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Chairman: Mr. Prandler (Hungary)

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

Agenda item 161: Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel (*continued*) (A/55/637; A/57/52)

1. **Mr. Kofod** (Denmark), speaking on behalf of the European Union, the associated countries Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey, and, in addition, Iceland and Norway, recalled that the Secretary-General's report contained in document A/55/637, which the Committee had considered at the fifty-sixth session, had painted a bleak picture of the conditions under which United Nations and associated personnel performed their tasks. Those conditions had not improved, and there had been further loss of life among United Nations personnel, a situation he deemed unacceptable. Attacks against United Nations and associated personnel undermined the activities of the United Nations and other humanitarian and peacekeeping organizations around the world.

2. He welcomed the fact that 63 Member States had ratified the Convention on the Safety of United Nations and Associated Personnel since its adoption in 1994. He urged all States to become parties, especially those States hosting United Nations operations, as they bore primary responsibility for the safety and protection of such personnel.

3. The report of the Ad Hoc Committee on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel (A/57/52) was a valuable contribution to the work of the Sixth Committee. The debate at the Ad Hoc Committee's session in April 2002 had revealed general agreement on short-term measures to improve the Convention. The Working Group of the Whole established at that session would now have to consider the manner and the time frame in which those measures would be implemented as well as the Secretary-General's recommendations for long-term measures.

4. **Ms. Čačić** (Croatia) said that as a troop contributor and host country to a number of different United Nations operations, Croatia was keenly aware of the security risks faced by personnel working in the peacekeeping and relief fields and the need to provide them with adequate legal protection at both the national and international levels. The Secretary-General's report

(A/55/637) rightly pointed out a number of deficiencies in the regime created by the Convention on the Safety of United Nations and Associated Personnel. The growing presence of the Organization and its agencies in conflicts and the changing nature of their engagement were inadequately addressed by that instrument.

5. The debate in the April 2002 session of the Ad Hoc Committee had focused on the Secretary-General's recommendations for strengthening and enhancing the existing regime. The support for the recommended short-term measures was encouraging, and should lead to such improvements as the incorporation of key provisions of the Convention in status-of-forces agreements (SOFAs) and status-of-mission agreements (SOMAs). However, her delegation believed that the Convention must be amended to extend its scope to all United Nations operations without the constraints of the trigger mechanism.

6. While the Convention had yet to achieve universality, that situation should not prevent any consideration of its normative deficiencies. That debate should continue in the Working Group and should ultimately lead to an improved legal framework for the comprehensive protection of all forms of United Nations presence in the field, preferably through the elaboration of an additional protocol to the Convention.

7. **Ms. Chatsis** (Canada) said that Canada was committed to enhancing the security of United Nations and humanitarian personnel by strengthening the United Nations security system and improving the international legal protection provided to such personnel. During the past year, Canada had ratified the Convention on the Protection of United Nations and Associated Personnel and had sought to ensure that deliberate attacks on peacekeeping and other humanitarian personnel were classified as war crimes in the Statute of the International Criminal Court. It had also incorporated the provisions of that instrument in domestic legislation so that intentional attacks on humanitarian personnel could be prosecuted.

8. However, the fact that the number of attacks against United Nations and other humanitarian personnel had increased dramatically in the past five years made it necessary to strengthen the protection afforded by the Convention. Means to that end included promoting the universality of the Convention, reviewing the implementation of the Convention by

States parties, the United Nations and the Secretariat, and identifying gaps in the international legal framework of protection and determining how they might best be addressed.

9. Her delegation had welcomed the establishment one year earlier of the Ad Hoc Committee and was pleased with the outcome of its first session. She noted in particular the support expressed for short-term measures, including a review of SOFAs, SOMAs and host country agreements that would lead to the incorporation of key provisions of the Convention in such agreements.

