



# General Assembly

Seventieth session

Official Records

Distr.: General  
24 November 2015

Original: English

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## Sixth Committee

### Summary record of the 27th meeting

Held at Headquarters, New York, on Friday, 13 November 2015, at 11 a.m.

*Chair:* Mr. Charles . . . . . (Trinidad and Tobago)

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*The meeting was called to order at 11.05 a.m.*

**Agenda item 80: Criminal accountability of United Nations officials and experts on mission**  
(continued)

*Oral report by the Chair of the Working Group on criminal accountability of United Nations officials and experts on mission*

1. **Mr. Joyini** (South Africa), Chair of the Working Group, recalled that, pursuant to General Assembly resolution 69/114, the Sixth Committee had decided to establish a working group, open to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency, with a view to continuing the consideration of the report of the Group of Legal Experts (A/60/980), in particular its legal aspects, taking into account the views of Member States and also noting the inputs by the Secretariat.

2. The Working Group had had before it the report of the Group of Legal Experts on ensuring the accountability of United Nations staff and experts on mission with respect to criminal acts committed in peacekeeping operations (A/60/980), the reports of the Ad Hoc Committee on its first and second sessions (A/62/54 and A/63/54), the note by the Secretariat (A/62/329), the reports of the Secretary-General (A/63/260 and A/63/260/Add.1, A/64/183 and A/64/183/Add.1, A/65/185, A/66/174 and A/66/174/Add.1, A/67/213, A/68/173, A/69/210 and A/70/208), a report of the Office of Internal Oversight Services on the evaluation of the enforcement and remedial assistance efforts for sexual exploitation and abuse by the United Nations and related personnel in peacekeeping operations, the report of the High-level Independent Panel on Peace Operations (A/70/95-S/2015/446), the report of the Secretary-General on the future of United Nations peace operations (A/70/357-S/2015/682), and an informal compilation prepared by the Secretariat collating information submitted by Member States in relation to their implementation of paragraph 3 common to all resolutions on criminal accountability of United Nations officials and experts on mission.

3. The Working Group had held three meetings, on 16, 21 and 28 October 2015. At the first meeting, which had been procedural, it had agreed to conduct its discussions in the framework of informal consultations.

At its second meeting, the Chair had provided a background briefing for delegates on the substantive work on the topic in the Sixth Committee, the Ad Hoc Committee and the Working Group. Representatives of the General Legal Division and the Office of the Legal Counsel of the Office of Legal Affairs, the Conduct and Discipline Unit of the Department of Field Support and the Office of Internal Oversight Services had given an informal briefing, followed by a question-and-answer segment. At its third meeting, in view of the adoption of the measures contained in General Assembly resolutions 62/63 and 63/119, as read with resolution 69/114, the Working Group had focused its discussions on consideration of the aspects of the report of the Group of Legal Experts concerning the elaboration of a convention and had then discussed additional measures that might be taken, for possible inclusion in the 2015 resolution, that would further enhance the mechanisms of accountability contained in General Assembly resolutions 62/63 and 63/119, as subsequently reiterated, since the Working Group session in 2012, in resolutions 67/88, 68/105 and 69/114.

4. On the question of whether discussions could commence on negotiations of a draft international convention on the criminal accountability of United Nations officials and experts on mission, as proposed by the Group of Legal Experts in its report (A/60/980), delegations had expressed divergent views, essentially reiterating the positions they had expressed in the plenary debate of the Committee (A/C.6/70/SR.9). Some delegations had stated that, given that the situation with regard to the criminal accountability of United Nations officials and experts on mission remained of serious concern, more in-depth discussion was needed to examine the issues that had formed the elements of the report of the Group of Legal Experts. They had emphasized that the short-term measures embodied in resolutions on the topic, which were intended to address that situation, had been set out since the sixty-second session of the General Assembly but had yet to address the problem adequately. Rather than focusing on whether or not to have a convention, it was important to engage in substantive discussions in order to catalyse further progress on those questions. Those delegations had also raised the possibility of some form of intersessional work.

