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Chairman: Ms. Rodríguez-Pineda (Vice-Chairperson) . . . . . (Guatemala)

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08-56723 (E)

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

Agenda item 76: Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts (*continued*) (A/63/118 and Corr.1)

1. **Ms. Blum** (Colombia), drawing attention to the information provided by her Government and included in the report of the Secretary-General on the item (A/63/118), said that Colombia was a party to the four Geneva Conventions of 1949 and to the 1997 Protocols additional thereto. Universal acceptance of those Protocols by all States Members of the United Nations would be an important step in consolidating and strengthening international humanitarian law. Colombia was also in the process of ratifying Additional Protocol III. In addition, in demonstration of its firm commitment to peace and international humanitarian law, Colombia had ratified the Statute of the International Criminal Court and had become a party to the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.

2. In compliance with those instruments, Colombia had adopted specific measures to promote the protection of victims, including the Law on Justice and Peace, which provided for the punishment of those responsible for serious humanitarian law violations; mechanisms for compensation to victims through administrative channels; the training of armed forces in matters relating to international humanitarian law; the adoption of legislation to punish war crimes; and the publication of manuals and the holding of seminars for members of the security forces. In 2008 the Ministry of Defence had adopted a policy on the integration of human rights norms and international humanitarian law, reinforcing the rules of engagement issued by the Armed Forces General Command aimed at ensuring that operations were conducted in a manner respectful of human rights and international humanitarian law.

3. One of the main strategies of the Government's democratic security policy in the field of human rights was to involve local authorities and civil society in creating broad public awareness. Colombia was firmly committed to a policy of strengthening respect for human rights and international humanitarian law and maintaining zero tolerance for any violation of international conventions on the protection of victims. In a clear demonstration of transparency, political will and cooperation with the United Nations system, Colombia had volunteered to report under the Human Rights Council's universal periodic review mechanism.

4. **Ms. Nguyen Thi Tuong Van** (Viet Nam) said that her country, fully aware of the devastating effects of war on a country and its population, had always upheld the principles of international humanitarian law. Viet Nam was a party to the Geneva Conventions of 1949 and Protocol I and was examining the possibility of acceding to Protocol II. Various laws and regulations had been enacted to give effect to the country's obligations under those instruments. The Law on National Defence of 2005 and related regulations, such as the disciplinary rules of the armed forces, established that the fundamental principle of national defence was to ensure protection of the civilian population. In order to disseminate knowledge of international humanitarian law within Viet Nam, the Government had arranged to have the most important instruments translated into Vietnamese and published. Selected Vietnamese army personnel participated in training courses organized by the International Committee of the Red Cross (ICRC) and in turn conducted annual training courses for army officers.

5. In addition to participating in international and regional workshops on international humanitarian law, the Ministry of Foreign Affairs and ICRC had jointly organized a regional workshop in Hanoi in 2006 on the theme "New treaties and implementation — the East Asian perspective", which recommended, among other things, early accession to the Additional Protocols of 1977 as a way to promote international humanitarian law in the region. In the long term, a conflict-prevention strategy that comprehensively addressed the root causes of armed conflict was necessary in order to protect civilian populations, first and foremost women and children, from the untold suffering and loss caused by war. Although it was the primary responsibility of each Government to protect its citizens, international cooperation in preventing armed conflicts was also important.

6. **Mr. Young** (Observer for the International Committee of the Red Cross (ICRC)) said that the adoption of Protocols I and II in 1977 represented a milestone in the regulation of armed conflict, yet hundreds of thousands of civilians continued to be affected by warfare and were frequently subjected to direct attacks, forced displacement, outrages against their personal dignity, sexual violence and destruction

of their property. Detainees continued to be deprived of their basic rights, including adequate treatment, procedural safeguards and judicial guarantees. In many instances, humanitarian organizations were prevented from doing their work. That grim picture was of the utmost concern to ICRC, a humanitarian organization with an international mandate to work for the faithful application of humanitarian law.

7. On the positive side, there was a heightened awareness of its basic tenets, which were the focus of wide-ranging scrutiny by Governments, academia and the media. In 2006 the Geneva Conventions of 1949 had achieved universal acceptance with 194 States parties. There were 168 States parties to Protocol I and 164 to Protocol II. Protocol III had entered into force in 2007 with 33 States parties. Other major humanitarian law treaties were being accepted by a growing number of States.

