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## Sixth Committee

### Summary record of the 17th meeting

Held at Headquarters, New York, on Friday, 21 October 2011, at 3 p.m.

*Chair:* Mr. Salinas Burgos . . . . . (Chile)

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

**Agenda item 143: Administration of justice at the United Nations** (*continued*) (A/66/86 and Add.1, A/66/158, A/66/224, A/66/275 and A/66/399)

1. **Mr. Kittichaisaree** (Thailand), Chair of the Working Group on the administration of justice at the United Nations, reported that at its 1st meeting, on 3 October 2011, the Sixth Committee had decided that the Working Group should continue examining the legal aspects of the reports to be considered under the item, which also included the question of effective remedies for non-staff personnel and the draft code of conduct for the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, annexed to document A/65/86. The Committee had decided to open the Working Group to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency.

2. The Working Group had had before it the Secretary-General's report on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/66/224); the Secretary-General's report on amendments to the rules and procedures of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal (A/66/86 and Add.1); the report of the Internal Justice Council on administration of justice at the United Nations (A/66/158); the Secretary-General's report on the administration of justice at the United Nations (A/66/275); a letter dated 23 September 2011 from the Presidents of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal to the President of the General Assembly (A/66/399); and a letter dated 7 October 2011 from the Secretary-General addressed to the President of the General Assembly (A/66/507) transmitting a letter dated 5 October 2011 from the President of the United Nations Dispute Tribunal addressed to the Secretary-General.

3. The Working Group had held four meetings, on 10, 11, 13 and 19 October 2011. On 11 October, it had been briefed by the representatives of several units of the Secretariat and by a representative of the Internal Justice Council on the various aspects of the proposal contained in the Secretary-General's reports and in the report of the Internal Justice Council. On 13 October, the Presidents of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal had given

short presentations to the Working Group and answered questions raised by delegations concerning the amendments to the rules of procedure of the tribunals that had been submitted to the General Assembly for approval and other aspects relating to the work of the Tribunals. In general, the Working Group had wished to see the various actors in the administration of justice system communicate with one another in a coordinated manner before presenting their proposals or reports to the General Assembly, so as to avoid unnecessarily contradictory or conflicting assumptions among themselves.

4. On 11 October, the Working Group had entrusted Mr. Thomas Fitschen with the task of conducting informal consultations on the legal aspects of the reports and had requested him to report on the outcome of his consultations at the final meeting of the Working Group.

5. On 11, 13, 17 and 18 October 2011, informal consultations had been held under the able coordination of Mr. Fitschen. At the final meeting of the Working Group, on 19 October 2011, the coordinator had presented an oral report on the informal consultations that he had conducted on the proposed amendments to the rules of procedure of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal and on the various recommendations made under the item by the Secretary-General and the Internal Justice Council. The ensuing discussion had been devoted to the recommendations that the Working Group might refer to the Committee.

6. On the basis of its deliberations, and taking into account the results of the informal consultations, the Working Group recommended that the General Assembly should approve the amendments to the rules of procedure of the United Nations Appeals Tribunal, as reproduced in documents A/66/86, annex II, and Add.1. It also recommended that the text of those approved amendments should be annexed to a draft resolution for adoption by the General Assembly.

7. Concerning the rules of procedure of the United Nations Dispute Tribunal, the proposed amendment to article 19 (Case management), as reproduced in document A/66/86, annex I, had raised concerns among delegations. The existing provision set out in article 19 had been deemed sufficient to guide the judges and enable them to take the necessary measures to manage

their cases effectively. The Working Group did not, therefore, recommend the approval by the General Assembly of the proposed amendment.

8. Concerning the draft code of conduct for the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, prepared by the Internal Justice Council and annexed to document A/65/86, the Working Group recommended its approval by the General Assembly, but with a number of amendments, namely: the addition of a new first preambular paragraph referring to the Charter of the United Nations; harmonization of the language in paragraph 2 (c) (ii) with article 27 of the rules of procedure of the United Nations Dispute Tribunal concerning conflict of interest; deletion of the final two sentences of paragraph 2 (i); replacement of the word "Convention" with "Covenant" in paragraph 6 (b); and deletion of paragraph 6 (f) on the power of judges to maintain order in the courtroom, an issue that should instead be addressed in the rules of procedure of both Tribunals. The Working Group also recommended that the amended version of the draft code of conduct should be annexed to a draft resolution for approval by the General Assembly.

