



Economic and Social Council

Provisional

14 December 2000

Original: English

Resumed substantive session of 1999

Provisional summary record of the 51st meeting

Held at Headquarters, New York, on Thursday, 16 December 1999, at 10.30 a.m.

President: Mr. Fulci..... (Italy)

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The meeting was called to order at 10.45 a.m.

Adoption of the agenda

1. *The agenda was adopted.*

Report of the Joint Inspection Unit on the Administrative Committee on Coordination (E/1999/123 and Add.1; E/1999/L.61)

2. **Mr. Civili** (Assistant Secretary-General for Policy Coordination and Inter-Agency Affairs), Secretary of the Administrative Committee on Coordination, commenting on the report of the Joint Inspection Unit (JIU/REP/99/1), said that the Council clearly attached great importance to its inter-agency responsibilities and to its dialogue with the Committee, coordination being central to the mandates of both bodies. Over the years, the concept had given rise to various interpretations, and had even been used to illustrate the so-called “centralizing ambitions” of the United Nations, as well as the weaknesses of the links binding the system. However, the authors of the Charter of the United Nations had clearly viewed coordination as the principal means by which the Organization was to achieve its objectives in the economic and social fields. The concept of coordination, as embodied in the Charter, encompassed both the requirement to respect the competencies and prerogatives of the specialized agencies, and the capacity of the United Nations to identify common directions for the work of the Organization.

3. The Economic and Social Council and the Administrative Committee on Coordination had always drawn strength from each other. The Council, in exercising its own coordination role, could only benefit from a strong and effective Committee. Moreover, the capacity of the Committee to advance system-wide coordination could be viewed as a function of the intergovernmental environment within which it operated, and which the Council had a central role in shaping. Successful coordination required the development of a coherent common framework based on the policies and actions of the agencies, yet transcending them. The global conferences of the 1990s had served to strengthen the coordinating role of both the Council and the Committee by creating policy consensus for a solid framework of objectives, notably poverty eradication. Significantly too, the conferences

and their follow-up had been inclusive and participatory in character.

4. As highlighted in the report, the reforms under way in both the Committee and the Council were mutually reinforcing and were in line with the original meaning of coordination embodied in the Charter. Thanks to more continuous dialogue between the Council and the Committee, there was a renewed sense of common purpose and confidence in the central intergovernmental processes. There was also a renewed sense among Governments and specialized agencies that no one possessed all the answers, or the capacity to respond single-handedly to the new challenges arising from globalization. The Committee furthermore appreciated the recognition in the report of the progress made in terms of enhancing system-wide coherence and coordination.

5. The Committee, far from being complacent, however, was embarking on a further review of its work; the report would provide important guidance to that end, and help enhance its capacity to support the work of the Council.

6. *Draft resolution E/1999/L.61 (“Joint Inspection Unit report on the review of the Administrative Committee on Coordination and its machinery”) was adopted.*

7. **Mr. Fins-do-Lago** (Observer for Portugal) lamented the fact that the draft resolution had yet to be circulated in all the official languages.

Economic and environmental questions: international cooperation in tax matters (E/1999/84) *(continued)*

8. **The President** suggested that the Council should postpone consideration of the agenda item until the substantive session of 2000, as agreed in informal consultations, and in view of ongoing consultations on the report of the Secretary-General on the ninth meeting of the Ad Hoc Group of Experts on International Cooperation in Tax Matters (E/1999/84).

9. *It was so decided.*

Programme of work for the Committee for Development Policy

Draft resolution E/1999/L.62: Report of the Committee for Development Policy

10. **Mr. Robertson** (New Zealand) pointed out that in the last line of paragraph 5, the word “can” should be replaced by the word “could”, as agreed in informal consultations.

