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Chairperson: Mr. Penke (Latvia)

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The meeting was called to order at 3.05 p.m.

Agenda item 61: Social development (*continued*)

(b) Social development, including questions relating to the world social situation and to youth, ageing, disabled persons and the family (*continued*) (A/C.3/64/L.7) (A/C.3/64/L.10)

Draft resolution A/C.3/64/L.7: Follow-up to the tenth anniversary of the International Year of the Family and beyond

1. **The Chairperson** said that the draft resolution contained no programme budget implications.

2. **Mr. Ali** (Sudan), speaking on behalf of the Group of 77 and China, introducing the draft resolution, read out revisions to the text. The following preambular paragraph should be inserted after the first preambular paragraph: “*Noting* that in paragraph 5 of its resolution 59/111 and paragraph 2 of its resolution 59/147, respectively, the General Assembly underlined the need to realize the objectives of the International Year of the Family and to develop concrete measures and approaches to address national priorities in dealing with family issues.”

3. In the former fourth preambular paragraph (now the fifth preambular paragraph), the words “components of” should be inserted after the word “family-centred”, and the phrase “as part of an integrated comprehensive approach to development” should be added after the word “programmes”. The words “on family issues” at the end of the former sixth preambular paragraph (now the seventh preambular paragraph) should be deleted and replaced by inserting the word “family” before the word “policymaking”.

4. In the former eighth preambular paragraph (now the ninth preambular paragraph), the words “further develop and promote a family-centred, integrated and comprehensive approach to development, as well as to continue to” should be deleted. The words “generation of” in paragraph 2 should be deleted, as should the word “Also” in paragraph 4, and the latter should be replaced by “Further”. The word “and” should be inserted before the word “geared” in paragraph 4, and the word “children” at the end of paragraph 5 should be replaced by “the child”. Lastly, the words “and contribute to developing strategies and programmes aimed at strengthening national capacities” at the end of paragraph 8 should be deleted. The Group of 77 and

China looked forward to adoption of the draft resolution without a vote.

5. **Mr. Khane** (Secretary of the Committee) said that Australia, Azerbaijan, Belarus, the Russian Federation and Uzbekistan had become sponsors.

6. **Mr. Bennwik** (Sweden), speaking in explanation of position on behalf of the European Union, as well as Bosnia and Herzegovina, Croatia, Georgia, the former Yugoslav Republic of Macedonia, Montenegro, Norway and Ukraine, said that the European Union attached great importance to family-related issues and recognized the crucial role of families in strengthening societies, along with the need to develop policies to support their role. However, given the evolving nature of the family, such policies would have to be inclusive in order to succeed. In that regard, ongoing policy discussion and development should similarly continue to reflect the diversity of family forms. The European Union therefore understood all references to the term “family” within the draft resolution as reflective of that diversity.

7. **Mr. Sammis** (United States of America) speaking in explanation of position, said that his delegation was pleased to join consensus on the draft resolution. However, the United States of America would have preferred the phrase “various forms of the family” to be included in the text. Consistent with the Cairo Programme of Action, which recognized that various forms of the family existed in different cultural, political and social systems, his Government understood that phrase to reflect such diversity.

8. *Draft resolution A/C.3/64/L.7, as orally revised, was adopted.*

Draft resolution A/C.3/64/L.10: Cooperatives in social development

9. **The Chairperson** said that the draft resolution contained no programme budget implications.

10. **Ms. Sodov** (Mongolia) read out revisions to the text. In paragraph 3, the word “system” after “the United Nations” should be deleted. In paragraph 6, subparagraph (d), the words “harmonizing statistical methodologies to enable sound policy formulation” should be deleted and replaced with the words “promoting sound national policy formulation through harmonizing statistical methodologies”.

11. The word “partnership” in the first line of paragraph 8 should be replaced by “collaboration”, and the words “as appropriate” should be inserted after “to promote” in the second line of paragraph 8. In the third line of paragraph 8, the word “easy” should be added after “through”, and “affordable” should be inserted after the words “access to”.

12. In paragraph 9, “as appropriate” should be inserted after the words “to promote”, “easy” should be added after the words “by providing”, and “affordable” should be inserted after the words “access to”. Lastly, the words “within existing resources” should be inserted after “International Year of Cooperatives” in paragraph 12.