9. In addition, the Working Group recommended that the Chair of the Sixth Committee should send to the President of the General Assembly a letter, a copy of which had been circulated in the meeting room, drawing his attention to certain specific issues relating to legal aspects of the reports under the item, as discussed within the Committee, and to issues on which further information or additional clarifications were sought. In accordance with past practice, the letter should also contain a request that it be brought to the attention of the Chair of the Fifth Committee and circulated as a document of the General Assembly.

10. **Ms. Kakee** (Japan) said that her delegation wished to reserve its position with respect to the paragraph in the letter concerning the number of judges of the United Nations Dispute Tribunal.

11. **Mr. Skalski** (Switzerland), supported by **Ms. Millicay** (Argentina), suggested that the paragraph in the letter dealing with redress mechanisms for non-staff personnel should include a reference to the possibility of access for all four categories of those personnel to informal systems of redress, as had been mooted during the discussions of the Working Group.

12. **The Chair** said that those comments would be taken into account and that the Committee would revert to considering the recommendations of the Working Group at a later stage.

**Agenda item 84: The scope and application of the principle of universal jurisdiction** (*continued*)  
(A/66/93 and Add.1)

13. **Mr. Ulibarri** (Costa Rica), Chair of the Working Group on the scope and application of the principle of universal jurisdiction, reported that pursuant to General Assembly resolution 65/33 of 6 December 2010, the Sixth Committee had decided, at its 1st meeting, on 3 October 2011, to establish a working group to undertake a thorough discussion of the scope and application of universal jurisdiction. It had also decided to open the Working Group to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency. At its 7th meeting, on 6 October 2011, it had elected him Chair of the Working Group.

14. The Working Group had had before it the Secretary-General's reports on the scope and application of the principle of universal jurisdiction for 2011 (A/66/93 and Add.1) and 2010 (A/65/181). Pursuant to an understanding reflected in the Committee's report to the General Assembly on the item in 2010 (A/65/474, para. 4), the Working Group had also had before it two informal compilations of potential relevance to its work, prepared by the Secretariat, one comprising multilateral and other instruments and the other consisting of decisions of international tribunals. In addition, the delegation of Chile had presented a non-paper intended to facilitate discussions (A/C.6/66/WG.3/DP.1), which delegations had considered useful enough to merit consultations and further study. The non-paper and the two informal compilations had been made available to delegations through the Sixth Committee eRoom.

15. The Working Group had held three meetings, on 13, 14 and 20 October 2011, conducting its work in the framework of informal consultations against the backdrop of the plenary debate at the 12th and 13th meetings of the Sixth Committee on 12 October 2011.

16. Its first meeting had been devoted to exploring the expectations of delegations on how to accomplish the mandate of General Assembly resolution 65/33, the road map for discussion and the anticipated outcomes.

After consultations by the Chair, a representative of the International Committee of the Red Cross, which had observer status in the General Assembly, had been authorized by the Working Group to attend and take the floor in its discussions.

17. At the second meeting of the Working Group, the Chair had presented a non-paper comprising informal working notes. The ensuing discussion had focused in particular on the perceived areas of agreement concerning the methodology of work and the issues to be addressed. On the basis of the comments made, the Working Group had agreed and adopted at its third meeting a methodological and thematic framework for structuring its substantive discussions.

18. No delegation had rejected the concept of universal jurisdiction, but the approaches to its meaning, scope and application had been many and varied. A wide majority of delegations had acknowledged the importance of universal jurisdiction as a tool in the fight against impunity for the most serious crimes against humanity. Some had expressed the view that it should be used only exceptionally and that preference should be given to other criteria for the exercise of jurisdiction, such as territoriality or nationality. Others had stressed the need to ensure that universal jurisdiction was responsibly exercised, in conformity with international law and without abuse. The International Court of Justice and its decisions on the matter had also been mentioned as resources in cases of presumed abuse.

19. The relevance of a role for the International Law Commission in addressing the issues under discussion by the Working Group was debated in the light of its expertise, technical approach and work on the obligation to extradite or prosecute (*aut dedere aut judicare*). Some delegations would have preferred the Commission to have dealt with the topic from the outset, but a substantial number were of the view that, as mandated by General Assembly resolution 65/33, the discussion should take place within the Sixth Committee. It had been generally recognized, however, that the possibility of a role for the Commission should not be ruled out.

