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Chair: Mr. Chekkori (Morocco)
Later: Mr. Huth (Vice-Chair) (Germany)

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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*)
(A/67/213)

1. **Ms. Akilu** (Nigeria) said that her delegation welcomed the commitment made by States to provide information about their nationals who committed serious crimes while serving as United Nations officials and experts on mission and welcomed the cooperation of other Member States and the United Nations on investigations and prosecution of cases. As a major troop-contributing country, Nigeria took exception to the criminal impunity of officials and experts, who were expected to be good ambassadors for the United Nations and to promote the rule of law. Her delegation subscribed to a zero-tolerance policy with respect to cases of sexual exploitation and abuse; such forms of misconduct tarnished the reputation and credibility of the Organization and breached the trust of victims and civil society in it.

2. Her Government had put into place an institutional accountability procedure for punishing acts of transgression by Nigerian military personnel on peacekeeping operations. Nigerian laws governing those operations had extraterritorial effect to ensure that acts committed with impunity were investigated and appropriate disciplinary measures applied. Her delegation recognized the importance of sustained education and training programmes for Nigerian peacekeepers and supported the efforts of the Department of Peacekeeping Operations and the Department of Field Support in strengthening pre-deployment and in-mission training on United Nations standards of conduct.

3. **Mr. Momen** (Bangladesh) said that the agenda item had gained prominence in the Committee's deliberations owing to an increase in conflict in the world and the enhanced engagement of the United Nations in peacekeeping operations. His delegation hoped that Member States would fully implement the relevant General Assembly resolutions in order to ensure the criminal accountability of United Nations officials. He welcomed the decision to form a working group in line with the report of the Group of Legal Experts and with General Assembly resolutions 62/63 and 63/119.

4. His delegation believed that awareness-raising activities and preventive measures at the mission level were critically important in all United Nations field missions to prevent misconduct, sexual exploitation and abuse, and hoped that the Department of Peacekeeping Operations and the Department of Field Support would continue to implement the three-pronged strategy to address such misconduct through preventive measures, the enforcement of United Nations standards of conduct and remedial action. Bangladesh was a top troop-contributing country and greatly valued the sacrifices made by the United Nations peacekeepers. His Government firmly believed that all United Nations peacekeeping personnel should perform their duties in a manner that preserved the integrity and credibility of the United Nations, and it therefore maintained a zero-tolerance policy in addressing cases of abuse and sexual exploitation committed by peacekeeping personnel. He drew the Committee's attention to General Assembly resolution 62/214, which provided for a comprehensive strategy on medical, social and legal assistance and support to victims of sexual exploitation and abuse by United Nations officials.

5. Under domestic law, Bangladesh armed forces personnel serving as United Nations officials or experts on mission were subject to a system of military discipline, even while deployed abroad, and were governed by the Code of Criminal Procedure of 1898 and the Manual of Bangladesh Military Law. Civil servants and members of the police force serving abroad were held liable for any crimes committed that were punishable under domestic law. All military or civilian United Nations peacekeeping personnel involved in suspected sexual exploitation and abuse cases should be reported to the competent authorities and investigated in accordance with Bangladesh law. His Government was committed to take all appropriate measures to ensure accountability and that the perpetrators of such crimes were brought to justice.

6. **Mr. Arbogast** (United States of America) said it was critical that United Nations officials and experts on mission should be held accountable if they committed crimes, and that the General Assembly should remain seized of the matter. The number of credible allegations against United Nations officials referred to the State of the alleged offender's nationality had increased since the previous year, suggesting that the Organization's efforts to strengthen

existing training on United Nations standards of conduct might have increased awareness of violations and the need to report them.

7. His delegation was not convinced that a multilateral convention, as recommended by the Group of Legal Experts in its report (A/60/980), was the most effective means for ensuring accountability, particularly when it was unclear whether the lack of jurisdiction over crimes was the principal reason for any current difficulties in carrying out prosecutions. The Committee could request a report by the Secretary-General examining other potential impediments such as a lack of political will, resources or expertise to prosecute cases effectively.

8. The burden was on Member States to curb abuses by their nationals, and all stood to benefit from the culture of accountability. He urged Member States to take appropriate action with regard to the referred cases and report to the United Nations on their outcome. His delegation would support efforts to provide Member States with assistance to close any gaps in their laws and legal systems relating to accountability.

9. **Mr. Sinhaseni** (Thailand) said that the basic principle of criminal accountability applied to the United Nations and its personnel, who were expected to adhere to the highest standards of the rule of law. His delegation strongly supported the zero-tolerance policy with respect to criminal conduct by United Nations officials or experts on mission, particularly cases involving sexual abuse, violence and the exploitation of women and children, which tarnished the credibility of the United Nations and its peacekeeping operations.

10. His delegation recognized the urgent need to eliminate existing legal gaps that allowed United Nations personnel guilty of serious crimes to escape justice and called on all States to establish jurisdiction over such crimes. United Nations efforts to provide technical support to Member States in developing their domestic legal frameworks in that regard were commendable. His delegation also supported enhanced cooperation between host States and the State of nationality of alleged offenders under existing treaties or other arrangements on mutual legal assistance and between States and the United Nations in investigating and prosecuting crimes alleged against United Nations personnel. Any measures taken by a State party against

United Nations personnel must be consistent with the provisions of the 1946 Convention on the Privileges and Immunities of the United Nations unless such immunities had been waived by the competent organ of the United Nations. His delegation commended the commitment of the Secretary-General to ensure the lifting of immunity of staff members and experts on mission who had allegedly engaged in criminal conduct, provided that the suspects received due process during the investigation and court proceedings. To ensure the successful prosecution of the crimes, States should adopt a more flexible test for satisfying the double criminality rule and focus on the totality of the acts alleged against the person whose extradition was being sought.