10. Although the Ad Hoc Committee had also considered several long-term measures, it had become clear that further discussion of the various proposals was warranted. For example, her delegation favoured extending the scope of the Convention to United Nations operations other than peacekeeping operations and to personnel working alongside United Nations operations.

11. **Ms. Katungye** (Uganda) said that her delegation supported the Secretary-General's recommendation to include key provisions of the Convention in SOFAs, SOMAs and host country agreements and hoped that significant steps had been taken to make that a reality. At the same time, her delegation would appreciate clarification as to precisely which provisions were involved.

12. Her delegation welcomed the decrease in attacks on United Nations and associated personnel during the past year. Such attacks were criminal acts which must be penalized by appropriate national laws. At the same time, United Nations and associated personnel must observe the laws of the country in which they were posted.

13. She supported the call for a review of the underlying causes of non-adherence to the Convention by States, bearing in mind the views expressed by delegations. Amendments to the Convention, if any, should extend its coverage to the United Nations staff of non-peacekeeping missions. There should be no distinctions among United Nations personnel: all should be accorded equal protection at all times. She therefore supported the elimination of the requirement that a declaration of exceptional risk must be issued. Delegations should also thoroughly examine the desirability of extending the protective regime to the personnel of humanitarian non-governmental

organizations (NGOs) working alongside the United Nations and having an existing relationship with or mandate from it.

14. **Mr. Kottut** (Kenya) said that, as one of the leading troop-contributing countries, Kenya had had its share of casualties. His delegation strongly believed that most of those casualties could have been averted if the legal protection regime had been strengthened, and he condemned all attacks on United Nations and associated personnel.

15. The recommendations of the Secretary-General that had been considered in the Ad Hoc Committee were important and timely, and he welcomed the agreement that had been reached on short-term measures. Kenya also supported the Ad Hoc Committee's conclusions regarding the incorporation of provisions of the Convention in SOFAs, SOMAs and host country agreements. Host countries had a responsibility to denounce attacks on United Nations and associated personnel and take any necessary measures; for their part, peacekeepers must be provided with a mandate that enabled them to discharge their duties effectively.

16. The 1994 Convention afforded good protection to United Nations and associated personnel, and Kenya was taking the necessary steps to ratify it. Kenya was also prepared to discuss further recommendations by the Secretary-General at future sessions of the Ad Hoc Committee and to participate in consensus-building to enhance the safety of United Nations and associated personnel.

17. **Ms. Mastika** (Malaysia) said that her delegation remained concerned at the real threat of violence faced by United Nations and associated personnel. The continuing casualties called for a strengthening of the legal regime governing the protection of those individuals. Her delegation therefore appreciated the reports of the Secretary-General (A/55/637) and the Ad Hoc Committee (A/57/52).

18. Her delegation saw merit in the incorporation of key provisions of the Convention on the Safety of United Nations and Associated Personnel in SOFAs, SOMAs and host country agreements. However, in order to provide a balance, other provisions of the Convention, such as article 6, on the need for personnel to respect the laws and regulations of the host country, should also be incorporated, and the importance of

doing so should be clearly expressed in a General Assembly resolution.

19. Under article 1 (c) (ii), the Convention's protection regime did not automatically apply to United Nations missions other than peacekeeping operations. The stipulation that a declaration of exceptional risk was necessary to trigger the application of the Convention was discriminatory in that it prevented the Convention from protecting all United Nations and associated personnel in a comprehensive manner. That inadequacy had been evident in political and humanitarian operations in Afghanistan, East Timor and Burundi. Thus one long-term measure that should be considered was the elimination of the requirement for such a declaration.

20. The question of the Secretary-General's "certifying authority" required further careful consideration. In particular, the implications of the certificate in relation to national courts needed to be addressed, as did its legality and evidentiary nature.