5. The view had been expressed that the draft convention should also cover military personnel

engaged in peacekeeping operations. Delegations had also highlighted the need for more information from both the Secretariat and Member States so as to be in a position to assess more fully the scope and nature of any obstacles to seeking criminal accountability and to promote more substantive discussions on the report of the Group of Legal Experts.

6. With regard to the discussion on further practical aspects that could enhance the measures of accountability set out in previous resolutions on the topic, delegations had highlighted the need to have a comprehensive picture of the empirical data on the subject for a more informed discussion of the issues raised in the report of the Group of Legal Experts. The measures suggested by delegations included making more detailed and expansive requests for information from the Secretariat; making proposals for follow-up by the Secretariat with Member States once referrals had been made to them; citing of other United Nations reports within the resolution; highlighting the issue of financial crimes, given their proportionate prevalence; and advocating the convening of a working group on the topic at the seventy-first session of the General Assembly. It had been considered that some of those additional measures would be subject to further elaboration during the discussions on the 2015 resolution.

7. During the question-and-answer session with representatives of the Office of the Legal Counsel, the Conduct and Discipline Unit and the Office of Internal Oversight Services, some delegations had posed questions relating to the difficulty of fully comprehending the nature and scale of the problem of the criminal accountability of United Nations officials and experts on mission, the range and kinds of allegations reported and possibilities of underreporting of incidents, given the differences in the information and figures contained in the various reports that were presented. Other questions had revolved around impediments to potential prosecution within the national jurisdictions of Member States to which referrals had been made, the nature of responses received from Governments, and follow-up. Information had also been sought on measures taken by the Secretariat to develop awareness among local populations of the mechanisms for reporting criminal conduct and the measures for safeguarding against retaliation.

8. **The Chair** said he took it that the Committee wished to take note of the report of the Chair of the Working Group on criminal accountability of United Nations officials and experts on mission.

9. *It was so decided.*

**Agenda item 108: Measures to eliminate international terrorism** (*continued*)

*Oral report by the Chair of the Working Group on measures to eliminate international terrorism*

10. **Mr. Perera** (Sri Lanka), Chair of the Working Group, recalled that, pursuant to General Assembly resolution 69/127, the Sixth Committee had decided to establish a working group, open to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency, with a view to finalizing the process on the draft comprehensive convention on international terrorism as well as discussions on the question of convening a high-level conference under the auspices of the United Nations. In keeping with its established practice, the Working Group had decided that members of the Bureau of the Ad Hoc Committee would continue to act as Friends of the Chair. The Working Group had had before it the report of the Ad Hoc Committee on its sixteenth session (A/68/37) and the annexes thereto; written proposals relating to the outstanding issues surrounding the draft convention; and an informal summary of the discussions during the plenary and the informal consultations prepared by the Chair, including the proposed accompanying draft resolution; a letter from the Permanent Representative of Egypt to the United Nations addressed to the Secretary-General (A/60/329); and a letter from the Permanent Representative of Egypt to the United Nations addressed to the Chair of the Sixth Committee (A/C.6/60/2).

11. The Working Group had held five meetings, on 26 and 30 October and on 9, 11 and 13 November 2015. At its first meeting, it had adopted its work programme and had decided to hold discussions in the framework of informal consultations. At that meeting, the Working Group had discussed outstanding issues relating to the draft convention. At its second meeting, it had considered the question of convening a high-level conference under the auspices of the United Nations and had held informal consultations on the draft convention. At its third, fourth and fifth meetings, it had held informal consultations on the way forward.

The Chair and the coordinator of the draft comprehensive convention had also engaged in informal and bilateral contacts with interested delegations on the outstanding issues relating to the draft convention.

12. During the informal consultations on 26 October 2015, the Chair had provided detailed background information on the work undertaken thus far and an update on the status of the negotiations regarding the outstanding issues surrounding the draft convention, including the attempts made over the years to overcome the differences among delegations. Delegations had reiterated the importance of concluding the draft convention. Several delegations had referred to current events and the increase in terrorist acts worldwide and had emphasized the need to step up efforts and make a renewed push towards concluding the draft convention.

