moreover, through their legal processes, States should carefully evaluate the category of defendant subject to the death penalty, the crimes for which it could be imposed and the manner in which it was carried out, so as to ensure that its use did not inflict undue suffering and that it complied with both domestic laws and international obligations undertaken freely by States.

53. **Mr. Tshishiku** (Democratic Republic of the Congo) said that his delegation welcomed the adoption of the draft resolution and the amendment thereto. A de facto moratorium on the death penalty had been in place in his country for over 15 years. The vote had demonstrated that the international community was capable of transcending its differences in order to address concerns about State sovereignty by applying international law in good faith. His delegation was pleased with the final text, which addressed a wide range of concerns expressed by delegations, including State sovereignty and compliance with international law.

54. **Mr. Elizondo Belden** (Mexico) said that his delegation deplored the United States Government's imminent execution of Mexican national Roberto Ramos Moreno, one of several Mexican nationals who, according to an International Court of Justice ruling, were entitled to a review of their sentences after that Government's violation of their right to notification and consular assistance. Capital punishment constituted an irreparable violation of human rights, hence the need to continue working towards a moratorium on executions and ultimately towards the universal abolition of the death penalty. By calling for assurances that the death penalty would not be applied arbitrarily or on the basis of discriminatory application of the law, the draft resolution would be vital in avoiding such cases as that of Mr. Ramos Moreno, who had received incompetent defence, a situation that consular assistance could have remedied. Due process and access to justice were prerequisites for the full enjoyment of human rights. His Government remained committed to the second Optional Protocol to the International Covenant on Civil and Political Rights, which aimed at the abolition of the

death penalty, and to the call in the draft resolution for a moratorium on all executions.

55. **Mr. Clyne** (New Zealand), speaking also on behalf of Liechtenstein and Switzerland, said that those countries opposed the death penalty – a violation of fundamental human rights and an ineffective means of deterrence – in all circumstances. In that regard, the Human Rights Committee's welcome adoption of general comment No. 36 reflected the growing consensus that the death penalty was not a valid exception to the right to life, taking an unambiguously pro-abolitionist stance. General comment No. 36 stated that article 6, paragraph 6 of the International Covenant on Civil and Political Rights reaffirmed the position that States parties that were not yet totally abolitionist should be on an irrevocable path towards complete abolition of the death penalty de facto and de jure, in the foreseeable future; and that the death penalty could not be reconciled with full respect for the right to life, making its abolition both desirable and necessary for the enhancement of human dignity and progressive development of human rights. Article 6 of the Covenant also stipulated that nothing contained therein should be invoked to delay or prevent the abolition of capital punishment by any State party.

56. New Zealand, Liechtenstein and Switzerland welcomed the increasing number of States that regarded the death penalty as violating the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, a view recognized by Human Rights Council resolution 36/17. In its general comment No. 36, the Human Rights Committee recognized that considerable progress might have been made towards establishing an agreement among the States parties that considered the death penalty as a cruel, inhuman or degrading form of punishment. Therefore, while the resolution currently stated that it was the sovereign right of States to develop their own legal systems, including determining appropriate legal penalties in accordance with their obligations under international law, that acknowledgement should not be interpreted to permit the use or imposition of the death penalty in any circumstances.

Agenda item 109: Crime prevention and criminal justice (*continued*) (A/C.3/73/L.9/Rev.1* and A/C.3/73/L.10)

Draft resolution A/C.3/73/L.9/Rev.1: Countering the use of information and communication technologies for criminal purposes*

57. **Mr. Khane** (Secretary of the Committee) said that, with regard to the request made in paragraph 1 of the draft resolution, additional extrabudgetary resources in the amount of $457,900 would be required to seek the views of Member States on the challenges they faced in countering the use of information and communications technology for criminal purposes and present a report based on those views for the consideration of the General Assembly at its seventy-fourth session. The sum would cover the posts of two consultants and one General Service staff member tasked with preparing a questionnaire for collecting information from Member States, analysing the responses to the questionnaire and drafting the report. The sum would also cover the preparation of the report in the six official languages of the United Nations.

58. Should the additional extrabudgetary resources not be provided, the activities would not take place. The draft resolution therefore would have no programme budget implications for the biennium 2018–2019.

59. **Mr. Kuzmin** (Russian Federation), introducing the draft resolution, said that it addressed a contemporary global threat, namely, countering the use of information and communications technologies for criminal purposes. Although aspects of that issue had been covered in some of the statements made under agenda item 109 and some limited research had been carried out in Vienna, there had thus far been no substantive discussion of the issue with the involvement of all Member States. The draft resolution created an opportunity to hold such a discussion. Without any duplication of effort, the Russian Federation proposed holding the first policy and legal discussion to identify optimal and effective means to prevent and counter cybercrime during the seventy-fourth session of the General Assembly. It was hoped that the report of the Secretary-General, prepared on the basis of the views of Member States, would form the basis for that discussion. The draft resolution was clear and concise, and no follow-up action was anticipated. During the negotiations on the text, his delegation had been willing to take into consideration the comments of all delegations that had engaged in a constructive manner.

