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Chairperson: Mr. Al Bayati (Iraq)

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The meeting was called to order at 10.10 a.m.

Agenda item 73: Criminal accountability of United Nations officials and experts on mission (A/60/980, A/62/329, A/63/54, A/63/260 and Add.1)

1. **Ms. Telalian** (Greece), speaking as Chairperson of the Ad Hoc Committee on criminal accountability of United Nations officials and experts on mission, introduced the report of the Ad Hoc Committee (A/63/54). Prepared in the wake of serious allegations of sexual exploitation and abuse in peacekeeping operations, it contained, in annex I, an informal summary of the Committee's discussions relating to legal aspects of international cooperation. Other issues addressed concerned timely notification and reporting mechanisms; collection and securing evidence; conduct of on-site investigations; role of the United Nations in conducting independent and professional administrative investigations; role of experts; questions relating to admissibility of evidence; due process; and transfers of proceedings and prisoners.

2. Annex II of the report contained a working paper on international cooperation submitted to the working group of the whole, together with oral and written amendments and proposals made by delegations. She welcomed the positive response of the Sixth Committee to the Ad Hoc Committee's recommendation that a working group should be established during the sixty-third session of the General Assembly to continue consideration of the report of the Group of Legal Experts (A/60/980) and looked forward to the working group being able to take up that task.

3. **Mr. Alday González** (Mexico), speaking on behalf of the Rio Group, said that, while criminal acts by United Nations officials and experts should not go unpunished, the consequences of such acts should be considered in accordance with the principles of justice and international law, particularly the right to due process. The Group reaffirmed its support for a zero-tolerance policy in respect of such acts, since the United Nations was expected to set standards in support of those whose rights had been violated, for the sake of both of the victims and of the Organization's reputation. A true joint response from the Secretariat and the Member States would help to restore that reputation. General Assembly resolution 62/63 was clear testimony to Member States' commitment to addressing the issue; it must be built upon to ensure its

effective implementation. The Secretary-General's report thereon (A/63/260) showed that more needed to be done by States collectively to ensure an end to impunity for the serious crimes in question.

4. The Rio Group attached great importance to receiving statistics regularly from the Secretariat concerning allegations of such crimes, as improved reporting would lead to better understanding of the problem. The Secretary-General must also address the question of abuse of privileges and immunities and carefully study the possibility of waiving them where appropriate. Foremost among the issues that needed to be addressed during the current session were the challenges presented by investigations in the field and during criminal proceedings and the evaluation of evidence in administrative and judicial proceedings.

5. **Mr. O'Brien** (Australia), speaking on behalf of the CANZ group (Australia, Canada and New Zealand), said that the ongoing discussions on the criminal accountability of United Nations officials and experts went to the heart of the foundation of the Organization as reflected in its Charter. As part of its mission to establish conditions under which justice could be maintained, the United Nations must exemplify the rule of law principles it sought to foster by ensuring the accountability of those officials and experts in the event of their committing criminal offences. While the adoption of General Assembly resolution 62/63 was a step in the right direction, much remained to be done. Measures were needed to strengthen cooperation among States, between States and the United Nations and within the United Nations itself and to ensure that inadvertent jurisdictional gaps did not lead to impunity.

6. In the longer term, the CANZ group supported the principle of a convention that would require Member States to exercise jurisdiction over their nationals participating in United Nations operations abroad and would welcome further discussions to that end. The CANZ delegations encouraged the Secretary-General to continue to support programmes and policies designed to ensure the highest standards of conduct among the Organization's officials and experts on mission, as that would further enhance respect for its work.

7. **Ms. Ramos Rodríguez** (Cuba), speaking on behalf of the Non-Aligned Movement, said the criminal accountability of United Nations officials and

experts was a matter of great importance. Since United Nations peacekeepers, over 80 per cent of whom hailed from non-aligned countries, should perform their duties in a manner that preserved the image, credibility, impartiality and integrity of the Organization, a policy of zero tolerance must be applied to all cases of sexual exploitation and abuse in which they were involved. The Non-Aligned Movement stood ready to continue considering in the Sixth Committee the report of the Group of Legal Experts (A/60/980) and the informal working paper on international cooperation prepared by the Chairperson of the Ad Hoc Committee (A/63/54, annex II). It took note of the adoption by the General Assembly of a comprehensive strategy to support victims of sexual exploitation and abuse by United Nations staff and experts and looked forward to its early implementation.

8. Steps should also be taken to implement without delay General Assembly resolution 61/291, amending the revised draft model memorandum of understanding, as it would strengthen accountability mechanisms and ensure due process in cases of sexual exploitation and abuse. Moreover, full implementation by all Member States of General Assembly resolution 62/63 could help to bridge any possible jurisdictional gaps; the possibility of further action by the General Assembly should also be studied. The non-aligned countries believed that progress needed to be made in the short term and that it would be premature to open a discussion on a draft convention on the subject. For the time being, the Committee should focus on substantive matters, leaving matters of form for a later stage.

