



SUMMARY RECORD OF THE 39th MEETING

Chairman: Mr. FONTAINE-ORTIZ (Cuba)

Chairman of the Advisory Committee on Administrative  
and Budgetary Questions: Mr. MSELLE

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The meeting was called to order at 10 a.m.

AGENDA ITEM 111: PROGRAMME PLANNING (continued) (A/C.5/41/59; A/C.5/41/L.13)

1. The CHAIRMAN said that document A/C.5/41/L.13 contained a draft resolution that he was submitting for consideration by the Committee following informal consultations conducted by the representative of Cameroon.
2. Mr. MURRAY (United Kingdom) asked for consideration of the item to be deferred to a later meeting to allow time for further consultations.
3. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee agreed to revert to the item at a later meeting.
4. It was so decided.

AGENDA ITEM 117: PERSONNEL QUESTIONS (continued)

- (b) RESPECT FOR THE PRIVILEGES AND IMMUNITIES OF OFFICIALS OF THE UNITED NATIONS AND THE SPECIALIZED AGENCIES AND RELATED ORGANIZATIONS: REPORT OF THE SECRETARY-GENERAL (continued) (A/C.5/41/12; A/C.5/41/L.12)

Draft resolution A/C.5/41/L.12

5. Mr. KOOIJMANS (Netherlands), introducing draft resolution A/C.5/41/L.12 on behalf of its sponsors, said that the Secretary-General's statement to the Committee on 17 November 1986 showed how wide the gap was between his notion of how international civil servants and Member States should interact and the reality described in his report (A/C.5/41/12). The latter was a factual account of cases involving the safety and well-being of United Nations officials, and of the impediments created by Member States to the work of those officials. Unfortunately, the past year had seen an increase in the number of cases in which the lives of United Nations officials had been put in danger, together with other developments that had an impact on their proper functioning. He therefore called on Member States to take the Secretary-General's observations to heart, in the hope that they would act on their common responsibility to guarantee adequate protection for international civil servants within the United Nations system in the performance of their tasks.
6. The sole purpose of the draft resolution was to give the Secretary-General full support in his efforts to safeguard the well-being and functioning of United Nations staff. In the past, there had been a broad consensus among Member States to support the Secretary-General in such efforts, and his delegation was confident that they would wish to renew the Secretary-General's mandate to pursue all existing and future cases involving violation of the privileges and immunities of United Nations officials. The draft resolution attempted to make a substantive response to the concerns expressed in the Secretary-General's report. It enjoyed the support of many delegations besides the sponsors and he therefore recommended that the Committee adopt it by consensus.

7. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt draft resolution A/C.5/41/L.12 without a vote.
8. It was so decided.
9. Mr. KHALEVINSKIY (Union of Soviet Socialist Republics) said that his delegation had noted with concern the recent flagrant violation of the privileges and immunities of United Nations officials at Headquarters. Its position - which was one of strong condemnation of the steps taken to restrict the movements of officials from certain countries to within a radius of 25 miles from Headquarters and to limit the representation of a number of missions - had been stated in detail in the Committee on Relations with the Host Country. Accordingly, his delegation trusted that the General Assembly would condemn the growing number of cases where the normal functioning of officials was being affected. It would have preferred paragraph 2 of the draft resolution to give details of the emerging trends in respect of violations of the privileges and immunities of officials of the United Nations; those details had been given in document A/C.5/41/12. Finally it hoped that the host country would reconsider the measures it had taken.
10. Mr. MICHALSKI (United States of America) drew attention to the position taken by his delegation in the Committee on Relations with the Host Country and to the general statement it had made in the Fifth Committee on personnel questions.

AGENDA ITEM 110: PROGRAMME BUDGET FOR THE BIENNIUM 1986-1987 (continued)

Judgement No. 370 of the United Nations Administrative Tribunal related to the suspension of class 12 post adjustment in New York as at 1 December 1984 (continued) (A/C.5/41/35; A/C.5/41/L.6/Rev.1)

11. The CHAIRMAN said that the Committee had to take separate decisions on the recommendations in the report of the Secretary-General (A/C.5/41/35) and on the draft resolution sponsored by the Soviet Union and the United States of America (A/C.5/41/L.6/Rev.1). However, since informal consultations had shown that there was no consensus on the draft resolution, he wished to know if the sponsors wished to press for its adoption or to withdraw it.
12. Mrs. EMERSON (Portugal) said that her delegation would not contest the judgement of the Administrative Tribunal that the decision of the International Civil Service Commission to suspend implementation of the increase in post adjustment for New York as from 1 December 1984 did not comply with certain procedural requirements and therefore had no legal force. However, since the Organization was now required to pay some \$2 million as a result, she wished to know what requirements had not been met and whether the error could have been avoided.
13. Mr. MILLER (Office of Legal Affairs) said that there was no simple answer to the question. The request to ICSC in General Assembly resolution 39/27 to take the necessary measures to suspend implementation of the increase in post adjustment for New York envisaged for December 1984 had been adopted only on 30 November 1984.

(Mr. Miller)

Under the rules of procedure of ICSC, its Chairman could not take such action, which would normally require a meeting of the full Commission to take the necessary decision. There was a possibility of taking such a decision without a meeting of the Commission, but the Commission had first to agree to such a procedure.

14. In an effort to respond to the urgency of the situation, the Chairman of ICSC had sent telegrams to all Commission members requesting decisions both to suspend implementation of the increase in post adjustment and not to hold a full meeting of the Commission for that purpose. The members had agreed, but the Administrative Tribunal had ruled 18 months later that the two issues should have been decided in separate stages. The Tribunal recognized that its view was somewhat legalistic, but considered that the rules of procedure were an important part of due process, especially where staff rights were concerned, and so had to be strictly followed. The sort of error that had occurred could scarcely have been foreseen and had escaped notice because of the urgency of the situation.