11. **Mr. Karin** (Israel) said that any United Nations official or expert who committed a serious crime in the course of a United Nations operation should be held criminally accountable, as the criminal activity harmed the immediate victims and was deeply damaging to the host country and to the image and integrity of the United Nations. Israel supported General Assembly resolution 66/93 and urged States to take all appropriate measures to ensure that such crimes were not met with impunity, close the jurisdictional gap and assert jurisdiction over serious crimes committed by their nationals while serving as United Nations officials and experts on mission abroad. His delegation welcomed the three-pronged strategy adopted by the Secretariat to address misconduct, in particular sexual exploitation and abuse. With regard to a new convention to address the issue of criminal accountability, his delegation believed that it was more useful to first focus on substantive matters and leave the question of form to a later stage.

12. **Mr. Tchiloemba Tchitembo** (Congo) said that the criminal acts of which United Nations officials and experts on mission had been accused were incompatible with their status and that of the Organization. Their impunity, arising from their diplomatic status, was unjustifiable in view of the rightful condemnation it elicited from the international community and developments in international criminal justice. United Nations officials and experts on mission were obligated to abide by the law of the host State, which had complete jurisdiction with respect to criminal matters. His delegation supported the United Nations zero-tolerance policy and the proposals for specific preventive measures contained in the

Secretary-General's report (A/67/213), such as pre-deployment training programmes that set out the standards of conduct for officials and experts on mission and required them to have a clear understanding of the criminal law of host States. His delegation believed in the need for an international convention that would provide for the subsidiary jurisdiction of international courts, particularly for sexual crimes, without prejudice to the principle of territorial jurisdiction.

13. **Mr. Eden Charles** (Trinidad and Tobago) said that United Nations officials and experts on mission who violated domestic and international laws must be brought to justice. When criminal acts were not prosecuted with full respect for due process, the United Nations could be accused of contributing to a culture of impunity. Holding perpetrators accountable for their acts would help restore trust in the United Nations system among their victims, while the failure to address the issue could have a deleterious effect on the work of the Organization. Given that some of the crimes were particularly heinous, such as sexual exploitation and abuse, appropriate measures were needed to bring the perpetrators to justice. His Government supported a zero-tolerance policy as it related to such crimes and viewed the report of the Secretary-General and the information concerning the efforts of other States to establish jurisdiction over crimes of a serious nature committed by their nationals while serving on mission on behalf of the Organization as an opportunity to ensure that its own laws were in line with its international legal obligations.

14. The provision of relevant information by the United Nations, in line with General Assembly resolutions 65/20 and 66/93, would assist in the successful prosecution of those guilty of misconduct and make available quality evidence to clear those who had been wrongfully accused. Cooperation would also assist with gaps in legislation that impeded the successful prosecution of those who were accused of committing crimes while on United Nations assignments. Legal certainty was vital at the domestic level while a common set of rules and regulations, known and accepted by all States, irrespective of existing domestic legal systems, was needed at the international level to bring to justice those whose criminal conduct brought the United Nations into disrepute.

15. His delegation hoped that the Committee would continue to deliberate on the report of the Group of Legal Experts on ensuring the accountability of United Nations experts while on mission, which was essential to the continued examination by the Organization of an issue that was indispensable to the promotion of the rule of law at the national and international levels.

16. *Mr. Huth (Germany), Vice-Chair, took the Chair.*

Agenda item 77: Report of the United Nations Commission on International Trade Law on the work of its forty-fifth session (A/67/17)

17. **Mr. Sikirić** (Croatia), Chair of the United Nations Commission on International Trade Law (UNCITRAL), introducing the Commission's report on the work of its forty-fifth session (A/67/17), said that one of its major achievements was the adoption of the Guide to Enactment of the UNCITRAL Model Law on Public Procurement, which had been prepared to assist States in developing modern public procurement laws using the Model Law as a template for their domestic legislation. The work had been undertaken by Working Group I in tandem with its work on the Model Law, starting at its sixth session in 2004. The Guide explained how the Model Law implemented the key aspects of good governance, integrity and achieving value for money in public procurement. Moreover, it provided an illustration of how it fit into the international regulatory system on public procurement, which included the United Nations Convention against Corruption and the World Trade Organization Agreement on Government Procurement. The Guide provided detailed recommendations to States on how to enact and implement the Model Law, and discussed the policy options and solutions available. The aim was to enable government purchasers to take advantage of modern commercial techniques, such as e-procurement and framework agreements, and to provide updates on procurement methods designed for complex technical goods and services, for simple and low-value items and in situations of emergency. The Guide was an indispensable tool for the implementation of the Model Law and had been prepared for readers with varying interests.

18. The Commission also adopted recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the 2010 UNCITRAL Arbitration Rules. The recommendations had been originally adopted in 1982 to assist arbitral institutions

administering arbitrations under the 1976 UNCITRAL Arbitration Rules. The Rules had been revised in 2010 and contained several changes, in particular with regard to the role granted to appointing authorities. Accordingly, it was necessary to update the accompanying recommendations. In 2010, the secretariat had been entrusted with the updating of the 1982 recommendations. After two years of work, the revised recommendations had been presented to the Commission, with the objective of promoting the use of the 2010 Arbitration Rules and ensuring that arbitral institutions would be more inclined to accept the role of appointing authorities. Recognizing their potential to significantly enhance the efficiency of arbitrations conducted under the 2010 Arbitration Rules, the Commission had adopted the revised recommendations.

19. Working Group II (Arbitration and Conciliation) had continued its work on the preparation of a legal standard on transparency in treaty-based investor-State arbitration, a topic of great practical importance, particularly in view of the high number of investment treaties already in existence. The Working Group had previously agreed that the legal standard on transparency should be drafted in the form of rules, and the Commission had considered the reports of the Working Group, containing deliberations on the content and scope of the draft rules. The aim was to balance the public interest inherent in treaty-based investor-State arbitration with the parties' interest in resolving disputes in a fair and efficient manner. In the light of the Commission's leading role in the field of international arbitration, the work was undertaken in close cooperation with arbitral institutions involved in administering investment arbitration so as to ensure that the standard on transparency, once adopted, could be widely applied, possibly beyond those cases administered under the UNCITRAL Arbitration Rules. The Commission had urged the Working Group to continue to pursue its efforts and to complete its work on the rules on transparency expeditiously. In order to assist users of UNCITRAL texts, the Commission's secretariat had published the *2012 Digest of Case Law on the Model Law on International Commercial Arbitration*, to assist in the interpretation and application of the Model Law, and a Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), which aimed to promote the uniform application of the Convention and limiting the risk that State practice

might diverge from the original spirit of the Convention. A web platform had been launched as part of that Guide, providing access to case law regarding the application of the New York Convention in multiple jurisdictions.