9. **Mr. Renié** (France) speaking on behalf of the European Union; the candidate countries Croatia, the former Yugoslav Republic of Macedonia and Turkey; the stabilization and association process countries Albania, Bosnia and Herzegovina, Montenegro and Serbia; and, in addition, Armenia, Iceland, Moldova and Ukraine, said that any person who committed a serious offence while participating in a United Nations operation should be held fully accountable, particularly since the Organization's staff were responsible for promoting and upholding justice and the rule of law. The European Union fully supported a zero-tolerance policy in such cases. Such offences were harmful not only to their victims but also to the United Nations as a whole. Member States must therefore ensure that the special status of its staff and experts did not enable them to escape criminal accountability, particularly in

cases where the host State was unable to institute proceedings against them.

10. The European Union supported the approach adopted so far, comprising both short-term and long-term measures, and notably General Assembly resolution 62/63, which represented both significant progress and a first stage of review. The primary concern was to bridge jurisdictional gaps by encouraging States to establish and exercise criminal jurisdiction over their nationals who perpetrated serious offences in a host country while participating in a United Nations operation. The European Union also supported the General Assembly proposal to strengthen cooperation among States and between States and the Organization with regard to investigations and legal proceedings. The working paper on the subject presented by the Chairperson of the Ad Hoc Committee, together with the amendments submitted by delegations (A/63/54, annex II), merited careful review. In the long term, the European Union stood ready to consider the proposal for an international convention that would clearly indicate in what cases and over which categories of individuals and crimes Member States could exercise jurisdiction. One of the issues to be considered was whether such a convention would facilitate international cooperation in responding appropriately and with resolve to crimes committed by United Nations officials and experts on mission.

11. **Ms. Orina** (Kenya), speaking on behalf of the African Group, said that, as major recipients of United Nations peacekeeping troops, officials and experts on mission, and in some cases as sources of such personnel fielded to other countries under the Organization's auspices, African countries were keenly interested in discussing ways of ensuring their accountability. They supported the predeployment training of such officials and experts and called for its enhancement. The good work done by such personnel must not be allowed to be overshadowed by the transgressions of a few. It was therefore important that there should be no impunity for such crimes. General Assembly resolution 62/63 was a major advance in that respect and offered a basis for expanding the scope of jurisdiction of States whose hands had previously been tied. There was still a need to define the scope of implementation of that resolution and to determine whether the issue of international cooperation should be addressed. She noted that the African Group had no

information about existing situations that might need to be addressed because of a lack of such cooperation.

12. **Mr. Charles** (Trinidad and Tobago), speaking on behalf of the Caribbean Community (CARICOM), said that his country recognized the important work being done by United Nations officials and experts on mission and their dedication to the tasks entrusted to them, often in stressful and dangerous environments. Nonetheless, no individual was above the law, and it was a well-established principle in law that all those who committed crimes should be held accountable, in accordance with due process. His delegation supported the efforts to establish a zero-tolerance policy with respect to crimes and atrocities committed by United Nations officials, experts on mission and peacekeeping personnel. Some of the crimes reported, sexual exploitation and abuse being the most common, were particularly heinous and a breach of trust. Holding the perpetrators accountable would help to restore faith and trust in the United Nations; failure to address the issue could have a deleterious effect on the work of the Organization.

13. In view of the jurisdictional gap that existed if the host State was unable to prosecute and the State of nationality did not extend its criminal jurisdiction to crimes committed beyond its borders, his delegation welcomed General Assembly resolution 62/63, which urged all States to consider establishing jurisdiction over crimes of a serious nature committed by their nationals while serving as United Nations officials or experts on mission. However, a longer-term solution was needed. In domestic law, legal certainty was required in order to prosecute. Correspondingly, at the international level there was an urgent need for a common set of rules accepted by all Member States. The CARICOM countries therefore supported the call for the conclusion of a comprehensive convention addressing not only sexual exploitation and abuse but all crimes committed by United Nations personnel on mission.

14. In the absence of a long-term strategy, the adoption of General Assembly resolution 62/214 at least demonstrated the willingness of Member States to provide assistance and support to victims of sexual exploitation and abuse by United Nations staff and related personnel. In addition, the CARICOM member States endorsed the recommendation of the Ad Hoc Committee on criminal accountability of United Nations officials and experts on mission that a working

group should be established to continue consideration of the report of the Group of Legal Experts (A/60/980).

15. **Ms. Möhler** (Liechtenstein) said that her delegation particularly welcomed the measures taken by the Secretary-General to strengthen predeployment and in-mission induction training with a view to preventing misconduct. Criminal conduct by United Nations personnel in the field had grave consequences, not only for their victims but also for the Organization itself, and every effort must be made to hold the perpetrators accountable.

16. To that end, international cooperation among Member States and with the United Nations must be enhanced. National law enforcement authorities needed a basis for cooperating with their counterparts in other States in sharing information, collecting and evaluating evidence and coordinating extradition. Facilitating international cooperation was the one area in which the elaboration of an international convention would add significant value, because few Member States had domestic laws that provided for legal assistance in cases involving the United Nations, and legal assistance between States was usually based on bilateral agreements, which might not exist in specific cases. Although her delegation had in the past supported the elaboration of a convention based on the draft submitted by the Group of Legal Experts (A/60/980, annex III), it would not exclude the possibility that the convention might address only the issue of cooperation and leave aside the issue of jurisdictional gaps. Apparently it was mainly the common-law countries that in some situations lacked jurisdiction over crimes committed by their nationals serving as United Nations officials and experts on mission. To address the problem, a convention focused on international cooperation could be supplemented by model legislation addressing the issue of jurisdiction.

