United Nations A/C.6/62/SR.17

General Assembly
Sixty-second session
Official Records

Distr.: General
28 November 2007

Original: English

Sixth Committee

Summary record of the 17th meeting
Held at Headquarters, New York, on Friday, 26 October 2007, at 3 p.m.

Chairman: Mr. Tulbure . . . . . (Moldova)

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07-56553 (E)

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

Agenda item 80: Criminal accountability of United Nations officials and experts on mission (*continued*) (A/62/54, A/62/329 and A/60/980)

Oral report by the Chairman of the Working Group

1. **Ms. Telalian** (Greece) recalled that at its first meeting, on 8 October 2007, at the recommendation of the Ad Hoc Committee on criminal accountability of United Nations officials and experts on mission, the Sixth Committee had decided to establish a working group to continue consideration of the report of the Group of Legal Experts established by the Secretary-General pursuant to resolution 59/300, taking into account the views expressed in the Ad Hoc Committee. The Committee had decided to open the Working Group to all States Members of the United Nations and members of the specialized agencies or the International Atomic Energy Agency.

2. The Working Group had decided that the members of the Bureau of the Ad Hoc Committee would continue to act as Friends of the Chair. In view of the unavailability of Martin Roger (Estonia) to serve in that capacity and in order to ensure the representation of all regional groups, it had been decided to invite Ms. Minna-Liina Lind (Estonia) to join the other Friends of the Chair, Mr. El Hadj Lamine (Algeria), Mr. Ruddy Flores Monterrey (Bolivia) and Mr. Ganeson Sivagurunathan (Malaysia). The Working Group had paid tribute to Mr. Roger for his valuable contribution as Rapporteur of the Ad Hoc Committee.

3. The Working Group had had before it the report of the Ad Hoc Committee (A/62/54), the report of the Group of Legal Experts on ensuring the accountability of United Nations staff and experts on mission with respect to criminal acts committed in peacekeeping operations (A/60/980) and the note by the Secretariat on the criminal accountability of United Nations officials and experts on mission (A/62/329).

4. The Working Group had held four meetings, on 15 to 17 and 23 October 2007. At its first meeting, it had adopted its work programme and organized its work by addressing the clusters of issues considered in the report of the Group of Legal Experts, together with the note by the Secretariat, namely, (a) the scope *ratione personae*; (b) the crimes; (c) the bases for jurisdiction; (d) investigations; (e) cooperation among States and between States and the United Nations; (f) the form of instrument; and (g) the way forward. Part of the time had been devoted to informal consultations on a draft resolution.

5. Several delegations had alluded to their statements made during the plenary debate on the criminal accountability of United Nations officials and experts on mission (A/C.6/62/SR.6 and SR.7), reiterating the importance of the agenda item. Some had stressed the importance of avoiding duplication of effort and the need to take into account the work of the Special Committee on Peacekeeping Operations and the Ad Hoc Open-ended Working Group on Assistance and Support to Victims of Sexual Exploitation and Abuse. Certain delegations had expressed reservations regarding the adoption of definitions and terminology that had been used elsewhere, especially in instruments to which their Governments were not parties. Others had welcomed the approaches proposed in the note by the Secretariat, in particular the distinction between short- and long-term measures, suggesting that the former should be the focus of the Working Group at the current session while the latter should be the subject of future consideration in the context of the Ad Hoc Committee.

6. With regard to the scope of application *ratione personae*, some delegations had requested data on the types of personnel involved or alleged to be involved, whether military or civilian personnel; the crimes committed or alleged to have been committed and their seriousness; the extent to which investigations were conducted and information on follow-up, if any; whether offences had been committed in the course of official duties or while off-duty; and whether such crimes were committed in the mission area, at headquarters or in third States. Other delegations had not viewed statistics as of vital importance, preferring to focus on the incidents' impact on the victims and on the image and credibility of the United Nations, while still others had considered that statistical data would reveal the scope of the problem and assist in the formulation of short- and long-term measures.

