United Nations

S/AC.25/SR.209

Security Council

Provisional

Distr.: Restricted
19 December 2000

Original: English

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

Provisional summary record of the 209th meeting (closed)

Held at Headquarters, New York, on Wednesday, 13 December 2000, at 10.30 a.m.

Chairman: Mr. van Walsum .... (Netherlands)

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00-79491 (E)

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

Adoption of the agenda

1. *The agenda was adopted.*

Oil export from Iraq

2. **Mr. Tellings** (Oil Overseer) said that the Oil Overseers had circulated a written summary of the current situation regarding Iraqi oil exports. To update that information, he reported that an Indian vessel had begun loading oil at the Mina Al-Bakr terminal at about midnight local time that day, and that a second Indian vessel was about to begin loading. Iraq was pumping about a million barrels of oil a day. Currently, seven vessels were waiting to load cargo at Mina Al-Bakr. At the Ceyhan terminal the storage tanks were very close to capacity and consequently a slowdown of the pipeline had begun. If the Iraqi State Oil Marketing Organization (SOMO) decided to make oil available, the earliest date on which a vessel could be in position to load at Ceyhan would be 19 December. No further information on that subject had been received from SOMO, however.

3. **Mr. Young** (United States of America) asked how many ships could load simultaneously at the Mina Al-Bakr terminal and what was the cost per day to ships waiting to load. He also inquired how long it would take to resume loading at Ceyhan. With regard to loss of revenue, it would be useful if the Oil Overseers could elaborate on the potential negative impact of the situation on the oil-for-food programme. The relevant Security Council resolution had been renewed and a pricing mechanism agreed, but he would like to hear the Overseers' views on why no loading had taken place until that day.

4. **Mr. Buur-Jensen** (Oil Overseer) said that two ships could load simultaneously at Mina Al-Bakr. The cost of waiting time for a very large group carrier (VLGC) could amount to $70,000 per day. It would take about a week for loading to resume at the Ceyhan terminal, though some vessels were already near the area and could arrive more quickly. As to lost revenue, the estimate had been based on figures gathered for the revenue earned in the first 12 days of September, October and November. That estimate was conservative; the actual loss could be much greater. He could offer no explanation as to why SOMO had stopped loading oil, as the Overseers had received no reply to their communications.

5. **Mr. McGurk** (United Kingdom) requested comment from the Overseers regarding media reports on the pricing mechanism, which had suggested that prices for Iraqi crude oil had been set below the fair market value. Those reports said that, since the price was already competitive, there was no need to provide incentives to buyers. He would also like to know how the Overseers had arrived at a reasonable price range in their negotiations with SOMO, given the surplus in the global market.

6. **Mr. Kramar** (Oil Overseer) said that the negotiations with SOMO had taken place between 20 November and 6 December in the course of about a dozen telephone conversations. The Overseers had valued Iraqi crude oil higher than SOMO had, taking into account the other crudes available on the market. Pricing had become more difficult after SOMO had suspended loading, however, because market confidence in the product had declined. In the negotiations, the Overseers had taken into account the value when Iraqi crude had been flowing. With regard to price incentives, they had also spoken to buyers about the point at which they would consider buying Iraqi oil. Concerning the view that the price was too low, he pointed out that the global oil market had deteriorated further since the prices had been set.

7. **Mr. Young** (United States of America) said that a great deal of information and even rumour had circulated concerning Iraqi oil sales, and his delegation was concerned that potential buyers lacked clarity regarding the situation on the ground. Therefore, he proposed that the Committee should request that the Oil Overseers should issue the following communication to all buyers immediately: (1) The Sanctions Committee had not approved a surcharge of any kind on Iraqi oil; (2) Payments could not be made to a non-United Nations account; (3) Therefore, buyers of Iraqi oil should not pay any kind of surcharge.