20. Working Group III had continued its work in the field of online dispute resolution (ODR), a subject of great practical importance to businesses and consumers in all parts of the world. The Commission had noted the progress made by the Working Group, which was preparing a legal standard for the resolution of cross-border, low-value online disputes, including those arising from business-to-business (B2B) and business-to-consumer (B2C) transactions. It had been agreed that the standard should take the form of procedural rules, and progress had been made in the development of such rules. The Commission also took note of the Working Group's mindfulness of consumer protection issues throughout its deliberations, as well as the perceived benefits of ODR in promoting interaction and economic growth within and between regions, including in developing countries and countries in post-conflict situations. Reaffirming the mandate of the Working Group, the Commission had urged it to continue to explore a range of means of ensuring that ODR outcomes were effectively implemented.

21. The Commission was a pioneer in developing legal standards on electronic commerce, and texts adopted by it had influenced a great number of jurisdictions. With the increased use of electronic communications in international trade, almost all Working Groups had considered related issues when deliberating their respective topics. One significant development in this area was the imminent entry into force, in March 2013, of the United Nations Convention on the Use of Electronic Communications in International Contracts, which aimed at facilitating the use of electronic communications in international trade. During its deliberations, the Commission had taken note of the progress made by Working Group IV, which had commenced work on issues related to electronic transferable records. There was general support for the Working Group to continue its work on electronic transferable records, and the Commission emphasized the need for an international regime to facilitate the cross-border use of electronic transferable records. The Commission had also welcomed the ongoing cooperation between the secretariat and other organizations, such as the United Nations Network of

Experts for Paperless Trade in Asia and the Pacific, the Economic Commission for Europe and the World Customs Organization, on legal issues relating to electronic single window facilities, and had requested the secretariat to continue reporting on relevant developments relating to electronic commerce.

22. Working Group V had continued to make progress with respect to the interpretation and application of selected concepts of the UNCITRAL Model Law on Cross-Border Insolvency relating to the concept of “centre of main interests”, an issue which was key to the efficient functioning of not only the Model Law, but also the European Regulation on Insolvency Proceedings. Given the concept’s commonality to those two instruments, it was highly desirable that it be interpreted consistently in States that used both of them. Working Group V had also made progress on the topic of the responsibilities of directors of an enterprise in the period approaching insolvency. The focus was to encourage the early use of appropriate resolution procedures in situations of financial difficulty by highlighting the steps that directors should take in such situation, and to provide appropriate remedies where those steps were not taken. The Commission had also approved the preparation of a digest of case law on the Model Law on Cross-Border Insolvency, which would provide wider and more ready access to relevant case law and draw attention to emerging trends in the interpretation of the Model Law. It had been noted that such a digest would be a useful supplement to the Model Law, assisting in the dissemination of information particularly to judges and other practitioners.

23. In the field of security interests, the Commission had taken note of the progress made by Working Group VI, which had continued its work on preparing a text on the registration of security rights in movable assets (the draft “Registry Guide”). In view of the urgent need for guidance in that area, the Commission had requested the Working Group to proceed with its work expeditiously so that the draft Registry Guide could be submitted to the Commission at its next session for final approval and adoption. As to future work, the Commission had agreed that, upon completing the draft Registry Guide, the Working Group should undertake to prepare a simple model law on secured transactions based on the general recommendations of the UNCITRAL Legislative Guide on Secured Transactions and consistent with all other UNCITRAL

texts. The Commission welcomed the joint publication entitled “UNCITRAL, Hague Conference and Unidroit texts on security interests”, which provided a comparison and analysis of the major features of international instruments relating to secured transactions prepared by those three organizations. The joint publication was a good example of the kind of coordination and cooperation that the Commission had been supporting for years; such work could pave the way for possible future collaboration among the three organizations. The Commission had requested the secretariat to continue proceeding with the preparation of a joint set of principles on effective secured transactions regimes in cooperation with the World Bank. In addition, the secretariat had been urged to continue cooperating closely with the European Commission with a view to ensuring a coordinated approach to the law applicable to the third-party effects of assignments of receivables.

24. To accommodate the interest of States in obtaining guidance on issues not addressed or not sufficiently addressed in the Model Law and the Guide, such as procurement planning and sustainability and environmental issues in public procurement, the Commission had instructed the secretariat to undertake a study of such topics, which would allow the Commission to make a decision on future work in the area of public procurement.

25. As for possible future work in the area of public-private partnerships, the Commission had considered the need for updating its instruments on privately financed infrastructure projects in the light of developments that had occurred since 2003, when the Commission had completed its work on that subject. The Commission had noted the conclusions of Rio+20 that had encouraged the use of public-private partnerships as a tool for economic development, and the interest of developing countries in a model law on public-private partnerships to be elaborated at the international level. The secretariat had been requested to organize a colloquium to identify the scope of possible work and primary issues to be addressed, which would be the basis of the Commission’s consideration when making a decision on future work in this area.