7. Some delegations had sought to limit the Working Group's mandate to issues of criminal accountability arising in the context of peacekeeping operations, stating that the term "United Nations operation" was vague and needed to be clarified or that any reference to "operation" should be deleted. Other delegations had favoured a broader approach that would include operations conducted under Chapters VI and VII of the

Charter of the United Nations and all personnel involved therein, irrespective of their contractual status. Some delegations had been prepared to consider extending the scope to include personnel of United Nations funds and programmes; others had proposed to include not only personnel involved in a United Nations operation in a host State but also those who committed a crime in a third State while involved with a United Nations operation; and still others had maintained that the important consideration was to ensure that no one working for the United Nations should fall into a jurisdictional gap. It had been considered that the scope of application should be clearly defined in any negotiation of a legally binding instrument.

8. Some delegations had maintained that military and civilian police personnel working for the United Nations, even those classified as experts on mission, should be excluded from the scope of application *ratione personae* since, like members of national contingents, they were subject to the exclusive jurisdiction of the troop-contributing State. Other delegations, recognizing that the inclusion of military observers and civilian police was a delicate matter, had stressed the need for caution; international cooperation in matters of extradition and mutual assistance in judicial matters might be relevant to situations involving military personnel, including members of national contingents, who should not therefore be excluded a priori. A regime of cooperation that would provide for mutual assistance in respect of crimes committed by such personnel could be envisaged along with other issues to be addressed in a legally binding instrument.

9. At some delegations' request, the Secretariat had provided additional statistics on alleged misconduct by United Nations officials and experts on mission. In addition to the two sources of information already before the Working Group, namely the summary of statistics in paragraph 7 of the annex to the report of the Ad Hoc Committee (A/62/54) and the statistics cited in paragraph 8 of the note by the Secretariat (A/62/329), the Secretariat had circulated a copy of the annexes to the report of the Secretary-General on special measures for protection from sexual exploitation and sexual abuse (A/61/957), which contained statistics on certain types of allegations for 2006, and three informal tables containing further information on misconduct for 2006 and 2007. A general distinction had been drawn between statistics on allegations of sexual exploitation and abuse and those concerning other types of misconduct.

10. The six annexes to the report of the Secretary-General dealt with cases of sexual exploitation and abuse (SEA) in 2006. They contained details on United Nations entities requested to provide information on allegations (annex I); the number (14) and nature of allegations by United Nations entities other than the Department of Peacekeeping Operations (annex II); and the status of investigations into allegations reported in 2006 and involving personnel of United Nations entities other than the Department of Peacekeeping Operations (annex III); those statistics were based on information provided by the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the United Nations Volunteers and the World Food Programme (WFP). Annexes IV to VI provided information on allegations emanating from missions led by the Department of Peacekeeping Operations in 2006 (357; annex IV); the status of investigations into allegations reported in 2006 (annex V); and the nature of the allegations made by Department personnel (annex VI). Tables 1 and 2 provided a breakdown of allegations of non-SEA misconduct for 2006 (438) and for the period 1 January to 30 September 2007 (416), respectively, and table 3 provided further SEA statistics for the same period.

11. The need to distinguish between allegations of misconduct and completed investigations had been noted. Accordingly, while some of the annexes to the report of the Secretary-General (A/61/957) provided a breakdown of allegations received, annexes V and VI provided information from the perspective of completed investigations; of the allegations received in 2006, 82 investigations had been completed. No statistics concerning completed investigations of non-SEA allegations were available.

12. Annexes V and VI provided a breakdown of completed investigations involving allegations of SEA misconduct by civilians, United Nations police and military personnel, without distinguishing between military observers and members of military contingents. However, it had subsequently been clarified that 12 of the 357 allegations of SEA misconduct received in 2006 in the context of missions led by the Department of Peacekeeping Operations had

been made against military observers. Of those, two investigations had been completed and one allegation had been found to be substantiated. Table 3 indicated that of the 99 allegations reported in the context of peacekeeping operations from 1 January to 30 September 2007, 26 concerned civilian personnel (including United Nations staff, United Nations Volunteers, contractors and consultants), 45 concerned military personnel who were part of national contingents (excluding military observers), none concerned military observers, 20 concerned the police component and 10 were classified as "unknown".