13. Many delegations had affirmed that momentum had been building to bring the negotiation process to a successful conclusion during the seventieth session of the General Assembly. Some delegations had emphasized that the negotiations had been going on for far too long and that it was time to agree on compromise solutions, and that, with the necessary political will, the remaining outstanding issues could be resolved. While some delegations had underlined the importance of concluding work on a consensual basis, it had also been observed that consensus could not be a goal in and of itself if it meant that the discussions could not move forward.

14. In relation to the outstanding issues surrounding the draft convention, several delegations had reiterated their concerns over the legal definition of terrorism, the scope of the convention and the need to distinguish between acts of terrorism and the legitimate struggle of peoples under foreign occupation and colonial or alien domination in the exercise of their right to self-determination. Some delegations had reaffirmed their support for the Bureau's proposal as originally presented in 2007, including the accompanying draft resolution. Some other delegations, recalling other proposals in relation to the outstanding issues surrounding the draft comprehensive convention and contained in annex II of the report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 (A/68/37), had expressed the view that the Bureau's proposal might well serve as a basis for negotiations, but that the concerns of all delegations had to be taken sufficiently into account.

15. While reaffirming their preference for earlier proposals, some delegations had stressed that the Bureau's proposal should be regarded as a basis for further negotiations, while others had expressed a willingness to consider that proposal, without modification, as a compromise, to ensure that the negotiations were concluded successfully. The view had also been expressed that consensus on the text should not come at the expense of having different interpretations of key terms. Some delegations had expressed concern that the consensus around the Bureau's proposal was simply not forthcoming.

16. During the informal consultations held on 30 October, delegations had exchanged views by considering a comparative table which the Chair had prepared to serve as a visual aid to highlight the differences and the similarities between various texts and proposals and to illustrate how the various texts on the key outstanding issues relating to the scope of the draft convention had progressed over the years. Using the comparative table as a basis, the Chair had explained the approach that had been taken in attempting to bridge existing differences and in reaching the compromise text presented by the Bureau.

17. Some delegations had expressed concern over the narrow approach used to elaborate the table and had pointed out that focusing solely on proposed draft article 3 might give the misleading impression that proposals on other provisions of the draft convention had been withdrawn. In the view of some delegations, the table was methodologically flawed since it seemed to put undue emphasis on the differences between the Bureau's proposal and the proposal of one other group, thereby giving a skewed impression of the negotiations. In response to those concerns, the Chair had clarified that the comparative table had been created simply to serve as a tool to facilitate the discussions; it had no standing on its own.

18. He had reassured delegations that all proposals remained on the table, but he had also reminded delegations that the Bureau's proposal had been the basis for negotiations for several years. While the view had been expressed that the way to proceed was for delegations to come to a common understanding as to the meaning of the terms used in the draft article, it had also been pointed out that that might be unrealistic in practice. It had also been recalled that it was not for the legislators to provide detailed interpretations of the

specific terms used in a convention; rather, that was the task of the judiciary, based on the circumstances at hand.

19. Some delegations had reiterated the view that the Bureau's proposal was a sound compromise which reflected the work done so far and which took into account the concerns expressed by delegations over the years. In their view, the Bureau's proposal had bridged the differences between the two proposals received in 2002 and had provided safeguard clauses. Some other delegations, however, had stressed that the Bureau's proposal had not fully met their concerns with regard to the questions of foreign occupation and the right to self-determination; the fact that the texts under consideration were not very dissimilar did not mean that the small textual difference therein did not reflect serious differences of opinion.

20. During the informal consultations on 26 and 30 October 2015, delegations had commented on 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. During the informal consultations on 30 October, the sponsor delegation of Egypt had recalled that its proposal to convene an international conference had been made more than a decade earlier. More than 15 years of negotiations on the draft convention at the technical level had not led to more than minimal progress, and raising negotiations to the level of Heads of State and Government might mobilize the political will needed to overcome the few outstanding difficulties and reach an agreement on the draft convention. If the impasse remained after such a conference, delegations could acknowledge that agreement was not possible and consider suspending further deliberations.

21. The sponsor delegation had stressed that a high-level conference would also provide an opportunity to strengthen coordination at the international level of the many actions taken by States in addressing all issues related to the fight against terrorism. It would ensure that there was common agreement and understanding among States and avoid duplication of effort. It had been further recalled that the proposal had been supported by the Organization of Islamic Cooperation, the Non-Aligned Movement and the African Group.