26. The Commission had considered a note by the secretariat containing a short summary of the four topics identified by the Commission in 2011, one of them being facilitating transparent secured lending to

micro-enterprises and small and medium-sized enterprises (SMEs). Pursuant to a suggestion to further explore particular issues relevant to facilitating access to credit for micro- and small businesses, particularly in developing economies, the Commission had unanimously agreed that one or more colloquiums on microfinance and related matters should be held, possibly in different regions. Topics to be discussed were 1) facilitating simplified business incorporation and registration; 2) access to credit for micro-businesses and SMEs; 3) dispute resolution applicable to microfinance transactions; and 4) other topics related to creating an enabling legal environment for micro-businesses and SMEs. The Commission had further agreed that the holding of such a colloquium should rank as a first priority for the Commission in the coming year.

27. The Commission had considered a proposal by Switzerland for the Commission to undertake work in the area of international contract law. The Commission's prior work in that field had produced one of its most successful and influential texts, the United Nations Convention on Contracts for the International Sale of Goods (CISG), which had 78 States parties from every geographical region, every stage of economic development and every major legal, social and economic system. Despite its success, CISG only covered specific areas of contract law dealing with the international sale of goods and left many matters to be determined by domestic law. The Swiss proposal argued for the need to build on the Convention's accomplishments and to further harmonize international contract law. While regional organizations were already considering actions in that direction, regionalization added an additional layer of rules which could be said to be dis-harmonizing, ultimately impeding cross-border trade. The Swiss proposal recommended that the Commission should be given a mandate for further work on contract law in order to foster universal harmonization. The prevailing view had been in support of requesting the secretariat to organize a colloquium or other meetings on the topic, resources permitting, with a view to compile further information to assist the Commission in assessing the desirability and feasibility of future work in the field of general contract law.

28. Once again, the Commission had stressed the importance of technical cooperation and assistance. As had been recognized at the High-level Meeting of the

General Assembly on the Rule of Law at the National and International Levels, the advancement of the rule of law was essential for sustained and inclusive economic growth and sustainable development and did not stop at merely preparing texts to be adopted by States. That was only the beginning: those texts then had to be promoted and carefully implemented, sometimes taking into consideration various domestic factors. Thus technical assistance to law reform became an essential element of the work of the Commission.

29. In that context, the Commission had expressed its appreciation for the activities undertaken by the secretariat during the preceding year. The Commission had further noted that, despite the secretariat's efforts to solicit new contributions, there was a shortage of funds available in the UNCITRAL Trust Fund for such activities. Accordingly, requests for technical cooperation and assistance activities continued to be very carefully considered, and the number of such activities, which had mostly been carried out on a cost-share or n^o cost basis, had been limited.

30. The Commission had requested the secretariat to continue exploring alternative sources of extrabudgetary funding, in particular by extensively engaging permanent missions, as well as other possible partners in the public and private sectors. The ability of the Commission's secretariat to respond to technical assistance requests was largely dependent on the availability of extrabudgetary funds. He appealed to all States, international organizations and other interested entities to consider making contributions to the UNCITRAL Trust Fund and to assist the secretariat in the identification of other sources of funding for such activities.

31. With a view to reaching out and providing technical assistance to developing countries as well as to coordinating existing initiatives in the field of international trade law reform, the idea of establishing UNCITRAL regional centres had been developed in the past few years. As a result, the first UNCITRAL Regional Centre for Asia and the Pacific had been established in January 2012 in Incheon, Republic of Korea. Owing to the aforementioned budgetary restraints, the Regional Centre was being funded by the Government of the Republic of Korea, including in-kind contributions such as a non-reimbursable loan legal expert. The activities of the Regional Centre focused on assessing needs and mapping existing

projects relating to trade law reform, with a view to increasing coordination among them. Particular importance was given to coordination with other regional entities, especially the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), and to the establishment of effective contacts with States already engaged in trade law reform. In the light of requests received to date, as well as of existing initiatives, the Regional Centre had identified the following main areas of work: alternative dispute resolution, sale of goods and electronic commerce. Other States had also expressed interest in hosting UNCITRAL regional centres. In particular, pursuant to the mandate received from the Commission, its secretariat was exploring the possibility of establishing such centres in Kenya and Singapore.

32. The Commission had expressed appreciation for the continued work of the secretariat on the CLOUT (Case Law on UNCITRAL Texts) system and the increasing volume of abstracts published. The Commission had noted that the CLOUT system and the digests were important for promoting awareness, harmonization and uniform interpretation of the law relating to UNCITRAL texts. In particular, the Commission had welcomed the third revision of the *Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods* and the first edition of the *UNCITRAL 2012 Digest of Case Law on the Model Law on International Commercial Arbitration*. The Commission had taken note that the secretariat had refined a project proposal aimed at finding resources for the resource-intensive system and that such a proposal had already been discussed with one UNCITRAL Member State. The Commission had fully endorsed a call for increased resources to maintain and expand the secretariat's work in that area.

33. The texts prepared by the Commission continued to serve as useful tools for States across the globe. The Commission had taken note of 33 actions on its texts by States, including signature or ratification of treaties and adoption of model laws, which took place in every geographic region. In that connection, there has been a promising new trend for States parties to withdraw their limiting declarations on UNCITRAL conventions, thus expanding the reach of those conventions. With the accession of the Dominican Republic, the United Nations Convention on the Use of Electronic Communications in International Contracts would enter

into force early the following year. Lastly, the New York Convention continued to move toward universal participation, with 147 States parties.

34. The Commission had also been informed of activities of other international organizations in the field of international trade law and the secretariat's coordination activities with organizations both within and outside the United Nations system, including ESCAP, the European Union, the Hague Conference on Private International Law, the Organisation for Economic Co-operation and Development (OECD), Unidroit, United Nations Conference on Trade and Development (UNCTAD) and the World Bank. The secretariat had participated in expert groups, working groups and plenary meetings with the purpose of sharing information and expertise, as well as avoiding duplication of work in the relevant fields. The Commission had reiterated the importance of its coordination efforts and had expressed support for the use of travel funds for that purpose.