13. She announced the following additional sponsors: Azerbaijan, Benin, Cameroon, China, Colombia, Costa Rica, Côte d'Ivoire, the Democratic Republic of the Congo, Ecuador, Egypt, El Salvador, Guinea, Honduras, Jamaica, Lebanon, Madagascar, Malawi, Mali, Mexico, the Philippines, Saint Lucia, Senegal, Sierra Leone, Tajikistan, Thailand, Togo and Zimbabwe.

14. **Mr. Khane** (Secretary of the Committee) said that Angola, Antigua and Barbuda, Barbados, Belize, Burkina Faso, Burundi, Congo, Dominican Republic, Ethiopia, Grenada, Guyana, Malaysia, Mozambique, Namibia, Nigeria, Sri Lanka, United Republic of Tanzania and Venezuela had also become sponsors.

15. *Draft resolution A/C.3/64/L.10, as orally revised, was adopted.*

(c) Follow-up to the International Year of Older Persons: Second World Assembly on Ageing
(continued) (A/C.3/64/L.6)

Draft resolution A/C.3/64/L.6: Follow-up to the Second World Assembly on Ageing

16. **The Chairperson** said that the draft resolution contained no programme budget implications.

17. **Mr. Ali** (Sudan), speaking on behalf of the Group of 77 and China, read out revisions to the text. The words “expand media coverage on ageing issues” in paragraph 5 should be deleted and replaced by “seek increased attention to ageing issues”. In paragraph 10, the words “better” and “more” should be deleted, and the word “have” should be replaced by “claim”.

18. In paragraph 12, the words “*Recommends* that” should be replaced by “*Calls upon*”. In addition, the word “to” should be inserted before the word “strengthen”, and the words “and incorporate a” should be inserted after “strengthen”. The word “the” following the word “strengthen” should be deleted. The word “in” after “gender perspective” should become “into”, and the word “and” before the word “eliminate” should be replaced by “as well as”. Lastly, the words “and address” should be inserted after the word “eliminate”.

19. In paragraph 13, the line that read “including lack of access to proper food, shelter, health care and medicines” should be deleted, and the word “any” should be inserted after “as well as”. The words “wherever these situations exist, and to tackle the root causes of their social exclusion by initiating a nation-wide review on the situation with regard to these issues and to” should be deleted. The word “through” should be inserted before the word “design”, which should itself be replaced by the word “designing”.

20. In paragraph 14, the words “*Also calls upon*” should be replaced by “*Encourages*”, and the words “to improve” should be deleted. The word “the” should be added before the word “international”, and “framework of” should be inserted after the word “international”. The words “pertaining to” should be deleted, and the phrase “can ensure the full enjoyment of the rights” should be inserted before the words “of older persons”. The words “as appropriate”, preceded and followed by a comma, should be added after the word “including”. Finally, the word “or” before “instruments” should be deleted, and “or measures” should be inserted after “instruments”.

21. The following new paragraph should be inserted after paragraph 21: “22. *Recommends* that ongoing efforts to achieve the internationally agreed development goals, including those contained in the United Nations Millennium Declaration, take into account the situation of older persons;”. Former paragraph 22 would therefore be renumbered as paragraph 23.

22. Andorra, Australia, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Germany, Ireland, Italy, Japan, Luxembourg, Malta, Mexico, Morocco, Netherlands, Poland, Portugal, the Republic of Korea, the Republic of Moldova, San Marino, Slovakia,

Slovenia, Spain and the United Kingdom had become sponsors of the draft resolution.

23. **Mr. Khane** (Secretary of the Committee) said that Albania, Azerbaijan, Belarus, Bosnia and Herzegovina, Canada, Croatia, Cyprus, France, Finland, Greece, Hungary, Iceland, Kazakhstan, Latvia, Lithuania, Monaco, Montenegro, Norway, Romania, Serbia, Sweden, Turkey, Uzbekistan and the former Yugoslav Republic of Macedonia had joined the sponsors.

24. **Mr. Sammis** (United States of America) said that his Government had enacted a number of laws to oppose age-based discrimination. The draft resolution called for States to eliminate discrimination on the basis of age, and while there were certain cases in which age was used as a legitimate distinction, the United States of America interpreted the draft resolution as being aimed at invidious discrimination. His Government's interpretation was consistent with paragraph 13 of the Committee on Civil and Political Rights General Comment Number 18 on non-discrimination.

25. *Draft resolution A/C.3/64/L.6, as orally revised, was adopted.*

Agenda item 62: Advancement of women (continued) (A/C.3/64/L.17)

Draft resolution A/C.3/64/L.17: Convention on the Elimination of All Forms of Discrimination against Women

26. **The Chairperson** said that the draft resolution contained no programme budget implications.

