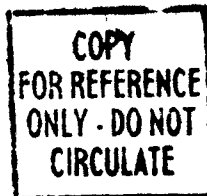




DEC 19 1984



FIFTH COMMITTEE
33rd meeting
held on
Friday, 23 November 1984
at 10.30 a.m.
New York

SUMMARY RECORD OF THE 33rd MEETING

Chairman: Mr. MAYCOCK (Barbados)

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

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PRESIDENT OF THE PRESIDUM OF THE SUPREME SOVIET OF THE UKRAINIAN SOVIET SOCIALIST
REPUBLIC

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- (a) REPORT OF THE NEGOTIATING COMMITTEE ON THE FINANCIAL EMERGENCY OF THE
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The meeting was called to order at 11.05 a.m.

TRIBUTE TO THE MEMORY OF HIS EXCELLENCY MR. ALEKSEY FEDOSSEEVICH VATCHENKO,
PRESIDENT OF THE PRESIDUM OF THE SUPREME SOVIET OF THE UKRAINIAN SOVIET SOCIALIST
REPUBLIC

1. The CHAIRMAN informed the members of the Committee of the death of Mr. Aleksey Fedosseevich Vatchenko, President of the Presidium of the Supreme Soviet of the Ukrainian Soviet Socialist Republic, and on their behalf offered his most sincere condolences to the deceased's family as well as to the Government and people of the Ukrainian Soviet Socialist Republic.
2. On the proposal of the Chairman, the members of the Committee observed a minute of silence in tribute to the memory of His Excellency Mr. Aleksey Fedosseevich Vatchenko, President of the Presidium of the Supreme Soviet of the Ukrainian Soviet Socialist Republic.
3. Mr. ABRASZEWSKI (Poland), on behalf of the Eastern European States, Mr. TOMMO MONTHE (Cameroon), on behalf of the African States, Mr. AOKI (Japan), on behalf of the Asian States, Ms. DURRANT (Jamaica), on behalf of the States of Latin America and the Caribbean and Mr. KOCATÚRK (Turkey), on behalf of the Western European and other States, paid tribute to the memory of Mr. Aleksey Fedosseevich Vatchenko.
4. Mr. RESHETNYAK (Ukrainian Soviet Socialist Republic) thanked the Chairman and the members of the Committee for their message of sympathy to the Ukrainian Government and people and to Mr. Vatchenko's family.

AGENDA ITEM 112: ADMINISTRATIVE AND BUDGETARY CO-ORDINATION OF THE UNITED NATIONS WITH THE SPECIALIZED AGENCIES AND THE INTERNATIONAL ATOMIC ENERGY AGENCY

- (a) REPORT OF THE ADVISORY COMMITTEE ON ADMINISTRATIVE AND BUDGETARY QUESTIONS (A/39/592)
 - (b) IMPACT OF INFLATION AND MONETARY INSTABILITY ON THE REGULAR BUDGET OF THE UNITED NATIONS: REPORT OF THE SECRETARY-GENERAL (A/C.5/39/44)
 - (c) FEASIBILITY OF ESTABLISHING A SINGLE ADMINISTRATIVE TRIBUNAL: REPORT OF THE SECRETARY-GENERAL (A/C.5/39/7 and Corr.1)
5. Mr. MSELLE (Chairman of the Advisory Committee on Administrative and Budgetary Questions) said that he had made a cursory study of the Secretary-General's report under sub-item (b), which he had received only that morning. In his opinion, there was very little that the Advisory Committee could add to the information contained in that report. He therefore saw no reason why the Fifth Committee should not consider the report without receiving a report from the Advisory Committee. The report relating to sub-item (c) did not call for any comment on the part of the Advisory Committee.

(Mr. Mselle)

6. Turning to sub-item (a), he reminded the Fifth Committee that the report submitted by the Advisory Committee at the thirty-eighth session (A/38/515) contained statistical information on the budgets of the specialized agencies and dealt with two other points, namely programme planning and cash flow problems. The report submitted to the thirty-ninth session (A/39/592) contained more detailed information on the budgets of the specialized agencies and comparative tables (sect. II). It also dealt with the budgeting practices of the specialized agencies. The discussions held with the agencies had covered such questions as inflation, exchange rates, categories of budget increase, delayed recruitment factors and apportioned costs. The information provided by each of the specialized agencies was summarized in section III of the report. The report did not deal with the budgeting practices of the United Nations, but delegations interested in that subject could consult the addendum to the programme budget for the biennium 1980-1981 (A/34/6/Add.1), which had been prepared in response to a request made by the General Assembly in section I of resolution 33/116 C.