13. With respect to non-SEA misconduct, table 1 showed that of the 438 allegations reported in the context of United Nations peacekeeping operations from 1 January to 31 December 2006, 240 concerned civilian personnel (including United Nations staff, United Nations Volunteers, contractors and consultants), 135 related to military personnel who were part of national contingents (excluding military observers), 8 concerned military observers and 55 concerned the police component. Table 2 showed that of the 416 allegations reported in the context of United Nations peacekeeping operations from 1 January to 30 September 2007, 291 concerned civilian personnel (including United Nations staff, United Nations Volunteers, contractors and consultants), 145 related to military personnel who were part of national contingents (excluding military observers), 18 concerned military observers, 42 concerned the police component and 10 were classified as "unknown".

14. With regard to the types of conduct alleged, annexes II and VI listed allegations of SEA misconduct such as sex with minors, exploitative sexual relationships, sex with prostitutes and rape. Tables 1 and 2 listed non-SEA allegations, including abuse of authority, assault, complex fraud, conflict of interest, fraud, harassment, infractions of United Nations rules and regulations, misuse or mismanagement of United Nations resources, negligence, theft and traffic-related misconduct. It had been noted that the Secretariat recorded statistics on allegations of "misconduct", not "crimes" per se. For example, tables 1 and 2 included infractions of United Nations rules and regulations which did not necessarily constitute criminal conduct. Nonetheless, it had been recalled that the Secretariat, in paragraph 8 of its note, stated that "while not all cases of misconduct constitute criminal activity, statistics in this area suggest that the problem is significant". The Working Group had been informed that although the Organization recorded whether the alleged misconduct was said to have been committed in or outside the host country, the vast majority of allegations emanated from within the area of the United Nations operation in question.

15. In reply to a question, a representative of the Office of Legal Affairs had explained that the term "United Nations operation" referred to operations defined by the competent organ of the United Nations and conducted under United Nations authority and control for the purpose of maintaining and restoring international peace and security.

16. Some delegations had stressed that the scope *ratione materiae* was closely linked to the scope *ratione personae*. Several delegations had favoured a generic approach rather than a listing of offences for the purpose of defining crimes *ratione materiae*. Such an approach, which would avoid the need for frequent updates to the list, could be based on the severity of punishment and the requirement of dual criminality. It had been pointed out, however, that a generic description based on severity of punishment alone would not be sufficient, especially in situations where the misconduct did not constitute a crime under the law of a particular jurisdiction. It had also been suggested that crimes could be defined using a combination of the generic approach and an indicative list; attention had been drawn to the vagueness of the term "serious crime".

17. While acknowledging that the subject matter had gained notoriety because of allegations of sexual exploitation and abuse, some delegations had seen no reason to limit the scope *ratione materiae* to assaults on the physical integrity of a person; they had suggested the inclusion of property crimes, embezzlement, trafficking, bribery and corruption, while drawing attention to the need to avoid duplication of efforts since the United Nations Office on Drugs and Crime also dealt with cases involving the corruption of United Nations officials.

18. In response to a request for clarification of the term "serious criminal activity", the Secretariat had noted that in its report on strengthening the investigation functions in the United Nations (A/58/708), the Office of Internal Oversight Services classified as Category 1 high-risk, complex matters and serious crimes such as serious or complex fraud; abuse

of authority; conflict of interest; gross mismanagement; waste of substantial resources; all cases involving risk of loss of life to staff or others; substantial violation of United Nations regulations, rules or administrative issuances; and any other serious criminal act or activity. Matters involving sexual exploitation and abuse had subsequently been given the status of Category 1 cases. Examples of recent examples of an "other serious criminal act or activity" included stabbings, abduction, arson and trafficking in drugs, weapons, gold, diamonds or human beings. It had been noted that the Organization's definition of a "serious criminal act or activity" might differ from those used by States.

19. Some delegations had considered that to the extent possible, priority should be given to the jurisdiction of the host State in deference to the principle of territoriality. It had been noted that the host State's exercise of jurisdiction would have advantages in terms of the availability of evidence and witnesses, while giving the victims a sense that justice had not only been done, but had been seen to be done; it should not be assumed too easily that the host State would be unable properly to exercise its criminal jurisdiction. According to another view, bearing in mind the need to ensure adequate protection to individuals entrusted with international functions, priority should be given to the jurisdiction of the State of nationality of the alleged offender (or the State of permanent residence, if the alleged offender was a Stateless person), since the host State in such circumstances was frequently unable to exercise its jurisdiction effectively.