17. Active participation by relevant Secretariat officials would help the Committee to engage in a meaningful discussion on the issues.

18. **Mr. Bichet** (Switzerland) said that it was unacceptable that United Nations personnel guilty of crimes of a serious nature should escape justice. It was the duty of the Member States and the Secretary-General to take the necessary steps to prevent such crimes and to ensure that those that were committed did not go unpunished. Such crimes undermined the reputation of the United Nations and the values it

promoted. The adoption of General Assembly resolution 62/63 could be considered a useful first step, particularly the provision that urged States to change their legislation if necessary to enable their courts to try their nationals for crimes of a serious nature committed abroad while serving as United Nations personnel if the host State was unable to prosecute.

19. However, the report of the Secretary-General (A/63/260 and Add.1) showed that further action was needed. It appeared that some States had gaps in their jurisdiction over their nationals. Moreover, the conditions and circumstances under which courts could try nationals who had committed serious crimes abroad varied widely from State to State. The legal bases for cooperation among States and between States and the United Nations also varied widely and in some cases were inadequate. His delegation was convinced that an international convention was the best means of resolving those problems effectively over the long term by filling jurisdictional gaps and facilitating cooperation. Indeed, a number of States had stated in their contributions to the report that they could easily extend their jurisdiction to crimes committed by nationals abroad on the basis of an international treaty.

20. **Mr. Abdelsalam** (Sudan) said that peacekeeping operations were an important mechanism for promoting the establishment of sustainable peace and paving the way in post-conflict societies for confidence-building and repair of the social and economic fabric. With its organizational capacities, resources and expertise, the United Nations remained the best institutional framework for the management of those operations.

21. He strongly supported measures designed to fill the gap created by the lack of criminal accountability of United Nations personnel and called for swift action to prevent impunity and ensure that the rule of law was upheld. In that regard, the efforts of the Ad Hoc Committee were commendable; in particular, the informal working paper on international cooperation (A/63/54, annex II) was a first step towards a common understanding of what was an important issue. Any delay in addressing the gap would give the mistaken impression that the international community was shirking its responsibilities and tolerating a shameful situation conducive to a culture of impunity.

22. It was important to begin negotiations on the draft convention on criminal accountability, in which regard the question of jurisdiction was a major issue. In

accordance with the principle of territoriality, host States should take precedence in exercising jurisdiction for the reasons articulated in the report of the Group of Legal Experts (A/60/980). The presumption that a State might be incapable in that regard was merely theoretical and also unsubstantiated by objective evidence. All peacekeepers should fall within the scope of the draft convention in order to boost confidence in the Organization and in its commitment to the rule of law and to the punishment of any criminal behaviour, irrespective of the perpetrator. Any distinction among persons engaged in peacekeeping operations conducted under Chapters VI and VII of the Charter was unjustified. As for the scope of objective jurisdiction, it should be extended beyond sexual crimes to include all acts constituting a criminal offence under the laws of the host State. His country stood fully prepared to cooperate in the negotiations on the draft convention, which would be an important step forward in dealing with the problem of criminal accountability.

23. **Ms. Nworgu** (Nigeria) said that the information provided by States on jurisdiction and cooperation was crucial for determining what procedural and jurisdictional gaps needed to be filled. Her delegation commended the Secretariat's efforts to ensure that prospective experts on mission were informed of the high standards expected of them and given training in conduct. The Organization's predeployment and in-mission induction training complemented similar predeployment training carried out by some troop-contributing countries, Nigeria being one.

24. Nigerian armed forces personnel serving as United Nations officials or experts on mission were subject to a system of military discipline established by the Nigerian Armed Forces Act of 2003, which had consolidated and standardized the rules for the different branches of the armed forces. The rules were extraterritorial in effect and therefore ensured that Nigerian armed forces personnel deployed outside Nigeria, including those engaged in United Nations duties, were accountable at all times for their conduct.

25. Nigeria had also entered into various bilateral mutual legal assistance agreements. In addition, the relevant authorities in Nigeria cooperated with all jurisdictions in the investigation of serious crimes and with the United Nations in the investigation of offences committed by any Nigerian officials or experts on mission.

26. Her delegation reiterated its firm support for the zero-tolerance policy concerning criminal conduct by United Nations personnel and experts on mission. Such crimes constituted a violation of trust that could damage the reputation of the Organization and impede its effectiveness. There was a need for cooperation both among States and between States and the United Nations on exchange of information, extradition, serving of sentences and other measures to facilitate the effective exercise of criminal jurisdiction, including judicial assistance mechanisms.

27. **Mr. Álvarez** (Uruguay) said that, since consideration of the issue of accountability was still at an early stage, the Committee's task during the current session was to determine the criteria for deciding what measures should be taken to address the problems identified. His delegation fully supported the zero-tolerance policy, not just for cases of sexual exploitation and abuse but for any crimes committed by United Nations personnel assigned to peacekeeping operations that would damage the reputation of the Organization and its Member States.

28. With regard to the scope *ratione personae* of the topic, the situation of military and police observers serving in the context of peacekeeping operations merited special treatment. The observers were officers paid by the contributing States. They signed a contract with the Organization on the understanding that the contributing State would ensure that they could return to their former positions when their missions were completed. In other words, military observers remained linked to the contributing State and, from a disciplinary point of view, should be deemed subject to its jurisdiction, like the national contingents provided by troop-contributing countries. Rules concerning the disciplinary policies to be applied by States in cases of sexual exploitation and abuse were to be added to the memoranda of understanding signed by troop-contributing countries, and similar rules could be incorporated in the contracts signed by military observers. In addition, the measures for the protection of victims recently approved by General Assembly resolution 62/214 should also form part of the contracts to be signed by observers (and by the State).