7. The information provided on budgeting practices was not exhaustive, since the Committee had made a conscious decision to strive for conciseness in order to limit the number of pages of its report and avoid superfluous detail. However, the report did cover the main aspects necessary for an understanding of how the specialized agencies dealt with such factors as inflation and exchange rates. Those matters were discussed in paragraphs 7 to 17, which also touched upon co-ordination between the specialized agencies and standardization and harmonization of their budgeting practices. Noting the calls made at various times in recent years for greater budgetary "transparency", he emphasized that that concept had never been clearly defined, with some taking it to mean that the format of the budgets of the specialized agencies must be clear so that comparisons could be made, while others maintained that the format of their budgets should be identical. The Advisory Committee had noted that many similarities existed in the ways the agencies prepared their budgets, as a result of the considerable efforts made over the years to promote standardization and harmonization. However, it was inevitable - but that should be no cause for concern - that differences would remain in technique and approach which were the result of a variety of factors, such as the structure and size of an agency, the procedures of its legislative body and the nature of its programme. The Advisory Committee therefore considered that, while further effort at standardization and harmonization should be encouraged, it should also be borne in mind that the prime objective in preparing a budget should be to set forth the estimates in a manner which was clear and understandable to the governing body concerned and which was responsive to the special requirements of that body. The specialized agencies should give a clear and concise explanation of the methodology used in formulating their budget estimates, perhaps in the budget document itself.

8. Referring to the comparative tables listed in paragraph 18, he said that table D on voluntary funds administered by members of the United Nations system of organizations had been drawn up in response to the request made in the Fifth Committee at the thirty-fifth session. The data contained in the table were supplemented by information in paragraph 24 on the various voluntary funds and

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(Mr. Mselle)

programmes of the United Nations. He drew attention to a number of reports which had been prepared on various aspects of expenditures financed from extrabudgetary resources, including the report of the Director-General for Development and International Economic Co-operation on the operational activities for development of the United Nations system (A/39/417), the report of the Administrator of UNDP on regular and extrabudgetary technical co-operation expenditures financed from sources other than UNDP (DP/1984/66) and the report of the Administrative Committee on Co-ordination concerning the programme expenditures of the United Nations system. The various reports did not necessarily contain the same figures, since they did not cover the same periods and they approached the subject from slightly different angles. The Advisory Committee would have to do a considerable amount of analytical work if it was to provide comparable statistics. It would have to decide whether to base the report on contributions or expenditures, and, if the latter was chosen as a basis, it would have to determine how to take overheads into account. It would also have to take a decision on the period to be covered by the report and how to deal with special trust funds and specific-purpose contributions. Lastly, since the Advisory Committee had so far concerned itself mainly with the regular budget, it would also have to determine whether the descriptive part of the report should be completely reorganized. The Advisory Committee would continue to consider the best ways of presenting information concerning extrabudgetary resources and would report on the matter to the General Assembly at subsequent sessions.

9. Mr. FORAN (Controller) said that document A/C.5/39/44 on sub-item (b) was a follow-up to the Secretary-General's three previous reports (A/C.5/32/5, A/C.5/33/47 and A/C.5/37/39) and also made reference to the in-depth study prepared by the Secretary-General of the United Nations Conference on Trade and Development, circulated as document A/37/518. In paragraphs 4 to 11, an attempt had been made to analyse the generation and transmission of inflation. Paragraphs 12 to 15 reviewed the impact of inflation and monetary instability on the burden of sharing in the United Nations budget. He described the various stages in the analysis of those phenomena and their relation to the real economic growth of the contributing countries. Paragraphs 16 to 23 dealt with the effects of inflation and currency fluctuations on the United Nations budget by expenditure category. For the reasons set out in paragraphs 17 to 22, the rates of inflation and exchange rate fluctuations reported in the statistics issued by the countries in which the various duty stations were located were not appropriate indicators of the impact of price and exchange rate changes on the United Nations budget. They had been replaced, therefore, by cost indices relevant to the United Nations expenditure structure.

10. As explained in paragraph 17, annex I contained a summary table indicating the rates of exchange and inflation rates reported in programme budget performance reports for the last four bienniums in respect of four major duty stations (New York, Geneva, Nairobi and Vienna). Annex II contained two graphs attempting to show the cumulative impact of inflation on local currency expenditures at each of the four locations and the annual fluctuations by the value of the local currencies in relation to the United States dollar.

(Mr. Foran)

11. Paragraphs 24 to 26 contained some general conclusions. He noted in that connection that inflation was a very complex and highly debatable phenomenon, as had been demonstrated by the strikingly different views expressed on the subject in the Fifth Committee at previous sessions.