15. Mr. MICHALSKI (United States of America), speaking also on behalf of the delegation of the Soviet Union, said that the two delegations were seriously concerned at Judgement No. 370 of the Administrative Tribunal. They had therefore proposed in draft resolution A/C.5/41/L.6/Rev.1 that the Secretary-General study whether the Tribunal should continue to deal with applications involving the common system whose financial implications were in excess of \$200,000. Although some delegations supported such a study, it had not been possible to reach consensus and the two sponsors therefore agreed to defer action on the matter to some future session when there was more time for its consideration.

16. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to revert to the matter at a future session.

17. It was so decided.

18. The CHAIRMAN proposed that, on the basis of the Advisory Committee's recommendation, the Fifth Committee should recommend to the General Assembly that, after considering the report of the Secretary-General and the related report of the Advisory Committee, it should approve the Secretary-General's proposal to charge the additional expenditures shown in paragraph 8 of his report (A/C.5/41/35) against the overall balance of appropriations for the biennium 1984-1985 to be retained as a result of the suspension of financial regulations 4.3, 4.4 and 5.2 (d).

19. Mr. VISLYKH (Union of Soviet Socialist Republics) expressed regret at the Committee's having to take such a decision and said that his delegation could not go along with the Tribunal's judgement, which was totally devoid of logic and would undermine justice rather than strengthen it. Nor could his delegation agree with the method proposed by the Secretary-General for implementing the judgement. The decision to suspend certain financial regulations referred to in paragraph 9 of the Secretary-General's report had been taken with a view to easing the Organization's financial situation. To propose that funds which had been accumulating in the

(Mr. Vislykh, USSR)

Special Account should be used for raising the salaries of United Nations officials was something of a bad joke, and his delegation could not reconcile that proposal with the emotional tone of the language used by the Secretary-General in describing the difficulties which the Organization was facing. His delegation would therefore vote against the proposal. It noted with regret that, judging from the position they were taking, the Secretariat and a number of delegations which were constantly expressing concern about the financial situation seemed to be lacking in sincerity. The decision would have an impact on the attitude of States which were being asked to give financial assistance to the United Nations.

20. Mr. MURRAY (United Kingdom) said that his delegation had not welcomed the decision of the Administrative Tribunal, the effect of which was to frustrate General Assembly resolution 39/27. However, recognizing that the decision represented the result of due legal process, his delegation would vote in favour of the Secretary-General's proposal.

21. At the request of the representative of the Soviet Union a recorded vote was taken.

In favour: Algeria, Argentina, Australia, Bahrain, Bangladesh, Barbados, Belgium, Bhutan, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Burma, Burundi, Cameroon, Canada, Central African Republic, China, Colombia, Congo, Côte d'Ivoire, Cuba, Denmark, Ecuador, Egypt, Finland, France, Germany, Federal Republic of, Greece, Guatemala, Guinea, India, Indonesia, Iraq, Israel, Italy, Japan, Jordan, Kuwait, Lesotho, Liberia, Madagascar, Malawi, Malaysia, Maldives, Mali, Mauritania, Mexico, Morocco, Netherlands, Norway, Oman, Panama, Peru, Philippines, Portugal, Qatar, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Spain, Sri Lanka, Swaziland, Sweden, Syrian Arab Republic, Thailand, Trinidad and Tobago, Tunisia, Turkey, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Venezuela, Yemen, Yugoslavia, Zaire, Zambia.

Against: Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, German Democratic Republic, Hungary, Mongolia, Poland, Romania, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.

Abstaining: Singapore.

22. The proposal was adopted by 79 votes to 10, with 1 abstention.

23. Mr. EDON (Benin), Mrs. CARRASCO (Bolivia), Mr. PALMA (Honduras), Miss DURRANT (Jamaica), Mr. MUDHO (Kenya), Mr. JOSHI (Nepal) and Mr. ETUKET (Uganda) said that had they been present during the voting they would have voted in favour of the proposal.

24. Mr. MICHALSKI (United States of America) said that his delegation had supported the proposal because it took seriously the concept of the rule of law. The Administrative Tribunal had reached a decision and the General Assembly had no choice but to comply with it. However, it was concerned about judgements of the Tribunal that had serious financial implications for Member States. It had no objection to the Secretary-General's financing the payment referred to from the funds intended to ease the financial emergency of the United Nations. The decision must not, however, be interpreted as a rejection of General Assembly resolution 39/27.

25. Mr. GITSOV (Bulgaria) noted that his delegation had consistently opposed proposals which could bring about an unacceptably high margin between the net remuneration of United Nations officials and that of the comparator civil service. It regretted the decision just taken, which ran counter to General Assembly resolution 39/27 and would, in effect, widen that margin. His delegation viewed the use of the Special Account to finance the implementation of the judgement as inappropriate and had therefore voted against the proposal.

26. Mr. LADJOUZI (Algeria) said that his delegation had voted in favour of the Secretary-General's proposal because it felt that the United Nations was legally bound to implement judgements of the Tribunal when they became final. Moreover, judging from the last sentence in paragraph 7 of the Secretary-General's report the Secretary-General had taken the current financial situation into consideration. Finally, the financial situation was temporary and should not be the overriding factor in the Committee's consideration of all items on its agenda.

The meeting rose at 11.20 a.m.