8. It was the conviction of ICRC that the existing rules protecting the victims of war were, on the whole, adequate to respond to the challenges of contemporary armed conflict and reflected a reasonable and pragmatic balance between the demands of military necessity and those of humanity. The major problem remained that of achieving greater compliance with those norms by all parties to armed conflict, whether Government armed forces or organized non-State armed groups. That did not mean that there was no scope or need for the clarification or development of humanitarian law in response to new situations. ICRC was actively pursing a range of projects and consultations to clarify key legal concepts such as "direct participation in hostilities" and to devise more detailed rules governing internment. Recently, ICRC had worked with Switzerland on an initiative resulting in the so-called Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict. The adoption in Dublin in May 2008 of a new international convention comprehensively outlawing cluster munitions to prevent the extensive civilian suffering caused by such weapons demonstrated the continued dynamism of international humanitarian law. Yet any attempt to review the appropriateness of international humanitarian law could only take place after it had been determined that it was the law itself that was inadequate and not the political will to apply it. It was essential for States to recall their obligation under article 1 of all four Geneva Conventions "to respect and to ensure respect" for humanitarian law in all circumstances.

9. Considerable progress had been made in recent years in the application and enforcement of international humanitarian law through international mechanisms to prosecute individual perpetrators of the worst international crimes in the former Yugoslavia, Rwanda and elsewhere. Another achievement was the entry into operation of the International Criminal Court, based on the principle of complementarity that affirmed the primary responsibility of States to punish war crimes, genocide and crimes against humanity. Ensuring compliance required understanding of the law and commitment to respecting it on the part of all belligerents. It also required States to take a wide range of national implementation measures, including comprehensive legislation, military manuals and proper training and command supervision within the armed and security forces.

10. Over the past two years many States had made changes in their domestic legal systems to fulfil their obligations under international humanitarian law. Increasingly, for example, States were adapting their criminal law to provide for the prosecution of war crimes in their domestic courts and to assert universal jurisdiction over such crimes. An increasing number of States had national committees or other bodies to advise Governments on matters relating to humanitarian law. States parties to Protocol I should be encouraged to make the declaration under article 90 to accept the competence of the International Fact-Finding Commission and to make use of its services.

11. Partnerships and synergies were developing among States, international and regional organizations, ICRC, the national Red Cross and Red Crescent societies and the International Federation of Red Cross and Red Crescent Societies, academic institutions, non-governmental organizations and civil society. In particular, he would like to highlight the specific role of national Red Cross and Red Crescent societies as auxiliaries to Governments in the promotion of humanitarian law.

12. ICRC encouraged States to pursue with urgency and determination the implementation of international humanitarian law at the national level and to encourage and support other States in that important endeavour.

13. **Mr. Schultz** (Observer for the International Federation of Red Cross and Red Crescent Societies

(IFRC)) said that the role of national Red Cross and Red Crescent societies as auxiliaries to the public authorities in the humanitarian field in their countries was embodied in the Geneva Conventions but had received renewed attention in recent years based on a study of the auxiliary role of the societies conducted by IFRC at the request of Governments and national societies and presented at the twenty-eighth International Conference of the Red Cross and Red Crescent in 2003. As requested, IFRC had presented recommendations based on the study and the recommendations had been integrated into a resolution adopted at the thirtieth Conference in November 2007. Paragraph 3 of that resolution defined the role of the national societies as auxiliaries, and paragraph 6 clarified that role in relation to article 26 of the First Geneva Convention of 1949; together they were of great importance in defining the relationship between the national societies and their Government partners. He was pleased to learn that the consensus achieved on the issue at the Conference was being considered for inclusion in the draft resolution of the Sixth Committee on the agenda item, since the adoption of that language by the General Assembly would help to provide a firmer basis for such partnerships and affirm the role of the national societies with respect to international humanitarian law.

14. He would also like to stress the importance of protecting the Red Cross and Red Crescent emblems from abuses of the type described in article 53 of the First Geneva Convention. Modern information and communications technology had made it difficult to locate responsibility for the prevention and repression of abuses on the Internet. Sadly, the appearance of fraudulent websites and Internet scams had become common after major disasters. IFRC was working to develop advice for national societies on how best to deal with Internet fraud in their own countries and hoped that Governments would join forces with their national society auxiliary partners to ensure that the generosity of the public in times of disaster was not diverted to the benefit of criminals. He hoped that the Committee would consider the issue of emblem protection relevant to its draft resolution.

Agenda item 77: Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives (A/63/121 and Add.1 and Corr.1)

15. **Mr. Cabouat** (France), speaking on behalf of the European Union; the candidate country the former Yugoslav Republic of Macedonia; the stabilization and association process countries Albania and Montenegro; and, in addition, Iceland, the Republic of Moldova and Ukraine, said that the Union noted with satisfaction the increasing number of ratifications of the Vienna Convention on Diplomatic Relations of 1961 and the Vienna Convention on Consular Relations of 1963 and their Optional Protocols and urged States to implement them fully. The privileges and immunities provided for in those conventions were not designed primarily to benefit individuals but rather to protect the sending State and to ensure the efficient functioning of diplomatic and consular missions as representatives of States. Diplomatic and consular personnel, for their part, were under an obligation to respect the laws of the receiving State.