12. Mr. FLEISCHHAUER (Under-Secretary-General, The Legal Counsel), introducing the report of the Secretary-General on the feasibility of establishing a single administrative tribunal (A/C.5/39/7), said that the item ought to have been renamed "Harmonization and development of the statutes, rules and practices of the common-system administrative tribunals". The proposals presented in the report were the culmination of an extensive series of consultations involving all the other common-system organizations and, although it had not been possible to meet fully the desires of all those entities, or to achieve complete harmonization of the statutes of the two tribunals, the reforms envisaged with respect to the United Nations Administrative Tribunal and that of the ILO would go far towards bringing the practices of those two organs into close alignment while at the same time modernizing them through the first substantial set of amendments proposed in over 30 years.

13. Regarding the composition of the United Nations Administrative Tribunal (UNAT), the first element to which the proposed reforms were directed, he noted that all the common-system organizations and almost all the staff representative bodies had expressed a strong preference for two aspects of ILO practice, which were to be embodied in the statute of the ILO Administrative Tribunal (ILOAT). It was therefore proposed that the method of selecting the members of UNAT should be assimilated to those established in the past decade by the General Assembly for other inter-organizational administrative organs, such as the Joint Inspection Unit and ICSC. As to the qualifications of the members, it was proposed to specify that they should normally be persons holding or having held high judicial office and preferably also with experience in international administrative or labour law.

14. With regard to jurisdiction, some minor expansions were being proposed in respect of both tribunals, to enable them to consider cases brought by various types of employees who were not staff members. It was also proposed, but only tentatively and solely in respect of the statute of UNAT, that the Secretary-General, in consultation with the members of ACC, should be authorized to request advisory opinions on legal questions concerning the conditions of employment provided for or proposed for inclusion in the common system. Such opinions would be given by a new Review Panel, to consist of the Presidents or next most senior members of UNAT and ILOAT, under the chairmanship of an appointee of the President of the International Court of Justice. A principal purpose of that device would be to make it possible to test the legality of proposals relating to the conditions of employment of the staff before they were adopted and implemented. As the Secretary-General would be the only official empowered to request advisory opinions, it seemed appropriate that ILO should not consider it necessary to include a similar provision in the statute of ILOAT.

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(Mr. Fleischhauer)

15. One of the major differences between the two tribunals, in respect of which all staff organs and many of the organizations had preferred the ILO provision, was that ILOAT had full powers to require specific performance of its judgements, although it could specify an alternative monetary penalty for the defendant. Under the existing system, UNAT must always specify such a monetary alternative, leaving it to the Secretary-General to decide whether he wished to comply specifically or to pay the amount set by the Tribunal. In spite of very strongly expressed demands on that subject, the Secretary-General had considered, in view of the political nature of the organization, that he should not be required to surrender that discretionary power entirely. He proposed, therefore, that, while specific performance might be required by the Tribunal as to most administrative decisions, the existing restrictions should be maintained in respect of the assignment or reinstatement of staff members.

16. Another important difference between the powers of the tribunals was that there was no limit to the amount of compensation which ILOAT could grant, while UNAT was limited to two years of net base salary, unless it explained the reasons for its decision. Despite strong demands from the staff representative organs that that limit should be abolished, the Secretary-General had not considered that he should recommend a major departure in respect of a provision inserted in the Statute of UNAT by an amendment adopted by the General Assembly in 1953. Instead, he was proposing, by analogy with a provision recently adopted by the World Bank when it had established its Administrative Tribunal, to increase the limit to three years of net emoluments.

17. Although both tribunals had considered that they had the implicit power to award costs to applicants who prevailed, it had been considered useful to express that power explicitly in the statutes. Because in recent years numerous vexatious suits, without any conceivable merit, had been brought before the two tribunals, in particular that of ILO, most of the organizations had considered it important, despite opposition by staff representative organs, that they should be empowered to discourage such litigation by imposing, if they considered it appropriate, limited monetary penalties against the applicants concerned.

18. Certainly one of the most striking divergencies between the present régimes governing the two tribunals had been the way in which their judgements might be submitted for review by means of an advisory opinion of the International Court of Justice. In respect of ILOAT, that could be done only by the executive organ of the specialized agency concerned. In respect of UNAT, a review could be initiated by any Member State, by the Secretary-General or by the applicant concerned, even though the decision as to whether to allow the review was taken by the Committee on Applications for Review of Administrative Tribunal Judgements.