21. Her delegation fully endorsed the view that the Convention regime should cover all United Nations personnel, including personnel of humanitarian NGOs working in some form of association with the United Nations. While humanitarian NGOs not associated with the United Nations did make a significant contribution, it must be borne in mind that the Convention was not intended to cover operations not under United Nations control or personnel not associated with the United Nations system. Dispensing with the requirement of a contractual link would introduce uncertainties as to the scope of the Convention. The contractual link conferred a legal character on the participation of NGOs working with United Nations operations and ensured that their activities were consistent with the purposes and principles of the Organization. A separate regime should therefore be developed to provide the necessary protection to humanitarian NGOs operating independently from, and not in association with, the United Nations.

22. **Ms. Uluiviti** (Fiji) said that as a State party to the Convention, Fiji had a strong interest in further strengthening the application and improving the ratification status of that instrument. During the debate in the Ad Hoc Committee, her delegation had strongly supported the establishment of interim measures to enhance the Convention's protective regime, but it was also open to further long-term measures to broaden the

Convention's scope. The Ad Hoc Committee's report gave positive indications of the trend of that discussion, and her delegation would welcome further opportunities to examine the complex issues involved.

23. The Secretary-General's recommendations concerning the application of the Convention, including its extension to peacekeeping operations had potential. Her delegation supported the recommendation that the Convention should be extended to cover non-United Nations personnel associated with United Nations operations. Her Government also believed that the Convention should be brought into line with other developments taking place within the United Nations system, such as reforms in peacekeeping, and stood ready to engage in dialogue on those issues.

24. **Mr. Lobatch** (Russian Federation) said that the item under consideration had not only legal and political significance, but also an important ethical component in that it concerned the fate of individuals who often risked their lives under a United Nations mandate to implement the will of the international community. A balanced approach and responsible decision-making were therefore required.

25. His Government fully supported efforts to enhance the current protective regime under the Convention and believed that the Secretary-General's recommendations in that regard merited serious consideration. However, none of the issues under consideration — neither the unconditional extension of the application of the Convention to all peacekeeping operations nor its application to humanitarian non-governmental personnel — called for a review of that multilateral treaty. The Convention was a balanced document, reflecting the will of many States, which had clearly indicated their consent to be bound by its provisions. Attempts to introduce amendments might impede the accession of more States to the Convention.

26. The Ad Hoc Committee had achieved a general understanding on a package of short-term measures that could enhance the effectiveness of the Convention and allay the related concerns without introducing amendments to the text of the treaty. His delegation agreed on the need to include key provisions of the Convention in SOFAs, SOMAs and host country agreements, and it supported the establishment of appropriate model agreements.

27. His delegation believed that the Secretary-General had the authority to initiate a declaration by the General Assembly and the Security Council as to the existence of an exceptional risk regarding a specific United Nations operation.

28. Lastly, his delegation felt that the question of extending the application of the Convention to humanitarian non-governmental personnel working alongside the United Nations without a reciprocal treaty arrangement lay outside the scope of the Convention. The presence of treaty links between a specific NGO and the United Nations was important not only because it set the Convention's protective machinery in motion but also because it ensured that the NGO acted in accordance with the purposes and principles of the United Nations, and that it conducted its work in compliance with the rules established for United Nations personnel. Accordingly, his delegation supported the proposal for the development of a model agreement on the application of the Convention between the United Nations and NGOs.

29. **Mr. Su Wei** (China) said that the Secretary-General, in his report (A/55/637), presented three recommendations that did not require amendment of the Convention, namely: (i) incorporating the Convention's key provisions into SOFAs, SOMAs and host country agreements; (ii) establishing a procedure whereby the Secretary-General could initiate a declaration of exceptional risk; and (iii) designating the Secretary-General as the certifying authority for determining whether the Security Council or the General Assembly had made such a declaration. His delegation had no difficulty with those recommendations and wished to see them implemented soon. They would have the effect of extending the scope of application of the Convention to almost all United Nations operations and United Nations and associated personnel, and would undoubtedly strengthen their protection.