27. **Ms. Pohjankukka** (Finland) announced the following additional sponsors: Albania, Brazil, Bulgaria, Canada, Cape Verde, Colombia, Costa Rica, Egypt, El Salvador, Ghana, Guinea-Bissau, Honduras, Hungary, Malawi, Malta, Mexico, Mongolia, the Republic of Moldova, South Africa, Sri Lanka, Timor-Leste, Togo, Ukraine and Venezuela.

28. A new sixteenth preambular paragraph had been added, which read: "*Noting with appreciation the elaboration and adoption by the Committee, at its forty-second session, of general recommendation No. 26, on women migrant workers*". In light of the addition, the sentence in paragraph 4, "including the most recent one, recommendation No. 26 on women migrant workers" should be deleted. Lastly, the words

"the implementation of" at the end of paragraph 11 should be deleted.

29. **Mr. Khane** (Secretary of the Committee) said that Angola, Belize, Bolivia, Burkina Faso, Burundi, Côte d'Ivoire, Dominican Republic, Ethiopia, Eritrea, Georgia, Guinea, Guyana, Haiti, Indonesia, Jamaica, Kazakhstan, Lesotho, Mali, Morocco, Namibia, Nicaragua, Nigeria, Papua New Guinea, Rwanda, Senegal, Suriname, Uganda, United Republic of Tanzania, Uzbekistan and Zambia had joined the sponsors.

30. *Draft resolution A/C.3/64/L.17, as orally revised, was adopted.*

31. **Ms. Halabi** (Syrian Arab Republic), speaking in explanation of vote after voting, said that while the Syrian Arab Republic was aware of the role of the Committee on the Elimination of Discrimination against Women in helping States parties implement the Convention on the Elimination of All Forms of Discrimination against Women, it remained convinced of the need to take account of the cultural and historical specificities of each nation in working to promote human rights. The Syrian Arab Republic therefore understood that the Committee's concluding observations and general recommendations mentioned in paragraph 4 of the resolution — which were non-binding — must be substantive and take into consideration those specificities, in order to assist States parties in fulfilling their obligations under the Convention. Furthermore, in introducing a procedure to enhance the follow-up of its recommendations, as mentioned in paragraph 11 of the resolution, the Committee must not exceed its mandate under the Convention.

Agenda item 104: Crime prevention and criminal justice (continued) (A/C.3/64/L.13)

Draft resolution A/C.3/64/L.13: Preparations for the Twelfth United Nations Congress on Crime Prevention and Criminal Justice

32. **Mr. Khane** (Secretary of the Committee), referring to the programme budget implications of draft resolution A/C.3/64/L.13, said that the General Assembly would request the Commission on Crime Prevention and Criminal Justice to begin preparation of a draft declaration at intersessional meetings to be held in advance of the Twelfth Congress; invite Member States, intergovernmental organizations and other

relevant entities to provide financial, organizational and technical support to the United Nations Office on Drugs and Crime and to the institutes of the United Nations Crime Prevention and Criminal Justice Programme network for the preparations for the workshops to be held during the Twelfth Congress; and request that the Secretary-General should make available the resources necessary to ensure the participation of the least developed countries in the Twelfth Congress, and that he should ensure a wide and effective programme of public information relating to the preparations for the Twelfth Congress, to the Congress itself and to the follow-up and implementation of its recommendations.

33. Resources had been included in the proposed programme budget for the biennium 2010-2011 under section 2, General Assembly and Economic and Social Council affairs and conference management, for conference servicing of the Twelfth Congress; section 16, International drug control, crime and terrorism prevention and criminal justice, for: (a) assistance with the preparation and servicing of the Twelfth Congress; (b) specialized expertise on the four substantive agenda items of the Twelfth Congress; (c) participation of the least developed countries in the Twelfth Congress; and (d) preparation of a booklet in the six official languages for the Twelfth Congress; and section 27, Public information, for public information relating to the Twelfth Congress. Accordingly, adoption of the draft resolution would not entail any additional requirements under the proposed programme budget for the biennium 2010-2011.

34. **Mr. Cardoso** (Brazil) announced the following additional sponsors: Argentina, Benin, Burundi, Nigeria, Panama, St. Vincent and the Grenadines and Uruguay.

