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Chair: Mr. Huth (Vice-Chair) (Germany)
later: Mr. Sergeyev (Chair) (Ukraine)

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

Agenda item 76: Criminal accountability of United Nations officials and experts on mission (*continued*)

Oral report of the Chair of the Working Group

1. **Mr. Tladi** (South Africa) said that the Working Group set up in pursuance of General Assembly resolution 66/93 to continue considering the report of the Group of Legal Experts (A/60/980) had held two meetings, on 23 and 25 October 2012. At those meetings, the Working Group, after adopting its work programme, had focused its discussion, in the light of General Assembly resolutions 62/63 and 63/119, in particular, on those aspects of the report of the Group of Legal Experts that concerned the elaboration of a convention on the criminal accountability of United Nations officials and experts on mission.

2. Emphasizing that any criminal misconduct by United Nations officials and experts tarnished the image and credibility of the United Nations and underscoring the importance of the zero tolerance policy, the Working Group had exchanged views on whether it was timely and appropriate to start negotiations on such a convention. The view had been taken by some delegations that such negotiations would be premature, and it had been noted that work should remain focused on the implementation at the national level of the measures set out in the aforementioned General Assembly resolutions, particularly the introduction of modifications to State legislation, and on enhanced cooperation among States and with the United Nations. It had also been recalled that changes had been made to the revised model memorandum of understanding with troop-contributing countries in order to address the issues of criminal accountability. Some delegations had considered that there was a need for greater understanding of the potential jurisdictional gaps and other obstacles to addressing the problem and that the focus should not be on the form to be adopted but on the content and nature of the measures to be taken and on capacity-building that might be required in relation to the adoption and implementation of relevant legislation. Some delegates had expressed a desire for a more focused and detailed clarification of the measures to be taken in pursuance of the resolutions on criminal accountability. Regular assessments and briefings by appropriate Secretariat units had also been proposed.

Although some delegations had expressed their readiness to commence negotiations on the elaboration of a convention, it had been recognized that the suggested assessments would need to be made beforehand as they would affect the nature of the convention. The view had been expressed that the proposed convention should also cover military personnel engaged in peacekeeping operations. It had been emphasized that the failure of States to prosecute their nationals created a culture of impunity that would hurt the credibility of all peacekeeping operations.

Agenda item 84: The scope and application of the principle of universal jurisdiction (*continued*)
(A/67/116)

Oral report of the Chair of the Working Group

3. **Mr. Bonifaz** (Peru), speaking on behalf of the Chair of the Working Group on the scope and application of the principle of universal jurisdiction, recalled that, pursuant to General Assembly resolution 66/103 of 9 December 2011, the Sixth Committee had decided, at its 1st meeting, on 8 October 2012, to establish a working group to continue to undertake a thorough discussion of the scope and application of universal jurisdiction. Pursuant to the same resolution, it had also been decided that the Working Group would be open to all Member States and relevant observers to the General Assembly. At the same meeting, the Sixth Committee had elected Mr. Eduardo Ulibarri (Costa Rica) as Chair of the Working Group.

4. The Working Group had had before it the Secretary-General's reports on the scope and application of the principle of universal jurisdiction for 2012 (A/67/116), 2011 (A/66/93 and Add.1) and 2010 (A/65/181) and an informal paper of the Working Group (A/C.6/66/WG.3/1), which contained agreements on the methodology and an enumeration of issues for discussion. Pursuant to an understanding reflected in the report of the Sixth Committee on the item in 2010 (A/65/474, para. 4), the Working Group had also considered two informal compilations prepared by the Secretariat that were of potential relevance to its work, one comprising multilateral and other instruments and the other consisting of decisions of international tribunals. In addition, the Working Group had had before it a non-paper presented by the delegation of Chile (A/C.6/66/WG.3/DP.1) and the summary record of the meeting at which the Chair of the Working

Group had reported on its work in 2011 (A/C.6/66/SR.17).

5. The Working Group had held four meetings, on 18, 19 and 25 October 2012, conducting its work in the framework of informal consultations against the backdrop of the plenary debate at the 12th and 13th meetings of the Sixth Committee, on 17 and 18 October 2012.