20. Concerning the relationship between the basis for jurisdiction and the *aut dedere aut judicare* (extradite or prosecute) principle, the view had been expressed that the appropriateness of establishing a regime based on that principle required further study. It had been noted that the questions concerning conflicting jurisdictions would need to be addressed if a decision was taken to elaborate a binding instrument. Some delegations had mentioned the link between jurisdictional issues and the question of an immunity waiver, noting in particular that articles 22 and 23 of the 1946 Convention on the Privileges and Immunities of the United Nations set out the general criteria governing the waiver of immunities for officials and experts on mission; they had also stressed the obligation to respect local laws and regulations. According to another view, practice relating to the waiver of immunities should be clarified and made more uniform; it had been suggested that in accordance with Article 105, paragraph 3, of the Charter of the United Nations, guidelines might be drafted by the Sixth Committee or the International Law Commission. Some delegations had urged that the existing regime on immunities should not be altered.

21. In response to questions regarding waivers of immunity by the Secretary-General, attention had been drawn to the explanation provided by the Office of Legal Affairs and reflected in paragraphs 12 to 16 of the annex to the Report of the Ad Hoc Committee (A/62/54).

22. Some delegations had stressed the need to strengthen the host State's capacity to conduct criminal investigations. It had also been suggested that the victim should be informed, at least in general terms, of measures adopted or follow-up action taken as a result of an allegation. The need to update the relevant Office of Internal Oversight Services investigative manuals and protocols had been mentioned, and further information on ongoing measures aimed at enhancing the Office's investigative capacity had been requested. The Secretariat had replied that in response to a request by the General Assembly addressed to the Secretary-General, proposals for strengthening the Office, based on internal assessments and on a review conducted in 2007 by an external expert, would be submitted to the Assembly at its sixty-second session. During the period 30 June 2006 to 1 July 2007, the Office had taken steps to improve its operations, including by updating and expanding its investigation guidelines and standard operating procedures and establishing a jurisprudence library, a legislation library and a procedures and reference library.

23. Attention had been drawn to paragraph 8 of the annex to the Report of the Ad Hoc Committee, which described the practical constraints on the collection of data and subsequent production of statistics. It had been reported that the Department of Field Support, in cooperation with the Communications and Information Technology Section, had finalized the development of a comprehensive misconduct tracking system. The new system, which had recording, tracking and reporting features, would be accessible to conduct and discipline personnel as well as to the Office.

24. Cooperation was needed at all levels: between States; between States and the United Nations; and between the relevant departments, funds and programmes. It had been proposed that consideration should be given to drafting a model bilateral convention on extradition or model clauses to be incorporated into existing extradition treaties. It had also been observed that the exercise of criminal jurisdiction by the State of nationality of the alleged offender would require cooperation between that State and the host State during the investigation; perhaps mechanisms for States to report to the United Nations might be developed. There was a need for enhanced technical cooperation between States and the Organization, notably in developing the host State's capacity and providing adequate training to individuals deployed under the United Nations flag. Consideration of the form of a possible legal instrument had been deferred.

25. In their discussions about the way forward, delegations had expressed a general desire to focus on preparation of a draft resolution, bearing in mind the recommendations contained in the note by the Secretariat. Some delegations had been of the view that, for the time being, the focus should be on short-term measures; others, however, had stressed their interest in the elaboration of a binding instrument. It had been suggested that, as an alternative to a convention, the model status-of-forces agreement, the status-of-mission agreement, the memorandum of understanding and, as appropriate, the host agreement, might be amended in order to address matters concerning the criminal accountability of United Nations officials and experts on mission. On the other hand, it had been noted that the existing instruments addressed a different category of personnel and that the statistics revealing the nature of the problem would have implications for the form of the instrument to be adopted.

26. Several delegations had expressed support for some of the short-term measures mentioned in the note by the Secretariat, in particular the adoption of a General Assembly resolution strongly urging States to establish, at a minimum, jurisdiction over their nationals engaged in a United Nations operation who committed serious crimes as they were known and defined in their existing domestic criminal laws, where that conduct also constituted a crime under the laws of the host State. It had been stressed that the wording of such a resolution should be carefully considered and that its scope should be clearly limited to conduct committed by United Nations officials or experts on mission in the context of a United Nations operation. A preference had also been expressed for a resolution containing more general language than that proposed by the Secretariat. It had been pointed out that terms such as "serious crime" or "United Nations operation" would need to be clarified since they did not offer sufficient guidance for States; moreover, given that some of the short-term measures recommended had a bearing on the activities of other bodies, it would be necessary to avoid overlapping.