16. The responsibility of a receiving State to protect diplomatic and consular missions in its territory was at the heart of international law relating to diplomatic relations. The physical safety of diplomatic and consular missions and representatives was a prerequisite for their smooth functioning and was in the common interest. The European Union was deeply concerned about the continued attacks, particularly deliberate attacks, against diplomatic and consular missions and their personnel and other violations of the Vienna Conventions. It would urge Member States to do their utmost to prevent such attacks and, if attacks nonetheless occurred, to investigate and prosecute. It would also encourage States to engage in a dialogue with the diplomatic missions in their territory to determine the most effective way to protect them. Breaches by a State of its obligations under the Vienna Conventions clearly engaged its international responsibility and entailed an obligation to make reparation and possibly to take other remedial action. Lastly, States were urged to comply with the reporting procedures set out in the General Assembly resolution under the agenda item.

17. **Mr. Eriksen** (Norway), speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), said that the obligation to protect foreign emissaries existed in the legal tradition of all cultures,

since the system of international cooperation depended upon the protection of State representatives. It was nearly 30 years since the agenda item had been introduced at the request of the Nordic countries but it was still a matter for concern. According to universally accepted principles and rules of international law, the receiving State was obliged to ensure the protection of diplomatic and consular representatives and their premises as well as missions and representatives to international organizations, not to protect particular individuals but to safeguard the channels of communication between States. It should also be stressed that diplomatic and consular representatives must observe the laws and regulations of the receiving State.

18. Acts of violence against diplomatic and consular representatives and missions, representatives to intergovernmental organizations and officials of such organizations could never be justified and should not go unpunished. There was a need for close cooperation and information-sharing in order to prevent violations. If the receiving State failed to offer the required protection, the injured State was entitled to claim prompt compensation for losses or injuries suffered.

19. The Nordic countries welcomed the accession of the new States parties to the instruments relevant to the protection of diplomatic and consular missions and representatives and appealed to all States that had not done so to become parties. In addition, they urged States to continue to report violations to the Secretary-General; the reporting procedure helped to raise awareness in the world community and to promote efforts to enhance the protection, security and safety of diplomatic and consular missions and representatives.

20. **Mr. Morrill** (Canada), speaking on behalf of the CANZ group of countries (Canada, Australia and New Zealand), welcomed the report of the Secretary-General (A/63/121 and Add.1 and Corr.1). A Canadian embassy had been seriously attacked in 2007 and before that a senior Canadian diplomat, Mr. Glynn Berry, had been killed in an attack by a suicide bomber in Afghanistan. Such incidents highlighted the importance of effective measures to enhance the protection, security and safety of diplomatic and consular missions and their personnel. Attacks on diplomatic personnel were universally acknowledged to be a serious international crime and seemed the more heinous where the victims were dedicated to improving the lives of the people in the countries in which they were serving. Diplomats often worked in very dangerous conditions in conflict zones and the measures traditionally used to protect them were no longer sufficient. All the relevant treaties for their protection must be ratified and offences against them must be criminalized. It was essential to prosecute both the offenders and those who aided and abetted them. It was also vital to ensure that the local population understood and appreciated the positive aims pursued by diplomats, especially in crisis and conflict zones. Diplomatic and consular premises must not be made into convenient lightning rods for political dissatisfaction.

21. **Mr. Zhou** Yong (China) said it was in the common interest of all States to enhance the protection of diplomatic and consular missions and their personnel, in accordance with the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations, and other relevant rules of international law. To ensure the effective maintenance of the world order, diplomatic missions must be able to function normally. He condemned all attacks on them and expressed serious concern at the various incidents of harassment and damage which had occurred over the past two years. Both the Vienna Conventions placed on receiving States a special duty to protect missions and their personnel. In fulfilling that obligation, however, States acted in different ways. Many States, including China, took vigorous preventive measures: they provided special security guards on a permanent basis and maintained frequent contact with the missions to warn them of risks to their safety and security and to listen to their requests in that regard. Security measures were also stepped up at sensitive times. Other States focused on the aftermath of an attack, by sending officials to the scene, prosecuting offenders and providing compensation. That was certainly a necessary part of the responsibility of the receiving State, but its first duty under the Conventions was prevention. Receiving States should also adopt legislative, administrative and judicial measures to improve their procedures for investigating and prosecuting offences against diplomatic and consular premises, and should criminalize such offences under their domestic law. Leniency in such matters served the interest of neither the sending nor the receiving State. Receiving States should also be held liable for failure to comply with their obligations under the Vienna Conventions. In March and April 2008, Chinese diplomatic and consular missions in some countries had been violently

attacked, some being set on fire and others broken into and damaged; some personnel had also been attacked and injured. China appreciated the steps taken by the States concerned to deal with the aftermath, including the payment of compensation and the strengthening of security. However, effective preventive measures were also an essential part of the obligations of those States.

