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Chairman: Mr. Prandler . . . . . (Hungary)

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The meeting was called to order at 3.10 p.m.

Agenda item 163: Observer status for the International Institute for Democracy and Electoral Assistance in the General Assembly (A/C.6/57/L.23)

1. **Mr. Schori** (Sweden), introducing draft decision A/C.6/57/L.23 on behalf of the original sponsors and Guatemala, Liechtenstein and Mauritius, said that the issue had been on the agenda of the General Assembly since 2000, and the sponsors hoped that the Committee would now be able to conclude its consideration of the matter. The sponsors firmly believed that the International Institute for Democracy and Electoral Assistance fulfilled the two criteria spelled out in General Assembly decision 49/426, that it was an intergovernmental organization and that its work was of relevance and beneficial to the United Nations. Delegations had expressed concern regarding its status as an intergovernmental organization since associated members — non-governmental organizations — might be part of its decision-making process. Although the Institute was fully convinced that that situation did not affect the status of an intergovernmental organization from a legal point of view, it had decided to start amending the relevant provisions of its statutes so as to meet the concerns of those delegations. That measure did not affect the importance which Member States and the secretariat of the Institute attached to close cooperation with non-governmental organizations in democracy assistance. The associated members would still be able to make a valuable contribution to the Institute's work regardless of the intended change in their role in the decision-making process. The text of draft decision A/C.6/57/L.23 was the standard text used for similar requests for observer status, and his delegation hoped that the fruitful discussions which had been held would enable the Committee to adopt the draft decision by consensus.

2. **Mr. Su** Wei (China), supported by **Mr. Samy** (Egypt), **Mr. Manis** (Sudan) and **Mr. Elmessallati** (Libyan Arab Jamahiriya), said that the consultations held with the delegation of Sweden concerning the draft decision had been very constructive. Progress had been made, and the area of disagreement narrowed. Regrettably, though, it had not yet been possible to reach consensus. The decision of the Institute to begin amending its statutes was certainly a step in the right direction, but until the statutes were revised, the Committee could not determine whether the Institute fulfilled the criteria of General Assembly decision 49/426. Once its statutes had been revised and their provisions met the requirements of that decision, the Institute could readily achieve observer status. Consideration of the matter should be deferred until the fifty-eighth session of the General Assembly, by which time the statutes would have been amended.

3. **Mr. Díaz Paniagua** (Costa Rica), supported by **Mr. Hakewnye** (Namibia), **Mr. Gandhi** (India), **Mr. Ortúzar** (Chile) and **Mr. Pecsteen** (Belgium), expressed full support for the statement made by the representative of Sweden and said that no point would be served by the Committee deferring consideration of the matter. It should not delve into the statutes of the International Institute, and the slight ambiguity should not be an obstacle to observer status being granted to the Institute at the current session.

4. **Mr. Much** (Germany) said he had been encouraged by the statement made by the representative of China to the effect that during consultations the areas of disagreement had narrowed almost to the point of consensus. In the past, where there had been a very small area of disagreement, the problem had been solved through generosity or an explanation of vote. The representative of Sweden had said that the perceived stumbling block would be removed by amending the relevant provisions of the International Institute's statutes, and while it was clear that currently there was not full agreement, the very small area of doubt should be removed and observer status granted through the adoption of the draft decision.

5. **The Chairman** said there was clearly no consensus regarding the draft decision, and appealed to all delegations concerned to hold further consultations.

6. **Mr. Schori** (Sweden) said that his delegation was very willing to heed that appeal, and had a proposal it wished to discuss with interested delegations.

Agenda item 159: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (*continued*) (A/C.6/57/L.10, L.11 and L.19)

7. **The Chairman**, on behalf of the Bureau, introduced draft resolution A/C.6/57/L.10 on prevention and peaceful settlement of disputes.

8. *Draft resolution A/C.6/57/L.10 was adopted.*

9. **The Chairman** drew attention to draft resolution A/C.6/57/L.11 on implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions, and said that the following countries had joined the sponsors: Algeria, Bangladesh, Brazil, Chile, China, Colombia, Egypt, India, Malaysia, Sierra Leone, Tunisia and Uganda.

10. *Draft resolution A/C.6/57/L.11 was adopted.*

11. **The Chairman** drew attention to draft resolution A/C.6/57/L.19 on the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization.

12. **Mr. Mikulka** (Secretary of the Committee), explaining the programme budget implications of the draft resolution, said that under the terms of paragraph 2, the General Assembly would decide that the Special Committee should hold its next session from 7 to 17 April 2003. Pursuant to that proposal, there would be two meetings per day with interpretation in all six languages. The documentation requirements would be 15 pages of pre-session, 20 pages of in-session and 50 pages of post-session documentation, to be issued in all six languages. The conference servicing requirements, at full cost, for the two-week session were estimated at US$ 247,106. The extent to which the Organization's capacity would be supplemented by temporary assistance resources could be determined only in the light of the calendar of conferences and meetings for the biennium 2002-2003. However, provision was made under the relevant section for conference services of the proposed programme budget for that biennium not only for meetings programmed at the time of budget preparation but also for meetings authorized subsequently, provided that their number and distribution were consistent with the patterns of meetings of past years. Consequently, should the General Assembly adopt the draft resolution, no additional appropriation would be required.