6. The first meeting had focused on the agreements reached during the sixty-sixth session of the General Assembly (2011) on methodology and issues for discussion. The Working Group had reaffirmed the continuing relevance of the methodological understandings reached and had taken a step-by-step approach to the issues on the basis of the road map contained in the informal paper of the Working Group (A/C.6/66/WG.3/1), which had been generally welcomed. That paper had been complemented by other informal papers prepared by the Chair, who had presented an informal list for discussion of five essential elements with a view to arriving at a working concept of universal jurisdiction and had, in addition, circulated a preliminary informal list of crimes within the scope of universal jurisdiction, as a basis for further discussion. It had been understood that the discussions were preliminary in nature and that no formal decisions would be taken as to the outcome of the work.

7. It had been recalled that, under the rubric “definition of the concept of universal jurisdiction”, the road map had identified as areas for discussion the role and purpose of universal jurisdiction, its relevant components and the distinction to be made between universal jurisdiction and other related concepts. The Chair had stressed that the work would focus on the criminal aspects of universal jurisdiction; that the bodies in relation to which the principle was exercised were national courts and tribunals; and that it was exercised in exceptional circumstances.

8. The informal paper presented by the Chair had been discussed and further refined during the informal consultations on 18 and 19 October; the revised text had been discussed on 25 October. While there had been support for the general direction of work on the subject, it had been felt that further fine-tuning would be required in the light of comments made, as well as of future discussion. Some delegations had stressed that universal jurisdiction was an important tool for

combating impunity and protecting the rights of victims and that reference should accordingly be made to its purpose.

9. The first of the five essential elements, “centred on criminal jurisdiction”, which had been revised to read “focused on criminal matters”, had sought to reflect the concern to focus the work of the Working Group on universal criminal jurisdiction. That had been generally acknowledged by delegations, which had welcomed the inclusion of that element in order to mark the difference from universal civil jurisdiction. Several delegations, however, had suggested alternative formulations for the sake of greater precision. Proposed amendments had included “related to criminal jurisdiction”, “confined to criminal matters”, “focused on criminal jurisdiction”, “focused on criminal offences” and “applied to criminal jurisdiction”. It had also been suggested that a footnote or other reference should be inserted to make it clear that, although the Working Group was focusing on universal criminal jurisdiction, other spheres of jurisdiction, in particular universal civil jurisdiction, were not disregarded and that civil statutes and jurisprudence were also relevant to the Working Group’s consideration of the matter. The revised text therefore contained a footnote to that effect. Some delegations had considered that the proposed revised element, “focused on criminal matters”, might be combined with element four, which characterized universal jurisdiction as being based on the nature of the crime, not on territoriality, personality or protective principles, and that it would thereby be made clear that universal jurisdiction focused on certain offences recognized as such under international law. Some delegations had sought to further refine the proposition as, in their view, the Working Group should be concerned exclusively with criminal aspects.

10. The second element had been initially formulated to state that universal jurisdiction was exercised as the “exclusive prerogative” of national courts and tribunals; that had been revised to read that it was simply exercised by national courts/tribunals. In their comments, several delegations had expressed concern regarding the phrase “exclusive prerogative” on the grounds that it unnecessarily raised issues as to the permissive or obligatory nature of universal jurisdiction. It had therefore been agreed that the element would be rephrased to read “exercised by national courts/tribunals”. Concerns had also been

raised about the second element: it had been suggested that it might better be placed in part 3 of the road map under “Application”. It had also been suggested that the element should be combined with element five, which proposed distinguishing universal jurisdiction from the jurisdiction of international criminal courts/tribunals. It had generally been felt, however, that universal jurisdiction, in contrast to international criminal jurisdiction, was exercised horizontally in relations between States by national courts and tribunals. Another suggestion had been that the element in question should be combined with the third element, to make the point that universal jurisdiction was an exceptional jurisdiction that might be exercised by national courts and tribunals.