11. **The President** expressed deep regret that the draft resolution had yet to be circulated in all the official languages, a state of affairs which reflected poorly on the work of the Secretariat and the credibility of the Organization. He intended to meet with the Secretary-General to express his concern that the Council was treated as the Cinderella of the Organization and that its work was accorded insufficient priority. It was to be hoped that the document would be made available during the course of the meeting, until which time consideration of the draft resolution would be suspended.

12. *It was so decided.*

Advisory opinion of the International Court of Justice on the difference relating to immunity from legal process of a special rapporteur of the Commission on Human Rights (E/1999/121 and 124)

13. **The President** deplored the fact that the letter dated 15 December 1999 from the Secretary-General to the President of the Economic and Social Council (E/1999/124) had only been made available that morning, allowing no time for the informal consultations which were now traditional. It was unacceptable that the document had only been circulated in English; the Council should postpone consideration of the document until the following session.

14. **Mr. Corell** (Under-Secretary-General for Legal Affairs, The Legal Counsel) said that the letter dated 19 October 1999 from the Secretary-General to the President of the Economic and Social Council (E/1999/121) gave detailed information on the case of Dato' Param Cumaraswamy, a Special Rapporteur of the Commission on Human Rights. The item related to the fundamental interests of the United Nations in protecting the legal framework of the Convention on the Privileges and Immunities of the United Nations. In its advisory opinion of 29 April 1999, the International

Court of Justice had upheld the Secretary-General's finding that Dato' Param Cumaraswamy was entitled to immunity from legal process.

15. Such privileges and immunities were granted in the interests of the Organization, not for the personal benefit of the individuals. Moreover, the privileges and immunities accorded pursuant to the Convention had been reproduced in the Malaysian legislation giving effect to Malaysia's ratification of the Convention.

16. An intervention in national courts to give effect to a Government's international treaty obligations did not constitute interference with the independence of the judiciary; that principle was recognized in Malaysian law.

17. The Secretary-General maintained that the Malaysian Government should take the necessary steps to implement the advisory opinion by issuing a written certificate confirming that the Court had upheld the Secretary-General's finding that Dato' Param Cumaraswamy was entitled to immunity from legal process and that Malaysia had an obligation to give effect to that immunity.

18. Introducing the letter dated 15 December 1999 from the Secretary-General to the President of the Economic and Social Council (E/1999/124), he said that in its advisory opinion, the Court had also found that Dato' Param Cumaraswamy must be held financially harmless from any costs imposed by the Malaysian courts, in particular taxed costs. The United Nations had submitted a claim for reimbursement to the Government of Malaysia, as detailed in the letter.

19. **The President** said that in view of its practice of holding informal consultations on all issues, the Council would have appreciated being informed earlier. He would advise delegations not to comment on that aspect of the matter.

20. **Mr. Corell** (Under-Secretary-General for Legal Affairs, The Legal Counsel) explained that confirmation of receipt of the payment had only been received the previous day.

21. Once the advisory opinion was implemented and the competent courts had dismissed the lawsuits, the plaintiffs would not be left without legal recourse. In accordance with the Convention, the United Nations must make provisions for appropriate modes of settlement of such disputes. Unless agreed otherwise by the parties, such disputes were traditionally

submitted to third parties for arbitration. In view of Malaysia's impeccable record, the Secretary-General appealed to the Government to make the necessary efforts to give effect to the Convention, the advisory opinion and Council resolution 1999/64. The Secretary-General was concerned that the advisory opinion of the Court, the principal judicial organ of the United Nations, should be promptly implemented, and he hoped that Member States shared that concern.

22. **Mr. Hynes** (Canada) said that he appreciated the efforts of the Legal Counsel to keep the Council informed. The information provided that morning did not call for any immediate action on the part of the Council. His delegation shared the concern of the Secretary-General over the lack of progress in securing compliance with the advisory opinion. The Council was duty-bound to do everything in its power to encourage compliance by the Government of Malaysia. His delegation strongly supported all efforts to that end and trusted that the Secretary-General would continue to keep the Council informed of developments.