13. *Draft resolution A/C.6/57/L.19 was adopted.*

Agenda item 161: Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel (*continued*) (A/C.6/57/L.20)

14. **Ms. Geddis** (New Zealand), speaking on behalf of the original sponsors of draft resolution A/C.6/57/L.20, and Brazil, Iceland, Monaco, Papua New Guinea, Suriname and the former Yugoslav Republic of Macedonia, said that, when the draft resolution was introduced, it had been announced that paragraph 8 should be revised to state that the Ad Hoc Committee established under resolution 56/89 would reconvene from 10 to 14 March 2003. Those dates had subsequently been changed to 24 to 28 March 2003.

15. **Mr. Mikulka** (Secretary of the Committee), explaining the programme budget implications of the draft resolution, said that under the terms of paragraph 8, the General Assembly would decide that the Ad Hoc Committee on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel would reconvene from 24 to 28 March 2003. Pursuant to that proposal, it was envisaged that there would be two meetings per day with interpretation in all six languages. Documentation requirements would be 30 pages of pre-session, 30 pages of in-session and 20 pages of post-session documentation, to be issued in all six languages. The conference servicing requirements, at full cost, for the one-week session were estimated at US$ 182,129. The extent to which the Organization's capacity would be supplemented by temporary assistance resources could be determined only in the light of the calendar of conferences and meetings for the biennium 2002-2003. However, provision was made under the relevant section for conference services of the proposed programme budget for that biennium not only for meetings programmed at the time of budget preparation, but also for meetings authorized subsequently, provided that their number and distribution were consistent with the patterns of meetings of past years. Consequently, should the General Assembly adopt the draft resolution, no additional appropriation would be required.

16. *Draft resolution A/C.6/57/L.20, as orally revised, was adopted.*

Agenda item 154: Convention on jurisdictional immunities of States and their property (*continued*) (A/C.6/57/L.21)

17. **The Chairman** drew attention to draft resolution A/C.6/57/L.21.

18. **Mr. Mikulka** (Secretary of the Committee), explaining the programme budget implications of the draft resolution, said that under the terms of paragraph 2, the General Assembly would decide that the Ad Hoc Committee on Jurisdictional Immunities of States and

their Property would reconvene from 24 to 28 February 2003. Pursuant to that proposal, it was envisaged that there would be two meetings per day with interpretation in all six languages. Documentation requirements would be 20 pages of pre-session, 20 pages of in-session and 20 pages of post-session documentation to be issued in all six languages. The conference servicing requirements, at full cost, for the one-week session were estimated at US$ 156,318. The extent to which the Organization's capacity would be supplemented by temporary assistance resources could be determined only in the light of the calendar of conferences and meetings for the biennium 2002-2003. However, provision was made under the relevant section for conference services of the proposed programme budget for that biennium not only for meetings programmed at the time of budget preparation, but also for meetings authorized subsequently, provided that their number and distribution were consistent with the patterns of meetings of past years. Consequently, should the General Assembly adopt the draft resolution, no additional appropriation would be required.

19. *Draft resolution A/C.6/57/L.21 was adopted.*

Agenda item 156: Report of the International Law Commission on the work of its fifty-fourth session (*continued*) (A/57/10 and Corr.1)

20. **Ms. Stancu** (Romania), referring to unilateral acts of States, said that her delegation understood the doubts expressed by some members of the Commission regarding the feasibility of setting all the general rules governing those acts. Nevertheless, given the nature of a unilateral act — a unilateral expression of will that produced legal effects between subjects of international law — such acts constituted a source of legal norms and therefore did not depart from the consensual nature of international law. The complex effort to codify unilateral acts should not lead to the combination of purely theoretical considerations with rules drawn from the law of treaties, and she therefore welcomed the suggestion that the Special Rapporteur should undertake a comprehensive study of State practice in the area.

21. On the topic of international liability in case of loss from transboundary harm arising out of hazardous activities, the Commission could make a valuable contribution with regard to loss allocation. The innocent victim should not, in principle, be left to bear the loss; States had only a subsequent role in sharing the loss, and State liability should serve as a last resort.

22. The work on the responsibility of international organizations should logically follow the approach used in considering State responsibility, but the two sets of draft articles should be considered as independent entities. While agreeing with the approach taken by the Commission thus far, her delegation considered that the work should be limited to intergovernmental organizations. Expanding the topic to include the responsibility of non-governmental organizations might lead indirectly to their implicit recognition as subjects of international law, which currently they were not.

23. The most appropriate approach to the topic of the fragmentation of international law was to examine it from the perspective of its consequences on the efficiency of contemporary international law. Thus, the study should first assess both the positive and the negative effects of fragmentation on the efficiency of international law; subsequently, the Commission should identify ways of encouraging its positive results and counterbalancing its negative effects.