19. The procedure had not generally been satisfactory in either of the tribunals. In respect of UNAT, it had therefore been proposed that the existing procedure should be maintained, substantially unchanged, but only in respect of review proposals initiated by a Member State. Requests from the Secretary-General or the applicant would be referred to the new UNAT/ILOAT Review Panel. That Panel would

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be able to reject the review proposal outright, dispose of it on its merits or, by way of exception, request an opinion from the International Court of Justice. Some had indicated that the Review Panel would constitute an undesirable additional level of appeal but, in the light of the quite restricted grounds on which review proposals might be addressed to it and the special rules it was to adopt for the expeditious conduct of its business, its work should not encroach more noticeably on that of UNAT than the Committee on Applications for Review now did. Finally, it should be noted that it had been proposed, with the endorsement of the United Nations Joint Staff Pension Board, that those review procedures should also be made applicable to judgements relating to decisions of the Board.

20. As for the principal differences that would persist between the two tribunals should the proposals of the Secretary-General and those of the Director-General of ILO be adopted, he noted that UNAT, unlike ILOAT, would still be precluded from requiring specific performance in respect of reinstatements and staff assignments. Furthermore, the compensation that a tribunal might grant as a substitute for specific performance would still be unlimited in respect of ILOAT, but would normally be limited to three years of net emoluments in respect of UNAT, unless the latter explained why a higher amount was justified.

21. The procedure for reviewing tribunal judgements would also be different. In respect of UNAT, the decision to request an advisory opinion would be made by the existing Committee on Applications for Review if the request was made by a Member State, but by the proposed UNAT/ILOAT Review Panel if it was made by the Secretary-General, the Secretary of the Joint Staff Pension Board or the applicant. In respect of ILOAT, the executive organ of the organization concerned would decide all requests for advisory opinions. The opinion of the Review Panel might be sought if the review proposals originated with an executive organ or with a State, and would have to be sought if it originated with the executive head or with the applicant. Those differences in part reflected the fact that the United Nations had no executive organ corresponding to the Governing Body of ILO, and that the latter, unlike the General Assembly, was not empowered to create organs authorized to request advisory opinions of the International Court of Justice.

22. Apart from reducing the divergencies in the statutory provisions relating to the two common-system tribunals, several of the proposals must also be recognized as a step towards the possible unification of the tribunals. Thus the proposed Review Panel would in effect be a joint organ, although with somewhat different functions in respect of each tribunal. Similarly, the provisions relating to the appointment of assessors to analyse the cases submitted to the tribunals would assist in harmonizing their jurisprudence. The Secretary-General's report and the attached draft General Assembly resolution also contained suggestions for co-operation between the two tribunals, in particular for the establishment of joint administrative machinery to prepare indices and repertoires of decisions.

23. In conclusion, he said that the proposals relating to ILOAT had been submitted to the ILO Governing Body at its two hundred and twenty-eighth session and that the

(Mr. Fleischhauer)

latter had decided not to take a decision on those proposals until its next session, with a view to their final adoption at the International Labour Conference in June 1985.

24. The CHAIRMAN said that, in view of the extremely technical nature of the document on administrative tribunals submitted by the Secretary-General, the members of the Fifth Committee might wish to submit it to the experts of their respective Governments. The Director of the General Legal Division, Mr. Paul Szasz, was prepared to assist in informal consultations on the subject.

25. Mr. MURRAY (United Kingdom) said that his delegation had no objection to the informal consultations mentioned by the Chairman but thought that certain members of the Sixth Committee might be invited to participate or that a legal opinion regarding the proposed reforms should be requested from that Committee. He agreed with the Chairman that the experts of Member Governments would undoubtedly wish to examine the questions under consideration thoroughly and that it would therefore be inadvisable to try to settle the question at the current session.

26. Mr. MAJOLI (Italy) associated himself with the comments of the representative of the United Kingdom and pointed out that although the proposals contained in the report of the Secretary-General concerned the Fifth Committee in so far as they related to personnel administration, their legal aspects were the concern of the Sixth Committee. Before taking a position at the fortieth session, on the substance of the proposals in the report, the report should be submitted to the various Governments.

27. Mr. ORSATELLI (France) endorsed the comments of the representatives of the United Kingdom and Italy, for it appeared from the explanations given by the Legal Counsel that the report of the Secretary-General contained not only aspects that were a matter for the Fifth Committee but also legal aspects which clearly fell within the competence of the Sixth Committee; since the issue did not seem to be particularly urgent he proposed that the Sixth Committee should be seized of the matter so that it could voice an opinion on the legal aspects at the fortieth session.

28. Mr. ROY (India) agreed with the preceding speakers that the issue under consideration was a matter for both the Fifth and the Sixth Committees. His delegation could agree to the Chairman's proposal that informal consultations should be held with the assistance of the Director of the General Legal Division and the participation of some members of the Sixth Committee. He, too, believed that government legal experts should be given a chance to consider the report of the Secretary-General.