11. The third element had captured the essence that universal jurisdiction was “exceptional”, initially by describing such as jurisdiction as being of an “exceptional character” and subsequently, upon revision, as being “exercised exceptionally”. Both formulations had been extensively discussed as it had been felt that there might be need for further clarification. Several delegations had suggested that the word “exceptional” was ambiguous, leaving it uncertain whether “exceptional” referred to the frequency of the invocation of universal jurisdiction, the exceptionality of its application, its relationship with other bases of jurisdiction as a form of residual, supplementary or complementary jurisdiction, or a form of jurisdictional basis of last resort, or whether the element sought to restrict the exercise of universal jurisdiction to international law violations of an exceptional character. To some of those delegations, the original formulation specifying the “exceptional character” of universal jurisdiction had best captured the required nuances. The concern had been raised, however, that any reference to exceptionality might in fact be irreconcilable with the ordinary exercise of such jurisdiction pursuant to domestic law in some jurisdictions. It had also been suggested by several delegations, however, that the element as drafted usefully encompassed the various concerns, and could thus represent a viable compromise solution. Some delegations had also pointed to the need to eschew any reference to last resort, as that seemed to suggest considerations of hierarchy in international law, although some other delegations had maintained that considerations of jurisdictional priority should be included. It had also been recalled that the purpose in identifying the essential elements of universal

jurisdiction had not been to define it as such but rather to help the Working Group to have a common understanding of its operating and practical parameters. In that context, some delegations had appealed for accommodation and understanding and suggested that a footnote could denote the fact that there were different understandings of the term “exceptional”.

12. The fourth element had characterized universal jurisdiction as being based on the nature of the crime, not on territoriality, personality or protective principles. In other words, it could be exercised without regard to where the crime was committed, the nationality of the alleged or convicted perpetrator, the nationality of the victim, or any other connection to the State exercising such jurisdiction. The element had thus read initially: “Not based on the territoriality, personality or protective principle, but on the nature of the crime”, and had been revised to read: “Based on the nature of certain crimes under international law, not on territoriality, personality or protective principles”.

13. Some delegations had supported the characterization of that jurisdictional basis in distinction to other jurisdictional bases, while others had preferred a simple general reference to the nature of certain crimes under international law. It had also been stressed that the principle was applicable only to a particular certain set of crimes, while some delegations had stressed the universality of the crimes at issue. While some other delegations had noted that greater clarification of “the nature of the crime” was necessary and that the question of the universality of crimes raised interesting issues, it had been felt that such matters would be further discussed in relation to part 2 of the road map under “Scope of universal jurisdiction”. Some delegations had expressed the view that the element should include an indication that other forms of jurisdiction should be exercised on a priority basis. It had also been noted, however, that that aspect would be further developed in connection with part 3 of the road map under “Application”. Another suggestion had been that that element could be combined with the second element.

14. The fifth element had focused on the fact that universal jurisdiction was distinct from the jurisdiction of international criminal courts and tribunals, as well as from the obligation *aut dedere aut judicare* and from other bases of extraterritorial jurisdiction. Support had been expressed for the inclusion of that element; it had been felt, however, that specific reference should be

made to the International Criminal Court. It had been suggested that attention should also be drawn to the distinction between the law of immunities and universal jurisdiction, even though immunity and jurisdiction were related concepts. Some delegations had noted that the question of immunity was central to the discussion of the subject and was in fact one of the reasons why the question of abuse of the application of universal jurisdiction had been highlighted. However, various delegations had felt that it was more appropriate to discuss the question of immunity in part 3 of the road map under “Application”. A footnote had been inserted in the revised text, indicating that the interaction of universal jurisdiction with relevant principles and rules of international law would be addressed in part 3 (“Application”) of the road map approved in 2011. Notwithstanding the suggestion that there should be a reference to the treaty-based nature of *aut dedere aut judicare*, several delegations had stressed that that would prejudice the Commission’s current work on the topic and had considered that it was sufficient, for the purposes of the exercise, to indicate that the obligation to extradite or prosecute was distinct without going into the source of the obligation.