35. **Mr. Khane** (Secretary of the Committee) said that Angola, Antigua and Barbuda, Bolivia, Dominican Republic, El Salvador, Ecuador, Malawi, Mexico, Mozambique, Namibia, Nicaragua, the Philippines, Senegal, Turkey and the United Republic of Tanzania had also joined the sponsors.

36. *Draft resolution A/C.3/64/L.13 was adopted.*

Draft resolution A/C.3/64/L.14: United Nations African Institute for the Prevention of Crime and the Treatment of Offenders

37. **The Chairperson** said that the draft resolution contained no programme budget implications.

38. **Ms. Awino-Kafeero** (Uganda), reading out revisions to the text, said that the fourth preambular paragraph of the draft resolution should be deleted.

39. *Draft resolution A/C.3/64/L.14, as orally revised, was adopted.*

Agenda item 69: Promotion and protection of human rights (*continued*) (A/64/81)

(b) **Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms** (*continued*) (A/64/159, A/64/160, A/64/170, A/64/171, A/64/175, A/64/181, A/64/186, A/64/187, A/64/188, A/64/209, A/64/211 and Corr.1, A/64/213 and Corr.1, A/64/214, A/64/216, A/64/219, A/64/226, A/64/255, A/64/256, A/64/265, A/64/272, A/64/273, A/64/279, A/64/289, A/64/290, A/64/293, A/64/304, A/64/320, A/64/333)

(c) **Human rights situations and reports of special rapporteurs and representatives** (*continued*) (A/64/224, A/64/318, A/64/319, A/64/328, A/64/334, A/64/357)

40. **Mr. Ruggie** (Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises) said that he was currently working to operationalize the policy framework of “protect, respect and remedy” that he had proposed to the Human Rights Council the previous year. The Council had extended his mandate through 2011, asking him to provide concrete guidance to States and businesses on implementation of the framework, which addressed five key business and human rights challenges.

41. First, companies could affect the entire spectrum of internationally recognized rights, including health-related rights; the rights of indigenous peoples; civil rights and rights related to an adequate living standard. Therefore, the relevance of all rights, not just business-specific rights, must inform the policies of States and companies alike.

42. Second, Governments currently lacked adequate policies and regulatory arrangements for managing the complex business and human rights agenda. Departments and agencies that directly shaped business practices conducted their work in isolation from and largely uninformed by their Government's human rights agencies and obligations, and vice versa.

43. Third, most companies lacked fully-fledged internal governance and management systems for conducting adequate human rights due diligence. Their legalistic approach neglected the fact that in many situations, meeting legal requirements alone might fall short of the universal expectation that they operate with respect for human rights, especially where laws were inadequate or not enforced.

44. Fourth, most companies lacked grievance mechanisms to which affected individuals and communities could bring concerns, thereby denying those who were adversely affected by their activities the opportunity to seek remedy and denying themselves a means of becoming aware of existing disputes before they escalated into major lawsuits.

45. Fifth, the incidence of corporate-related human rights abuse was higher in countries with weak governance institutions, in which local laws did not exist or were not enforced, the worst cases occurring amid armed conflict over territory or control of the Government itself. Such contexts attracted marginal and illicit enterprises, which treated them as law-free zones, but legitimate firms might also become implicated in human rights abuses. Those situations impeded victims' access to justice and posed even greater challenges for them when multinational corporations were involved. Closing such impunity gaps would require a systemic solution that included greater enforcement of existing laws, clearer standards and more innovative policy responses by both home and host States.

46. The "protect, respect and remedy" framework was intended to generate an interactive dynamic among the different responsibilities of States and businesses, producing progress on a cumulative basis. Numerous national bodies had invoked the framework in their own policy assessments, including a Norwegian Government white paper on corporate responsibility, and regional organizations such as the European Union were contributing to its elaboration and drawing upon

it in their work on the business and human rights agenda.

47. Two sets of practices accounted for the relative success of the mandate, namely, carrying out exhaustive research of facts on the ground, thereby generating reference sources for practitioners and scholars; and conducting more stakeholder consultations than any comparable effort.

48. A small but representative group of States would be participating in a series of informal brainstorming sessions on how to help companies that operated in conflict-affected areas avoid becoming involved in human rights abuses, with a view to identifying innovative policy measures by States that the Special Representative could draw upon in making his final recommendations to the Human Rights Council. The aim of the next phase of his mandate was to provide a set of guiding principles for States and businesses, applicable in all sectors and regions.