27. There had been general agreement to focus first on short-term measures to address the problem of criminal accountability. Accordingly, as Chairman of the Working Group, she had prepared a draft resolution on the basis of comments made by delegations and of the recommendations contained in the note by the Secretariat. Work on the draft resolution was proceeding in the context of informal consultations.

Agenda item 137: Administration of justice at the United Nations (*continued*) (A/RES/61/261; A/62/294)

Oral report by the Chairman of the Working Group

28. **Mr. Sivagurunathan** (Malaysia) recalled that the General Assembly, in its resolution 61/261, paragraph 35, had invited the Sixth Committee "to consider the legal aspects of the reports to be submitted by the Secretary-General without prejudice to the role of the Fifth Committee as the Main Committee entrusted with responsibilities for administrative and budgetary matters". In accordance with paragraph 36 of the resolution, the General Assembly also had decided to continue consideration of the item during the current session "as a matter of priority with the objective of implementing the new system of administration of justice no later than January 2009".

29. The Working Group had met 11 times from 8 to 19 and on 25 October 2007. At the first meeting the representatives of the Office of Legal Affairs and the Department of Management had introduced the report of the Secretary-General on the administration of justice at the United Nations (A/62/294) and had answered questions raised by delegations. The Chairman of the Advisory Committee on Administrative and Budgetary Questions (ACABQ) had attended the fifth meeting and had briefed

delegations about ongoing negotiations in ACABQ on the financial aspects of the proposed new system of administration of justice. Representatives of the Office of Legal Affairs, Department of Management and Office of Human Resources Management, together with the Secretary of the United Nations Administrative Tribunal, had attended the sixth meeting of the Working Group and had responded to queries from delegations.

30. As Chairman of the Working Group, he had prepared a list of issues as a basis for discussions. Delegations had addressed relevant paragraphs of the report, as well as the elements of draft statutes in annexes III and IV to the Secretary-General's report. Delegations had had the opportunity to make comments on each issue two or three times.

31. With regard to the scope *ratione personae* of the new system of administration of justice, some delegations had supported the Secretary-General's proposal that all personnel working for the United Nations should have recourse to the new system. The view had also been expressed that officials appointed by the General Assembly and experts on mission should have access to the system. Some delegations felt that the system should not cover individuals who were not staff of the United Nations and the funds and programmes, such as contractors, consultants, daily paid workers and experts on mission, whose claims would be distinct from claims brought by United Nations employees because the nature of their employment relationship was different. Further information would be necessary with regard to the type of grievances, applicable law and type of remedies currently available to such workers. Those delegations had further suggested that consideration should be given to alternative modes of dispute settlement which might be more appropriate or effective for those individuals, such as small claims commissions and expedited procedures. In that regard, paragraph 52 of the model status of forces agreement for peacekeeping operations (A/45/594) provided a mechanism for claims by locally recruited personnel. Some delegations had expressed the wish to have more information on that practice and wondered whether it was viewed by all concerned as fair and effective.

32. With regard to legal assistance for staff, some delegations had supported the Secretary-General's proposal. In their view, enhanced legal assistance provided by legally qualified full-time professionals would help to place staff and management on equal footing in the formal justice system. Some had referred to paragraph 23 of General Assembly resolution 61/261, in which the Assembly agreed that legal assistance for staff should continue to be provided and supported the strengthening of a professional office of staff legal assistance.

33. Assistance to staff could be provided either through an internal legal assistance system or by hiring lawyers from outside the United Nations. Some delegations had expressed the opinion that the proposed office of staff legal assistance would be beneficial to the United Nations and the staff. By providing timely advice to staff in cases not ripe for litigation, unnecessary proceedings could be prevented. Some other delegations had expressed the view that the United Nations did not have an obligation to employ lawyers to provide staff with legal assistance and representation and felt that the United Nations should not exceed what other international organizations or national jurisdictions provided.