29. As a general rule, the State of nationality should have jurisdiction, so that a specific set of penalties and rules of procedure could be applied and due process safeguarded. An effective system of judicial cooperation could ensure that the investigation was

conducted in close collaboration with the other States concerned. In some cases, however, the United Nations personnel involved might reside in another State and have no functional link to the State of nationality; for such cases, consideration should be given to the extradition regimes that would apply.

30. In the investigation phase, the representatives of the Secretariat in the field should cooperate more closely with the authorities of the contributing State. His delegation had proposed, particularly in relation to investigations involving contingents in the field, that a national legal adviser should be designated as soon as an investigation was opened in order to ensure that the procedural rules of the contributing State for criminal and administrative investigations were satisfied.

31. His delegation generally supported the content of the informal working paper on international cooperation (A/63/54, annex II), on the understanding that the drafting should be carefully looked at and amended where necessary. For example, the phrase "there may be a need" that began most of the subparagraphs should be redrafted to reflect the desirability of the broadest cooperation between States and the United Nations. In addition to reformulating the working paper, the Working Group on the item should also consider the questions of scope *ratione personae* and *materiae* and jurisdiction.

32. **Mr. Lamine** (Algeria) said that the great contribution made by observers to the success of peacekeeping operations, often under very difficult conditions, deserved gratitude and recognition but did not exempt them from responsibility for their conduct. His delegation reiterated its firm support for the principle of zero tolerance towards serious crimes committed by United Nations officials and experts on mission; the credibility and reputation of the United Nations depended on it. His delegation noted the measures already being taken to strengthen predeployment and in-mission induction training.

33. General Assembly resolution 62/63 urged all States to establish jurisdiction over crimes of a serious nature committed by their nationals while serving as United Nations officials or experts. The Algerian Code of Criminal Procedure provided that any crime punishable under Algerian law committed outside its territory by an Algerian could be prosecuted in Algeria. There was thus no jurisdictional gap regarding crimes committed by Algerian nationals abroad. That was true

for most of the States that had responded to the Secretariat's request for information, although many States had been silent on that point.

34. During the current session, the Committee should continue its consideration of such aspects of the agenda item as cooperation, judicial assistance, the admissibility in national courts of evidence provided by the Office of Internal Oversight Services (OIOS) and the scope of application of the topic. On the question of whether an international legal instrument was needed, his delegation was flexible but believed that an international convention could make a contribution of particular benefit to developing countries in the area of extradition.

35. **Mr. Mukongo Ngay** (Democratic Republic of the Congo) said that his delegation was well aware of the often dangerous conditions in which peacekeepers operated and was grateful to the troop-contributing countries for their many sacrifices. Nonetheless, the revelations of acts of sexual exploitation and abuse by members of peacekeeping missions had seriously damaged the reputation of the missions. United Nations officials and experts who committed serious crimes while serving on peacekeeping missions should answer for their actions.

36. Despite the rhetoric in favour of accountability, in practice impunity seemed to be the order of the day. The host country, bound by headquarters agreements, usually had no option but to hand suspects over to the United Nations. Since the United Nations was unable to prosecute, suspects were sent back to their countries of origin. Those countries, hesitant to admit publicly to misconduct on the part of their nationals, were unlikely to bring the guilty parties to justice. Impunity for serious crimes must not be tolerated. His delegation had welcomed the introduction of the agenda item and the progress being made on the issue.

37. It was regrettable, however, that some delegations considered it premature to elaborate an international convention on the topic. The damage caused by such crimes gave some urgency to the relevant recommendation of the Group of Legal Experts. A convention would mean that criminal acts could effectively be punished. It would enable Member States to establish jurisdiction over crimes committed by their nationals on the territory of a host State and would therefore fill a major legal gap. It would clear up any uncertainty about jurisdiction *ratione personae*

and *ratione materiae*. Since a General Assembly resolution on the agenda item could only be a short-term measure, efforts to elaborate an international convention should not be indefinitely postponed.

38. With regard to the scope *ratione personae* of such a convention, the argument that military and police forces should be excluded was understandable but left unanswered the questions of how to ensure protection for victims and how to avoid a double standard, if civilian personnel could be brought to justice while military personnel enjoyed impunity. As for the scope of application *ratione materiae*, an international instrument should not be limited to crimes related to sexual exploitation and morals but should also cover economic crimes such as trafficking in drugs and precious minerals and money-laundering. A convention would require a clear definition of which crimes were considered "serious", in view of the differences in national penal legislation; the notion of the serious nature of a crime was not an objective criterion.

39. With regard to cooperation, the recent conviction in France of French national Didier Bourget, charged with the rape of 20 under-age girls while employed with the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), was an example that should be followed by other countries whose nationals were accused of committing such crimes while serving on peacekeeping missions. His delegation would urge troop-contributing countries to investigate thoroughly the allegations of sexual misconduct brought to their attention by United Nations investigators and to report back to the Secretary-General on the outcome of each case. Those guilty of such acts should also be ordered to pay compensation to the victims, including maintenance for children they had fathered.