49. **Mr. Michelsen** (Norway) commended the Special Representative for his groundbreaking efforts to clarify the private sector's responsibility for human rights. His Government's white paper on corporate social responsibility, the first of its kind, was intended to raise awareness of the issue. Developing relevant norms under the auspices of the United Nations was important, as it lent legitimacy to the process, which would only be effective if the United Nations system worked as one. In that connection, he called for greater coherence within the United Nations system.

50. **Mr. Javaheri** (Sweden), speaking on behalf of the European Union, expressed support for the work of the Special Representative. The European Union believed that business activities must be conducted in a manner consistent with the enjoyment by all persons of their human rights. Nonetheless, the duty for ensuring human rights protection fell to States and could not be transferred to businesses.

51. The report of the Special Representative (A/64/216) noted that broad investment agreements might limit States' ability to fulfil their human rights obligations. He asked the Special Representative to provide examples, and whether the Special Representative had any recommendations on how to deal with the difficult issues faced by businesses in conflict zones. Lastly, noting the need for States to avoid the temptation of impairing human rights protection in order to attract business in the midst of

the global economic crisis, he enquired about the ways in which the crisis had affected the ability of States to ensure the enjoyment of human rights by both their citizens and non-citizens living and working under their jurisdiction.

52. **Ms. Boutin** (Canada) asked what responsibilities fell to companies operating in countries where the State did not protect human rights. She also enquired about the standing of extraterritorial jurisdiction in international law and in relation to the mandate of the Special Representative. Lastly, she wondered what the role of the home State should be with regard to providing remedy for actions that had occurred in another jurisdiction.

53. **Ms. Sapag** (Chile) asked whether the Special Representative intended to address the issue of quotas for women members of executive boards of enterprises and international corporations and what his views were on that issue. Such quotas had proved effective in Norway and elsewhere and surely added a new element to the work of those corporations.

54. **Mr. Rastam** (Malaysia) said that he appreciated the ongoing efforts to operationalize the “protect, respect and remedy” policy framework, which balanced the complementary but sometimes competing desires to promote and protect human rights while ensuring continued economic growth. He asked whether there was a consensus among corporations on corporate responsibility to protect human rights. Mandatory regulation versus voluntary action by businesses was a core issue for countries with market economies. He wondered whether the Special Representative had a timeline for completion of the guiding principles and which body was best suited for addressing compliance with them — the Human Rights Council, the World Trade Organization or the International Labour Organization.

55. It had not been States’ lax regulatory systems alone that had contributed to the economic and financial crisis, but also the lack of corporate responsibility, accountability and discipline. He wondered whether reform measures implemented by States offered an opportunity to instil a human rights perspective into corporate culture.

56. **Ms. Sicade** (United States) said that corporate social responsibility should begin with a mandatory element of a strong domestic legal and regulatory framework, which could then be complemented by

voluntary initiatives. She asked what instruments and methodologies the Special Representative would consider in his study of extraterritoriality. His understanding of adequate assistance from Governments for companies operating in tough environments should be clarified; examples of such assistance would be welcome.

57. **Ms. Mballa Eyenga** (Cameroon) said that the report had referred to corporate social responsibility, which the State could promote through mechanisms such as public assistance, export credits and insurance. She asked how such measures could be relevant in the case of foreign companies operating in developing countries, especially in Africa, as there seemed little chance of success for social responsibility if there was no solidarity or common interest between companies and the local population.

58. With regard to the dichotomy of voluntary versus mandatory measures, there was unfortunately still a long way to go for States, especially developing States, to be able to ensure that the human rights of their citizens were respected by transnational corporations. She hoped that it would be possible to move beyond the report’s declarations of intent to the effective implementation of the policy framework. She would like to hear more about possible solutions to the question of mandatory or voluntary measures.

59. **Mr. Geurts** (European Commission) said that a European study on supply chain issues would be published early in 2010 and that a guide on social considerations in public procurement was in preparation. In view of the reference to the need for progress in practical problem solving in the report, he wondered what the next practical steps would be to involve stakeholders in a business and human rights framework that included both mandatory and voluntary approaches. In relation to human rights due diligence, he asked how the Special Representative viewed small and medium-sized enterprises in relation to the proposed framework. It would be interesting to know to what extent he had been able to engage with smaller businesses and the organizations representing them and what their reactions had been.