30. The report also contained recommendations that would make the Convention automatically applicable to all United Nations operations and all United Nations and associated personnel. Those recommendations would require amendment of the Convention, and his delegation viewed them with caution. As the discussion in the Ad Hoc Committee had shown, many countries did not approve of the idea of amending the Convention. Furthermore, the Convention's protective regime had not yet been implemented, and its potential

shortcomings had yet to be determined in practice. Further experience was needed before such a review could be considered.

31. The most pressing task at hand was to increase the universality of the Convention in order to achieve effective protection of United Nations and associated personnel. While there were now nearly 60 States parties to the Convention, few were host countries for United Nations operations.

32. It could hardly be said that existing international law afforded no protection to humanitarian NGOs that lacked the requisite link to the United Nations; however, should there be a need to further strengthen the protection of such NGOs, a separate international instrument could be adopted for that purpose.

33. **Ms. Stancu** (Romania) said that her delegation wished to associate itself with the statement made by the representative of Denmark on behalf of the European Union. With regard to the long-term measures recommended by the Secretary-General (A/55/637), the Ad Hoc Committee had held extensive discussions on the question of extending the automatic applicability of the Convention to all United Nations operations. Her delegation joined others in expressing support for the Secretary-General's conclusion that the optimal long-term solution to the limitations identified in his report remained a protocol to extend the scope of the Convention. Such a protocol could ensure the automatic, non-discriminatory application of the Convention to all United Nations operations.

34. **Mr. Biato** (Brazil) said that, while there had been a welcome decline in the number of deaths of peacekeeping personnel in the past year, the inadequacies in the Convention's protective regime and the unacceptably high number of casualties in previous years could not be ignored.

35. An important consensus had been achieved during the Ad Hoc Committee's session in favour of the inclusion of key provisions of the Convention in SOFAs, SOMAs and host country agreements. That measure would have a lasting impact on the implementation of the Convention and would help to overcome the limitations of the existing regime.

36. It was crucial that measures aimed at enhancing the effectiveness of the Convention should preserve the balance between the obligations of the sending parties and the responsibilities of the countries hosting peace

operations. The fact that most host countries had not joined the Convention was a reason for exercising caution when considering how best to redress the situation. Many host countries had voiced concern that peacekeeping forces must also show full respect for the laws and regulations of the host country. The proposed measures would go a long way towards allaying those concerns and overcoming the difficulties in negotiating and adopting SOFAs and SOMAs. His delegation endorsed the proposals to quickly update the existing model agreements for SOFAs, SOMAs and host country agreements along the lines suggested.

37. With regard to the more ambitious proposals regarding a review of the trigger mechanism, his delegation remained convinced that the Secretary-General already had the requisite authority, and his prerogatives should not be constrained by a formalized procedure for initiating a declaration of exceptional risk. China also remained convinced of the benefits of designating the Secretary-General as a certifying authority for the purposes of the Convention.

38. Despite the well-known limitations of the Convention, efforts should be made to encourage universal adherence and enhance the existing regime. An appropriate follow-up mechanism might be the submission by the Secretary-General of a report to the General Assembly in a few years' time to evaluate the effectiveness of the Convention once the short-term measures under consideration had been implemented. If those steps proved inadequate, the Ad Hoc Committee might go on to consider further steps to strengthen the Convention, as outlined in the Secretary-General's report.

39. **Mr. Mangueira** (Angola) said that although Angola was not a party to the Convention on the Safety of United Nations and Associated Personnel, it was committed to respecting its international obligations and duties in that regard and to creating conditions that would ensure the safety and security of all United Nations personnel and all foreigners in Angola. Any attack on United Nations personnel or on the rights or liberty of any foreigner was punishable by severe penalties under the Angolan Criminal Code.