22. **Ms. Tansu-Seçkin** (Turkey) said her country's diplomatic and consular missions and personnel had been targets of terrorism and many Turkish diplomats had lost their lives in attacks by terrorist organizations. It should be a high priority, in the light of the 1961 and 1963 Conventions, to ensure the protection of all diplomatic and consular missions and representatives. The 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, required the criminalization of offences against diplomatic personnel. Turkey welcomed the additional 19 accessions to those instruments since the previous report of the Secretary-General on the question and called upon all States that had not yet done so to become parties to them. General Assembly resolution 35/168 and subsequent resolutions had established a valuable mechanism for bringing serious violations of diplomatic premises and offences against their personnel to the attention of States, and reporting on the actions taken against the offenders. She urged States to communicate directly and in a timely manner with the sending State in the event of such violations.

23. She noted with regret that some baseless claims had been made in the report of the Secretary-General (A/63/121) in the context of the Cyprus question. There was a functioning authority in the northern part of the island, equipped with competent law enforcement agencies with which the Greek Cypriot police were able to collaborate. However, the Greek Cypriot side had for decades been pursuing a policy of non-cooperation with the Turkish Cypriot side, especially in combating crime. Instead of evading its responsibilities and depicting every matter as being related to the so-called "invasion", the Greek Cypriot side should work together with the Turkish Cypriot authorities. It was hardly necessary to recall that in 1974 Turkey had intervened as a guarantor Power within its rights and responsibilities under the 1960 Agreements. It was the Turkish Cypriot side which had since insisted on the formation of a technical committee wholly dedicated to crime prevention, and the two sides had recently agreed to establish technical committees to handle day-to-day matters on the island.

24. **Mr. Moreno** (Bolivarian Republic of Venezuela) said his Government firmly rejected any attempt on the security of diplomatic and consular missions. Where any such offence had taken place in its own territory, the competent authorities had promptly investigated the incident in order to identify and prosecute the offenders in accordance with domestic law. In such cases the affected mission had also been promptly informed of the measures taken and the Government had undertaken to reinforce its security precautions to prevent any repetition. His Government was committed to the protection of accredited diplomatic and consular missions and their personnel in its territory, in conformity with the requirements of international treaty and customary law and its own legislation.

25. **Mr. Al-Habib** (Islamic Republic of Iran) said his country attached great importance to the security and safety of diplomatic and consular missions and representatives and was committed to taking every necessary step to enhance their protection. It had a special police unit for the purpose and had recently set up a national committee within its Ministry of Foreign Affairs to coordinate the measures taken by different Government agencies in order to ensure the safety and security of diplomatic and consular missions and their personnel. The consequences of any violation would be kept to a minimum, and the offenders prosecuted without undue delay. All States had an obligation under international law to respect the immunity and inviolability of diplomatic and consular missions and their personnel and to protect them from any violation.

26. He expressed serious concern at the systematic and continuing violence by foreign forces in Iraq against the safety and security of his country's diplomatic and consular missions. Several attacks had been made on them in the past two years. On 11 January 2007 United States military forces had stormed the Consulate General in the city of Erbil and occupied the building. They had abducted five consular officials, confiscated official documents and computers and caused damage to the premises. That incident had been reported to the Secretary-General in a letter dated 19 January 2007 (A/61/706-S/2007/28), seeking an urgent and resolute response from the United Nations. Two further letters had been sent following up the matter. The abducted persons had been subjected to physical and mental torture and three of them were still

in detention. In other incidents, on 7 April and 8 May 2007, the Consulate General in Basra had been attacked and damaged by British military forces; on 13 June 2007 three Iranian diplomats had been detained and interrogated by United States troops in Baghdad; and in August 2007 three more diplomats had been detained and another diplomat, together with representatives of the Ministry of Electricity, had been detained as well. On 11 January 2008 four staff members and four security guards at the Consulate General in Basra had been detained by foreign military personnel. Those violent acts, for which the United States and United Kingdom Governments were primarily responsible, violated the law governing diplomatic and consular relations and endangered diplomatic and consular immunity. The United States Government must immediately release the consular officials it had detained and provide compensation for the damage caused. The authorities in Iraq should continue their efforts to investigate the incidents and to identify and prosecute the offenders.

27. **Mrs. Ramos** (Cuba) said her delegation unequivocally condemned violations of the protection and security of diplomatic and consular missions and representatives. Those responsible should not go unpunished and States must take the necessary internal measures to prohibit in their territory activities by individuals, groups or organizations which encouraged, instigated, organized or committed such acts. Her Government had taken the necessary measures to prevent such acts being committed against diplomatic or consular missions in its territory. It provided security services on mission premises, at the sites of official activities, and at diplomatic residences. Attacks on diplomatic representatives were criminal offences under Cuban law, carrying severe prison sentences. The international conventions on diplomatic protection must be strictly complied with and she welcomed the 19 recent accessions to them.