35. Pursuant to an invitation by the General Assembly, the Commission provided its comments every year on the role it played in promoting the rule of law at the national and international levels. During the session, a rule of law briefing had been organized involving various stakeholders, particularly in the context of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels. Under this agenda item, the Commission had expressed concern that the Chair of the Commission had not been listed among the speakers at the High-level Meeting in General Assembly resolution 66/102, an omission that was inconsistent with paragraph 12 of resolution 66/102, by which the Assembly had requested the Commission to continue to comment on its current role in promoting the rule of law, and with the message of the Commission, continuously endorsed by the Assembly, that the promotion of the rule of law in commercial relations should be an integral part of the broader agenda of the United Nations. The Commission had agreed that the only expert body in the United Nations system in the field of international commercial law should not be excluded from what was intended to be an inclusive and comprehensive rule of law discussion in the Assembly.

36. The High-level Meeting had been viewed as a unique opportunity for the international community to look at rule of law issues from a commercial law point

of view and to increase the knowledge of all concerned about the impact of commercial law reforms and the Commission on the promotion of the rule of law. The Commission had requested that he, as the Chair of its forty-fifth session, transmit its views to the Office of the President of the General Assembly so that arrangements could be made for him to address the High-level Meeting. The Commission had also formulated its message to the High-level Meeting, consisting of a message addressed to States and a message addressed to the United Nations system, stating that an outcome document of the High-level Meeting should refer to the Commission's work and recognize its contribution to the promotion of the rule of law in the field of economics, which was vital to the promotion of the rule of law in the broader context.

37. The Commission's views had been shared by Member States and the Office of the President of the General Assembly, and he had had the opportunity to address the High-level Meeting and promote the commercial and trade law perspective not commonly associated with the rule of law. The outcome document, recognizing the importance of fair, stable and predictable legal frameworks for generating inclusive, sustainable and equitable development, economic growth and employment, generating investment and facilitating entrepreneurship, had duly acknowledged the Commission's contribution to harmonizing and modernizing international trade law. It was hoped that, in the implementation of that outcome document, Member States, the United Nations system and other stakeholders would duly consider the message of the Commission to the High-level Meeting contained in its current report.

38. The Commission was the core United Nations entity in the field of commercial law, working to provide a legal environment in support of trade and commerce. On numerous occasions, the General Assembly had reaffirmed the multi-faceted impact of the Commission's work on development, peace, stability, and the well-being of all peoples and on the promotion of the rule of law. The Commission would remain at the service of the international community and faithful to its mandate to promote the progressive harmonization and unification of international trade law.

39. The Commission and its secretariat had been a good example of what the Secretary-General Ban Ki-moon called "Doing more with less". The

Commission had been pursuing its mandate with great efficiency, supported by a remarkably small secretariat consisting of 14 lawyers and a half-dozen support staff. It had reached the limit of what such a small secretariat could do, however, if the Commission was to meet the challenges of globalization. A strategic planning exercise based on a comprehensive review of current and future work programmes and their implementation would be undertaken next year.

40. The Member States were the Commission's true shareholders and thus should be more directly involved. The Commission needed to continue its work on commonly agreed and understandable rules of international trade and to improve its technical assistance to law reforms in response to the growing globalization of the economy. He asked for the States' continued participation in and support of the Commission and its activities.

41. **Ms. Enersen** (Norway), speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Sweden and Norway), commended the Commission for its efforts to maintain close cooperation with other international bodies and organizations active in the field of international trade law. The Nordic countries had participated in the Commission's Working Groups, particularly Working Group II (Arbitration and Conciliation), and believed that the open and inspiring nature of their discussions had contributed to their excellent results. They appreciated the hard work that had led to the successful adoption of the Guide to Enactment of the UNCITRAL Model Law on Public Procurement. They welcomed the work done so far by Working Group VI (Security Interests) and looked forward to the further work within Working Group V (Insolvency Law) on the responsibility and liability of directors and officers of an enterprise in insolvency and pre-insolvency cases. The Nordic countries were following with interest the work of Working Group III (Online Dispute Resolution), which held great potential in view of the existing degree of agreement. They were encouraged by the ongoing efforts to streamline and focus the work of Working Group.

42. **Mr. Nikolaichik** (Belarus) said that the publication of the Guide to Enactment of the 2011 UNCITRAL Model Law on Public Procurement would expand the use of the Model Law and best procurement practices. The work of the Working Groups was valuable for identifying promising new approaches and improving the system of international trade law. His

delegation was interested in the outcome of the establishment of a regional UNCITRAL centre in the Republic of Korea, as the dissemination of international trade standards developed by the Commission was important for invigorating international trade and development.

43. His delegation stressed the need to respect the principle of consensus in the Commission's work to ensure the universal adoption of its texts. His delegation supported efforts to draft a balanced legal standard on transparency in investor-State arbitration. The secretariat should take additional steps to provide training and technical assistance in order to meet the needs of States with respect to legal frameworks for international commercial activity. Such assistance should be made possible using extrabudgetary donor resources. Belarus used its participation in the Commission's work to bring its laws in line with international legal standards in the field of international trade and thereby create favourable conditions for developing international economic ties and attracting foreign investments. It was particularly important for such standards to take into account the idiosyncrasies of national legal systems and the nature of economic relations. Such an approach would be his delegation's contribution to the work of the Working Groups of the Commission upon resuming membership in 2013.

44. **Mr. De Vega** (Philippines) said that the work of the Commission, by facilitating world trade, benefited Member States, including developing countries like his own. Its Guide to Enactment of the Model Law on Public Procurement would contribute significantly to the Philippines programme on public-private partnership projects; such projects were a further possible topic for the work of Working Group I (Procurement) as they offered a means of encouraging the collaboration of the public and private sectors in achieving the shared goals of growth and development. The Commission had also contributed to the promotion of the rule of law at the national and international levels; the effective delivery of public services in a fair, non-discriminatory and accountable manner was a key factor in that endeavour. To strengthen further the rule of law in the Philippines, mechanisms had been put in place to ensure transparency, public accountability, private sector participation and fair access to information. Noting that his country was considered a pioneer in mobile payments and

electronic money, he said that it supported the proposal on electronic payments. It considered that the opening of the UNCITRAL Regional Centre for Asia and the Pacific in the Republic of Korea was a further important step for the Commission in reaching out to developing countries and looked forward to the proposed establishment of similar centres in other Member States, particularly Singapore.