29. Mr. VISLYKH (Union of Soviet Socialist Republics) said that, after reading through the report of the Secretary-General quickly, he had serious misgivings about it for it contained numerous proposals which would radically alter the procedures, composition and operation of the Administrative Tribunals; those proposals should be studied cautiously and painstakingly, particularly from the

(Mr. Vislykh, USSR)

legal standpoint. In view of the fact, in particular, that the report referred to the means of access of Member States to the Administrative Tribunal it was absolutely essential that the Sixth Committee should be seized of the document before the Fifth Committee discussed it. Accordingly, the report should be referred to the Sixth Committee for consideration at the fortieth session; the Fifth Committee should not take it up until it had received the former's conclusions.

30. The CHAIRMAN said that he would talk to the Chairman of the Sixth Committee and, if necessary, with the President of the General Assembly in order to determine what procedure should be adopted and he would communicate their suggestions to the Committee.

AGENDA ITEM 111: FINANCIAL EMERGENCY OF THE UNITED NATIONS

- (a) REPORT OF THE NEGOTIATING COMMITTEE ON THE FINANCIAL EMERGENCY OF THE UNITED NATIONS;
- (b) REPORT OF THE SECRETARY-GENERAL (A/39/622; A/C.5/39/10 and Corr.1)

31. Mr. FORAN (Controller), introducing the report of the Secretary-General on the financial emergency of the United Nations (A/39/10 and Corr.1), recalled that, at the thirty-eighth session of the General Assembly, he had reported that a number of Member States had responded to the General Assembly's appeal and had paid their contributions more expeditiously than in 1982. As a result, as at 30 June 1983, the rate of payment of assessed contributions for 1983 had been well ahead of what it had been the previous year. He had also been able to report that the improved situation, combined with the increase in the Working Capital Fund and the funds resulting from the suspension of Financial Regulations 5.2 (d), 4.3 and 4.4, had permitted the Organization to get through the first nine months of 1983 without borrowing from other funds. It had therefore seemed as if the cash flow situation of the Organization had improved or was improving. Unfortunately, the same could not be said in 1984.

32. Section I of the report contained a financial report on the issue of special postage stamps for the conservation and protection of nature and showed that the net revenue from the sale of such stamps had come to \$1,249,795. Half of that amount, \$624,897, had been allocated to the United Nations Environment Programme; the Executive Director of UNEP would report to the Governing Council of UNEP at its next session on the utilization of those funds. The other half had been placed in the United Nations Special Account.

33. Section II of the report dealt with the current and foreseen extent of the deficit of the Organization; as at 30 September 1984, three quarters of the way through the fiscal year, only 53 Member States had paid in full their assessments for the 1984 regular budget, 31 Member States had made a partial payment and 73 Member States had made no payments. The situation had improved slightly since then - currently, 59 Member States had paid in full, 32 had made partial payments

(Mr. Foran)

and 66 had made no payments. The status of payments as at 23 November confirmed the pessimistic outlook which the Secretary-General had presented to the Fifth Committee at its thirteenth meeting; the rate of payment of assessed contributions should be a matter of grave concern to those who were concerned about the financial integrity of the Organization.

34. The suspension of the provisions of Financial Regulations 5.2 (d), 4.3 and 4.4 had been reviewed in paragraph 7 of the report; the final amount to be retained was estimated at about \$40 million, taking into account savings anticipated in the liquidation of obligations for the 1982-1983 biennium. It should, however, be noted that the entire amount had been required to meet the monthly cash needs of the Organization.

35. Section II, C, dealt with the extent, rate of increase and composition of the deficit, which had been estimated at \$356 million by the end of 1984, according to the figures given in annex IV.

36. Section II, D, on voluntary contributions, showed that 28 Member States had contributed \$42 million to the Special Account since its inception in 1965. The status of that account was shown in annex VII. It should be noted that the entirety of the Special Account had also been required to meet the monthly cash needs of the Organization.

37. Section III entitled "Conclusions", painted a rather gloomy picture of the situation and indicated that unless the situation improved in 1985 it would be necessary to consider possible revisions to the financial regulations. He drew attention to the table in annex II to the report, particularly to the last three columns which listed the contributions outstanding as at 30 September 1984. If Member States with outstanding contributions would pay those contributions and if all Member States forwarded their 1985 contributions early in the year there would not be any need to consider changing the financial regulations. However, unless Member States responded quickly to that appeal it was likely that the Organization would not have sufficient cash to meet its obligations at some point early in 1985.

The meeting rose at 12.35 p.m.