28. **Ms. Schonmann** (Israel) said her country attached great importance to developing effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives. Israeli missions had long been the deliberate target of terrorist attacks. Despite some positive international developments and a growing awareness of the need for diplomatic protection, violent attacks and terrorist threats against mission premises and representatives, including Israeli ones, were continuing. She called on the international community to take all necessary steps to provide them with adequate protection and urged all States to implement preventive methods appropriate to the current threats by terrorists, in accordance with General Assembly resolution 61/31. International resolve and cooperation would, she hoped, assist in deterring States which facilitated terrorist activities directed against diplomatic and consular missions and representatives. Israel was committed to compliance with the provisions of the Vienna Conventions and of all other relevant instruments of international law. The Sixth Committee must emphasize the obligations arising for receiving States from article 29 of the Vienna Convention on Diplomatic Relations, namely, to treat as inviolable the person of a diplomatic agent and to take all appropriate steps to prevent any attack on his person, freedom and dignity. To prevent such attacks receiving States must devote special attention, at the national and local levels, to protecting diplomatic and consular premises. She urged the international community to cooperate in ensuring that those obligations were fulfilled.

29. **Ms. Ioannou** (Cyprus), speaking in exercise of the right of reply, said she regretted having to revert to some unsubstantiated and inaccurate remarks by a previous speaker, whose delegation had unfortunately felt the need to politicize the question of diplomatic protection. The representative concerned had been referring to an attempt by her own delegation to respond to a submission by the Holy See concerning an incident in the territory of Cyprus (A/63/121, paragraph 9). The delegation of Turkey had claimed that there were Turkish Cypriot authorities distinct from the Government of Cyprus. It was, however, abundantly clear which Government represented Cyprus, which according to its constitution was “one and indivisible”. Unfortunately, since 1974 the Government of Cyprus had been unable to exercise effective control over part of its territory, owing to the use of force by a fellow State Member of the United Nations which continued to occupy a substantial portion of the territory. It was no coincidence that only one country failed to recognize which was the legitimate Government of Cyprus. The speaker in question had denied that there had been an invasion of her country in 1974, although several resolutions of the Security Council recognized that there had. Could that delegation explain that, or indeed the maintenance of a large military force in the territory of another sovereign

State, which according to the Charter of the United Nations constituted a violation of international law?

Agenda item 73: Criminal accountability of United Nations officials and experts on mission (*continued*) (A/C.6/63/WG.1/WP.1 and A/C.6/63/WG.1/DP.1)

30. **Ms. Telalian** (Greece) (Chairperson of the Working Group on criminal accountability of United Nations officials and experts on mission), reporting on the outcome of the Working Group's meetings, said that the Working Group had decided that the members of the Bureau of the Ad Hoc Committee on criminal accountability of United Nations officials and experts on mission would continue to act as friends of the Chairperson during the Working Group's meetings. As Mr. Flores Monterrey (Bolivia) and Mr. Zainuddin (Malaysia) had been unavailable to serve in that capacity, the Group of Latin American and Caribbean States and the Group of Asian States had been invited to nominate representatives to serve as friends of the Chairperson in order to ensure the representation of all regional groups.

31. The Working Group had had before it the report of the Ad Hoc Committee (A/63/54), the note by the Secretary-General on ensuring the accountability of United Nations staff and experts on mission with respect to criminal acts committed in peacekeeping operations (A/60/980), the note by the Secretariat on the criminal accountability of United Nations officials and experts on mission (A/62/329) and the 2008 report of the Secretary-General on that subject (A/63/260 and Add.1).

32. The Working Group had held four meetings, on 14, 15 and 17 October 2008. It had adopted its work programme at its first meeting. As more time was needed to assess the information from Governments set out in the Secretary-General's report, and in accordance with the Ad Hoc Committee's wishes, the Working Group had focused on the informal working paper on international cooperation prepared by the Chairperson of the Ad Hoc Committee. Following discussion of that paper, a revised informal working paper had been prepared and issued as document A/C.6/63/WG.1/WP.1. Some delegations had put forward observations and comments on the revised working paper. Some oral and written proposals had also been made.

33. The Working Group's discussions had proceeded in two phases. First, consideration had been given to the informal working paper on international cooperation which she had prepared for the Ad Hoc Committee with a view to identifying the relevant principles of international cooperation which might usefully supplement the elements incorporated in General Assembly resolution 62/63 on criminal accountability of United Nations officials and experts on mission. Several delegations had expressed the view that that resolution served as the reference point for the Working Group's discussion. It had also been agreed that it was necessary to focus on developing general principles of international cooperation. A brief discussion of the informal working paper had then been held, taking account of the various oral and written suggestions made in the Ad Hoc Committee and recorded in the Ad Hoc Committee's report.