45. **Mr. Choi Yong Hoon** (Republic of Korea) said that the finalization and adoption of the Guide to Enactment of the Model Law on Public Procurement counted among the year's greatest achievements and would be useful to all Member States. His delegation also appreciated the recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules as revised in 2010. It commended Working Group V for its work with respect to guidance on the interpretation and application of selected concepts of the UNCITRAL Model Law on Cross-Border Insolvency and the responsibility of directors of an enterprise in the period approaching insolvency; it also appreciated the work done by Working Group VI (Security Interests) on the draft Registry Guide. His delegation approved the Commission's decisions on possible future work and hoped that issues relating to commercial fraud would be taken up in the future by the Working Groups. It continued to believe that the existing rotation arrangement between New York and Vienna should be maintained.

46. **Mr. Maza Martelli** (El Salvador) welcomed the adoption of the Guide to Enactment of the Model Law on Public Procurement, as it would contribute to the establishment of a modern legal framework in that area. His delegation also commended Working Group II for the adoption of recommendations with regard to arbitration under the UNCITRAL Arbitration Rules; they would facilitate the establishment of a set of harmonized standards for fairly and effectively resolving international trade disputes.

47. El Salvador, as a developing country, attached great importance to its continuing membership of the Commission and commended it for its valuable contribution to the codification and progressive development of international trade law. His country had been actively involved in that work, in particular through meetings to prepare and adopt instruments to promote international trade and investment. It also encouraged the use of such instruments and had hosted

a training seminar for that purpose in December 2011 at which UNCITRAL experts had spoken about the Commission's work before representatives of the various national institutions concerned. His Government continued to benefit from the UNCITRAL model laws and legislative guides and was hoping thereby to develop a national legal framework that would enable El Salvador to become more fully integrated into the dynamics of international trade.

48. **Ms. Ren Xiaoxia** (China) said that China had taken the relevant UNCITRAL model laws and legislative guides as references in its domestic legislation and actively contributed to the dissemination of the results of the Commission's work. Among its recent achievements, China appreciated particularly the Guide to Enactment of the Model Law on Public Procurement and the recommendations with regard to arbitration under the UNCITRAL Arbitration Rules as revised in 2010. His delegation looked forward to the Commission's further work to advance the unification of global trade rules; the Chinese Government would continue to value and take part in it.

49. **Ms. Quidenus** (Austria) said that the Commission was to be commended for its work on arbitration and conciliation, online dispute resolution, electronic commerce, insolvency law and security interests. Austria appreciated in particular the revised recommendations on arbitration, which they would serve to make more efficient. The UNCITRAL secretariat also deserved praise for its efforts in support of the promotion of the uniform and effective application of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

50. The Commission played a key role in strengthening the rule of law at the national and international levels, not only in the field of international trade but also in the context of long-term development, conflict prevention and post-conflict reconstruction. A regular dialogue with the Rule of Law Coordination and Resource Group through the Rule of Law Unit was therefore appropriate, while the biennial briefing by that Unit was of the utmost importance in keeping abreast of progress made in integrating the Commission's work into United Nations rule of law activities.

51. **Mr. Kyffin** (Canada) said that his delegation welcomed the adoption of the Guide to Enactment and

the revised recommendations with regard to arbitration and strongly supported the ongoing work of Working Group II. While noting the importance of safeguarding consumer protection legislation and understanding the desire of some States to have consumer transactions included in the work on online dispute resolution, it urged Working Group III to be cautious in that respect. It was pleased that the work of Working Group VI to produce a guide on registries for security rights in movable assets was nearing completion, as it would be a useful tool for States that wished to create or modernize a legislative regime for such security interests. With regard to the current project of Working Group IV on electronic commerce, Canada deemed it important to identify and focus on specific issues or types of issues, with all due regard for the solutions already provided by the Commission's previous work.

52. His country shared the view of many States that the proposal that UNCITRAL should undertake work in the area of international contract law was not currently advisable, as it was of academic rather than practical interest and would duplicate existing instruments. Secretariat resources should be allocated to other projects for which there was a demonstrated need and that had a greater chance of succeeding. Canada looked forward to contributing to the development of the work of Working Group VI to prepare a model law for secured transactions, which would usefully complement the UNCITRAL Legislative Guide to Secured Transactions. It also supported the decision to explore further the area of microfinance and reaffirmed the Commission's pivotal role in harmonizing commercial law between States.

53. **Mr. Song** (Singapore) said that both the newly adopted Guide to Enactment and the revised recommendations would contribute to the Commission's objectives and would be of valuable assistance to States. They formed part of the Commission's increasing output of valuable texts that served to facilitate and promote international trade. Since such work required increased resources and as only limited resources were available, the Commission must optimize its working methods, in particular by concentrating on areas where there was a clear need to harmonize legal rules in the case of cross-border transactions, and must ensure that such harmonization resulted from its work; it should also seek outcomes that addressed real commercial needs and should avoid duplication. Its core function should be to produce

texts that would not be or were unlikely to be produced without it, and particularly international conventions and model laws. Moreover, the Commission's secretariat should seek more often the collaboration of Member States, experts and other organizations in promoting UNCITRAL texts, as exemplified by its recent collaboration with Singapore, which had resulted in the first *Digest of Case Law on the UNCITRAL Model Law on International Commercial Arbitration*. The Digest would be extremely useful to practitioners and, by making texts more easily accessible to all, would promote arbitration under the UNCITRAL Rules as a preferred mode of resolving international commercial disputes.

54. Singapore stood ready to do more to further the Commission's work. It had offered to host and support an UNCITRAL Centre, which would operate in close coordination with other UNCITRAL regional offices. His country was a long-standing member of the Commission and looked forward to continuing in that capacity to participate actively in its deliberations.

