



Security Council

Provisional

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Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait

Provisional summary record of the 203rd meeting (closed)

Held at Headquarters, New York, on Tuesday, 15 August 2000, at 3.30 p.m.

Chairman: Mr. Van Walsum (Netherlands)

Contents

Letter dated 10 August 2000 from the Secretary-General

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The meeting was called to order at 3.45 p.m.

Adoption of the agenda

1. *The agenda was adopted.*

Letter dated 10 August 2000 from the Secretary-General (S/2000/790)

2. **Mr. Li Junhua** (China) said that the meeting had been convened at his delegation's request. In a letter dated 10 August 2000 and addressed to the President of the Security Council (S/2000/790), the Secretary-General had announced the appointment of Mr. Michel Tellings of the Netherlands and Mr. Morten Buur-Jensen of Denmark to serve as oil Overseers pursuant to paragraph 7 of Security Council resolution 1302 (2000). In that paragraph, the Council had requested the Secretary-General to appoint, in consultation with the Committee established by resolution 661 (1990), no later than 10 August 2000, the additional Overseers necessary to approve petroleum and petroleum product export contracts in accordance with paragraph 1 of resolution 986 (1995) and the procedures of the Committee established by resolution 661 (1990).

3. He asked the Secretariat and, in particular, the Office of the Iraq Programme (OIP), to clarify the Secretariat's understanding of paragraph 7 and to describe the criteria and procedures used in making the appointments in question. Furthermore, since, as far as he knew his delegation and, those of all other Committee members had been given no information on the background of the successful candidates, he asked the Secretariat to remedy the situation.

4. **The Chairman** confirmed that no delegation, including his own, had been provided with background information on the new oil Overseers despite the fact that one of them was a citizen of his own country, the Netherlands.

5. **Ms. Scheer** (Office of the Iraq Programme) said that the adoption of Security Council resolution 1302 (2000) had come as a surprise to the Secretariat; which had been given two months to resolve a problem with which the Committee had grappled unsuccessfully for two years. OIP had considered the Committee's procedures and the qualifications for the posts in question and had updated the terms of reference for the appointment, bearing in mind that OIP had not yet been

established when the original oil Overseers had been named.

6. On 28 June 2000, the Director of OIP had held an informal meeting at which Committee members had been briefed on the procedures to be followed and asked to submit their views, particularly as to whether the appointments should be made on the basis of technical expertise rather than political considerations. There had been general agreement favouring the former approach.

7. On the basis of the revised terms of reference and given the time constraints, OIP had contacted various associations, institutions and international consulting and executive search firms with experience in the oil industry. The response had been fairly satisfactory, even on such short notice. The candidates had then been considered under a weighted evaluation system; there had been no exclusions from review. The evaluation had focused on two areas: first, experience and qualifications, including familiarity with global oil markets and energy fields, knowledge of markets for Iraqi oil and familiarity with the oil industry in the Middle East; and technical expertise, including experience in oil trading and market analysis and secondly, expertise in establishing pricing mechanisms, appraisal of oil contracts, supply issues, transport, shipping and logistics; academic qualifications had also been taken into consideration.

8. On that basis, OIP had identified and interviewed four candidates, discussing with them the conditions of service and the fact that the special service agreement under which the appointees would be hired did not include certain benefits that might normally be expected. Two of the four had declined, one because the salary offered was too low and the other for family reasons; the two remaining candidates had been appointed by the Secretary-General.

9. The candidate's backgrounds corresponded to the criteria that she had described. She would prepare a brief biographical note on the two appointees for circulation to Committee members.

10. She said she saw no ambiguity in the wording of paragraph 7 of Security Council resolution 1302 (2000). Her Office considered that the Secretary-General had complied with the provisions of that paragraph and was fully confident that the individuals whom he had appointed would be excellent oil Overseers.