34. On the basis of the various comments and drafting suggestions made by delegations, she had then prepared and presented the revised informal working paper for the Working Group's consideration. The revised paper had two purposes: to reflect the emerging trend of opinion by incorporating various views on the earlier version expressed by delegations in the Ad Hoc Committee and the Working Group and to provide a basis for discussion and reflection on the draft resolution presented in 2008, in particular with regard to the possibility of adding some specific clauses on international cooperation.

35. The revised working paper had been tailored to be read together with General Assembly resolution 62/63. Some passages of the previous draft, dealing with issues that had been the subject of earlier discussions and adequately addressed in the resolution, had been deleted from the revised paper, e.g. the paragraph concerning the privileges and immunities of the Organization. Some delegations had expressed a preference for the initial informal working paper, on the grounds that the issues raised in the two informal papers should remain on the table for further discussion, while others had supported the revised working paper and considered that it represented a compromise and a basis for including a reference to certain aspects of cooperation in a draft resolution. Written and oral comments had been made on the revised informal working paper, including a proposal from the Russian Federation (A/C.6/63/WG.1/DP.1) and an informal paper on international cooperation

presented by Cuba on behalf of the member States of the Non-Aligned Movement, which contained possible elements for inclusion in the draft resolution.

36. The discussions in the Working Group had contributed to the drafting of a resolution on the topic in so far as elements of the revised informal working paper and proposals from delegations had been included in the draft.

Agenda item 99: Measures to eliminate international terrorism (*continued*) (A/63/37, A/63/89, A/63/123, A/63/173 and Add.1, A/63/281-S/2008/431)

37. **Mr. Perera** (Sri Lanka) (Chairperson of the Working Group) recalled that at its first meeting the Committee had decided to establish a working group with a view to finalizing the draft comprehensive convention on international terrorism and to continue discussion of the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations. The Working Group had held two meetings and one informal consultation. It had had before it the reports of the Ad Hoc Committee established by General Assembly resolution 51/210 on its eleventh and twelfth sessions (A/62/37 and A/63/37), the oral report made by the Chairperson of the Working Group during the sixty-second session of the General Assembly (A/C.6/62/SR.16) and two letters from the Permanent Representative of Egypt, one addressed to the Secretary-General (A/60/329) and the other to the Chairperson of the Sixth Committee (A/C.6/60/2).

38. At its first meeting, the Working Group had decided to proceed with its discussion of outstanding issues relating to the draft comprehensive convention and then go on to consider the question of convening a high-level conference. He, as Chairperson, together with the Coordinator of the draft comprehensive convention, Ms. Telalian, had also engaged in bilateral contacts with interested delegations on the outstanding issues. The Coordinator had likewise held one round of intersessional bilateral contacts. The Working Group had received a report on the results of those contacts at its second meeting, during which it had also taken up the question of convening a high-level conference.

39. With regard to the draft comprehensive convention, several delegations had found the proposal made by the Coordinator during the 2007 session of the Ad Hoc Committee (A/62/37, annex) to be a good basis for negotiations aimed at reaching a compromise solution. Other delegations had considered the text proposed by the Coordinator to be acceptable if it was taken as a package. Some delegations had felt that the text of draft article 18 proposed by the Coordinator had a constructive ambiguity that might help to resolve the outstanding issues relating to that article. It had been observed that the current wording of draft article 18 was intended to achieve a good balance between the scope of the comprehensive convention and the scope of application of international humanitarian law, without leaving open the possibility that the draft article might be interpreted to the detriment of international humanitarian law.

40. Some delegations had emphasized that all proposals should remain on the table and be considered along with the Coordinator's proposal, which, in the view of some, did not sufficiently address all concerns of Member States and contained some uncertainties that needed further clarification. It had been pointed out that draft article 18 should be considered as a whole and that it should also be read in conjunction with draft article 2, on the scope of offences, as the two articles were interrelated. Some delegations had reiterated that a clear definition of terrorism should be included in the draft convention, as well as a clear distinction between acts of terrorism and the legitimate struggle of peoples against foreign occupation. Some speakers had underlined that acts of military forces of States not regulated by international law, as might be the case in some instances during peacetime, should not be excluded from the scope of the convention. Notwithstanding the difficulties, delegations had reaffirmed their commitment to the early conclusion of the draft comprehensive convention.

41. The Coordinator, in her briefing on the informal bilateral contacts carried out during the current session, had reported that an increasing number of delegations had indicated their readiness to work on the basis of the proposed overall package (A/62/37, annex, para. 14) aimed at resolving the outstanding issues surrounding the draft comprehensive convention. She had noted that the approaches that had characterized the work on the draft convention from the outset had also underpinned the development of the previous three instruments concluded by the Ad Hoc Committee, namely, the International Convention for the

Suppression of Terrorist Bombings, the International Convention for the Suppression of the Financing of Terrorism and the International Convention for the Suppression of Acts of Nuclear Terrorism. The focus throughout the work had been on developing a law enforcement instrument for individual criminal responsibility, strengthening international cooperation in that regard on the basis of an extradite or prosecute regime. In other words, the individual rather than the State had been at the centre of the efforts to draft a comprehensive convention. The core rationale for focusing on the individual had been that other fields of law — in particular the Charter of the United Nations, international humanitarian law and the law relating to the responsibility of States for internationally wrongful acts — adequately covered the obligations of States in situations where acts of violence were perpetrated by States or their agents. However, since States acted through the agency of individuals, there had nevertheless been an attempt to address the conduct of such agents during armed conflict and in peacetime.