60. **Ms. Ahuja** (India) asked the Special Representative to elaborate on some of the key elements of the framework, and on whether other stakeholders had been as receptive to it as the Human Rights Council. She wondered whether he expected a

logical progression from the framework to an internationally agreed convention at some time in the future. It would be interesting to hear about examples of innovative national policy responses from transnational corporations.

61. **Mr. Ruggie** (Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises) said that a few years previously, South Africa had become involved in a dispute (the *Foresti* case), subject to binding international arbitration, on the grounds that some parts of the Black Economic Empowerment Act were tantamount to expropriation and that investors should therefore be able to claim compensation. The Act in question had been a fundamental piece of restorative justice legislation in South Africa, but investment treaties had been signed without any attention being paid to their implications beyond the narrow scope of investment effects. Yet they affected the ability of the Government to regulate in other areas, including human rights.

62. Great care should be taken when Governments signed any kind of international treaty to ensure that such treaties would not lead them into binding arbitration and make them pay foreign investors compensation for the privilege of meeting international treaty obligations. Business and human rights could not be dealt with in a narrowly confined conceptual and institutional box without regard for all business-related areas of policy. South Africa was therefore conducting a thorough review of its bilateral investment treaty obligations.

63. A workshop had recently been organized on innovative tools for conflict zones. If, for example, an export credit agency from an industrialized country was providing assistance to an investor for mining operations in a conflict zone, the agency should be obligated to require heightened due diligence in relation to that investment. The government agency, as a participant in the human rights regime, had the obligation to ensure that the company had acted with the appropriate due diligence by anticipating the kinds of problems that it would inevitably encounter in a conflict zone and having policies in place to deal with them. It could not be dealt with as an investment promotion activity which had nothing to do with human rights. With regard to the economic crisis, it was impossible for a country to achieve a sustainable economic recovery by lowering human rights

standards. Development could only occur by raising standards.

64. Extraterritoriality was a complex issue. States sometimes felt they had less power than major multinational corporations and needed help in dealing with them, but were reluctant to have other countries intervene in their domestic affairs. Similarly, business had legitimate problems with extraterritoriality, as it created an uneven playing field, with different rules in different places. Governments were not making full use of their capacity for overseeing and even regulating the parent companies of subsidiaries that operated abroad. They could require a parent company to exercise greater oversight and greater due diligence, especially in a difficult environment such as a conflict zone. There were a number of policy areas, including anticorruption and antiterrorism, where States had already addressed extraterritorial jurisdiction.

65. The incorporation of a gender dimension was part of his mandate. A workshop had recently taken place on how to integrate gender into all of its three pillars. With regard to corporate law, reports had recently been received from 19 law firms focusing on the kinds of rules that existed and should exist for corporate governance in relation to promotion and respect for human rights.

66. Corporate responsibility related to respect for human rights rather than protection. Respect for human rights included not infringing on the human rights of others. He was looking for allies in other international institutions, including the Organization for Economic Cooperation and Development (OECD), the European Union and various other bodies in order to promote corporate responsibility with respect for human rights. So far, business seemed to feel quite comfortable with human rights. Businesses could apply the familiar methodology of due diligence, already observed in other areas, to human rights as well. The World Bank or the World Trade Organization might well have rules in that area, but the international community was looking to the United Nations, as the home of human rights, for guidance on those issues. The timeline for completion of the guiding principles was 2011, when his mandate would expire.

67. He agreed with the representative of the United States that there was a need for a robust domestic legal framework. Government assistance could include assistance from embassies, the kind of oversight he had

referred to earlier on the part of export credit agencies and insurance agencies, assistance for companies to develop appropriate due diligence procedures and methodologies and a request for reports on how they were being implemented on the ground. The issue of voluntary action versus mandatory regulation had been an impediment to creative thinking in that area. Some thought that everything had to be the subject of an international convention or treaty, but such treaties were also voluntary. At the same time, the idea that pure voluntarism would resolve the enormously complex issues being dealt with was a heroic assumption that bore no relationship to reality. It was essential to consider, *inter alia*, what kind of mandatory measures were the most appropriate, what kind of voluntary measures could reinforce them and what lessons could be learned from the failures or successes of voluntary initiatives.

68. In response to a question from the European Commission, he said that the next step would be to continue the consultations. A global online consultation was about to begin on all aspects of the framework. As for small and medium-sized enterprises, all companies had certain responsibilities. The principles should be the same for all, but the tools would differ according to a company's size or sector. A company with 30 employees could not use the same tools, methodologies and procedures for due diligence as a multinational corporation with 200,000 employees around the world. In domestic legislation, smaller firms usually did not have to meet the same requirements as larger ones.