22. Several delegations had supported the proposal, underlining the need for a forum that could serve to bridge the gap between the divergent positions on the

outstanding issues. In their view, a high-level conference could achieve the political agreement which had been lacking and which was a precondition for the conclusion of a convention. However, other delegations had pointed out that the time was not ripe for such a conference and that the outstanding differences should be addressed within the framework of the Sixth Committee, not by Heads of State and Government. They had also underlined that important progress in the negotiations had been made in the past 15 years and that the Bureau's proposal was a good starting point. Some delegations had stressed that a conference should only be discussed once agreement had been reached on the draft convention and that such a conference could be convened solely for final adoption of the convention.

23. During the informal consultations on the way forward, held on 9, 11 and 13 November, the Chair had recalled the efforts made to engage delegations in a constructive dialogue on the outstanding issues surrounding the draft convention. It had been recognized, however, that those efforts had not generated the kind of discussions that would be necessary to overcome the current impasse. Instead, delegations, particularly those considered key to the process, had merely restated their positions. The Chair had urged all delegations to remain engaged in the negotiations and to continue to consider the text proposed by the Bureau in a constructive spirit.

24. The Chair had also recalled the mandate of the Working Group, which envisaged bringing the process to a close. The general debate and his interactions with many ambassadors had given the Chair a sense of renewed optimism that that goal was within reach. Indeed, there had seemed to be a common desire and a sense of urgency among delegations to complete the draft convention in light of the increase in terrorist attacks worldwide. Delegations had also expressed a desire to step up the momentum generated by the seventieth anniversary of the United Nations to overcome the last hurdles. The Chair had recognized, however, that despite the efforts made, positions of delegations had not been coalescing towards that common goal. Several delegations had pointed out that the outstanding issues were of a political, rather than a legal, nature, a position shared by the Chair.

25. The Chair had observed that there seemed to be a strong desire among delegations to complete work on the draft convention before the end of the seventieth

session. He had doubted whether that goal was achievable and whether the impasse could be overcome within the current negotiating framework, and had expressed the belief that the Working Group, with the limited time at its disposal, had done as much as was possible to move the process forward. The Chair had expressed his conviction that work should continue in a different framework that would allow for continuous consultations to bring a fresh impetus to the process. He had also suggested that the Working Group should follow the precedent that had been used during the negotiation of the International Convention for the Suppression of Acts of Nuclear Terrorism to overcome similar hurdles.

26. During the informal consultations on 11 November, the Chair had presented a proposed recommendation on behalf of the Friends of the Chair for adoption by the Working Group. The recommendation had been considered during the informal consultations on 11 and 13 November. After considering various proposals, and given that there had been no agreement, the Working Group had completed its work without adopting any recommendation. Although progress remained elusive, the Chair encouraged delegations to continue exploring ways of overcoming their differences.

27. **The Chair** said he took it that the Committee wished to take note of the report of the Chair of the Working Group on measures to eliminate international terrorism.

28. *It was so decided.*

**Agenda item 86: The scope and application of the principle of universal jurisdiction** (*continued*)  
(A/C.6/70/L.12)

*Oral report by the Chair of the Working Group on the scope and application of the principle of universal jurisdiction*

29. **Ms. Guillén-Grillo** (Costa Rica), Chair of the Working Group, recalled that, pursuant to General Assembly resolution 69/124, the Sixth Committee had decided again to establish a working group, open to all Member States and relevant observers to the General Assembly, to continue to undertake a thorough discussion of the scope and application of universal jurisdiction. The Working Group had had before it a number of reports of the Secretary-General on the scope and application of the principle of universal jurisdiction (A/65/181, A/66/93 and A/66/93/Add.1,

A/67/116, A/68/113, A/69/174 and A/70/125), the record of the oral reports of the Chair on the work of the Working Group in 2012 (A/C.6/67/SR.24), 2013 (A/C.6/68/SR.23) and 2014 (A/C.6/69/SR.28), and an informal paper of the Working Group (A/C.6/66/WG.3/1), commonly referred to as the “road map”, containing agreements on methodology and a list of issues for discussion. The Working Group had also had before it two informal compilations prepared by the Secretariat, one containing relevant multilateral and other instruments, and the other containing excerpts from decisions of international tribunals, along with the Chair’s informal working paper which had been distributed and discussed in previous sessions of the Working Group and had provided the basis for the Working Group’s discussions.