24. **Mr. Galicki** (Poland) said that as the work on the draft guidelines on reservations to treaties advanced, the proposals presented by the Special Rapporteur were becoming increasingly specific. Consequently, the final results of the work of the Commission were becoming so detailed as to negatively affect the necessary balance between the codification of existing principles of international law and its progressive development.

25. Some of the eleven draft guidelines adopted by the Commission on first reading remained controversial and should be examined with greater care. Draft guideline 2.1.8, entitled "Procedure in case of manifestly [impermissible] reservations", was a case in point. The Commission had discussed that draft guideline in combination with the question it had addressed to Member States in the Sixth Committee as to whether the depositary of a treaty could or should refuse to communicate to States and international organizations concerned a reservation that was manifestly inadmissible, particularly when it was prohibited by a provision of the treaty. Based on the answers received, the Commission had adopted a draft guideline that maintained the middle position between the extreme opinions expressed by States. Nevertheless, the question appeared to be whether draft

guideline 2.1.8 remained within the limits of the functions of depositaries, as described in draft guideline 2.1.7, and in accordance with the functions of depositaries as established in particular in article 77, paragraph 1 (d), of the 1969 Vienna Convention and article 78, paragraph 1 (d) of the 1986 Vienna Convention. His delegation shared the opinion of the Chairman of the Commission that draft guideline 2.1.8 went a step beyond the Vienna Conventions in that respect.

26. However, regarding a possible extension of the functions of depositaries in the case of "manifestly impermissible reservations", it was necessary to remember that any draft guideline on that subject should be in accordance with the aforementioned treaty rules, since the Commission was not preparing a new treaty, but only a set of draft guidelines based on existing treaty regulations. Also, a significant change had taken place during the *travaux préparatoires* on the rule set forth in article 77, paragraph 1 (d), of the 1969 Vienna Convention. The draft adopted on second reading by the Commission in 1966 had stipulated that the functions of the depositary comprised examining whether a signature, an instrument or a reservation was in conformity with the provisions of the treaty, while the final version stated only that the functions included examining whether the signature or any instrument, notification or communication relating to the treaty was in due and proper form.

27. That limited approach was followed by draft guideline 2.1.7 but not by draft guideline 2.1.8. If the drafters of the 1969 Vienna Convention had tended to limit the depositary's powers exclusively to examining the form of reservations, draft guideline 2.1.8 should not contest that approach.

28. The current version of the draft guidelines left many questions unanswered. The formula of "manifest impermissibility" went beyond the strictly formal aspects of reservations, as did the appropriate powers proposed for depositaries, particularly in the area of "indicating the nature of legal problems raised by the reservation". As a result, the depositary became more of an umpire than a facilitator.

29. Furthermore, the terminology used in draft guideline 2.1.8 was imprecise. For example, it would be useful to know whether the word "manifestly" was used in the same sense as the word "manifest" used in article 46, paragraph 2, of the 1969 Vienna Convention, or whether it should have its own specific definition. Another problem arose with the word "impermissible", which appeared for the first time in the draft guidelines, even though it was placed within square brackets, since the Special Rapporteur had also used the more appropriate word, "inadmissible", in his report. The terminology of draft guideline 2.1.8 should be harmonized with the rest of the draft guidelines and with both Vienna Conventions.

30. That might also help to solve the problem of the differences between the powers of the depositary in the case of reservations directly prohibited by the treaty and such powers in the event of incompatibility of reservations with the object and purpose of the treaty. In both cases, his delegation considered that a final decision on the rejection of such reservations should be taken by the parties to the treaty and not the depositary.

31. Lastly, the numerous examples of international treaties with more than one depositary was an additional factor in favour of a rather restrictive approach to the competences of depositaries. Granting substantial powers to multiple depositaries could create serious problems, arising from the political interpretation and application of such powers by different Governments which were depositaries of the same treaty.

32. **Mr. Lindenmann** (Switzerland), referring to reservations to treaties, said that Switzerland, the depositary of a certain number of treaties, considered that the depositary had an important role to play in the functioning of a treaty; hence, the role should be exercised with impartiality and neutrality. In that respect, the wording of draft guideline 2.1.7, which stated that the depositary should examine whether a reservation was in due and proper form and, if need be, bring the matter to the attention of the State or international organization concerned, appeared appropriate and grounded in both international law and the practice of depositaries. It was important to note that the text referred to a preliminary examination of the form and not the substance of the reservation. Thus, the role of the depositary was more than that of a simple "letter box", but, the depositary should never have to decide on matters of substance. In particular, it was not the role of the depositary to examine whether the reservation was compatible with the object and purpose of the treaty; that was the responsibility of the States parties, or the monitoring bodies established by the treaty. Draft guideline 2.1.8 was advancing into

unknown territory. In its current form, it created more difficulties than it resolved and could be eliminated.