23. **Mrs. Mäkinen** (Observer for Finland), speaking on behalf of the European Union, said that, despite the earlier announcements by the Government of Malaysia that it fully recognized the binding character of the advisory opinion of the International Court of Justice, it appeared from document E/1999/121 that four civil suits against the Special Rapporteur on the independence of judges and lawyers were still pending in the Malaysian courts. The European Union remained concerned that Malaysia had so far failed to abide by its obligation under the Convention on the Privileges and Immunities of the United Nations to accept the Court's advisory opinion as decisive. The Union called on the Government of Malaysia to cooperate fully with the Secretary-General, and to ensure that its international obligations were met and that the Special Rapporteur's immunity from legal process was respected. The Government had not yet made full use of its national legal framework for giving effect to the Special Rapporteur's immunity.

24. The advisory opinion had been requested by the Council, with the support of the Government of Malaysia, and the Council had a responsibility to continue to follow the matter closely until it was resolved. The European Union looked forward to receiving further information on the outcome of contacts with the Government. Meanwhile, it wished to know when the four certificates of immunity had been

issued by the Government of Malaysia, and specifically whether before or after the advisory opinion had been delivered. The European Union would also like to know how any new certificates would have to differ in content in order to give effect to the advisory opinion, and what the financial implications of the lawsuits had been to date for the Special Rapporteur and for the United Nations.

25. **Mr. Kama** (Observer for Malaysia) said that his Government had consistently upheld the principles of the Charter of the United Nations and faithfully fulfilled its obligations under international treaties. It was not a party to the four civil suits instituted against the Special Rapporteur, who had been sued in a civil court for libel and defamation by private companies and individuals claiming that he had made remarks that brought them into public odium and contempt. The Government had conveyed to the judiciary its wish to comply with the advisory opinion of the International Court of Justice, through various channels. The Ministry of Foreign Affairs had informed the Chief Registrar of the Federal Court of the advisory opinion on 27 May 1999. On 1 June 1999 the Attorney General had conveyed the advisory opinion to the Chief Justice of Malaysia. On 12 March 1997 the Minister for Foreign Affairs had filed a certificate with the trial court, attesting the Special Rapporteur's immunity. The necessity or otherwise of issuing a new certificate would be determined at the appropriate time on the advice of the Attorney General, since the proceedings against the Special Rapporteur were still in progress.

26. It was an internationally accepted principle of law that the judicial arm of government was expected to enjoy independence from the executive arm. His Government adhered to that principle and was thus not in a position to direct either the courts or the parties to the suit to accept the advisory opinion of the International Court of Justice, particularly given that the Special Rapporteur's mandate concerned the independence of judges and lawyers. The Government would therefore exercise its right to wait and see what action was taken by the respective parties in each case, before the United Nations could be informed of its next step.

27. In stating that the United Nations had conferred absolute and unlimited immunity on its special rapporteurs, the Prime Minister of Malaysia had had in mind the effect of the decision by the International Court of Justice that the Secretary-General had the

authority to determine whether a statement by a special rapporteur was made in the performance of his mandate. That would appear to prevent the Government of any Member State from holding views about a special rapporteur's performance of his mission. The Convention on the Privileges and Immunities of the United Nations, to which his Government was a party, had been effected long before the development of the role of special rapporteurs and the evolution of social and human rights matters.

28. The determination made by the Secretary-General raised questions of facts and law of concern to Malaysia with which the Court had refused to deal directly, rather emphasizing the importance of the Secretary-General's role in making a determination to protect the so-called human rights mechanism. His Prime Minister's remarks were therefore understandable, if there was neither a built-in mechanism to check a special rapporteur's conduct nor any subsequent endorsement by the Council of the views of the Subcommission on Prevention of Discrimination and Protection of Minorities. A determination by the Secretary-General that merely endorsed a pronouncement by the Council and the Subcommission, based on the premise that the human rights mechanism must be protected, would render absolute and unlimited an immunity that purported to be functional.