11. **Mr. Theron** (Namibia) asked whether any other such appointments were anticipated.
12. **Ms. Scheer** (Office of the Iraq Programme) said that her Office considered that the current workload could be handled by three Overseers, but would inform the Committee in the unlikely event that further recruitment became necessary.
13. **Mr. Safronkov** (Russian Federation) said that his delegation supported implementation of Security Council resolution 1302 (2000) and, in particular, paragraph 7. He had no objection to the candidates selected by the Secretary-General, but he pointed out that, the current meeting would have been unnecessary had Committee members been provided with the candidates' files.
14. **Mr. Mauriès** (France) said that at the informal meeting on 28 June 2000, he had asked to see the candidates' *curricula vitae* and had been told that they would soon be posted on the OIP web site. His delegation looked forward to receiving the biographical notes to be prepared by OIP.
15. **Mr. Li Junhua** (China) said that the Committee had operated under a gentleman's agreement since 1996. Three of the four original oil Overseers had subsequently left for various reasons and OIP had repeatedly informed the Committee that successors must be appointed to handle the heavy workload. Unfortunately, owing to the lack of a constructive approach on the part of one delegation, it had proved impossible to agree on a solution.
16. During the consultations on the Security Council draft resolution 1302 (2000), his delegation had requested clarification of the wording of paragraph 7 and had been informed that "in consultation with the Committee" meant "with the Committee's concurrence". On that understanding, it had not opposed adoption of the resolution. During the informal meeting with the Director of OIP on 28 June 2000, several delegations had again raised that issue, stressing the importance of the consultation process as a preliminary to the Secretary-General's appointment of the new oil Overseers. Again, his delegation had raised no objection in the hope that the Secretariat would take into account the views expressed. He therefore reiterated his request that the Secretariat should explain its understanding of the words "in consultation with the Committee".
17. His delegation agreed that the appointments should be made on the basis of technical competence rather than political considerations and, in that spirit, had awaited submission of the candidates' names so that they could be discussed by the Committee. His delegation had assumed that the informal briefing on 28 June 2000 marked the beginning rather than the end of the consultation process; however, there had been no subsequent Committee involvement. Thus, paragraph 7 of the resolution, which was perfectly clear, could not be said to have been implemented and the status of the Committee appeared to have been called into question.
18. The representative of OIP had stated that after reviewing all candidates, her Office had selected and interviewed four, two of whom had declined for personal reasons. He wondered on what basis the remaining two individuals had been selected, whether their candidacies were considered stronger than those of other applicants and, if so, in what way. The procedures described appeared correct; however, in the absence of background information on the appointees, the Committee could not verify that their qualifications were indeed superior to those of other applicants and that the process had been conducted in a fair and transparent manner. His delegation was therefore unable to accept the appointments made by the Secretary-General. He reminded OIP that in future, on any important issue and, in particular, on matters relating to Security Council resolution 986 (1995), it should seek instructions from the Committee in a timely fashion. Only the Council and the Committee were empowered to take decisions on such issues.
19. **Mr. McGurk** (United Kingdom) said that his delegation had every confidence in the procedure followed by OIP and looked forward to the appointment of the new overseers so that Security Council resolution 661 (1990) could be fully implemented.
20. **Ms. Shestack** (United States of America) said that she associated herself with the statement made by the representative of the United Kingdom. The procedure followed appeared even-handed, fair and inclusive. The Secretariat had done its best within the limited time available and had held consultations with the Committee. She had every confidence in the candidates selected.
21. **Mr. Harvey** (Canada) said that he welcomed the letter from the Secretary-General; he had fully

complied with paragraph 7 of Security Council resolution 1302 (2000).

22. His delegation had never accepted the gentleman's agreement under which the Committee operated since 1996. The fact that it had never been implemented was the measure of its value. "The Committee" was merely a euphemism for two of its members. The lengthy deadlock over the appointment of the new oil Overseers had been embarrassing, and he was glad that it had been broken.

23. Ms. Scheer (Office of the Iraq Programme) said that her Office considered the two appointees to be extremely competent. She was sorry that delegations had not yet received copies of the successful candidates' *curricula vitae* and would see to the matter as quickly as possible; it had been thought best to first notify the successful candidates of their appointment.

24. Mr. Rani Ismail Hadi (Malaysia) said that in principle, he had no objection to the appointees; however, the issue was one that had been mired in controversy and it was important to proceed with care. Paragraph 7 of the resolution clearly stated that the appointment was to be made in consultation with the Committee, yet only one informal meeting had been held. At the least, the candidates' *curricula vitae* should have been circulated to delegations.

25. Mr. Li Junhua (China) noted that the representatives of Canada, the United Kingdom and the United States of America had all expressed full confidence in the appointees. He wondered whether they had had prior knowledge of these candidates' qualifications and, if not, on what they based their confidence. In the past, two delegations had often stressed that the Committee needed all possible information in order to take its decisions and had called for fairness and transparency in that process.

26. He also wondered how the representative of Canada could state that his delegation could not accept the gentleman's agreement arrived at in 1996 since Canada, like all other delegations present except for the permanent members of the Security Council, had not been a member of the Council for some portion of the intervening period and it was not logical for any delegation to claim to accept or reject an agreement reached in its absence.

27. His delegation's opposition to the appointment of the new oil Overseers was not based solely on the fact

that no Chinese candidate had been accepted; it had always agreed that the Secretary-General should make those appointments in a fair and transparent manner. However, the Committee could not be said to have been fully consulted under paragraph 7 of the resolution, which it had helped to draft, when the Chairman himself had stated that he had not been informed of the procedures followed. The Committee's credibility was at stake.

28. The Chairman said that, although he had no information on the two candidates, he was not dissatisfied with the procedure. On the contrary, he welcomed the appointment since, in his capacity as Chairman, he had repeatedly indicated that one overseer was not sufficient and had therefore been a driving force in favour of the adoption of Security Council resolution 1302 (2000). As the United States representative had noted, the Secretariat had been given a very short time in which to make the selections and had had difficulty finding suitable candidates. Of course, non-permanent members were bound by understandings and agreements which exceeded their tenure; the difficulties created by the existence of permanent and non-permanent members in both the Committee and the Security Council were well known. He himself had felt that the Committee could no longer wait for a consensus among all five permanent members to appoint additional Overseers.