33. Unlike draft guideline 2.1.3 (Formulation of a reservation at the international level), guideline 2.4.1 (Formulation of interpretative declarations) did not include a detailed list of the categories of persons authorized to make such a formulation. He wondered whether the Commission had taken sufficiently into account the category of conditional interpretative declarations mentioned in the Guide to Practice and whether that category should be maintained. It was sometimes difficult to distinguish between a reservation and an interpretative declaration and he did not think that it would be useful to make a distinction between the conditions for their formulation.

34. In the case of reservations found impermissible by a body monitoring the implementation of a treaty (draft guidelines 2.5.4 and 2.5.X), it was necessary to establish whether the monitoring mechanism's suggestions, recommendations and opinions were compulsory in nature. If not, it could only invite the State or organization in question to reconsider the usefulness of and justification for the reservation; if so, the monitoring body's finding of impermissibility amounted to a finding of invalidity, in whole or in part, and the reserving State or international organization must act accordingly by denouncing the treaty or withdrawing all or part of the reservation. The latter solution should be encouraged in the interests of transparency.

35. In the case of international liability for injurious consequences arising out of acts not prohibited by international law, the distinction between primary and secondary rules made it possible to organize the topic by establishing two areas of inquiry: who was responsible, for which acts and why; and what the material and procedural consequences of that responsibility were. The loss should be allocated primarily to the private or State operator; "innocent" victims (the term should be reviewed) should not, in principle, be expected to assume a portion of the loss unless they had benefited from the operation. His delegation was prepared to allocate residual liability to the State under specific circumstances, even where no internationally wrongful act had been committed. It had not yet formed an opinion regarding the scope of the Commission's work; it might be useful for it to include harm caused to the global commons, but there was a certain logic to the position that since work on the prevention of harm arising out of hazardous activities had been limited to transboundary harm, consideration of liability should also focus on such activities.

36. His delegation supported inclusion of the topic of responsibility of international organizations in the Commission's programme of work and the decision to limit the topic to responsibility for internationally wrongful acts and, at least in the early stages, to intergovernmental organizations. By so doing, the Commission should be able to produce results in a timely manner, taking into account the articles on State responsibility.

37. His delegation also supported the inclusion in the Commission's programme of work of the topic of fragmentation of international law. As to the question whether the word "fragmentation" should be replaced by "diversification", it was true that the phenomenon had both positive and negative aspects, but the Commission's work should focus primarily on the problems and risks and should culminate in practical proposals that would help States face those challenges. His delegation particularly welcomed the decision to give priority to consideration of the function and scope of the *lex specialis* rule and the question of "self-contained regimes".

38. **Ms. Yasuda** (Japan) said that while she agreed with the Special Rapporteur on reservations to treaties that the Guide to Practice must be as comprehensive as possible if it was to be of practical use, she was somewhat concerned at the slow progress of the work. She hoped that the Commission would address the key issue of the legal consequences of reservations to treaties as soon as possible and would complete its work on the topic within the current quinquennium. To that end, it must be fully informed of recent developments involving reservations to human rights treaties and should consult closely with the Sub-Commission on the Promotion and Protection of Human Rights and the human rights treaty bodies.

39. It was her understanding that draft guidelines 2.1.7 and 2.1.8 were not meant to authorize the depositary to make any judgement on the form or substance of reservations, but only to perform a useful service to the contracting Parties; they would not affect the depositary's duty as stipulated in draft guideline 2.1.6 (ii) (Procedure for communication of reservations). The term "impermissible" had been

placed in square brackets but would seem appropriate, at least in English.

40. There was no need to establish a special category of "conditional interpretative declarations" since they amounted in fact to reservations. She supported the decision to submit an amended version of draft guidelines 2.5.4 and 2.5.11 bis and 2.5.X on withdrawal of reservations held to be impermissible by a body monitoring the implementation of a treaty, either during future debates on the admissibility of reservations or during the review of the Commission's preliminary conclusions of 1997. Since the Vienna Conventions gave States parties the primary responsibility for deciding on the impermissibility of reservations, the nature of similar decisions taken by treaty bodies must be carefully examined. The Guide to Practice should stipulate which types of bodies could assume that role, bearing in mind the need to maintain a balance between the universality and the integrity of treaties. The preliminary conclusions took a balanced approach to the issue.

41. The fact that few States had submitted information on their practice in the area of unilateral acts suggested that the topic might not be ripe for codification; the Commission should suspend its study until it received more input from Governments and should approve the proposal to request outside private research institutions to conduct research into State practice by examining governmental materials and publications.

42. She was pleased that the Commission had embarked on a the second stage of its work on international liability and agreed that failure to perform the duties of prevention stipulated in the final text of the articles on prevention of transboundary harm from hazardous activities, adopted by the Commission in 2001, entailed State responsibility and that it was appropriate to limit the scope of the topic to the activities mentioned therein. Unfortunately, the General Assembly's failure to adopt the Commission's recommendation that a convention should be elaborated on the basis of the draft articles would undermine work on the liability aspect; she hoped that the Assembly would act expeditiously on the matter.