69. Lastly, he said that the framework had been well received by all constituencies: States, international business associations, individual corporations and civil society organizations. That support was vital for ensuring a strong foundation for moving forward. As he had stated at a meeting of the Human Rights Council in June, he could set out the relevant facts and principles, but it was the job of United Nations bodies to draft conventions. A questionnaire survey had been sent to all Member States asking for examples of good practices in corporate responsibility. He would share the results when they had been finalized and then it would be possible to discuss what constituted good practices.

70. **Ms. Knaul de Albuquerque e Silva** (Special Rapporteur on the independence of judges and lawyers) introduced the report on the independence of judges

and lawyers (A/64/181), which was the final report of her predecessor, Leandro Despouy. She would try to follow in his footsteps while drawing new insights from her experience as a female judge in Brazil. The report presented an analysis of the safeguards to be established at the domestic level to ensure the independence of lawyers and the legal profession, as a prerequisite for lawyers to discharge their professional functions freely and effectively. She encouraged Member States to give formal endorsement to the Basic Principles on the Role of Lawyers, which were a key element for fair judicial proceedings.

71. Her mandate had been established by Human Rights Council resolution 8/6 and a number of elements in the resolution would guide her in her work. As a judge, she recognized the critical role of lawyers in the judicial process and would therefore give greater emphasis to their work and protection.

72. Technical cooperation activities could extend beyond the Office of the United Nations High Commissioner for Human Rights (OHCHR) to regional human rights bodies and to international associations of judges and lawyers. She would give special emphasis to cooperative efforts to produce a concise manual on human rights for judges, prosecutors and lawyers in local languages for use in different parts of the world. It would contain summaries of the key human rights provisions and core jurisprudence of international and regional courts on basic human rights issues and on the independence of judges and lawyers. She would be writing to the specialized bodies working in that area to help produce, translate and distribute the manual. She would also send a questionnaire to all Governments asking for information on the extent to which the relevant materials on international human rights were available to judges and lawyers in local languages and explore with Member States and OHCHR effective ways to help make those materials available.

73. She intended to encourage periodic regional meetings with actors in the judicial system. Such meetings could involve training on international human rights norms and provide an opportunity for sharing information and ideas in order to move towards a genuinely international approach. She appealed to the relevant United Nations departments and to regional organizations to help in initiatives to disseminate the concise manual and convene periodic regional meetings.

74. The resolution establishing her mandate called upon Governments to give serious consideration to responding favourably to the request of the Special Rapporteur to visit their countries and urged them to enter into a constructive dialogue with regard to follow-up and implementation of her recommendations. Constructive dialogue would be her creed. Her first country visit would be to Colombia in December; when engaging in dialogue with countries, she would focus on the study of important and topical questions of principle and the identification of ways and means to improve the judicial system. A future report would be devoted to those issues.

75. She was particularly attentive to the parts of her mandate requiring her to investigate and report on any substantial allegations transmitted to her, identify and record attacks on the independence of the judiciary and make concrete recommendations when they were requested by the State concerned and would pursue those issues in the spirit of the Council resolution and the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council. She planned to pursue a combination of the thematic and the country-specific approaches, adopting a cooperative approach with States and other partners, and would seek to identify building blocks of a structural approach towards her mandate. Topical analytical reports would be submitted to the Human Rights Council and the General Assembly and information would be compiled globally on the independence of judges and lawyers.

76. **Ms. Sapag** (Chile) said that the independence of the judiciary and the legal profession had helped Chile to overcome difficulties in a very dark period of its history. In relation to paragraph 24 of the report, regarding professional associations, she asked the Special Rapporteur to elaborate on the advantages of having a single professional association, as was the case in Chile. Some countries had many organizations, however.

77. Re-registration of lawyers, referred to in paragraph 38 of the report, restricted their independent functioning, and she asked for information on any trends in that area. Regarding the recommendation made in paragraph 105 (e), she would appreciate a clarification of the concept of the "legal profession" to which responsibility for controlling admission should be transferred. In countries such as Chile, the legal profession was involved in the registration and incorporation of lawyers into the profession but the

Ministry of Justice also provided guidance. Applicants had to pass a bar exam and appear before the Supreme Court. She hoped that future reports would also address that important matter.