60. **Mr. Khane** (Secretary of the Committee) said that Benin, Guinea, Indonesia, Kyrgyzstan, the Lao People's Democratic Republic and Libya had joined the sponsors.

61. **Mr. Horne** (Australia), speaking in explanation of vote before the voting, said that his delegation had approached the discussions on the draft resolution in a spirit of commitment to fostering consensus and had put forward a number of proposals aimed at finding solutions that would accommodate all Member States. It believed that the appropriate forum for discussions on cybercrime was the United Nations Office on Drugs and

Crime, and the General Assembly and the Economic and Social Council had already given a mandate for those discussions to take place under the Commission on Crime Prevention and Criminal Justice, its intergovernmental expert group and other forums.

62. While the Russian Federation had stated repeatedly that the draft resolution represented an effort to launch a new political process, Australia was of the view that it represented an attempt to erode the shared international frameworks for combatting cybercrime, to undermine consensus and to move further from the spirit of multilateral engagement. It was disappointing that the Russian Federation had not been willing to incorporate text from Member States that had not co-sponsored the draft resolution and it was hard to imagine how consensus could be achieved when the views of so many States had been dismissed.

63. In support of the existing international framework, which was helping to work in greater partnership than ever before to address the growing threat of cybercrime, Australia would vote against the resolution.

64. **Ms. Nemroff** (United States of America) said that her country was profoundly disappointed at the decision of the Russian Federation and its co-sponsors to press forward with the draft resolution. Following several rounds of informal consultations, which had been limited in scope and purposefully opaque, the delegation of the Russian Federation had not accepted any substantive edits from other delegations to the first draft.

65. The text itself raised serious concerns. By its resolution 65/230, the General Assembly had requested the Commission on Crime Prevention and Criminal Justice to establish an expert-level body to conduct a study of the problem of cybercrime and develop responses to it. Since its creation, the open-ended intergovernmental expert group on cybercrime had met four times. In that context, the draft resolution appeared to be aimed at politicizing, polarizing and undermining the ongoing and substantive cyber-related policy discussions that were already taking place within the United Nations, as well as undermining the ability of law enforcement experts to share information with one another.

66. The United States was concerned that some countries intended to exploit a new agenda item on cybercrime at the Third Committee in order to launch negotiations on a new global cyber treaty, which would undermine existing treaties such as the United Nations Convention against Transnational Organized Crime and the Convention on Cybercrime. At the previous session of the General Assembly, the Russian Federation had circulated a similar draft treaty that had failed to receive a positive response from Member States. Additionally, at the meetings of the intergovernmental expert group held since 2011, no consensus had been reached on the need for a new United Nations cyber treaty. In that context, it was surprising that some Member States that had served as leaders within the intergovernmental expert group had decided to undermine its work by supporting the draft resolution.

67. The Russian Federation was putting forward a draft resolution claiming to counter cybercrime only weeks after it had been caught perpetrating a cyber-attack on the Organisation for the Prohibition of Chemical Weapons, thus raising serious questions about the intentions of Russia as the sponsor of the draft resolution. Given the criminal misuse by the Russian Federation of information and communications technology to undermine and violate the integrity of institutions, including international organizations, as well as the sovereign democratic processes of Member States, they were not the appropriate sponsor to be taking the lead on the topic.

68. The United States would therefore vote against the draft resolution and urged all other Member States to do the same in order to prevent the erosion of other multilateral processes on cybercrime.

69. **Mr. Kickert** (Austria), speaking on behalf of the European Union and its member States, said that his delegation welcomed the progress made in the fight against cybercrime though the work of the intergovernmental expert group on cybercrime, the Commission on Crime Prevention and Criminal Justice, the United Nations Office on Drugs and Crime, the Convention on Cybercrime and other bodies. It recognized the need to develop national cybercrime legislation and promote international cooperation in the fight against cybercrime and was funding a range of capacity-building programmes on cybercrime in developing countries.

70. The creation of a new agenda item on cybercrime at the General Assembly, as proposed in the draft resolution, would lead to a duplication of discussions that were already being held by United Nations expert bodies. His delegation was also concerned by the confrontational and non-inclusive approach taken, which had deprived the vast majority of Member States of the opportunity to contribute to discussions. In fact, none of the proposals made by the European Union had been considered during the informal consultations held. The approach was particularly regrettable given that the normal procedure was for crime issues to be agreed

through the annual General Assembly omnibus resolution on crime prevention and criminal justice.