Draft resolution E/1999/L.62: Report of the Committee for Development Policy (continued)

29. **Mr. Chowdhury** (Observer for Bangladesh) said that it would have been appropriate to have laid more stress in the draft resolution on the need for the Committee for Development Policy to adjust its work programme so that it could take into account two important forthcoming meetings, the tenth session of the United Nations Conference on Trade and Development and the Third United Nations Conference on the Least Developed Countries. It was essential that the Committee should make its recommendations on revised criteria as soon as possible. He was in favour of the draft resolution being adopted, but his strictures should be borne in mind.

30. **Mr. Robertson** (New Zealand) said he hoped that the draft resolution would be flexible enough to allow for changes to the work programme, if a decision to that effect were taken.

31. **Mr. Rabuka** (Observer for Fiji) said, in relation to paragraph 5, that much additional work was required and the draft resolution should take that fully into account. The revised criteria that would emerge transparent and able to stand the test of time.

32. *The draft resolution, as orally amended, was adopted.*

Election of five members of the Executive Board of the World Food Programme

Election of two members of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting

33. **The President** recalled that the Council had postponed elections to the Executive Board of the World Food Programme (WFP) until the Food and Agriculture Organization of the United Nations (FAO) had taken action on General Assembly resolution 53/223, which had provided for a new distribution of seats on the Board. FAO had taken the necessary action in November 1999 and the Council had subsequently elected Hungary to the new seat allocated to the Group of Eastern European States (list E in the Basic Texts of WFP) for a three-year term beginning on 1 January 2000.

34. The Council was called upon to elect five members from among the States included in the lists in the Basic Texts of the WFP, for a three-year term beginning on 1 January 2000 to replace those whose terms expired on 31 December 1999. One member was to be elected from list A (African States), one from list B (Asian States), one from list C (Latin American and Caribbean States) and two from list D (Western European and Other States). The candidacies of Swaziland, the Islamic Republic of Iran and Mexico had been endorsed by their respective groups to fill the vacancies from lists A, B and C, while the two candidacies for list D were those of France and Japan.

35. *France, the Islamic Republic of Iran, Japan, Mexico and Swaziland were elected by acclamation.*

36. **The President** said that the Western European and Other States had endorsed the candidacy of Norway to complete the remainder of the term relinquished by Denmark until 31 December 2001.

37. *Norway was elected by acclamation.*

38. **The President** said that the Western European and Other States had endorsed the candidacy of France and Malta to fill the vacancies in the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting for a three-year term beginning on 1 January 2000.

39. *France and Malta were elected by acclamation.*

Other matters

40. **The President** invited the Council to turn to the question of seating arrangements.

41. *The Council decided by the drawing of lots that in 2000 China would take the first seat in the Council, followed by other Member States in alphabetical order.*

42. **Mr. Valdivieso** (Colombia) said it was regrettable that a matter discussed in informal consultations had not appeared on the agenda of the meeting, namely the initiative to bring forward the review of the Council's coordination instruments, given that coordination was one of its prime functions. There had been considerable progress over the past year, but a review should nonetheless be undertaken sooner rather than later. The Bureau had proposed the establishment of an advisory committee, and that could still be done. He understood that the Group of 77 and China wanted more time to consider the matter, but it would still be worth discussing at the Council's session in January 2000.

43. **The President** fully endorsed the views of the representative of Colombia. The failure to establish the advisory group was the only aspect of his original seven-point programme that had not met with full success, and he hoped that the next President would take the matter up. He noted that by rights 70 per cent of United Nations financial and human resources ought to be directed to the Council; that was a situation that should be preserved.

44. The day before the election of a new Bureau was traditionally devoted to bidding farewell to the outgoing one. The decision rather to hold a panel discussion on poverty eradication on the day in question, 26 January 2000, showed the Council's commitment to the issue.

45. He declared that the Council had completed its work for 1999.

The meeting rose at noon.