43. The approach taken by the Special Rapporteur on the responsibility of international organizations and by the Working Group on that topic seemed appropriate; it was preferable to limit the study to intergovernmental organizations, at least at the initial stage.

44. Lastly, her delegation was keenly interested in the topic of the fragmentation of international law. Fragmentation was not necessarily undesirable; she hoped that the Commission would analyse the positive and negative aspects of the phenomenon, thereby contributing to the further development of international law.

45. **Mr. Hmoud** (Jordan) said he hoped that the Commission would complete the draft guidelines on reservations to treaties and the Guide to Practice by 2006. The current text of draft guideline 2.1.1 (written form) was acceptable; there was no reason to address the question whether a reservation could initially be formulated orally since the issue had no practical impact and might have unforeseen legal consequences. He was not in favour of extending the mandate of the depositary beyond that established by article 77 of the Vienna Convention on the Law of Treaties; unless otherwise provided by the parties to the treaty, the depositary should remain impartial.

46. His delegation did not object to the communication of reservations by electronic mail or fax (draft guideline 2.1.6), provided that they were confirmed by a diplomatic note or depositary notification within a reasonable time. Lastly, he welcomed the decision to withdraw the proposal contained in draft guideline 2.5.X; the Commission would consider the consequences of inadmissibility at a later stage and, in any case, the issue of the authority granted to monitoring bodies should be carefully studied in the light of international practice. His initial view was that they should not have discretion to rule on the admissibility of reservations unless that was expressly provided for in the relevant treaty.

47. Expansion of the draft articles on diplomatic protection to issues other than the nationality of claims and the exhaustion of local remedies would exceed the traditional notion of diplomatic protection and confuse legal regimes which might not necessarily coincide.

48. Functional protection by international organizations should not be dealt with in the context of diplomatic protection since the relationship of an organization to its agent had legal grounds and consequences different from that of a State to its national. The same argument applied to the right of a ship's State of nationality to bring claims on behalf of

injured crew members; the *M/V Saiga* case should be viewed only in the context of article 292 of the Convention on the Law of the Sea. Moreover, diplomatic protection involved a direct link, that of nationality, between the injured party and the State, as opposed to the indirect link that existed between the crew of a ship and the latter's State of registry or incorporation.

49. The issue of a State's delegation to another State of its right to exercise diplomatic protection should be thoroughly studied since the transfer of that right might adversely affect the rights of individuals; if the State to which such protection had been delegated failed to provide it, the victim might be unable to seek damages from either State.

50. He endorsed the "mixed" position reflected in draft articles 13 and 14; the exhaustion of local remedies should be treated as a procedural matter if it violated both local and international law but as a substantive matter if a State's responsibility was triggered by denial of justice. He had reservations regarding the three options proposed in draft article 14 (a); a more objective criterion would be to establish that local remedies need not be exhausted where there was no reasonable possibility of an appropriate remedy.

51. Draft article 14 (b) (Waiver and estoppel) reflected the general principles of law and the case law of the International Court of Justice. Draft article 14 (c) and (d) (Voluntary link and territorial connection) should be maintained and their scope limited to situations where it would be unfair or unreasonable to require the exhaustion of local remedies. The situations listed in draft article 14 (e) and (f) (Undue delay and denial of access) were not in fact exceptions and could be covered under article 14 (a).

52. Draft article 15 (Burden of proof) should be retained. There was no reason not to include an article related to the rules of evidence; moreover, it could provide States and dispute resolution bodies with useful guidance on the burden of proof in the context of the exhaustion of legal remedies. Draft article 16 (Calvo clause) should also be retained; codification of that clause and limitation of its scope of application to business transactions where there was no breach of international law would give developing States a safeguard against intervention.

53. Lastly, he welcomed the adoption of draft articles 1 to 7 and the deletion of former draft article 2, which would have allowed a State to exercise diplomatic protection through the threat or use of force.

54. The Special Rapporteur on unilateral acts of States had rightly noted that the topic was highly complex and had proved difficult to tackle (A/57/10, para. 302); he therefore wondered whether the Commission should continue its work in that area.

55. He welcomed the resumed consideration of the liability aspect of international liability for injurious consequences arising from acts not prohibited under international law. As a rule, innocent victims should not share in the loss; however, the degree of care practised by the individual should be taken into account. There appeared to be general agreement that the operator should bear the primary liability in any allocation of loss regime; the State or States should assume residual liability. The Commission should consider establishing a particular regime for ultra-hazardous activities, where the threshold for the duty of prevention was higher. The threshold for triggering application of the regime on allocation of loss should be "harm" in the case of operators and non-State actors and "significant harm" in the case of the liable State. And while it would be legitimate for the Commission to consider the issue of harm caused to the global commons, it might be inappropriate for it to seek to codify that concept in the context of the current project.