71. The draft resolution had been presented as a simple technical initiative that did not prejudge the outcome of future discussions. However, it was made clear during informal consultations that the goal was the creation of a new international legal instrument for cybercrime. The European Union did not support the creation of a new instrument given that the Convention on Cybercrime and the United Nations Convention Against Transnational Organized Crime already served as effective standards in that field. For those reasons, the European Union would vote against the draft resolution and called on all other Member States to do the same.

72. **Mr. Mizuno** (Japan) said that the Commission on Crime Prevention and Criminal Justice and other open-ended intergovernmental expert groups were already discussing approaches to cybercrime with Member States. Japan expected such discussions to continue at the headquarters of the Commission in Vienna. His delegation would therefore vote against the draft resolution as it believed that it would hamper the process that was already under way in Vienna.

73. *A recorded vote was taken on draft resolution A/C.3/73/L.9/Rev.1*.*

In favour:

Algeria, Angola, Armenia, Azerbaijan, Bahrain, Belarus, Belize, Benin, Bhutan, Bolivia (Plurinational State of), Botswana, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cambodia, China, Côte d'Ivoire, Cuba, Democratic People's Republic of Korea, Democratic Republic of the Congo, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Guinea, Guyana, Haiti, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Libya, Madagascar, Malaysia, Maldives, Mali, Mauritania, Mongolia, Morocco, Mozambique, Myanmar, Nepal, Nicaragua, Niger, Nigeria, Oman, Pakistan, Palau, Qatar, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Senegal, Serbia, Singapore, South Africa, South Sudan, Sri Lanka, Sudan, Suriname, Syrian Arab Republic, Tajikistan, Thailand, Togo, Turkmenistan, Uganda, United Arab Emirates, Uzbekistan, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zambia, Zimbabwe.

Against:

Albania, Andorra, Australia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Chile, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Japan, Kiribati, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Marshall Islands, Monaco, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Korea, Romania, San Marino, Slovakia, Slovenia, Solomon Islands, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Tonga, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Vanuatu.

Abstaining:

Argentina, Bahamas, Bangladesh, Cameroon, Central African Republic, Chad, Colombia, Costa Rica, Djibouti, Dominican Republic, Fiji, Ghana, Guatemala, Guinea-Bissau, Lesotho, Liberia, Mauritius, Mexico, Namibia, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Sao Tome and Principe, Timor-Leste, Turkey, Tuvalu, Uruguay.

74. *Draft resolution A/C.3/73/L.9/Rev.1* was adopted by 88 votes to 55, with 29 abstentions.*

75. **Mr. Solari** (Peru) said that his delegation had abstained from the vote given the importance it attached to the Convention on Cybercrime, which contained valuable rules of substantive and procedural criminal law, as well as provisions relating to international judicial cooperation, aimed at tackling cybercrime. Peru was in the process of acceding to the Convention.

76. Peru was aware that the current regulatory framework was insufficient in terms of rules and governance, and that new criminal threats demanded coordinated and reinforced responses from the international community. In that regard, it believed that all States should work together to complement the provisions contained in the Convention in order to achieve a regime that addressed all present and future concerns.

77. **Mr. García Paz y Miño** (Ecuador) said that his delegation had voted in favour of the resolution because it considered that it did not duplicate, hinder or distort the work of the intergovernmental expert group established by resolution 65/230 or that carried out by the Commission on Crime Prevention and Criminal Justice.

78. The position of Ecuador had traditionally been to support initiatives aimed at achieving adequate control

over the use of technology and fighting cybercrime. Likewise, Ecuador had always favoured the discussion of issues of global interest within the framework of the General Assembly.

79. **Mr. Kuzmin** (Russian Federation) said that his delegation thanked all those who had voted in favour of the draft resolution. It hoped that those who had voted against it would change their position and participate constructively in work on that initiative.

Draft resolution A/C.3/73/L.10: United Nations African Institute for the Prevention of Crime and the Treatment of Offenders

80. **Mr. Odida** (Uganda), introducing the draft resolution on behalf of the Group of African States, said that the Group attached great importance to the United Nations African Institute for the Prevention of Crime and the Treatment of Offenders as it provided technical support to African countries to strengthen their national capacities to counter crime and criminal activities in cooperation and collaboration with partners such as the United Nations Office on Drugs and Crime and the United Nations Interregional Crime and Justice Research Institute.

81. The draft resolution contained concrete actions to make the Institute fit for purpose in supporting national mechanisms for crime prevention and criminal justice in African countries, taking into consideration the dynamic trend of crimes. The Group considered that strengthening the Institute would support African countries in accelerating their efforts to prevent the problem of crime and delinquency from undermining development on the African continent. It was hoped that the Committee would adopt it by consensus, as was the usual practice.

82. **Mr. Khane** (Secretary of the Committee) said that Austria, France, Hungary, Italy, Norway and Paraguay had joined the list of sponsors.

83. *Draft resolution A/C.3/73/L.10 was adopted.*

The meeting rose at 5 p.m.