

STATEMENT BY MR. SUBASH MAHARIA, MEMBER OF PARLIAMENT AND MEMBER OF THE INDIAN DELEGATION, ON AGENDA ITEM 80: CRIMINAL ACCOUNTABILITY OF THE UNITED NATIONS OFFICIALS AND EXPERTS ON MISSION AT THE SIXTH COMMITTEE OF THE 62ND SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY ON OCTOBER 15, 2007

Thank You Mr. Chairman

We thank the Secretariat for the Note on the subject and for providing the necessary inputs that will enable Member States to make an informed decision on the short term and long term measures required to be taken to ensure the criminal accountability of United Nations Officials and Experts on Mission.

We also commend the efforts of the Ad Hoc Committee, which at its first meeting devoted considerable time on understanding the nature and extent of the problem and the remedies currently available.

Mr. Chairman

We are extremely concerned that in spite of clear codes of conduct for United Nations peacekeepers and a policy of zero tolerance, cases of sexual abuse and exploitation and other criminal acts continue to be reported. Such acts taint the image and reputation not only of the United Nations, but also of the sending States. United Nations peacekeepers are sent on humanitarian missions in conflict ridden areas and, working together with UN agencies, their task is to re-establish the rule of law, curb violence, and promote good governance and reconciliation to help the host country recover from the trauma of conflict. It is regretful that those tasked with upholding the rule of law sometimes do not observe the law themselves. The goal of security, development and human rights for all must be strongly advanced and those UN personnel held responsible for violating the codes of conduct must certainly be held accountable.

We therefore concur that it is essential to ensure that all United Nations personnel are neither exempt from the consequences of criminal acts committed at their duty station, nor unjustly penalized. The legal gap in jurisdiction has been identified as the main barrier in this regard and to address the problem the Secretariat has proposed several short term and long term measures.

As regards the short term measures, we support the proposal that the General Assembly could adopt a resolution strongly 'urging Member States to establish, as a minimum, jurisdiction over their nationals who commit serious crimes as they are known and defined in their existing domestic criminal laws, where that conduct also constitutes a crime under the laws of the host State'. This would fulfill the requirements of double criminality, which is a condition precedent in some jurisdictions to invoke jurisdiction. Other short term measures proposing inclusion of similar language requiring Member States to ensure accountability in Mission specific resolutions of the Security Council and the Memorandum of Understanding with contributing Member States can also be considered.

As regards long term measures, the Secretariat has expressed its support for development of a Convention to close the legal gap in matters of jurisdiction.

Mr. Chairman,

At the meeting of the Ad hoc Committee in April this year, my delegation had stated that future deliberations on long term measures may not be focused or geared only towards elaboration of a convention. We still feel that the gaps in the current system can be plugged through various other means, like those suggested in the Secretariat's Note under the rubric of short term measures or through development of a model law as indicated in the Report of the Group of Legal Experts.

We are not fully convinced at this stage of the necessity of developing a convention. Many States, including India, do not need a convention to establish jurisdiction over their nationals for crimes that have been committed outside their territory. Such jurisdiction already exists. If only a small number of States do not assert extraterritorial jurisdiction for ordinary crimes then that problem should be addressed through more focused efforts directed at those countries.

The other fundamental issue that we see is the 'scope *ratione personae*', particularly with respect to military personnel employed as experts on mission. Despite very cogent explanation and rationale provided by the Secretariat for the distinction between military observers and military members of national contingents, it may be difficult to implement differential treatment under national laws.

As regards "establishment of jurisdiction", the recommendation by the Group of Legal Experts that the host State should itself establish criminal jurisdiction conforms to principle of territoriality but needs to be carefully examined particularly in situations where the legal/law enforcement machinery for gathering such evidence may be missing or, even if available, is weak and hence unable to function effectively. The Secretariat's Note identifies several options for such situations but such ad hoc measures may not be able to produce reliable, credible and legally admissible evidence.

Further, any future legal regime on the subject in the form of a binding international treaty/convention may require a long time to get adopted and it will be effective and enforceable only between the States parties. Therefore, we believe that at this juncture it is important to first implement the short term measures and assess their efficacy and after such assessment take a decision, if needed, on any long term measures.

Thank you Mr. Chairman

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