42. The general tendency in the Ad Hoc Committee had been to take an exclusionary rather than an inclusionary approach. Thus, in proscribing certain specific acts as acts of terrorism, attempts had been made to exclude certain activities because they were governed by other fields of international law. In the case of the International Convention for the Suppression of Terrorist Bombings, particular attention had been focused on excluding activities of peacekeepers, activities of armed forces and activities of military forces of a State from the scope of the Convention. Such an exclusionary approach was not novel. The 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft, for example, expressly provided that the Convention would not apply to aircraft used in military, customs or police services, the assumption being that other rules of international law covered such instances and that the exclusion was therefore not a total exclusion of criminal responsibility, but rather a qualification as to the applicable law.

43. During the earlier part of the negotiations on the draft comprehensive convention, there had been proposals to follow the model of some regional instruments that expressly excluded some conduct from the scope of the defined proscribed activity; thus, acts that were not considered to be acts of terrorism would be specified within the article that defined the acts prohibited. However, that approach had not found general resonance in the context of the work of the Ad Hoc Committee, and the exclusionary approach taken in article 19 of the Terrorist Bombings Convention had been followed instead. The Coordinator had emphasized that it was in that spirit that draft article 18 of the draft comprehensive convention detailed the exclusionary provisions that applied to certain activities undertaken by the armed and military forces of a State. At the same time, it sought to close any loopholes that might invite impunity for certain categories of persons. In order to achieve that balance, however, it was imperative that the draft article be read as a whole and together with draft article 2. Paragraph 1 of draft article 18 set out the overarching principles governing what would be excluded from the scope of the draft convention. The negotiated language of that article built upon the text of the Terrorist Bombings Convention. Draft paragraph 5 of article 18, which contained a "without prejudice clause", had been added to further emphasize that premise.

44. The Coordinator had also reported that, during the bilateral contacts and informal meetings, a number of delegations had observed that there seemed to be general agreement on a number of basic principles, including the proposition that civilians could under no circumstances constitute a legitimate target of the use of force, whether during armed conflict or during peacetime. It had also seemed to be agreed that the integrity of international humanitarian law should be respected and preserved, and that the draft convention should not prejudice or attempt to modify existing provisions. In the same vein, the draft convention would not impose on States parties obligations under international humanitarian law by which they were not already bound.

45. The elements of the package proposed in 2007 attempted to consolidate those understandings by clarifying the relationship between the draft convention and international humanitarian law. Draft article 18, paragraph 2, established a demarcation between what was covered by the draft convention and activities of armed forces during armed conflict, as those terms were understood under international humanitarian law. The "without prejudice" clause in paragraph 5 further clarified that point. The term "lawful" should, from an international humanitarian law perspective, be understood with its double-negative connotation as "not unlawful", since international humanitarian law

did not in a literal sense define which acts were "lawful", but rather which were prohibited. The Coordinator had reiterated that, in view of the need to distinguish those acts that were "unlawful" under draft article 2, paragraph 1, the term "lawful" in paragraph 5 had been used as being more appropriate in the circumstances. The essential aspect of that paragraph was the principle that international humanitarian law should not be prejudiced by the convention.

46. The Coordinator had further reported that the issue of "State terrorism" had continued to be raised in the bilateral contacts. She had noted in that regard that, despite the exclusionary provisions relating to activities attributable to the State or its agents, the Ad Hoc Committee had not been oblivious to particular situations in which the State might play a role in suppressing international terrorism, for example by passing and enforcing legislation that proscribed acts of terrorism within its jurisdiction. She had also noted that there had been some progress in addressing questions of general impunity in the various instruments dealing with terrorism. In the Terrorist Bombings Convention it had been recognized that the activities of armed forces during armed conflict were governed by international humanitarian law. It had also been recognized that, although the activities of military forces of States were governed by other rules of international law, the exclusion of certain actions from the coverage of the Convention did not condone or make lawful otherwise unlawful acts or preclude prosecution under other laws. Since then, those principles had appeared in various forms in the Nuclear Terrorism Convention and, now, in the draft comprehensive convention.

47. Draft article 2 was concerned with "unlawful" conduct by "any person". Draft article 18, read in conjunction with draft article 2, merely excluded from the scope of the convention certain activities that were regulated by other fields of law. Draft article 18, paragraph 3, read with paragraph 4, simply recognized that other laws would apply and did not preclude prosecution under such laws. The addition to paragraph 4, together with the new preambular language based on the Nuclear Terrorism Convention, sought to reinforce that understanding. Activities that were not regulated by other fields of law and that constituted an offence within the meaning of draft article 2, on the other hand, could conceivably fall under the scope of the convention.