30. The Working Group had held three meetings, on 21, 23 and 29 October 2015. It had conducted its work in the framework of informal consultations. At its first meeting, on 21 October, the Chair had presented an overview of past proceedings, including the discussions that had led to the drawing up and refinement of the informal working paper; the points listed in the working paper were for illustration purposes only and without prejudice to the positions of delegations.

31. For the third consecutive session, the Working Group had discussed all three sections of the Chair’s informal working paper, covering the definition, scope and application of the concept of universal jurisdiction. Several delegations had stressed the usefulness of sharing national practices, as they might provide insights and help the Working Group understand the obstacles faced in the application of the principle of universal jurisdiction. A discussion had also been held concerning the basis of that principle in different sources of international law. The view had been expressed that implementation of recommendations on application would help to prevent or minimize abuse of the principle.

32. The following additions had been made to the informal working paper to reflect the discussions that had taken place during the first two meetings of the Working Group: “international comity” was included among the procedural aspects considered in the application of universal jurisdiction; “hybrid criminal tribunals” were added to the list of concepts or institutions considered distinct from the concept of universal jurisdiction; and one new purpose of universal jurisdiction was to address the most serious

crimes of concern to the international community as a whole. The informal working paper had been further amended to reflect the fact that, for delegations, the question of the scope of the principle of universal jurisdiction could be constructed on the basis of rights and obligations under treaty law and/or customary international law, to serve as parameters to determine which crimes fell under universal jurisdiction.

33. At the conclusion of the second meeting, the Chair had proposed a further set of discussion points flowing from the “road map” and the elements set out in the informal working paper. Those discussion points also took into account the various sources set out in the “agreements on methodology” section of the informal paper of the Working Group (A/C.6/66/WG.3/DP.1); the informal papers prepared by the Chair and considered in the Working Group; the resolutions of the General Assembly on the item; the compilations of all written observations provided by Governments and relevant observers included in the reports of the Secretary-General on the topic (A/65/181, A/66/93 and A/66/93/Add.1, A/67/116, A/68/113, A/69/174 and A/70/125); and statements by delegations in the Sixth Committee and in the Working Group on the topic, together with the informal compilations prepared by the Secretariat (A/C.6/66/WG.3/INF.1 and A/C.6/66/WG.3/INF.2). During the discussions in the third meeting, some delegations had raised specific questions and concerns about some aspects of those points, which the Chair had attempted to reflect in a revised version of the informal working paper.

34. Progress had been made in the working groups since the item had been taken up by the Sixth Committee. At the current session, the Working Group had further elaborated the text developed in previous years, modifying and clarifying various elements. She hoped that delegations would continue working closely to advance work on the vital topic of the scope and application of the principle of universal jurisdiction.

35. **The Chair** said he took it that the Committee wished to take note of the report of the Chair of the Working Group on the scope and application of the principle of universal jurisdiction.

36. *It was so decided.*

*Draft resolution A/C.6/70/L.12: The scope and application of the principle of universal jurisdiction*

37. **Mr. Waweru** (Kenya), introducing the draft resolution on behalf of the Bureau, said that the text largely replicated General Assembly resolution 69/124, with some slight technical modifications.

**Agenda item 174: Observer status for the Union for the Mediterranean in the General Assembly**  
(continued) (A/C.6/70/L.5)

*Draft resolution A/C.6/70/L.5: Observer status for the Union for the Mediterranean in the General Assembly*

38. **Mr. Al-Moumani** (Jordan) announced that Albania, Austria, Croatia, Cyprus, Estonia, Germany, Greece, Ireland, Israel, Lithuania, Malta, Portugal, Spain, Sweden, Tunisia and Turkey had become sponsors of the draft resolution.

39. *Draft resolution A/C.6/70/L.5 was adopted.*

*The meeting rose at 12.25 p.m.*