40. Lastly, his delegation firmly supported the measures undertaken to promote high standards of conduct on mission through predeployment and in-mission induction training.

41. **Mr. Mansour** (Tunisia) said that in order to preserve the image, credibility and integrity of the United Nations, a zero-tolerance policy must be applied to all acts of sexual exploitation and abuse and to any other crimes which might be committed by United Nations officials and experts on mission. It was necessary to combat impunity by overcoming all obstacles to calling miscreants to account and by

stepping up measures to prevent the occurrence of the above-mentioned abuses and crimes.

42. Member States' closer involvement in that sphere would lead to better results; they had an important role to play in countering the impunity of their nationals by establishing jurisdiction over criminal acts committed by those persons while they were in the service of the United Nations. Under article 305 of the Tunisian Code of Criminal Procedure, the country's criminal jurisdiction covered all crimes committed by its nationals outside its territory, including participants in United Nations missions. It was essential that Member States should make the requisite arrangements for cooperating fully with other States and the United Nations in order to facilitate any investigations involving officials and experts on mission who might have committed serious crimes, as well as their possible prosecution under domestic law. The Tunisian Code of Criminal Procedure permitted and regulated cooperation with other Members of the United Nations in criminal matters.

43. In view of the crucial nature of mutual judicial assistance in criminal cases entailing the prosecution of United Nations officials and experts on mission, his Government was striving to extend its cooperation *inter alia* in the spheres of information exchange, extradition and the serving of sentences, in order to facilitate the exercise of criminal jurisdiction, above all on the basis of bilateral agreements. In fact it had already concluded several agreements on that subject.

44. It would be advisable for the Ad Hoc Committee to give further consideration to the report of the Group of Legal Experts, in particular its legal aspects, taking into account the views of Member States and the information contained in the Secretary-General's report (A/63/260). Priority should go to a deeper scrutiny of current obstacles to accountability for crimes, in order to determine the full extent of the problem and the best way of tackling it. The drafting of a convention on the subject was not necessarily the shortest route to the solution of all the problems arising in that context, but was a plausible long-term option.

45. Jurisdiction *ratione materiae* should be extensive and not confined to the offences of sexual exploitation and abuse, but should take in offences against the person, corruption and embezzlement. Similarly, jurisdiction *ratione personae* could cover the personnel of the various programmes and specialized agencies,

but not military observers or civilian police units employed by the United Nations as experts in peacekeeping missions, because such experts remained active members of their national army, and their activities were therefore governed by the specific rules laid down by the contributing State's legislation.

46. **Ms. Rodríguez-Pineda** (Guatemala) said that the summary of the discussions of the working group on criminal accountability of United Nations officials and experts on mission (A/63/54, annex I) were a useful starting point for considering ways of overcoming existing obstacles to United Nations personnel being called to account for crimes committed during peacekeeping operations. Priority should go to securing the effective application of General Assembly resolution 62/63 and to careful consideration of the informal working paper presented by the Chairperson of the Ad Hoc Committee (A/63/54, annex II), as it suggested ways of filling gaps in jurisdiction through international cooperation. Since varying levels of international cooperation called for different measures, it would be advisable to rework the Chairperson's proposal according to whether the cooperation in question was between States and the United Nations, or only between States. It was also necessary to remember that the processes involved varied according to where the initial complaint was filed and who received it. Depending on those circumstances, there might be an obligation to notify the parties concerned immediately, in order that they might activate legal, administrative, investigative, judicial or diplomatic channels.

47. International cooperation could not replace the inter-agency cooperation which must exist within the United Nations system. Coordination within that system should be improved by a greater exchange of information and better registration of and follow-up on complaints. Since the crimes in question occurred in the field, measures and decisions would have to be harmonized with Headquarters. That meant that any recommendations made by the Sixth Committee would have to address the coordination aspect as well.

48. The Sixth Committee's work should not be confined to crimes related to sexual exploitation and abuse, even though the Organization's criminal accountability policies and measures were focused mainly on such offences, since other forms of criminal behaviour were equally serious. The lifting or granting of immunity was also a question of jurisdiction. For that reason it would have been useful to have fuller

information about the functioning and effectiveness of the process in the field and on follow-up at Headquarters. It would also be interesting to know what subsequent measures had been adopted by the Secretariat when the truth of allegations had been confirmed, irrespective of whether immunity was ultimately lifted or granted. While the Secretariat was to be commended on all the preventive measures it was taking and the induction training it provided, the Sixth Committee's main concern was to combat impunity. To that end, it must work closely with the Fourth and Fifth Committees in order to avoid a duplication of efforts and to remain abreast of initiatives which might have an impact on its own deliberations in the future. The best path to follow would be that of continuing to devise short- and long-term measures, on the basis of General Assembly resolution 62/63 and the proposal of the Ad Hoc Committee's Chairperson.

49. **Mr. Saripudin** (Indonesia) said that the men and women who served the United Nations with admirable selflessness would probably be the first to recognize the importance of good conduct in the exercise of their responsibilities. If an expert or official engaged in criminal conduct, it was vital, in order to protect the work and image of the United Nations and ensure its effectiveness, that the offender should not only face justice, but be seen to do so. To that end it was important that States established jurisdiction over any crimes that might be committed by their nationals when serving in United Nations missions as officials or experts.