48. The Coordinator had noted that there had been an effort to include specific obligations for States and the draft comprehensive convention imposed a variety of obligations on the State. In large measure, those obligations contained language that tracked provisions of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV)), which the International Court of Justice, in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, had said were declaratory of customary international law. Those points underscored the fact that the draft convention should not be seen in isolation from other rules of international law. It was an additional building block in an already existing edifice of law that governed the conduct of relations among States. The fact that it focused on criminal responsibility of the individual did not, in and of itself, mean that international law was silent on the obligations of States.

49. The Coordinator had further stated that, in view of the overall structure and the approach chosen in drafting the convention as a law enforcement instrument on the criminal responsibility of the individual, it had seemed that an explicit inclusion of elements of "State terrorism", other than as mentioned above, would imply revisiting the entire premise on which the Ad Hoc Committee had proceeded in developing those instruments. She had stressed that the negotiating process had come a long way and that it was essential that the *acquis* of the draft convention as a law enforcement instrument for ensuring individual criminal responsibility on the basis of an extradite or prosecute regime should be preserved. That was the approach that had been followed in the various other multilateral counter-terrorism instruments.

50. While she understood that there was a need to study the 2007 proposal carefully and to reflect upon whether it addressed the various concerns expressed in a satisfactory way, the development of the draft convention could not be an endless process, as had been stressed by a number of delegations during the informal consultations. Although most of the outstanding issues were of a political nature, she had encouraged delegations to keep in mind that they were drafting a legal instrument and to try to address the issues from that perspective.

51. Concluding her briefing, the Coordinator had said she was pleased that delegations had increasingly indicated a readiness to continue negotiations in a more open and transparent manner in order to resolve the outstanding issues on the basis of the existing package. She had recalled that there had been discussions on the possibility of changing the title of the draft convention, removing the word "comprehensive", in order to overcome the impasse. It had also been suggested that certain questions could be answered, or additional explanations provided, in the resolution accompanying the draft convention. She had pointed out that that approach had been used before to solve politically or legally difficult issues — for example in the case of the United Nations Convention on Jurisdictional Immunities of States and Their Property.

52. Turning to the Working Group's consideration of the question of convening a high-level conference, the Chairperson said that the representative of Egypt had reiterated her Government's proposal (A/60/329 and A/C.6/60/2) and had noted the continuous support expressed for that initiative within the framework of various regional meetings. She had highlighted the need to study the phenomenon of terrorism in all its aspects, including its economic, social and political causes, as well as the importance of agreeing on a comprehensive definition of terrorism. She had also pointed out that convening a high-level conference on terrorism would help to strengthen cooperation among States on the issue, and would also contribute to the achievement of the goals of the United Nations Global Counter-Terrorism Strategy.

53. Some delegations had expressed support for the proposal, observing that the convening of a high-level conference would represent an opportunity to formulate a structured response to terrorism, analyse its root causes, and resolve outstanding issues such as the definition of terrorism. It could also provide the necessary impetus to conclude the draft comprehensive convention. It had been suggested that the conference should be organized as soon as possible.

54. Other delegations, while not opposed in principle to the proposal, had bet that attention should remain focused on the conclusion of a comprehensive convention and that the convening of a high-level conference should only be discussed once that had been accomplished. They had acknowledged the importance of a definition of terrorism, but had expressed doubt that such a definition could be agreed within the framework of a high-level conference.

55. He was encouraged by the discussions on the draft convention during the current session and by the willingness of delegations to continue to consider the Coordinator's proposal with flexibility and an open mind. He continued to believe that her proposal, together with the additional clarifications offered subsequently, contained the elements of a carefully balanced package that addressed the diverse issues raised in the long negotiating process and that could provide a sound basis for compromise. In her report to the Working Group, the Coordinator had mentioned some useful suggestions put forward during the bilateral contacts and informal meetings with a view to solving the remaining difficult issues. He urged delegations to take advantage of the intersessional period to reflect seriously on those suggestions and to consider earnestly whether they, together with the Coordinator's proposal of an overall package, could help overcome the last few hurdles. Demonstration of the requisite political will would enable delegations to achieve the shared goal of concluding the draft comprehensive convention on international terrorism and thus to discharge their collective responsibility, as a body of legal experts, in putting in place an effective legal regime for combating the scourge of terrorism.

56. **The Chairperson** said that the completion of the draft comprehensive convention would be an important contribution to United Nations efforts to combat international terrorism and that the proposal submitted at the 2007 session of the Ad Hoc Committee, together with the additional clarifications given then and in the current year, were worthy of serious consideration.

The meeting rose at 12.10 p.m.