

**Seventy-third session**  
**Sixth Committee**  
Agenda item 79

**Criminal accountability of United Nations Officials and Experts on Mission**

**Oral report of the Chair of the Working Group**

*Chair:* Thabo Molefe (South Africa)

**I. Introduction**

1. Pursuant to General Assembly resolution 72/112 of 7 December 2017, the Sixth Committee decided, at its 1st meeting, on 3 October 2018, to establish a working group with a view to continuing the consideration of the report of the Group of Legal Experts (A/60/980), in particular its legal aspects, taking into account the views of Member States and the information contained in the Note by the Secretariat (A/62/329). The Committee also decided to open the Working Group to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency.
2. At its 1st meeting, on 3 October 2018, the Sixth Committee also elected Mr. Thabo Molefe as Chair of the Working Group.
3. The Working Group had before it the report of the Group of Legal Experts on ensuring the accountability of United Nations staff and experts on mission with respect to criminal acts committed in peacekeeping operations (A/60/980); the three reports of the Secretary-General (A/73/129, in particular section VI, A/73/128 and A/73/155); General Assembly resolution 72/112 of 7 December 2017, as well as the previous reports of the Secretary-General on the item (A/63/260 and Add.1; A/63/331; A/64/183 and Add.1; A/65/185; A/66/174 and Add.1; A/67/213; A/68/173; A/69/210; A/70/208; A/71/167; A/72/121, A/72/126 and A/72/205); the Note by the Secretariat on criminal accountability of United Nations officials and experts on mission (A/62/329); and General Assembly resolution 72/112 of 7 December 2017.

**II. Proceedings of the Working Group**

4. The Working Group held two meetings, on 10 and 15 October 2018. The Working Group agreed to conduct its discussions in the framework of informal consultations.
5. At the 1st meeting, on 10 October, the Working Group set out the relevant materials to frame the debate. Pursuant to paragraph 16 of resolution 72/112, representatives of the Secretariat, namely senior officials of the Disciplinary Unit of the Administrative Law Section in the Office of Human Resources Management, the

Conduct and Discipline Unit of the Department of Field Support, the Ethics Office, the Office of the Special Coordinator on Improving United Nations Response to Sexual Exploitation and Abuse and the General Legal Division of the Office of Legal Affairs were present to provide a briefing to delegates and to engage in an informal discussion.

6. At its 2nd meeting, on 15 October, the Working Group focused its consultations on three interrelated questions: first, whether the criminal accountability of United Nations officials and experts on mission should be addressed in the form of a convention, and if so, when; second, which substantive issues a convention should cover; and third, whether there are any matters that should be included in this year's resolution to further enhance the mechanisms of accountability initially developed in resolutions 62/63 and 63/119.

7. The following section of the report constitutes an informal summary for reference purpose only, not an official record of the proceedings, of the exchange of views in the Working Group.

### **III. Informal summary of discussions in the Working Group**

8. During their briefing, the Secretariat representatives set out the respective roles and responsibilities of their units in addressing the item under examination, and provided updates on relevant policies and procedures, as well as information on other developments. The Working Group then engaged in a very fruitful and constructive question and answer session with Secretariat officials. Delegations sought factual and analytical information, together with information on the processes and mechanisms in place to address criminal accountability in the United Nations. As in previous years, the briefing and the interactive dialogue were greatly appreciated.

9. A number of delegations asked questions regarding investigations and disciplinary measures taken against United Nations officials and experts on mission, and regarding the measures offered by the Organization to "whistle-blowers" to protect them from retaliation for reporting unsatisfactory conduct or misconduct, or for cooperating with investigations and audits. Several delegations inquired which kind of assistance the United Nations provided to victims of criminal conduct of United Nations officials and experts on mission. It was also asked how recent measures and initiatives to ensure that victims received adequate support and assistance related to the findings in the "Evaluation of the Enforcement and Remedial Assistance Efforts for Sexual Exploitation and Abuse by the United Nations and Related Personnel in Peacekeeping Operations" conducted by the Office of Internal Oversight Services (OIOS) in 2015. Some delegations asked questions regarding the process by which the United Nations refers credible allegations that a crime may have been committed to Member States, and the follow-up subsequent to such referrals, as required by the relevant resolutions on this agenda item since resolution 62/63. They inquired whether the territorial State would be informed of allegations that a crime may have been committed by United Nations officials or experts on mission, and sought clarification as to the situations in which the question of a waiver of immunities arises.

10. Following the briefing by the Secretariat, the Working Group turned to an exchange of views among delegations regarding the three questions mentioned earlier. As to the question of whether and when it was the appropriate time to commence negotiations on a draft international convention relating to the criminal accountability of United Nations officials and experts on missions, the views of delegations remained divided. Some delegations reiterated their position that it was premature to commence such negotiations. In addition, it was pointed out that the issue of criminal accountability of United Nations officials and experts on mission was best addressed comprehensively in the form of a General Assembly resolution and not by means of a convention, which was subject to ratification by Member States. Other delegations expressed more readiness to commence the process. It was emphasized that jurisdictional gaps existed and that the short-term measures embodied in resolutions on the topic had been set out since the sixty-second session of the General Assembly, and had yet to adequately address the problem.

11. With regard to the second question of substantive matters that could be covered in a possible convention, it was noted that Member States had provisions in their domestic laws to establish jurisdiction over crimes committed abroad, but that there was a need for harmonization. Possible substantive matters that could be included in a convention were the active personality principle, and the double criminality principle. Some delegations advocated for the holding of the working group at shorter intervals, and for the possibility of some form of intersessional activity. Other delegations reiterated that any discussions on the content of a possible convention would prejudice the question whether the issue of criminal accountability of United Nations officials and experts on mission should be addressed in the form of a convention. It was also suggested that, before addressing the details of a convention, it would be helpful to identify the barriers to commencement of prosecution faced by some States to which credible allegations have been referred.

12. The Working Group then turned to the third question of further practical aspects that could enhance accountability measures set out in previous resolutions on the topic, as well as to present delegations with a more comprehensive picture of the relevant empirical data. This would permit a more informed discussion of the issues raised in the report of the Group of Legal Experts to occur in due course. Those measures included continuous and possibly more detailed requests for information from the Secretariat; proposals relating to the follow-up by the Secretariat with Member States once referrals have been made to them; the need to consider capacity-building measures for Member States; and potentially convening the working group more regularly to build momentum.

Mr. Chair,

13. This concludes my oral report on the work of the Working Group on Criminal Accountability of United Nations Officials and Experts on Mission at this year's session. I am most grateful to delegations for their cooperation and assistance in furthering the work on the topic. It is clear from the discussions how seriously delegations take this issue, and in my capacity as Chair of the Working Group, I remain available to work with

delegations to ensure that that there is no impunity for criminal activity committed by United Nations officials and experts on mission.

Thank you.