15. Additional suggestions for items to be included in the elements had been made, including a reference to the requirement that universal jurisdiction should be exercised in accordance with other relevant rules and principles of international law. Some delegations had expressed the view that that element would be better discussed in part 3 of the road map, under “Application”. Some delegations had also suggested that it was important to characterize universal jurisdiction as a discretionary or voluntary right and not an obligation. Other delegations, however, had cautioned against such an approach, as in some cases the exact nature depended on the content of a treaty provision; what seemed clear was that universal jurisdiction was a basis for exercising jurisdiction. It had been pointed out that that aspect was linked to the substance of the discussion on part 3 of the road map related to application. Some other delegations had considered that a suggestion that universal jurisdiction should be subject to other rules of domestic law and procedure was too restrictive and also that it would be better discussed in the context of part 3 of the road map. It had been further suggested that an additional element was required to the effect that there was no mandatory priority of jurisdiction, given that there was

no hierarchy of jurisdictional bases in international law; that view had met with objections on the part of some other delegations, who had said that they would then insist on the inclusion of a reference to universal jurisdiction as a jurisdiction of last resort.

16. During the discussions of the five elements, many delegations had emphasized the need for flexibility at the current stage of discussions. Although no text on the preliminary elements for a working concept of universal jurisdiction had been agreed upon, the broad parameters concerning the elements seemed to reflect the general concerns and agreements of delegations. On the basis of those parameters, the Chair had drawn up an informal list entitled “Preliminary elements for developing a working concept of universal jurisdiction”, which might serve as a basis for the Working Group’s further discussions. It had been circulated among delegations and also placed in the eRoom on the understanding that it did not necessarily reflect an agreement of the Working Group. It was the Chair’s intention to build upon the discussions that had taken place at the present session.

17. During the informal consultations on 19 October, the Working Group had requested the Chair to prepare a list of crimes under universal jurisdiction under part 2 of the road map, entitled “Scope of universal jurisdiction”. The list had been made available to delegations during the informal consultations on 25 October and also placed in the eRoom. However, through lack of time, the informal list of crimes, comprising genocide, crimes against humanity, war crimes, torture, slavery, enforced disappearances, crimes against peace, apartheid, piracy and terrorism, had not been introduced or discussed.

18. The Chair was encouraged by the level of interest shown by delegations during the discussions and thanked all of them for their useful and constructive comments. The Working Group was making steady progress and he hoped that it would continue to build on its work.

Agenda item 76: Criminal accountability of United Nations officials and experts on mission
(continued) (A/C.6/67/L.17)

Draft resolution A/C.6/67/L.17: Criminal accountability of United Nations officials and experts on mission

19. **Mr. Pavlichenko** (Ukraine), introducing the draft resolution on behalf of the Bureau, said that the text was based on General Assembly resolution 66/93. He drew

attention to the new language added in paragraph 3, urging States and appropriate international organizations to provide technical and other assistance to States in developing legal measures. Paragraph 8 had been modified to show that the General Assembly had decided to continue to consider the report of the Group of Legal Experts in the framework of a working group of the Sixth Committee; reference was made to inputs by the Secretariat rather than to information contained in the note by the Secretariat. He was confident that the draft resolution could be adopted without a vote.

Agenda item 78: United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law (*continued*) (A/C.6/67/L.15)

Draft resolution A/C.6/67/L.15: United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

20. **Ms. Gasu** (Ghana), introducing the draft resolution on behalf of the Bureau, said that following extensive discussions between the Fifth Committee and the Advisory Committee on the Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law with a view to securing viable funding for the Programme, the present resolution marked a big step forward and gave hope for the future. The text was based on General Assembly resolution 66/97, incorporating a number of technical updates. Paragraph 5 had been expanded to express appreciation to the Secretary-General for the activities conducted under the Programme of Assistance; paragraph 12 of the former resolution had been deleted so as to avoid any reference to activities being continued “within available resources”; the important contribution of the African Union had been recognized in paragraph 19; and in paragraph 20, new text had been added to take into account the recently-established African Institute of International Law. She drew particular attention to the requests for voluntary contributions contained in paragraphs 22 and 23 and to new paragraph 26 on sustainable funding. The draft resolution on the subject of the Programme of Assistance had traditionally been adopted without a vote and she hoped that it would be again at the current session.