34. It had been suggested that staff members seeking more individualized advice should continue to rely on the current voluntary system of legal assistance, which should be improved. The new office of legal assistance should absorb the functions of the Panel of Counsel, which should continue to provide training and coordination for volunteers. The Secretariat should develop better incentives for managers and staff to promote voluntary services. However, staff who wished to be represented by an attorney could hire a private attorney or seek assistance from United Nations associations. Reliance on independent outside representation would also avoid conflict of interests. The proposed office of staff legal assistance could maintain registries for private lawyers and United Nations staff volunteers interested in serving as a staff counsel. Staff associations could also provide staff with legal representation.

35. Divergent views had also been expressed as to whether legal assistance should comprise only legal advice or should also include representation in litigations, legal research and preparation of briefs. Some delegations had suggested that a distinction should be made between legal advice, which should be free of charge, and legal representation, for which staff members could contribute as appropriate. The view had also been expressed that if in a dispute a defendant

prevailed, the United Nations would have the burden of compensating the defendant for the expenses incurred.

36. Support had been expressed for the preparation of a code of conduct to guarantee the impartiality and independence of professionals working for the proposed office of staff legal assistance. Delegations generally supported the strengthening of the informal system of justice, which could result in reducing the accumulation of cases before the formal system. It had been suggested that the relationship between the informal and formal systems needed to be clarified, by inclusion of a provision in the statute of the United Nations dispute tribunal to regulate referral of cases by the Tribunal to mediation. Concerning terminology, the view had been expressed that the terms "extrajudicial" and "judicial" should be used instead of "informal" and "formal" system of justice. The term "quasi-judicial" had also been proposed.

37. With regard to the Ombudsman, some delegations had supported the appointment of the Ombudsman by the Secretary-General, noting that that process had already begun. The view had also been expressed that the appointment of the Ombudsman by the Secretary-General, who was a party to disputes, might raise questions about the independence and impartiality of the Ombudsman and that, in order to avoid real or perceived conflicts of interests, the Ombudsman should be appointed by the General Assembly. Concerning the possible role of the General Assembly, some delegations favoured the endorsement of the Ombudsman by the General Assembly after selection by a panel of experts. Others supported direct appointment of the Ombudsman by the General Assembly.

38. The view had also been expressed that the Ombudsman should be a person who enjoyed the trust of both staff and management. Under that view, the appointment of the Ombudsman by the General Assembly would not necessarily increase the trust of the parties involved. The procedure for the appointment of the Ombudsman proposed by the Redesign Panel was the best approach to gain the trust of both the employer and the employees.

39. Some delegations had expressed the opinion that the Ombudsman should have legal background, particularly in the area of labour law, as well as vast experience in mediation and negotiation procedures. Other delegations had not considered legal training essential but had stressed the importance of experience in mediation and negotiation.

40. Delegations had supported the creation of a mediation division in the Office of the Ombudsman. Some had stressed that decentralization of the system, including mediation, was an essential feature. Other delegations, while supporting the strengthening of the informal system, had expressed grave reservations concerning equal access of non-staff to the system.

41. Concerning the possible referral of cases by the proposed United Nations dispute tribunal to mediation, some delegations had taken the view that mediation was entirely voluntary and any referral by the tribunal would be contrary to such basic requirement. The tribunal could, however, encourage parties to settle their disputes by resorting to mediation. Other delegations had favoured authorizing the tribunal to refer disputes to mediation under certain conditions: willingness of the parties to a dispute; fixing a time limit for the resolution of disputes through mediation; and avoidance of referral if the dispute had previously been submitted to mediation.

42. Concerning qualifications of mediators, some delegations felt that legal training in labour law should be required, while others had expressed the view that mediators need not necessarily be lawyers but should have training in alternative dispute resolution mechanisms, including mediation.

43. Many delegations had agreed in principle with the Secretary-General's proposal regarding the qualifications of judges of the proposed United Nations dispute tribunal and United Nations appeals tribunal, with the proviso that gender and regional balance should be also respected in their nomination and selection. Some delegations had expressed the view that judicial experience was a paramount consideration with regard to qualifications. Therefore, the notion of equivalent experience in the Secretary-General's proposal entailed a risk of lowering the bar for qualifications. The view had also been expressed that the criteria regarding qualifications should be stated in flexible terms, and, as with other international tribunals, previous judicial experience should not be an absolute requirement. It had also been observed that the requirement of previous judicial experience was more important for dispute tribunal judges. Some delegations had expressed the view that a decision on the qualifications of judges would also depend on

whether cases before the dispute tribunal would be decided by a single judge or by a panel of three judges.