8. **Mr. Mauriès** (France) asked whether the Overseers had received any information from buyers that would confirm the press reports of a surcharge of 50 cents per barrel. The third point of the communication proposed by the United States delegation seemed too broad, as it might be seen to include commissions on sales, which were perfectly legal.

Mr. **Tellings** (Oil Overseer) said that some buyers indeed confirmed the surcharge request and had their reports in writing.

Mr. **Young** (United States of America) said that proposal was not intended in any way to preclude itimate commissions on sales. To avoid giving that pression, the last point could read "Therefore, yers of Iraqi oil shall not pay any kind of surcharge Iraq".

Mr. **Khalizov** (Russian Federation) said that his legation had some doubts regarding the approach proposed by the United States. As he had understood the Overseers, there was no official confirmation of the surcharges, and further interruption in sales could cause losses to the oil-for-food programme, the Iraqi people and the companies in the oil market. The communication proposed by the United States delegation seemed premature and could provoke Iraq to take unpredictable actions with negative consequences. The Committee might also be open to criticism for the subtext of the proposal: an accusation of alleged sanctions violations by Iraq. His delegation intended to seek instructions from its capital. In the absence of any official information regarding surcharges, it would be premature to adopt any proposal without further consideration.

12. Mr. **McGurk** (United Kingdom) stressed that press reports and the oral report made by the Overseers had referred to attempts by Iraq to impose a surcharge of 50 cents per barrel on oil exports. Even after the new pricing mechanism had been adopted, reports continued to be received of demands for a surcharge of 40 cents per barrel, to be paid into a non-United Nations account. It would be naive to expect Iraq to acknowledge that it was making such a request: on the contrary, it would be in Iraq's best interest not to inform the Committee of such attempts. The proposal made by the representative of the United States was a simple statement of the facts regarding the illegality of surcharges or payments into a non-United Nations account and would serve to clarify the situation and dispel any confusion among buyers. He did not understand why the representative of the Russian Federation had referred to a deterioration of the situation, when Iraq had apparently resumed shipping oil from Mina Al-Bakr, although without any explanation of the reason why there had been no exports in the previous 10 days. The Committee would be negligent if it did not communicate its position to the Overseers and to buyers. He therefo the Committee approve the proposed com

13. Ms. **Price** (Canada) said that there evidence that Iraq was attempting surcharge — a regrettable decision which detrimental to its people. She did not beli proposed communication risked provoking action; in fact it represented rather a mild rea delegation would therefore support it and urg be issued that day, amended to reflect the raised by the representative of France.

14. Mr. **Young** (United States of America) said the addition of the words "to Iraq" at the end of third point should meet the concern raised by the representative of France. There was ample evidence to support allegations that Iraq was demanding surcharge and it was unrealistic to expect SOMO to confirm that fact. The Committee nevertheless needed to give buyers some guidance on how to proceed if such a request was made. The United States proposal was not a provocation, but merely sought to reassure the oil markets, to ensure that all funds were deposited into a United Nations account and to remind buyers of the current situation regarding oil exports within the context of the oil-for-food programme and the pricing mechanism, as agreed by Iraq itself. His delegation had deliberately adopted a responsible and non-provocative approach to a situation which required a response on the part of the Committee.

15. Mr. **Li** Junhua (China) wondered how many companies had confirmed that they had been requested to pay a surcharge and whether the Indian company loading oil at Mina Al-Bakr had agreed to pay a surcharge.

16. Mr. **Buur-Jensen** (Oil Overseer) stressed the need to protect the confidentiality of buyers' communications with the Overseers on that issue and said that there had been no letters indicating precisely how much of a surcharge was being asked. However, sufficient information had been received in various forms from those in the process of purchasing oil to enable him to state that surcharges were in fact being requested. With regard to the Indian tanker, he noted that its owners had denied paying any surcharge.