56. Since the legal nature of international organizations was different from that of States, the topic of responsibility of international organizations should not be limited to responsibility for internationally wrongful acts; however, in order not to complicate its work, the Commission should confine the exercise to intergovernmental organizations. He also welcomed the decision to add the topic of the fragmentation of international law to the Commission's programme of work.

Other matters

57. **The Chairman** said that as requested by the Committee, the Under-Secretary-General for General Assembly and Conference Management was prepared to brief members on the transfer of the technical secretariat of the Sixth Committee from the Office of Legal Affairs to the Department for General Assembly and Conference Management. If he heard no objection, he would take it that members agreed to suspend the

formal meeting and hold the briefing in an informal meeting.

58. **Mr. Díaz Paniagua** (Costa Rica) said that his delegation objected to the Chairman's proposal to hear the Under-Secretary-General in an informal meeting. The briefing should be part of the formal meeting.

59. **The Chairman** observed that the practice of holding informal meetings for Secretariat briefings had served the Committee well in the past. He appealed to the Costa Rican delegation to agree to hold briefing in an informal meeting.

60. **Mr. Díaz Paniagua** (Costa Rica) said that the problem with the proposal to transfer the technical secretariat of the Sixth Committee lay in the secrecy that had surrounded it. His delegation had never received a satisfactory reply to its requests for information. Was the Secretariat threatening not to provide information on the matter unless it was allowed to do so in an informal setting?

61. **The Chairman** said that no such threat had been made. He merely wished to stress that in the past, the practice had been to hold briefings in informal meetings.

62. **Mr. Díaz Paniagua** (Costa Rica) said that his delegation was not implying that the Secretariat would not be frank with the Committee in a formal setting. He wanted the record to include a formal guarantee that any change in the secretariat of the Committee would not affect the quality of the services provided to members. Previous practice notwithstanding, he wished to request that the current meeting be held in public, in accordance with rule 60 of the rules of procedure of the General Assembly.

63. **Mr. Rosand** (United States of America) said that since there did not seem to be any objection from the floor to the Costa Rican proposal, his delegation would like to know why the Secretariat was resisting the request to continue with a formal meeting on the subject.

64. **The Chairman** said that the question of the transfer of the technical secretariat from one unit to another was not on the agenda of the Sixth Committee. If there was pressure for a formal restatement of the views of certain delegations, that could be done. He once again suggested that the Committee should continue its work in an informal setting, if there was no objection.

65. **Mr. Díaz Paniagua** (Costa Rica) inquired whether the Secretariat was unwilling to provide the information in a public meeting.

66. **Mr. Su** Wei (China) said that the issue was not whether the Secretariat could make the information public. The matter was of interest because it related to personnel matters and Secretariat services, and should be dealt with in an informal setting.

67. **Mr. Díaz Paniagua** (Costa Rica) observed that his delegation had not received an answer to its question.

68. **The Chairman** replied that the matter was not on the official agenda of the Committee. Informal consultations had already been held during which the Legal Counsel had shared his views on related matters. That was why the Bureau had wished to follow the procedure he was suggesting. He appealed to the representative of Costa Rica to allow the Committee to start the informal consultations.

69. **Mr. Díaz Paniagua** (Costa Rica) said that his delegation did not understand why the Secretariat seemed so reluctant to speak for the record. According to rule 60 of the rules of procedure, meetings should be held in public unless there was agreement to hold a private meeting. Currently, there was no such agreement. If the Secretariat replied that it was not prepared to provide the information in public, the matter would have to be discussed in other bodies and they would need to find out why the Secretariat was disobeying Member States.

70. **The Chairman** said that the Under-Secretary-General for General Assembly and Conference Management had graciously agreed to brief members in the public meeting.

71. **Mr. Chen** (Under-Secretary-General for General Assembly and Conference Management) said that he was always ready to appear before intergovernmental bodies to respond to questions concerning conference services and matters falling within the purview of his department. The decision to transfer the technical secretariat of the Sixth Committee to the Department for General Assembly and Conference Management had been taken by the Secretary-General for the purpose of completing the integration of the technical secretariats of all the Main Committees of the General Assembly, a process which he had initiated in 1997. To implement the decision of the Secretary-General, his

own department would initiate close consultations with the Office of Legal Affairs on the necessary administrative arrangements to be concluded well in advance of the fifty-eighth session of the General Assembly. It was in the common interest of all concerned to ensure a smooth transition. He could assure members that high-quality services would continue to be provided to the Committee as in the past, taking fully into account the specialized and technical nature of the Committee's work.

72. **Mr. Cabrera** (Peru) said that while his delegation realized that the Secretary-General's decision was intended to improve the substantive work of the Main Committees, it was important to take into account the technical needs of the users of the Secretariat's services, namely delegations. He wished to know whether the transfer of the technical secretariat of the Sixth Committee was a fait accompli. He had understood that it was a proposal to be considered by the committees, including the Sixth Committee.