Agenda item 79: Report of the International Law Commission on the work of its sixty-third and sixty-fourth sessions (*continued*) (A/C.6/67/L.13)

Draft resolution A/C.6/67/L.13: Report of the International Law Commission on the work of its sixty-third and sixty-fourth sessions

21. **Mr. Bonifaz** (Peru), introducing the draft resolution on behalf of the Bureau, said that it was largely based on General Assembly resolution 66/98. He drew attention to paragraph 2, which referred in particular to the work accomplished by the International Law Commission in respect of the draft articles on the expulsion of aliens; paragraph 5, which provided for the continued consideration of the work on reservations to treaties; paragraph 6, which set the deadline for the submission of comments on the topic of expulsion of aliens; paragraph 7, which listed the two new topics included in the Commission's programme of work; and paragraph 10, which welcomed the Commission's efforts to improve its methods of work. He hoped that the draft resolution would be adopted without a vote, as was traditionally the case.

Agenda item 80: Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts (*continued*) (A/C.6/67/L.14)

Draft resolution A/C.6/67/L.14: Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts

22. **Ms. Pernilla Nilsson** (Sweden), introducing the draft resolution on behalf of the sponsors, said that they had been joined by Argentina, Belgium, Canada, Chile, Cyprus, Estonia, Germany, Guatemala, Iceland, Japan, Monaco, Republic of Moldova, Swaziland, Uruguay and Venezuela (Bolivarian Republic of). The text of the draft resolution was very much the same as in previous years, with a few changes. The seventh, fourteenth and fifteenth preambular paragraphs contained partly or wholly new material intended to highlight the role of national and international Red Cross and Red Crescent partners in strengthening the implementation of international humanitarian law. Paragraphs 9 and 10 were also new; they welcomed respectively the undertakings by States at the Thirty-first International Conference of the Red Cross and Red Crescent and the importance given to the

exploration of ways to enhance and ensure the effectiveness of mechanisms of compliance with international humanitarian law. There was a slight change to paragraph 15, which now encouraged Member States to explore how reporting could be made easier and to consider using a questionnaire drafted by Member States to prepare for the next reporting period; such a procedure would be voluntary. She expressed the hope that the draft resolution would be adopted without a vote, as in previous years.

Agenda item 81: Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives (*continued*) (A/C.6/67/L.10)

Draft resolution A/C.6/67/L.10: Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives

23. **Ms. Mäkelä** (Finland), introducing the draft resolution, said that the sponsors had been joined by Australia, Belgium, Bulgaria, Canada, Cyprus, the Czech Republic, Estonia, Germany, Ghana, Ireland, the Netherlands, the Republic of Moldova, Romania, Slovenia and the United Kingdom of Great Britain and Northern Ireland. The text was based on General Assembly resolution 65/30 and reflected the continuing concern of Member States in the face of the recurring acts of violence against diplomatic and consular representatives. She drew attention to the importance of the reporting procedures referred to in paragraph 10 and to the proposed inclusion of an item on the topic in the agenda of the sixty-ninth session. She was confident that the draft resolution could be adopted without a vote.

Agenda item 82: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (*continued*) (A/C.6/67/L.11)

Draft resolution A/C.6/67/L.11: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

24. **Mr. Salem** (Egypt), introducing the draft resolution, said that the text was based on that of General Assembly resolution 66/101 with some additions and modifications. The words “on a priority basis and” had been deleted from subparagraph 3(b).

The next session of the Special Committee would take place in February 2013. He recommended that the Committee should adopt the draft resolution without a vote.