20. With respect to methodology, delegations had agreed to focus on the legal aspects implied by the item, and to take a step-by-step approach, addressing clusters of identified issues sequentially. In accordance with the mandate of resolution 65/33, the Working

Group had identified three clusters of issues for discussion, covering the definition, the scope and the application of universal jurisdiction, albeit without excluding the consideration of other relevant aspects in each case.

21. Concerning the definition, the Working Group had sought to gain a clearer sense of how universal jurisdiction was understood, focusing on its elements from the perspective of international law and, as appropriate, domestic law, while also taking into account the role or purpose of universal jurisdiction. With regard to the scope, the Working Group had focused in particular on the specific crimes to which universal jurisdiction was applicable. Concerning the application, the Working Group had considered such issues as the conditions and criteria for the exercise of universal jurisdiction, the role of national judicial systems, the interaction with other issues of international law, and matters relating to international cooperation and mutual assistance. In addressing those three clusters, the Working Group had considered that it would be appropriate to draw on a variety of frameworks and sources, including treaties, customary international law and national legislation, in addition to national, regional and international case law.

22. The discussions had culminated in a working paper that spelt out the methodology agreed by the Working Group, namely: the conduct of discussions within the Sixth Committee, focusing on specific issues, in line with the content and mandate of General Assembly resolution 65/33, and taking into account the potential role of the International Law Commission, as appropriate; the adoption of a step-by-step approach; the framing of discussions within reasonable limits; the exploration of matters of context, overlapping and/or interaction among different issues, as appropriate; an emphasis on legal matters; and the consideration of issues on the light of various frameworks and sources.

23. The working paper also enumerated the issues to be discussed, namely the three clusters comprising the definition of the concept of universal jurisdiction; the scope of universal jurisdiction; and the application of universal jurisdiction. The working paper would be made available in the eRoom as a document of the Working Group.

24. It was important to stress that the working paper set out the methodology and thematic outline for the conduct of discussions by the Working Group with the

aim of fulfilling its mandate. The topics appearing in each of the three clusters, as well as the sources that might be taken into account, constituted lists that were descriptive and open, not prescriptive, exhaustive or closed. The reports of the Secretary-General, the compilations by the Secretariat and the non-paper presented by Chile, referred to earlier, would also continue to inform the work of the Working Group.

25. Speaking in his personal capacity, he said that the Working Group must focus on pursuing its goals with a practical sense of purpose and direction in order to translate its mandate into meaningful results for the benefit of the international community. To that end, a clear definition of universal jurisdiction and its relationship with other concepts was essential. As to the scope of universal jurisdiction, it would make sense to explore the common understanding that was achievable on the scale between the minimalist and maximalist positions. With respect to the application of universal jurisdiction, differences of opinion were inevitable, and efforts should therefore focus on developing a set of guidelines designed to settle the key issues. Concerning the role of the International Law Commission, a decision was not yet appropriate, insofar as it would depend on the Working Group's success in fulfilling its mandate. In short, all issues relating to universal jurisdiction must be approached with a view to enhancing its use in the light of its sheer relevance and irrespective of differences of opinion concerning its application.

**Agenda item 169: Observer status for the International Renewable Energy Agency in the General Assembly** (*continued*) (A/C.6/66/L.4)

26. **Mr. Alshemali** (United Arab Emirates) announced that Algeria, Australia, Bahrain, Belgium, Czech Republic, Egypt, Finland, France, Germany, Italy, Japan, Jordan, Kuwait, Montenegro, Nauru, Netherlands, New Zealand, Nicaragua, Palau, Papua New Guinea, Philippines, Portugal, Saudi Arabia, Serbia, Spain, Thailand and the United States of America had become sponsors of draft resolution A/C.6/66/L.4.

27. **Mr. Lundkvist** (Sweden) said that his delegation also wished to sponsor the draft resolution.

28. **Mr. AlFarhan** (Saudi Arabia), noting the importance of renewable energy, expressed his delegation's strong support for the draft resolution. His

Government had recently ratified the Statute of the International Renewable Energy Agency, and the procedures for its membership of the Agency were accordingly nearing completion.

29. *Draft resolution A/C.6/66/L.4 was adopted.*

*The meeting rose at 4.15 p.m.*