29. With regard to the meaning of "consultation", the Committee could request an opinion of the Legal Counsel. There were a number of precedents indicating that "consultation" did not mean the decision should be left to the Committee; however, he could not say to what extent its input was required. He disagreed that the Office of the Iraq Programme should, in future, seek instructions from the Committee; "consultations" were no more than what the word implied.

30. Mr. Mauriès (France) supported the Chairman's interpretation. As a sponsor of the resolution with the United Kingdom, his delegation's understanding of paragraph 7 was that "consultation" was not tantamount to "agreement". He wished to point out that, at times, the interpretation of "consultation" had been different, depending on the sanctions committee involved. For example, a different interpretation had been applied in the recent appointment of the panel of experts by the Sierra Leone sanctions committee, for which a list of candidates had been circulated among Committee members under the no-objection procedure.

31. **Mr. Harvey** (Canada), replying to questions posed earlier by the representative of China, said that he had not seen the *curricula vitae* of the candidates but was satisfied to defer to the Secretariat's judgement, since he had no technical expertise in the matter. His understanding of the gentlemen's agreement was that a few Committee members had divided up the work among themselves for what appeared to have been political reasons. In the present situation, he believed that there had been sufficient consultation from a legal standpoint. His delegation supported paragraph 7, noting that, for years, the Committee had been incapable of selecting an Overseer on its own. He hoped that progress would not now be thwarted for political reasons.
32. **The Chairman**, referring to the remarks by the representative of France, added that the appointment of a panel of experts on Sierra Leone was not comparable to the appointment of a member of the Secretariat, which was the prerogative of the Secretary-General.
33. **Mr. Safronkov** (Russian Federation) said that the issue was not one of bureaucratic procedure but rather the avoidance of a negative precedent. Even in a two-month period, the Secretariat could have provided Committee members with the candidates' *curricula vitae*. If that step had been taken, there would be no need for the current meeting.
34. **Ms. Shestack** (United States of America) expressed complete agreement with the Chairman's interpretation of "in consultation with". In her delegation's view, there had been sufficient consultation.
35. **Mr. Li Junhua** (China) said that no formal or informal Committee meetings had been held since 28 June to discuss the matter. He agreed with the representative of the Russian Federation that the central issue was whether the Committee had been consulted in any form. His delegation, too, understood that the Secretariat was working under a time constraint and had sincerely endeavoured to be cooperative; however, that did not constitute an excuse for the lack of consultations. Whatever the definition of the term, the Committee should, at the very least, have been informed of the experts' backgrounds upon their appointment. Failure to do so could not be construed as "consultation", even in a strictly legal sense. He reiterated that his delegation in no way challenged the Secretary-General's prerogative; however, some form of consultation process should have been carried out. The gentleman's agreement had not been reached among only certain members or in private but rather on the basis of repeated discussions in the Committee which had included the 10 non-permanent members.
36. **The Chairman** said that, had there been a consensus, the Committee could have informed the Security Council that it had not been properly consulted in accordance with the resolution. Since that was not the case, any delegation which felt the Secretary-General had acted improperly should raise the matter before the Security Council, since the appointment had been requested by the Council, in its resolution, and not by the Committee.
37. **Mr. Li Junhua** (China) said that, while he agreed with the thrust of the Chairman's remarks, he would not prejudice whether the Committee would be able to reach a consensus, since it often had difficulty in doing so. His delegation requested the Chairman to send a formal letter to the Legal Counsel, requesting an interpretation of paragraph 7 of resolution 1302 (2000), in particular the phrase "in consultation with the Committee". His delegation reserved the right to request another meeting of the Committee to discuss the matter and would await his Government's instructions about whether to bring the matter before the Security Council.
38. **The Chairman** said that a consensus would be required in order to seek the views of the Legal Counsel. He invited Committee members to state their positions.
39. **Ms. Shestack** (United States of America) and **Mr. McGurk** (United Kingdom) said that they would have to consult their respective Governments.
40. **Mr. Theron** (Namibia) said that an opinion from the Legal Counsel might be very useful, particularly if there was a possibility that the matter would be referred to the Security Council.
41. **The Chairman** said that he would ask delegations at the next meeting whether he was authorized, on behalf of the Committee, to seek an opinion from the Legal Counsel on the interpretation of paragraph 7.
42. **Mr. Li Junhua** (China) agreed with that approach. The Chairman could also seek clarification from the Secretariat as to its interpretation of the paragraph and what constituted compliance with its terms. Lastly, he

wished to point out that the Chinese delegation was not alone in expressing doubts about the Secretariat's actions.

43. **The Chairman** wondered whether the decision on seeking the Legal Counsel's opinion could be determined through written replies from delegations rather than in another formal meeting. He pointed out that the Office of Legal Affairs had presumably consented to the appointment made by the Secretary-General. He also warned that an elaborate and complicated formulation of the questions might arouse the immediate opposition of at least one Committee member.

44. **Mr. Li junhua (China)** said that he preferred the Chairman's initial proposal, namely to determine orally, at a subsequent meeting of the Committee, whether there was any opposition to the Chinese request.

45. **The Chairman** said that the Committee would hold a meeting on the question in early September and, in the meantime, urged all delegations to seek instructions from their Governments.

The meeting rose at 5 p.m.