73. **Mr. Lindenmann** (Switzerland) drew attention to the fact that several delegations were not represented at the current meeting because their presence was required at important consultations being held elsewhere. He hoped they would be informed of what was behind the proposal. The organization of the Secretariat was a prerogative of the Secretary-General and the proposal to transfer the secretariat of the Committee was outlined in very general terms in his report entitled "Improving the performance of the Department of General Assembly Affairs and Conference Services" (A/57/289). His delegation had not been aware that the decision had already been taken. In paragraph 79 of its report (A/57/32), the Committee on Conferences had referred to the question as follows: "The Committee noted the intention to integrate the functions of the technical-servicing secretariats of the Fifth and Sixth Committees into the Department and that the programmatic and financial consequences would be considered by the appropriate bodies of the General Assembly." That seemed to imply that the bodies responsible for considering the financial implications of the proposal would be asked for their opinion. He would like clarification on that point. His delegation had always been happy with the services provided by the Office of Legal Affairs. Given the technical nature of the Committee's work, he would like assurances that the quality of services would be maintained.

74. **Mr. Marschik** (Austria) said that any reform initiative should be aimed at making improvements in the quality of the services provided and rationalizing operations so as to reduce costs. It would be difficult to improve a system that was already excellent, as was the case with the Office of Legal Affairs. He would therefore appreciate receiving replies to the following questions: What improvements were expected from the proposed system? How many people in the Department for General Assembly and Conference Management would be responsible exclusively for Sixth Committee affairs? How would the Secretariat ensure that substantive legal aspects of the Committee's work would be given due consideration? How many posts could be reduced? Would the rationalization exercise be implemented across the board?

75. **Mr. Rosand** (United States of America) said his delegation would like to know what savings would be realized by the proposed change. Given the excellent quality of the services already provided by the Office of Legal Affairs, what financial benefit would the change provide?

76. **Ms. Álvarez Núñez** (Cuba) said that her delegation shared the concerns expressed by others. The proposed change was mentioned only in very general terms in the aforementioned report of the Secretary-General (A/57/289). How would the integration of the technical-servicing secretariat into the Department for General Assembly and Conference Management ensure that the Sixth Committee received the technical advice it required? How would the proposal affect secretariat services for the International Law Commission? What improvements would ensue as a result of the proposed change?

77. **Mr. Díaz Paniagua** (Costa Rica) noted that the implementation of the proposed transfer would depend on the decisions taken by the Fifth Committee and the General Assembly. In other words, the decision on whether or not to proceed would be taken by Member States and not the Secretariat. He would like to know which specific organs would be affected by the implementation of the proposal, how it would affect the work of the Bureau, and what effects the proposal is now expected to have on the drafting of resolutions, legislative documents and treaties.

78. **Mr. Cannon** (United Kingdom) echoed the concerns of other delegations regarding the lack of detailed information on the proposed transfer but said

that the Under-Secretary-General's statement had been helpful in that regard. He greatly valued the quality of the services provided by the Codification Division of the Office of Legal Affairs and would have serious reservations about any changes which would adversely affect them.

79. **Mr. Tomka** (Slovakia) said he welcomed the Secretary-General's efforts to streamline the work of the Secretariat to improve its efficiency. In one of his first reports to the General Assembly, the Secretary-General had recognized that the most encompassing manifestation of the strength of the United Nations was in the normative realm (A/51/950/para. 8). The success of activities in that area was largely due to the highly qualified Legal Counsels and lawyers of the Office of Legal Affairs, and the Sixth Committee had derived enormous benefit from being able to access the expertise of those officials, who also serviced the other legal organs of the United Nations, on both procedural and substantive matters. He wished to know what specific problems had been identified by the Secretariat to justify the change in servicing arrangements and what advantages the proposed new system was expected to provide.

80. **Mr. Bocalandro** (Argentina) said he shared the concerns of other delegations regarding the planned transfer of technical servicing functions: although it was necessary to streamline and improve the United Nations Secretariat, the proposed changes should not be detrimental to the efficiency of the Sixth Committee. The Office of Legal Affairs provided an irreplaceable service to the Committee, which had unique technical requirements. He appealed to the Under-Secretary-General to respond to the questions put by Member States.

81. **Mr. Peersman** (Netherlands) reiterated that he recognized that it was the Secretary-General's prerogative to decide on the division of labour within the Secretariat. However, the question put by the United States representative was timely, as more information was needed regarding the projected net financial gain to be obtained from the proposed change.

82. **Mr. Hmoud** (Jordan) said that his delegation appreciated the Secretary-General's efforts to increase the efficiency of the United Nations and to free the necessary resources. However, the intended transfer of technical servicing functions to the Department of General Assembly and Conference Management might well be counterproductive. He agreed with the representative of Costa Rica regarding the unique technical requirements of the Sixth Committee and expressed the hope that the Committee would be consulted about the proposed transfer. Ultimately, his delegation hoped that it would not take place.

83. **Mr. Abebe** (Ethiopia) inquired whether the Secretariat had consulted the Office of Legal Affairs regarding the reform or had been requested to take steps to improve the efficiency of the Sixth Committee or the Office of Legal Affairs. He also wondered whether the Secretariat, when formulating the proposal at issue, had taken account of the current diversification of the work of the Sixth Committee in the areas of the codification of international law and the expansion of the United Nations Commission on International Trade Law (UNCITRAL).