40. His delegation's concerns regarding certain aspects of the Secretary-General's report on the scope of legal protection under the Convention (A/55/637) had been raised at the Ad Hoc Committee's session. First, since the Convention had been ratified by only a

small number of States, there had not yet been enough experience with its implementation to identify its failures. Second, although Angola, as an aid receiver, recognized the important role of humanitarian NGOs, it was convinced that their members must respect national legislation, and it did not favour according those organizations special status, even when they were operating under an agreement with the Secretary-General or a specialized agency, unless the host country agreed. Therefore, it could not support any modifications in the Convention that entailed expanding the concept of "associated personnel". Lastly, his delegation had reservations about extending the scope of the Convention; it could consider extending it to peace-building situations, but only if the host country agreed. Overall, his delegation felt that there was no reason to amend the Convention at present.

41. His delegation was willing to consider a resolution on the incorporation of the Convention's key provisions in SOFAs and SOMAs, but agreements with the host countries were the key to assuring the safety and security of United Nations personnel on the ground.

42. **Mr. Akamatsu** (Japan) noted that Japan was the second country to have ratified the Convention and called upon those States that had not yet done so, especially members of the Security Council and States hosting United Nations operations, to become parties as soon as possible.

43. In a welcome development, the key provisions of the Convention had been incorporated in the SOFA concluded between Timor-Leste and the United Nations. His delegation strongly hoped that such measures would be taken in future peacekeeping operations and that the other short-term measures discussed in the report of the Ad Hoc Committee (A/57/52), including the Secretary-General's recommendation for a declaration of exceptional risk, would be promptly implemented.

44. In addition, it was crucial that the scope of the Convention should be extended to include groups not currently covered, such as personnel of humanitarian NGOs. The Committee should continue its discussion of a protocol to extend the scope of the Convention's protective regime in the Working Group.

45. **Mr. Vázquez** (Ecuador) said that his delegation was pleased to note that the Ad Hoc Committee had

expressed general agreement on the need to strengthen the protection of the United Nations and associated personnel involved in any United Nations operation and had expressed general support for the Secretary-General's recommendation to include key provisions of the Convention in SOFAs, SOMAs and host country agreements. Even though the Secretary-General already had the authority to do so, it was important for the Sixth Committee, in its resolution on the agenda item, to reiterate its request to the Secretary-General to incorporate those provisions in such agreements. The resolution should also urge States to accept the inclusion of such provisions in any future agreements they signed. To ensure rapid implementation, the short-term measures on which there was consensus should also be spelled out in the resolution, reflecting the exchanges and refinements that would develop in forthcoming meetings of the Working Group.

46. Beyond that, the Working Group would have the important task of identifying points of agreement on longer-term measures to strengthen the legal regime of the Convention and overcome its limitations, a task that should be pursued beyond the meetings of the Working Group.

47. **Mr. Ogonowski** (Poland) said that a general consensus seemed to have emerged as to the desirability of proceeding with the implementation of the short-term measures proposed in the Secretary-General's report (A/55/637), particularly the incorporation of key provisions of the Convention in SOFAs, SOMAs and host country agreements. Following that approach, States could improve the safety and security of United Nations personnel without having to wait for the outcome of negotiations on more ambitious measures.

48. His delegation also agreed that the Secretary-General had the authority to initiate the adoption of a declaration by the General Assembly or the Security Council concerning exceptional risk. If the adoption of a resolution would help to clarify that view, his delegation could support such a resolution.

49. The Committee's most important task, however, was to address the long-term measures envisaged in the Secretary-General's report. The Convention might not adequately cover all situations in which the safety of United Nations and associated personnel was in jeopardy; consequently, a protocol to the Convention defining measures to enhance their safety and

clarifying the scope of the term "associated personnel" would be a useful tool.

50. **Ms. Rivero** (Uruguay) said that her delegation attached great importance to making implementation of the Convention a reality and cherished the hope that the Working Group, building on the report of the Secretary-General and the work of the Ad Hoc Committee, could develop recommendations during the current session to rectify the Convention's shortcomings, which had already been demonstrated in practice.

The meeting rose at 11.25 a.m.