17. Mr. **Li** Junhua (China) said that it was a positive sign that exports seemed to have resumed. On 8 December, the Committee had agreed on a pricing mechanism and funds for humanitarian projects in

annex IX should therefore be available. Noting that the representative of the Russian Federation had stressed the need to carefully consider the situation, he said that the Committee should first ascertain whether Iraq was indeed requesting a surcharge before rushing into any action which could have a negative effect on the current positive momentum. It would therefore be appropriate to wait a day or two before taking any action. His delegation was still waiting for information from its mission in Iraq and for instructions from its capital and, although not opposed in principle to the proposal that the Overseers should contact the buyers immediately, believed the Committee should proceed with caution. Although the United States proposal was a mere statement of facts, it would be more positive if the Committee could simply reiterate that the pricing mechanism included no surcharges.

18. Mr. **Khalizov** (Russian Federation), responding to the statement made by the representative of the United Kingdom, said that the Russian delegation did not believe that the situation was deteriorating but felt that, given the positive sign provided by the apparent resumption of exports, adoption of the text proposed by the United States could prompt Iraq to take some intemperate action by implying that Iraq was attempting to impose a surcharge in addition to the price set by the Committee. Since no written complaints from buyers had reached the oil-for-food programme and there had been no confirmation that the Indian company had paid any surcharges, it would be premature to adopt the text.

19. **Mr. Roslan** (Malaysia) said that the United States proposal was a fair one but agreed that further discussion was necessary, for example with regard to the exact text, in order to ensure that the Committee's intent was clear and to avoid conflicting interpretations of the communication.

20. **Mr. Cappagli** (Argentina) said that the press and oral reports indicated that there was certainly some confusion among potential customers for Iraqi oil and that the United States proposal would contribute to a better understanding of the situation. The first and second points were a simple statement of the facts and the third point was a logical consequence of the others. It was important for the Committee to act as soon as possible, especially given the expense to buyers with vessels waiting to be loaded as well as the fact that storage capacity in the ports was virtually exhausted. His delegation therefore supported the issuing of the communication in order to clarify the situation and reassure buyers.

21. **Mr. Mauriès** (France) wondered whether the Russian delegation simply wanted to delay action on the United States proposal for a few days to see whether exports continued and no further reports of requests for surcharge were received but, if that were not the case, would be prepared to support the proposal. The French delegation's concern about the halt in oil exports was motivated not by the cost to buyers of keeping their ships idle but by the effect on humanitarian programmes and the Iraqi population, especially if money derived from the surcharge were diverted into non-United Nations accounts. While recognizing that Iraq bore much of the responsibility for the situation in which it found itself, he noted that there were some $12 billion in the United Nations account, ~~disbursement of which was hampered~~ by archaic procedures that some delegations had attempted to improve, ~~although with little~~ success. His delegation was, however, ready to approve the communication, with the amendment to the third point, in an effort to improve the functioning of humanitarian programmes and eliminate any pretext for Iraq to stop exports, impose a surcharge or use non-United Nations accounts.

22. **Mr. Khalizov** (Russian Federation) said that, since the situation had clearly not arisen out of the blue, it would be appropriate for the Committee to see how matters developed before defining its position.

23. **Mr. Young** (United States of America) asked whether his understanding was correct that, once the two Indian ships currently being loaded had completed the process, no other ships were scheduled for loading. He also wondered whether the intention was for other ships to be loaded or whether there was some difference between the Indian ships and others.

24. His delegation saw no direct connection between the loading and the surcharges that were being imposed. The Committee did, however, owe it to the buyers to explain its position. In that connection, he noted that the Indian Oil Corporation was reported to have refused to pay a surcharge. His delegation's concern had no sinister subtext; simply as a matter of principle, surcharges should not be paid into any accounts but those administered by the United Nations. If the Iraq Programme was to achieve its purpose, more money should be flowing into United Nations accounts

meet humanitarian needs. He suggested that the draft text, as amended, should be circulated under the no-objection procedure, with a view to action over the next few days, since it appeared that there was no argument against the substance of the proposal.