44. The Working Group had agreed that dispute tribunal and appeals tribunal judges should be elected by the General Assembly and that the election of judges should be staggered so as to ensure a partial periodic renewal of the composition of each tribunal. Several delegations had expressed the view that dispute tribunal judges' independence would be undermined if they were appointed by the Secretary-General as proposed in the Secretary-General's report.

45. As proposed by the Secretary-General in his report, delegations had agreed that judges should be removable only by the General Assembly, and exclusively on grounds of proven misconduct or incapacity. However, some delegations had questioned why only the Secretary-General could make a recommendation to that effect to the General Assembly. It had been proposed that the "grounds of proven misconduct or incapacity" should be carefully defined and that decisions on removal be subject to the qualified majority prescribed by rule 83 of the rules of procedure of the General Assembly.

46. The Working Group had agreed that in order to ensure that candidates met the required qualifications, it was essential that a mechanism should be identified for the compilation of lists of persons eligible for appointment to dispute tribunal and appeals tribunal judicial positions. Several delegations therefore supported the establishment of an internal justice council for the selection of judges. Some delegations, however, had raised doubts as to the composition of the council proposed by the Secretary-General, which in their view gave too much representation to the administration. In that regard, it had been suggested that the chairperson of the proposed council should be designated by agreement of the other members of the council, not appointed by the Secretary-General. A suggestion had been made that Member States should be represented on the proposed internal justice council. It had also been suggested that the council should present to the General Assembly a list of qualified candidates containing two or three times the number of candidates to be elected. As an alternative to an internal justice council, it had been proposed that nominations of candidates for the tribunals should be made directly to the General Assembly by Member States.

47. Regarding the terms of office of judges, the Secretary-General had proposed a five-year term, renewable only once, for both tribunals. In that respect, several delegations had expressed the view that a possibility of re-election or reappointment would threaten the independence of judges. A clear preference had emerged for a non-renewable term in order to avoid any real or perceived conflict of interest.

48. Despite extensive debate, no agreement had been reached on the issue of the number of judges who should decide a case in the first instance. In his report, the Secretary-General had proposed that a single judge would decide on procedural matters, while decisions on substance would require review by a panel of three judges. While some delegations favoured first-instance decisions being made by a single judge, other delegations preferred a panel of three judges so as to duly reflect diversity of nationalities, cultures and legal traditions in the decision-making process. It had also been observed that issues of substance and procedure could not always be clearly separated. Furthermore, the point had been made that any determination of the number of first-instance judges should take into consideration certain factors, such as the nature and level of legal assistance provided to dispute tribunal judges, as well as the question whether the appeals tribunal, as an appellate body, would have the power to review facts. As a possible compromise solution, it had been suggested that each case could be subject to a preliminary examination by a panel of three judges, who could then agree whether the case should be referred to a single judge.

49. Divergent views had been expressed as to the jurisdiction *ratione personae* of the future dispute and appeals tribunals. Discussions on that point had been similar to those regarding who would have access to the proposed administration of justice system. Concern had been expressed in the Working Group about the Secretary-General's proposal that *locus standi* should be conferred upon staff associations. It had been agreed that the issue required further consideration.

50. With regard to the jurisdiction *ratione materiae* of the proposed dispute tribunal, it had been observed that the language currently used in the draft elements of statutes entailed certain ambiguities. A representative of the Office of Legal Affairs had explained that there was no intention on the part of the Secretary-General to introduce any change in that respect.