78. **Ms. Schlyter** (Sweden), speaking on behalf of the European Union, said that she welcomed the follow-up analysis of the safeguards established by international law to ensure the independence of lawyers and the legal profession. There was concern at the increasing numbers of attacks on key actors in that field and she supported the Special Rapporteur's recommendations to strengthen safeguards against unlawful interference by authorities and to ensure free access to information for lawyers. She asked if there were any examples of best practices in legislation that could serve as models for other States, and what role the General Assembly could play in contributing to the establishment of safeguards, in addition to endorsing the basic principles for the role of lawyers. It would be interesting to hear whether the Special Rapporteur planned any additional country visits and what ideas she had for using United Nations technical assistance programmes to promote good governance and the independence of the judiciary in States undergoing a transition or crisis situation.

79. **Ms. Sicade** (United States) welcomed the new Special Rapporteur's commitment to give greater emphasis to the protection of lawyers. It was vitally important to provide technical assistance in the field of administration of justice, especially to those States undergoing a democratic transition, and her Government was committed to continuing its strong support for technical assistance programmes. She asked the Special Rapporteur to outline her top priorities for the coming year.

80. **Mr. Cabral** (Guinea-Bissau) said that it was imperative to ensure the independence of judges and lawyers if justice was to be administered fairly. They should not be subjected to intimidation or harassment and they should have access to all the information they needed during a trial so that persons subject to the jurisdiction of the courts could have confidence in the judicial system. His delegation welcomed the conviction the Special Rapporteur had demonstrated, which had emerged from her own experience in Brazil, a developing country that faced the kind of constraints and specific problems that were familiar to Guinea-Bissau.

81. **Ms. Kohli** (Switzerland) said that the justice system was often weak in a post-conflict situation. The previous Special Rapporteur had recommended in 2007 that the United Nations should give priority to justice issues in its cooperation and support activities, especially in countries in transition. In the recent resolution of the Human Rights Council on human rights and transitional justice (A/HRC/RES/12/11), a reference had been made to the need within a sustainable transitional justice strategy to develop national prosecutorial capacities to combat impunity. She asked about the main challenges in that area and how the United Nations system and Member States could respond.

82. **Mr. Cardoso** (Brazil) welcomed the Special Rapporteur's proposed approach, imbued with a spirit of dialogue and cooperation, similar to the approach of Brazil in the field of human rights, which would make a positive contribution to strengthening respect for the independence of judges and lawyers worldwide. He asked how her experience as a judge would be of benefit to her in the discharge of her functions.

83. **Ms. Frings** (New Zealand) noted that one of the minimum criteria for admission to the legal profession recommended in the report (paragraph 112 (b)) was a mandatory internship period with a lawyer. She asked for more details of that particular recommendation, including the duration and nature of the internship and its benefits.

84. **Ms. Shivabasavaiah** (India) asked how the Special Rapporteur would prioritize her future activities and was interested to hear her thoughts on the gender perspective.

85. **Ms. Knaul de Albuquerque e Silva** (Special Rapporteur on the independence of judges and lawyers) said that the resolution that set out the mandate of the Special Rapporteur required her to apply a gender perspective in her work. She considered that to be a very important part of her mandate and she would be looking at concrete ways and means of addressing that issue. Representatives of all groups in society, including women, should participate in the judiciary so that people could have confidence in the administration of justice.

86. Among her priorities for the coming year, she had started work on a plan of action for preparation of the concise version of the human rights manual for judges, prosecutors and lawyers and to identify the countries

wishing to improve their judicial systems in different parts of the world. Her first country visit would be to Colombia in the Latin American region, as her predecessor had reported on many countries in other regions. She was also working on preparing a thematic report. She had been communicating with many departments in the United Nations with regard to the project to draft the manual. In November she would participate in a colloquium for judges and lawyers in the Maldives.

87. With regard to requirements and procedures for the legal profession, national legislation was essential to protect lawyers so that they could work without any kind of interference from the Ministry of Justice. Registration and re-registration requirements specified by the Ministry of Justice in some countries constituted interference with the freedom to exercise the legal profession.

88. Her prior experience included work on criminal cases and at maximum-security prisons. She had also worked for the National Council of Justice to develop measures to improve the Brazilian judiciary, a challenging task in such a large country, which had a judicial system with 92 tribunals and 17,000 judges. All of that experience would be beneficial in her new functions. Written answers to any remaining questions would be provided.

The meeting rose at 5.55 p.m.