50. The United Nations should not only take the appropriate measures to protect the lives of international peacekeepers, but also lay down high standards to govern their behaviour. A policy of zero tolerance must be implemented with regard to criminal conduct, especially sexual exploitation and abuse, on the part of peacekeepers and other United Nations experts and officials.

51. In order to ensure that that approach worked, United Nations officials and experts must be given awareness-raising training prior to deployment. The faithful application of that policy would help the international community to fill any legal loopholes with regard to the criminal accountability of those officials and experts. He therefore appreciated the efforts of the Department of Peacekeeping Operations, the Department of Field Support and the Conduct and Discipline Unit in that respect.

52. It would be wise to give further consideration to the question of whether the draft convention should cover United Nations personnel from national contingents whose terms of service were regulated by other instruments. Certain provisions of the draft text should also be amended to avoid giving the impression that a difference was being drawn between United Nations operations under Chapter VI or VII of the Charter of the United Nations. Broadening the scope *ratione materiae* of the convention to include serious crimes other than sexual exploitation and abuse might make it difficult to reach agreement in the short term. Once the law of sending and receiving States established their extraterritorial criminal jurisdiction, the perpetrators of serious crimes would be unable to escape justice, and all that would then be needed would be to explore ways and means of improving cooperation among Member States and the United Nations with a view to facilitating the prosecution of suspects, especially in the areas of investigations and the collection of evidence.

53. **Ms. Chen Peijie** (China) said that United Nations officials and experts who had committed criminal acts must be held accountable under criminal law in order to protect the image, prestige and credibility of the United Nations. That would require effective cooperation between the United Nations, the country of nationality of the officials and experts in question and the host country. Effective cooperation in matters of information exchange and personnel training would help to prevent crime, while efficient mechanisms for judicial cooperation would heighten countries' ability to deal with crimes that had occurred. The fact that the crimes were committed in the host country made it difficult for the sending country to conduct criminal investigations. The host country should therefore be allowed to initiate inquiries and prosecute offenders with the assistance of the United Nations, but the country of nationality should also have a role to play. It should be mainly up to the countries concerned to decide whether, under their domestic law, evidence gathered by the United Nations in the course of administrative investigations was admissible in criminal proceedings in the host country or the country of nationality.

54. The Sixth Committee and the Ad Hoc Committee would be greatly assisted in their further deliberations if the Secretariat were to provide information about more cases and the way in which they had been

handled and also if it could identify any loopholes in the existing mechanisms.

55. Turning to the relevant Chinese legislation, she explained that article 7 of the Criminal Code gave Chinese courts jurisdiction over any criminal acts carried out by Chinese citizens outside the territories of the People's Republic of China, if the act in question constituted a crime under the Code. Pursuant to article 9 of the Code, China exercised criminal jurisdiction over any crimes under any international treaty to which it was a party, within the scope of its treaty obligations.

56. China had acceded to more than 20 multilateral conventions containing provisions on judicial cooperation and had concluded 102 treaties on extradition and judicial assistance, 79 of which had entered into force. It was willing to engage in cooperation and judicial assistance in criminal matters with countries with which it had no treaty relations, on the basis of Chinese law on extradition, other legal provisions and the principle of mutual benefit. China was also willing to discuss feasible ways of cooperation with the United Nations.

57. **Mr. Limon** (Israel) said that it was important to ensure the criminal accountability of any United Nations official or expert on mission who committed a serious crime and to maintain a zero-tolerance policy with regard to such criminal conduct. Ensuring criminal accountability required the implementation of a variety of measures through collective efforts by the United Nations and Member States.

58. The steps taken by the Secretariat to eradicate misconduct, especially sexual exploitation and abuse, were therefore welcome, although the "jurisdictional gap" was still clearly a source of impunity, as was the absence of a process for cooperation in criminal proceedings among States, between States and the United Nations and among United Nations units and departments. His Government was therefore in favour of States establishing jurisdiction over crimes committed by their nationals while serving as United Nations officials or experts on mission, particularly when those crimes were of a serious nature. It would also be advisable for States, by way of mutual assistance in criminal proceedings, to cooperate with one another and with the United Nations in exchanging information and in facilitating investigations and prosecution.

59. Given the differences of opinion which had emerged regarding the recommendation that a new international convention should be drawn up to address jurisdiction and related issues of criminal accountability, it would be more effective, at the current stage, to focus on substantive matters. The issue of enhancing cooperation among States and between States and the United Nations might serve as a good basis for progress. In that connection, special emphasis should be laid on the timely notification of allegations of misconduct to OIOS and the relevant national authorities; on the offer of appropriate assistance to the host State in the conduct of criminal investigations; and on the enhancement of the capacity of OIOS to conduct investigations. His delegation was therefore ready to continue the discussion of the informal working paper prepared by the Chairperson of the Ad Hoc Committee.

60. **Ms. Negm** (Egypt) said that her Government attached great importance to the criminal accountability of United Nations officials and experts on mission, because Egypt contributed many troops to peacekeeping operations. In view of the important role of the United Nations in maintaining peace and security, it was essential for the Organization to safeguard its image and to follow a zero-tolerance policy when dealing with cases of sexual exploitation and abuse committed by members of peacekeeping operations. She reiterated the importance of identifying gaps in the current system of criminal accountability and finding appropriate ways of filling them. In that connection she commended the Organization's efforts to provide training for members of peacekeeping operations in order to raise their awareness of the standards of behaviour expected of them while on mission. It was vital, however, to verify the truth of claims brought against peacekeepers in order to exclude the possibility of false accusations or attempts to receive undue compensation.