25. *Mr. Sergeyev (Ukraine), Chair, took the Chair.*

Agenda item 83: The rule of law at the national and international levels (*continued*) (A/C.6/67/L.9)

Draft resolution A/C.6/67/L.9: The rule of law at the national and international levels

26. **Mr. Barriga** (Liechtenstein), introducing the draft resolution, said that the text was a technical update of the resolution adopted at the previous session with no changes to the preambular paragraphs. A reference to the high-level meeting of the General Assembly on the rule of law at the national and international levels and the Declaration adopted at that meeting had been made in paragraph 1. He thanked delegations for showing flexibility with respect to the subtopics selected for inclusion on the Committee’s provisional agenda for the sixty-eighth and sixty-ninth sessions of the General Assembly as reflected in paragraph 17: “The rule of law and the peaceful settlement of international disputes” and “Sharing States’ national practices in strengthening the rule of law through access to justice”, respectively. He recommended that the Committee should adopt the draft resolution without a vote.

Agenda item 84: The scope and application of the principle of universal jurisdiction (*continued*) (A/C.6/67/L.16)

Draft resolution A/C.6/67/L.16: The scope and application of the principle of universal jurisdiction

27. **Mr. Mukongo Ngay** (Democratic Republic of the Congo), introducing the draft resolution, said that the text was based on General Assembly resolutions 64/117, 65/33 and 66/103 and reflected the comments and observations submitted by Governments as well as the discussions held in the Sixth Committee during the last four sessions of the General Assembly. It also took into consideration the discussions held in the relevant Working Group. Paragraph 2 of the draft resolution made it clear that delegations wished the Committee to continue its consideration of the scope and application of the principle of universal jurisdiction, both in the Working Group and in plenary. He recommended that the Committee should adopt the draft resolution without a vote.

Agenda item 105: Measures to eliminate international terrorism (continued) (A/C.6/67/L.12)

Draft resolution A/C.6/67/L.12: Measures to eliminate international terrorism

28. **Mr. Norman** (Canada), introducing the draft resolution, said that the text was similar to that of General Assembly resolution 66/105. Delegations were united in their condemnation of international terrorism and the need for the international community to further international cooperation in that regard. New thinking and approaches were needed with respect to consideration of a draft comprehensive convention on international terrorism. Two informal meetings had been held, and the Working Group on the draft comprehensive convention on international terrorism had met to discuss the question of convening a high-level conference under the auspices of the United Nations.

29. With regard to substantive changes, he drew attention to the new language contained in paragraph 19, which reflected the fact that the United Nations Counter-Terrorism Centre was now operational. Paragraphs 25 to 29 referred to the convening of the Ad Hoc Committee established by General Assembly resolution 51/210 to discuss a draft comprehensive convention on international terrorism in April 2013. Paragraph 26 stated that future meetings of the Ad Hoc Committee would be decided upon subject to substantive progress in its work. A proposal tabled by South Africa and Lichtenstein on how to change the rhythm of work between consideration of the agenda item and that of the United Nations Global Counter-Terrorism Strategy, which was a biennial item in the plenary, would be taken up at the Committee's next session.

Agenda item 77: Report of the United Nations Commission on International Trade Law on the work of its forty-fifth session (continued) (A/C.6/67/L.7 and L.8)

Draft resolution A/C.6/67/L.7: Recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law as revised in 2010 (continued)

30. *Draft resolution A/C.6/67/L.7 was adopted.*

Draft resolution A/C.6/67/L.8: Report of the United Nations Commission on International Trade Law on the work of its forty-fifth session (continued)

31. **Ms. Quidenus** (Austria) said that Belgium and Malaysia had joined the group of sponsors of draft resolution A/C.6/67/L.8.

32. *Draft resolution A/C.6/67/L.8 was adopted.*

Agenda item 168: Observer status for the Andean Development Corporation in the General Assembly (continued) (A/C.6/67/L.4)

Draft resolution A/C.6/67/L.4: Observer status for the Andean Development Corporation in the General Assembly (continued)

33. **Mr. Ruiz** (Colombia) said that El Salvador and Poland had joined the group of sponsors of draft resolution A/C.6/67/L.4.

34. *Draft resolution A/C.6/67/L.4 was adopted.*

The meeting rose at 11.40 a.m.