55. **Mr. Petrosyan** (Russian Federation) said that the Commission played a special role in harmonizing and unifying the rapidly developing field of international trade law. It was important to preserve the stability of economic relations while ensuring that the regulatory framework met modern-day needs. The High-level Meeting of the General Assembly on the Rule of Law had reaffirmed the leading role the Commission played in upholding high legal standards in trade relations. His delegation welcomed the progress made by the Commission at its most recent session, in particular the adoption of the Guide to Enactment of the 2011 UNCITRAL Model Law on Public Procurement, the recommendations on arbitration under the UNCITRAL Arbitration Rules and the decision to hold colloquiums on possible future work in the area of public-private partnerships and microfinance. The progressive development of international law was highly beneficial for international trade, entrepreneurship, investment and the use of effective commercial dispute resolution mechanisms. Discussions were under way concerning the possibility of opening a regional UNCITRAL centre in Moscow. His delegation hoped to be re-elected to the Commission during the November election and would be grateful to delegations for their support.

56. **Ms. Akilu** (Nigeria) said that her delegation shared the secretariat's concern that lack of

coordination with the Commission could lead to duplication of effort in the field of international trade law. It was important to increase knowledge about the impact of UNCITRAL and commercial law reform on the promotion of the rule of law and, to that end, to integrate the Commission's work into United Nations rule of law activities. Nigeria welcomed the adoption of the UNCITRAL Model Laws on Public Procurement and Cross-Border Insolvency respectively; attention should next be given to the elaboration of legal standards on transparency in treaty-based investor-State arbitration and online dispute resolution for cross-border electronic transactions and electronic commerce, particularly for the benefit of developing countries. Within Nigeria's own legal framework, the Guide to Enactment of the UNCITRAL Model Law on Public Procurement would be most useful in promoting implementation of that Law. Her country also welcomed the progress made by the other Working Groups, particularly with regard to the development of an online dispute resolution mechanism that would promote greater equality between developed and developing States and give the latter greater access to foreign markets. Her delegation looked forward to further progress in that area, with special attention to the issue of arbitration. Given that micro-, small and medium-sized enterprises in developing economies were engines of economic growth and job creation, it was essential to provide them with an enabling environment through the development of legal foundations, such as the UNCITRAL online dispute resolution rules. Nigeria remained committed to the Commission's goals and called on international bodies responsible for development assistance to support its technical cooperation and assistance programme.

57. **Mr. O'Brien** (India) said that the legal texts and models laws developed by the Commission were of great practical value to all entities involved in commercial transactions. His delegation particularly appreciated its Guide to Enactment of the UNCITRAL Model Law on Public Procurement and its recommendations with regard to arbitration under the UNCITRAL Arbitration Rules, as well as its continued efforts to monitor the implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. On the question of possible subtopics for consideration under the item on the rule of law, he said that it required careful forethought. India welcomed the technical assistance provided to developing countries by the UNCITRAL secretariat

and called on it to continue to provide it to the broadest possible extent.

58. **Mr. Otsuka** (Japan) said that wide use of the Guide to Enactment of the UNCITRAL Model Law on Public Procurement would make international procurement practices increasingly transparent and was therefore greatly appreciated, as were the recommendations that had similarly been recently adopted regarding arbitration under the UNCITRAL Arbitration Rules. In cases of treaty-based investor-State arbitration, each State should seek to ensure transparency without sacrificing efficiency: Japan would contribute accordingly to the related work of Working Group II and hoped that it would be successful in meeting the challenge.

59. His country would also continue to participate actively in the work on online dispute resolution rules for cross-border electronic commerce transactions and looked forward to further progress in that area. It welcomed the completion of the judicial materials on the UNCITRAL Model Law on Cross-Border Insolvency, which should be very useful to practitioners, judges, creditors and other stakeholders in insolvency proceedings. In the area of security interests, Japan considered it important to finalize a legal text on registration of security rights in movable assets; that would promote the availability of credit and enhance economic growth and international trade. His delegation was satisfied with the substantive deliberations taking place in Working Group VI and would work towards completion of that task at the next Commission session.

60. Japan welcomed the adoption by the General Assembly during the Commission's forty-fifth session of some recommendations regarding UNCITRAL and hoped that careful consideration would be given to those remaining, taking into account the need for coordination of national legislation in that area. A member of the Commission since its inception, Japan deeply appreciated its contribution to the progressive harmonization and unification of international trade law and would continue to participate actively in its work.

61. **Mr. Arbogast** (United States of America) said that the Guide to Enactment was a welcome accompaniment to the 2011 UNCITRAL Model Law on Public Procurement and would assist States in implementing the Model Law in their domestic

systems. His delegation also welcomed the adoption of the recommendations regarding arbitration under the revised UNCITRAL Arbitration Rules, which should help to promote the continued broad global use of those Rules.

62. He commended the Commission for its important contribution to the promotion of the rule of law at the international level, through the practical mechanism of international instruments designed to harmonize international trade law. His Government supported the proposal to prepare a model law on secured transactions; it was favourable to the holding on a priority basis of one or more colloquiums on microfinance and related matters, including simplification of business incorporation and registration and the creation of an enabling legal environment and access to credit for micro-, small and medium-sized enterprises; it also supported the holding of a colloquium on possible future work in the area of public-private partnerships, particularly in the context of privately financed infrastructure projects, taking into account the Commission's previous work in that area.

63. His Government continued to have concerns, however, about the proposed work on the further harmonization of principles of contract law. It was not true to say that there was consensus-based support for further work; it did not merit the expenditure of valuable UNCITRAL resources, since neither the need for such work nor its feasibility had been demonstrated.