61. Her delegation welcomed the further development of the issue of extending States' criminal jurisdiction to cover the conduct of their nationals while serving on United Nations missions. Further study was needed, however, on some aspects of the criminal accountability of United Nations officials and experts on mission before deciding on the advisability of drafting a new legal instrument on the subject. To that end it was vital to agree on a clear definition of experts on mission. For instance, it was essential to

ensure the equal treatment of military experts who signed contracts with the Organization as members of a peacekeeping operation and the military personnel of national contingents, as both categories fell under the military law of the sending State. There was a need to reach agreement on the means of lifting the immunity of officials on mission to make it possible to try them for acts they had committed while participating in United Nations operations, once jurisdiction had been established, and to identify the level of international cooperation required among States and with the United Nations in that regard.

62. The scope *ratione personae* of the provisions of Egyptian military and criminal law on extraterritorial jurisdiction was wide enough to guarantee the prosecution of Egyptians who committed crimes abroad. Moreover, the drafters of the Egyptian Criminal Code had striven to close any loopholes which might exist when an Egyptian national took part in a United Nations mission as either an official or an expert.

63. The Sixth Committee and the Special Committee on Peacekeeping Operations must cooperate closely in order to avoid duplication of work. It was important to identify gaps in the current system, the obstacles hampering its operation and possible measures to strengthen the rules on criminal prosecution in States contributing peacekeeping forces, so as to ensure that justice would prevail.

64. **Mr. Alhabib** (Islamic Republic of Iran) said that the criminal accountability of officials and experts on mission was essential for protecting the integrity, reputation and credibility of the United Nations. His delegation supported the Organization's efforts to preserve its public image and had faith in the zero-tolerance policy for all cases of sexual exploitation and abuse committed by peacekeeping personnel. With respect to domestic legislation, his country's legal system contained provisions that allowed jurisdiction to be exercised over crimes committed by Iranian nationals serving as United Nations officials in foreign countries. Iranian courts could prosecute when offences defined by domestic law were committed by Iranian nationals in a foreign country, provided that the alleged offender was found in or extradited to Iran. Article 6 of the Penal Code allowed for the prosecution of public officials or agents on mission abroad, including diplomatic and consular personnel who enjoyed immunities. Furthermore, Iranian courts had

criminal jurisdiction over crimes which were punishable under international treaties.

65. His delegation welcomed the adoption of the United Nations Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by United Nations Staff and Related Personnel. The host State, based on territorial jurisdiction and in accordance with its domestic law and internationally recognized norms and standards, should be able to exercise jurisdiction over crimes committed by United Nations officials and experts in the mission area. However, military contingents should remain under the criminal jurisdiction of the contributing State. In addition, other States should be entitled to establish criminal jurisdiction based on the passive personality and active personality principles. His delegation supported the development of a binding international instrument to address legal gaps in jurisdiction and issues of international cooperation. General Assembly resolution 62/63 represented an important step in that direction because it urged Member States to consider establishing jurisdiction over crimes committed by their nationals while serving as United Nations officials and experts on mission.

66. **Mr. Sen** (India) said that it was a matter of great concern that, despite the existence of clear codes of conduct for United Nations peacekeepers and a policy of zero tolerance, cases of sexual abuse and exploitation and other criminal acts were still being reported. Given that such misconduct tainted the image of the United Nations, it was essential to ensure that United Nations personnel should not be exempt from the consequences of criminal acts committed at their duty station. His delegation hoped that the implementation of resolution 62/63 would fill jurisdictional gaps in respect of Member States that did not assert extraterritorial jurisdiction over crimes committed by their citizens abroad. In the case of India, offences committed by its officials or experts on missions abroad were punishable under its domestic law.

67. Pursuant to resolution 62/63, India had enacted legislation under the Code of Criminal Procedure that provided a range of provisions that enabled the Government to cooperate with States in the conduct of investigations and prosecutions. India had also concluded bilateral agreements on mutual assistance in criminal matters. The Indian Extradition Act of 1962 allowed for extradition for offences provided for in the

extradition treaty with another State and also allowed for use of a convention as the legal basis for considering extradition in the absence of a bilateral agreement. His delegation welcomed the measures taken to strengthen United Nations standards of conduct and recognized that predeployment and in-mission training were crucial for preventing misconduct. It therefore welcomed the adoption of the United Nations Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by United Nations Staff and Related Personnel.

68. **Mr. Ahmad Hamzah** (Malaysia) recalled that United Nations officials and experts were only granted functional immunity (*ratione materiae*) for acts performed in pursuit of their official tasks. There should be no impunity for United Nations officials who committed offences, including sexual offences, while on mission. However, in addition to establishing criminal accountability, it was necessary to address the capacity of States to investigate and prosecute, particularly in cases of overlapping jurisdiction. His delegation supported the work of the Ad Hoc Committee established pursuant to General Assembly resolution 61/21 and the development of a practical mechanism to ensure the criminal accountability of United Nations officials and experts on mission without compromising the operational requirements of such personnel and without impinging on existing agreements.