84. **Mr. Chen** (Under-Secretary-General for General Assembly and Conference Management) said that the Secretary-General, in his capacity as chief administrative officer of the Secretariat, had already taken the decision to transfer the technical servicing functions for the Sixth Committee and related bodies from the Office of Legal Affairs to the Department of General Assembly and Conference Management. The programme budget implications of that decision for the biennium 2004-2005 and beyond would be considered by the Fifth Committee and the Advisory Committee on Administrative and Budgetary Questions.

85. The Secretary-General's decision did not run counter to the views of Member States given that, in General Assembly resolution 52/220, they had emphasized that the rationalization of servicing arrangements should lead to greater unity of purpose, greater coherence of efforts at all levels and greater cost-effectiveness, which would result in economies of scale, and had requested the Secretary-General to keep those arrangements under review: the decision at issue was simply a reflection of the Secretary-General's compliance with that request. Furthermore, the Office of Internal Oversight Services had conducted a survey of Member States which had indicated that the integration exercise had been successful, and it was in that context that the Secretary-General had decided to bring the process to completion.

86. Lastly, he assured Committee members that he had taken note of their legitimate concerns; he and the Legal Counsel would do their utmost to ensure a

smooth transition from the old to the new system and to make available to the new secretariat of the Sixth Committee all the necessary legal expertise and institutional memory.

87. **Mr. Stoby** (Assistant Secretary-General for General Assembly and Conference Management) explained that the Department of General Assembly Affairs and Conference Services (currently the Department for General Assembly and Conference Management) had been created as a result of the 1997 reform process. Prior to that time, technical secretariat servicing had been spread over a number of different departments within the Secretariat but in 1997, the Secretary-General had decided to create a unique department which combined traditional conference management activities with the services provided by the technical secretariats, since he believed that those services were more akin to conference management than anything else and that the essential function of the secretariats was to provide essentially non-substantive, technical support to the officers of the bodies concerned.

88. Nevertheless, in 1997, the Secretary-General had decided "not to bite off more that he could chew" and had not entrusted the technical servicing of the Fifth and Sixth Committees or the Security Council to the Department of General Assembly Affairs and Conference Services. The intention, however, as reflected in resolution 52/220, was to keep the arrangements under review, and the Secretary-General was mandated to submit a report to the General Assembly at its fifty-third session with a view to considering the possible integration of all conference-servicing resources for all Main Committees of the General Assembly, the Security Council, the Economic and Social Council and their subsidiary and ad hoc bodies and special conferences into the Department of General Assembly Affairs and Conference Services.

89. Therefore, the issue currently under discussion was not unique, but was simply the culmination of a process approved by the General Assembly in 1997. Every principal organ of the United Nations and every Main Committee of the General Assembly at Headquarters, including the Fifth Committee, was currently serviced by secretaries whose sole function was technical support. The Sixth Committee was the only exception to that rule. The advantages currently enjoyed by the other Committees as a result of that process were expected for the Sixth Committee.

90. **Mr. Corell** (Under-Secretary-General for Legal Affairs, The Legal Counsel) said that when he had originally informed the Sixth Committee that the Secretary-General had decided to proceed with the transfer of technical servicing functions, that decision had not been formalized. However, in October 2002 he had been authorized to tell the Committee, and had done so through the Bureau, that the practical consequences of the decision were the transfer of one P-5 and two General Service posts from the Office of Legal Affairs to the Department of General Assembly and Conference Management. Any budgetary implications of the decision would necessitate the involvement of the Fifth Committee and the Advisory Committee on Administrative and Budgetary Questions. He reassured the Committee that he was well aware of the current situation with regard to UNCITRAL and had borne it in mind when working on the budget proposals.

91. **Mr. Díaz Paniagua** (Costa Rica) expressed regret that the specific questions raised by his delegation had not been answered, and appealed to the Secretariat to respond. It was important to present a full picture of the historical background to the decision at issue. He had consulted a colleague from the Fifth Committee, who had confirmed that in the case of other Main Committees, in particular the First Committee, the transfer of technical servicing arrangements had led to various problems in such areas as duplication of work and drafting of resolutions and that those problems had been reflected in a report by the Office of Internal Oversight Services. In short, there were reasons why the 1997 technical servicing arrangement reforms did not include the Sixth Committee.

92. **Mr. Rosenstock** (Chairman of the International Law Commission) said that no answers had been provided to the questions raised, particularly those concerning the eventual savings resulting from the transfer. The input of lawyers and other officers of the Office of Legal Affairs involved in the servicing of the Sixth Committee, the International Law Commission and other subsidiary legal bodies greatly facilitated the work of all the bodies concerned. It was hard to see how the efficiency of the system could be improved, and consequently there did not appear to be much to commend the new arrangements.

The meeting rose at 6.05 p.m.