64. **Mr. Karin** (Israel) said that Israel had been a member of UNCITRAL for a decade and greatly valued its work in promoting the harmonization and unification of international trade law. Over the years, Israeli experts had played an active role in that work, which had an impact in many other areas of law and could assist in promoting stability and security by strengthening economic ties between peoples and creating fast and efficient dispute settlement mechanisms. For future online dispute resolution rules, his country supported the inclusion of a mechanism to ensure finality in resolving low-value, high-volume cross-border disputes. Israel remained committed to active involvement in the Commission's work and looked forward to continuing to take part in its efforts to meet the new challenges arising in international trade law. The UNCITRAL secretariat was to be particularly commended for its exceptional professionalism and for establishing a collaborative

environment for all concerned, while contending with a heavy workload and tight deadlines.

65. **Mr. Clarke** (United Kingdom) said that the Guide to Enactment of the UNCITRAL Model Law on Procurement was a most important contribution to the assistance available in that area and would greatly enhance the use of the Model Law. The United Kingdom was pleased to participate in Working Group II on the preparation of a legal standard on transparency in treaty-based investor-State arbitration; good progress had been made in that important project; it was to be hoped that the progress would continue and lead to timely conclusion of the work. The United Kingdom also actively supported the work on insolvency law and was pleased to have participated in the May 2012 session of Working Group V in New York, which had continued to expand and amend the Guide to Enactment of the Model Law on the interpretation and application of the concept of “centre of main interests”; again, good progress had been made and, once completed, the revised text would provide invaluable guidance on the application of the Model Law in Cross-Border Insolvency. The United Kingdom also looked forward to continuing progress in the work to develop further text for inclusion in the Legislative Guide on Insolvency Law on directors’ responsibilities in the period approaching insolvency.

66. **Mr. Stelakatos Loverdos** (Greece) said that the Guide to Enactment of the UNCITRAL Model Law on Procurement would facilitate the interpretation and effective application of the Model Law. Greece welcomed the inclusion in the Guide of a paragraph on the need to tackle the problem of collusion in public procurement; collusion could serve the purposes of market manipulation and involve an agreement to distort fair competition. It would therefore be useful to help domestic legislators to address the question effectively.

67. Regarding the continuing efforts in Working Group II to prepare draft legal standards on transparency in treaty-based investor-State arbitration, Greece subscribed to the view that, owing to the highly complex nature of the question of transparency, it was essential to take a thorough approach to the law governing international treaties.

68. Greece attached importance to the promotion of the uniform interpretation and application of UNCITRAL texts and shared the Commission’s view that the CLOUT system and the digests were a valuable

tool in that regard. The renewed appointment of CLOUT correspondents would give further impetus to that endeavour.

69. **Mr. Al-Robaaie** (Iraq) said that the world was becoming increasingly interconnected as a result of technological and economic developments. Such growing interdependency meant that international trade legislation would be a key tool in efforts to promote trade. Iraq fully supported the Commission’s efforts to promote the rule of law and, in particular, commended its work in connection with public procurement and the settlement of international trade disputes. In that regard, Iraq endorsed the Commission’s proposal for training to be provided to judges and national judicial authorities to enable them to rule on cases involving international trade law, and its call for further academic research to be carried out into the impact of trade law reform on economic development. Iraq also supported the assertion made by the Working Group on Electronic Commerce that the single electronic window was a key tool that could facilitate trade and investment in a country.

70. In 2006, Iraq had enacted legislation aimed at fostering an environment that was conducive to trade and investment. The Iraqi authorities were also striving to disseminate knowledge of domestic investment opportunities and to streamline bureaucratic procedures for investors. Iraqi investment legislation provided for investors to procure the documentation they required from investment authorities at the district, provincial or national levels via the Internet; Iraq had established an online single electronic window for that purpose. The Iraqi Investment Authority was legally required to respond to applications that were submitted online within 45 days. That Authority also provided support services to investors once they had been issued with the documentation they required to carry out their commercial activities, including with regard to the welfare of their expatriate employees.

71. Iraqi investment legislation provided for parties involved in trade disputes, including disputes to which an Iraqi Government authority was a party, to resort to arbitration, either by an Iraqi authority or any other internationally recognized body, including the International Centre for Settlement of Investment Disputes. Iraqi legislators were, moreover, in the process of elaborating an amended trade arbitration law with a view to creating a more secure investment and legislative environment to further encourage investment in the country.

72. Iraq had acceded to a number of regional instruments, including, inter alia, the Arab Convention on Commercial Arbitration, to foster investment, protect investors and resolve trade and investment disputes in the country. Those instruments also provided for Arab States to resort to international trade arbitration. Iraq also intended to establish an international trade arbitration centre in Najaf, which, in addition to resolving disputes, would seek to minimize the financial losses incurred by parties to disputes and provide input for lawmakers involved in the design of laws and regulations on trade. The centre would also endeavour to diffuse knowledge of arbitration as a tool for resolving disagreements by, inter alia, publishing newsletters on that subject.

73. **Mr. Sikirić** (Croatia), Chair of the United Nations Commission on International Trade Law, thanked delegations for their comments on the Commission's work. The Commission and its secretariat would take them, and particularly the concerns expressed, into careful consideration for the purposes of both the current and future work of UNCITRAL. He particularly appreciated the emphasis they had placed on the importance of the Commission's work in comprehensive and sustainable legal development and on its role in the promotion of the rule of law at the national and international levels. He welcomed their support for the Commission's efforts to intensify its work in the field of technical assistance and cooperation. He had been pleased to note the commitment expressed by so many delegations to the work of UNCITRAL and joined in the praise they had expressed for the excellent work and professionalism of the secretariat.

74. **Mr. Sorieul** (Secretary of the United Nations Commission on International Trade Law) reminded members of the Committee that the UNCITRAL secretariat remained at the disposal of delegations, particularly to consider requests for technical assistance in implementing UNCITRAL standards. He informed them that the new UNCITRAL Centre in the Republic of Korea had got off to a promising start. The Governments of Singapore, the Russian Federation and Kenya were engaged in talks with the Commission's secretariat concerning the possible establishment of further regional centres. He invited any other States interested in such initiatives to contact the secretariat.

The meeting rose at 1 p.m.