69. With respect to the call to establish jurisdiction over crimes of a serious nature, Malaysia's criminal law was generally limited to events occurring within Malaysia's territorial jurisdiction, although it provided for the extension of jurisdiction for certain offences of a transnational nature or for offences covered under multilateral conventions. Under Malaysia's Armed Forces Act of 1972, Malaysian law continued to apply to military personnel deployed abroad, and similar provisions were being considered for Malaysian police officers deployed on United Nations peacekeeping missions. With reference to paragraph 4 of General Assembly resolution 62/63, he said that Malaysia was willing to enhance cooperation with the United Nations in the exchange of information and the facilitation of investigations on an informal basis.

70. **Mr. Kuzmin** (Russian Federation) said that it was vital to redouble efforts to combat impunity for crimes which undermined the authority of the United Nations. For that reason, the adoption of General Assembly

resolution 62/63 was a major step in the right direction. As for States' extraterritorial jurisdiction over crimes committed by its own citizens, the Russian Criminal Code contained provisions making it possible to hold persons criminally accountable for offences committed outside the Russian Federation.

71. It was necessary to continue the search for long-term measures which would not only remove obstacles to the prosecution of persons responsible for crimes but would also guarantee those persons the right to a fair trial. In that connection, it was necessary to bear in mind the special legal status of officials and experts on United Nations missions and their conditions of service. The leading role in calling those guilty of crimes to account must be taken by their State of nationality.

72. While the cooperation of States in combating impunity was important, the effectiveness of such action depended to a great extent on States being informed of the occurrence of offences in a full and timely fashion by the Secretariat. Although the Secretary-General's report on information-sharing practices between the United Nations and national law enforcement authorities, as well as referrals of possible criminal cases related to United Nations staff, United Nations officials and experts on mission (A/63/331) had been requested by the Fifth Committee, it had a direct bearing on the subject before the Sixth Committee and should be taken into account in its work. The machinery for cooperation between the Secretariat and States with a view to the criminal prosecution of United Nations officials and experts required streamlining. The material received in the course of internal administrative investigations by the Secretariat could play only a very limited role in any criminal prosecution. It could certainly be used to initiate the bringing of a criminal case and might help to establish a fuller picture of events, but it could scarcely be admitted as evidence in a criminal trial. His Government's position in that respect was basically similar to that of China.

73. Before considering the advisability of drawing up a legally binding instrument, for example an international convention, in order to ensure that punishment could not be evaded, it was necessary to determine the approach which should be taken on that subject, in particular the possible scope *ratione personae* and *ratione materiae*. He shared the opinion expressed by many delegations that the topic should

exclude the accountability of military observers and advisers acting in an official capacity but not forming part of their national peacekeeping contingents.

74. The work of the Ad Hoc Committee on criminal accountability of United Nations officials and experts on mission was valuable, in that it had permitted a useful exchange of views on international cooperation, an important aspect of the topic. His delegation was ready to continue its participation in discussions of the Chairperson's informal working paper on that subject in the Sixth Committee's working group.

75. **Mr. Eriksen** (Norway) said that impunity for serious crimes should apply regardless of the circumstances because impunity could only foster mistrust and taint the Organization's image. It was therefore vital to establish effective remedies to guarantee access to justice for victims of serious crimes. Norway strongly supported the United Nations zero-tolerance policy towards crimes committed by its officials. There was a clear need for some Member States to extend their criminal jurisdiction to serious crimes committed by their nationals serving as members of United Nations missions; other Member States had yet to provide information in relation to their relevant legislation. Norway was convinced that it was important to strengthen cooperation and information-sharing through the establishment of an internationally binding legal framework. Although General Assembly resolution 62/63 had contributed to that goal, there was room for further strengthening of the resolution by developing more specific guidance for Member States and the Organization.

76. **Ms. Cabello de Daboin** (Bolivarian Republic of Venezuela) said that her country attached great importance to the issue of ensuring the criminal accountability of United Nations officials and experts on mission and supported the zero-tolerance policy for crimes committed by United Nations officials and experts on mission. It was reprehensible that refugees were mistreated by the officials charged with their care. The accountability of United Nations officials on mission entailed questions of both general principles of law and jurisdiction. Consideration should be given to gaps in State legislation that allowed for impunity, but it was premature to begin elaborating a convention. However, the principles of taking action to punish wrongdoing and to protect human rights must be implemented in accordance with the will of the General Assembly.

77. **Mr. Morrill** (Canada) said that it was important to ensure system-wide coherence in addressing issues such as corruption, which had been addressed by the United Nations Convention on Corruption and General Assembly resolution 58/4. The Conference of States Parties to the Convention had called for coordination between the various bodies in which accountability of United Nations staff was considered. Such work should be taken into account during the Sixth Committee's deliberations.

78. **Mr. Donovan** (United States of America) said that United Nations officials and experts on mission should be held accountable for the crimes they committed, and that more could be done to curb such crimes. He noted the broad range of practical measures that had been taken to address the issue, including the Organization's efforts to train peacekeepers on current rules, guidance and procedures relevant to conduct and discipline. The United States appreciated efforts to refer credible allegations against United Nations officials and experts on mission to the State of the alleged offender's nationality. It urged States to which such individuals were repatriated to take appropriate action and notify the Organization in order to allow the Secretariat to report to Member States on efforts to investigate and prosecute referred cases.

The meeting rose at 12.45 p.m.