25. **Mr. Kramar** (Oil Overseer) said that at least one, and perhaps two, Indian cargo ships were known to be loading. It appeared to be true, according to reports by other buyers, that the Indian Oil Corporation had refused to pay a surcharge. Other vessels currently waiting to load had also been requested to pay a surcharge but so far none had done so. The real reasons behind the delay in loading were unknown.

26. **The Chairman** expressed doubt that the Government of Iraq would be provoked into a violent reaction by any action on the part of the Committee, given that it was testing the resolve of the United Nations on an almost daily basis. His own fear was that the Government of Iraq might, in view of the chaotic and totally unacceptable situation concerning flight notifications, draw the erroneous conclusion that the whole system was in a state of collapse. Security Council resolution 670 (1990) was and always had been an unsatisfactory and ambiguous document. It was therefore all the more important that the Committee — all the members of which, despite disagreements over detail, were fully in favour of observing legality — should provide some guidance.

27. **Mr. Li** Junhua (China) said that his delegation could not yet commit itself. In a day or two the position would become clearer and it might well be possible for the Committee to agree on authorizing the Oil Overseers to address a communication to buyers.

28. **The Chairman** said that the no-objection procedure was easy to handle if there was an agreed text, but matters would become more complicated if delegations wished to make any amendments. He hoped that the text could remain as it stood.

29. **Mr. Young** (United States of America) expressed support for any action that would expedite matters. It was important to deal with the problem of surcharges before buyers were forced into a difficult predicament. It had, after all, been rumoured for some time that surcharges would be imposed.

30. After a procedural discussion, in which **Mr. Young** (United States of America) and **Mr. Khalizov** (Russian Federation) took part, **the Chairman** suggested that the Committee should authorize the informal meeting scheduled for the following day to make a decision on the statement to be issued and on whether the no-objection procedure was still necessary.

31. *It was so decided.*

Other matters

32. **Mr. McGurk** (United Kingdom) said that the Committee had not paid sufficient attention to the problem of port charges imposed by the Government of Iraq. Correspondence between the Committee and the Office of the Iraq Programme on the issue had been inconclusive. The position seemed to be that payment of charges was acceptable, provided that it was made in Iraqi dinars at standard rates. If, however, payments to Iraqi entities were not in themselves in breach of Security Council resolution 661 (1990) he asked what relevance there was in the currency used. Iraqi dinars were not a convertible currency, so they were hard for companies to obtain. In that context, he also asked what the customary rates for port charges were in such circumstances.

33. His delegation had also been informed that, before agreeing to contracts under the oil-for-food programme, the Iraqi Government asked businesses to pay an import tax amounting to 3 per cent of the value of the contract, ostensibly to pay for storage and distribution costs, as a precondition to granting them the contract. He asked the Office to confirm whether such was the case.

34. **Ms. Scheer** (Office of the Iraq Programme) said, with regard to payments in Iraqi dinars, that similar situations had arisen previously, when arrangements had had to be made for the accommodation, transportation or communication needs of inspection agents for oil or humanitarian supplies. The Office of Legal Affairs had long held that payments for such arrangements should be in Iraqi dinars. In the current situation, however, where entities not having a permanent or semi-permanent base in Iraq were involved, the situation was different and perhaps the principle should be reviewed. In that context, she noted that the Government of Iraq had made an arrangement for port services with a Jordanian company, payment for which was to be made in Jordan, in hard currency. Such an arrangement was acceptable in itself, but in the case in question it had not been cleared by the Committee. The Government of Iraq had been

informed that in future it must obtain the Committee's approval. As for port charges, her understanding was that the rates charged by the Government of Iraq were below those charged by other oil-exporting countries in the region. They had recently risen but were still considered to be within a normal range. With regard to the question of the imposition of a 3 per cent import tax, she had no knowledge of such a move. The Programme office in Baghdad would be requested to provide further information.

The meeting rose at 12.25 p.m.