51. The Working Group had not reached agreement on the grounds for appeal before the appeals tribunal. On the main disputed issue, whether the tribunal might consider only questions of law or whether it might also review facts, views had differed. Some delegations had felt that the appellate instance should not be given the power to review facts, while others had taken the view that parties should not be allowed to bring the facts twice before the dispute and appeals tribunals, but that the appellate body should be allowed to review serious errors in the categorization of facts, or consider material facts that the parties had been justifiably unaware of and hence unable to present to the dispute tribunal. It had been suggested that the appeals tribunal should at least be empowered to overrule the dispute tribunal's factual findings if they were clearly erroneous. A compromise proposal had been made in the Working Group. According to that proposal, while the jurisdiction of the appeals tribunal acting as an appellate body should be limited to questions of law, it should be granted the power to review facts to the extent that it found that the ascertainment of facts by the dispute tribunal had been arbitrary or based on an obvious error. Some delegations had expressed the view that any determination on that point would depend on the decision regarding the number of dispute tribunal judges who would decide a case in the first instance.

52. With regard to the remedy of specific performance, delegations had expressed the view that it required further consideration in determining the conditions under which the tribunals might order specific performance as an alternative to compensation. Some delegations had been concerned about any possibility of specific performance. Other delegations had questioned the Secretary-General's proposal that the power to order specific performance without compensation as an alternative remedy should be granted exclusively to the appeals tribunal.

53. Some delegations had expressed concerns about lifting the current limit of two years' salary for compensation, as suggested by the Secretary-General in his report. Some other delegations could agree to empower the tribunals to order a higher amount of compensation only in exceptional cases, to be determined in their respective statutes. It had been proposed that the two tribunals should be granted the power to issue decisions regarding the interpretation of their judgements or decisions upon the request of one of the parties.

54. Some delegations had expressed the view that further information was necessary regarding the Secretary-General's proposal that the dispute and appeals tribunals should be entitled to refer appropriate cases to the Secretary-General and heads of funds and programmes for "possible action to enforce accountability". Some delegations supported the Secretary-General's proposal that the dispute tribunal should be authorized to suspend action on a contested administrative decision upon request of the staff member concerned. However, the view had been expressed that the statute should make clear that the parties were not entitled by right to suspend a decision of the tribunal pending appeal.

55. Some delegations had expressed a preference for the establishment of a single registry for both tribunals, in the interests of cost-effectiveness. In their opinion, the functions of the registry should be limited to case management and should not include legal research or the preparation of summaries of facts for judges. Other delegations preferred separate registries for the two tribunals, on the grounds that the dispute tribunal would be decentralized and would function in other locations, whereas the appeals body would function in New York only. It had been observed that the functions suggested by the Redesign Panel (A/61/205, para. 131) for registries were different from the functions proposed by the Secretary-General in his report (A/62/294, para. 130). Concerning the question whether the two tribunals should have a single registry or separate registries, the view had been expressed that it would mainly depend on the type of functions assigned to a registry or registries. A single registry for both tribunals might suffice to deal solely with case management. Separate registries would be necessary if they were required to deal with case management and also assist the tribunals with legal research and the like.

56. Support had been expressed for the Secretary-General's proposal that the rules of procedure of the tribunals should be drafted by their judges in accordance with the statutes of the proposed tribunals. Some delegations favoured a role for the General Assembly regarding the adoption of the rules of procedure of the tribunals. Other delegations had stated that it was premature, at the current stage, to discuss

matters relating to the internal administration of the proposed tribunals.

57. With regard to transitional measures, it had been noted that at 1 January 2009, when the new system of administration of justice at the United Nations would begin to function, there would be an estimated 100 cases pending before the United Nations Administrative Tribunal. Those cases could either continue to be considered by the current Tribunal, in parallel with the new system, or be transferred to the new dispute tribunal. Some delegations had expressed preference for transferring these cases to the dispute tribunal, in the interests of cost-effectiveness and uniformity of proceedings, and in view of the fact that the staff members had lost their trust in the existing system.

58. Other delegations favoured preserving the old system in parallel with the new system because the transfer of pending cases to the new system at the beginning of its operation would overburden the new system and cause unnecessary delays in handling new cases. The point had been made that other organizations were using the current system and their views needed to be solicited before taking a decision. The view had also been expressed that litigants of pending cases should be encouraged to use informal systems for resolution of their disputes. Other delegations had said that it was premature to discuss transitional measures at the current stage, since ACABQ was considering the matter and had not yet come up with a concrete recommendation in that regard.

59. Negotiations on draft points of agreement would continue during informal consultations. If agreed, the points of agreement would be attached to a draft resolution or decision to be presented to the Sixth Committee for adoption.

The meeting rose at 4.20 p.m.