



# 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 206th meeting (closed)**

Held at Headquarters, New York, on Thursday, 5 October 2000, at 3.30 p.m.

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

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The meeting was called to order at 5.35 p.m.

### Adoption of the agenda

1. *The agenda was adopted.*

2. The Chairman suggested that it would be desirable to consider the next two agenda items together so that any speaker would be free to discuss either of them.

3. *It was so decided.*

### Non-paper on "Procedure for notification of flights to Iraq" submitted by the Permanent Mission of France

#### Letter dated 25 September 2000 from the United States (re: flights by France and the Russian Federation)

4. The Chairman recalled that there was no consensus on the interpretation of Security Council resolution 670 (1990); the Committee was divided into two schools of thought, and the Legal Counsel professed to be unable to offer any further help in that connection. Practical solutions must thus be found if the Committee was to function, and processing every communication relating to a proposed flight through the no-objection procedure was such a solution. The two agenda items under consideration illustrated the Committee's difficulty: both of them hinged on the interpretation problem, but approached it from opposite directions.

5. Mr. Mauriès (France) said that, owing to the difference of views to which the Chairman had referred, the Committee found it difficult to deal with the growing volume of communications giving notification of proposed flights to Iraq. They were currently distributed under the non-objection procedure, but the situation could not be regarded as satisfactory. His delegation had therefore submitted the non-paper which was before the Committee, with a view to reaching a consensus concerning procedures applicable to prospective flights to Iraq. The purpose was not to reconcile the two positions, but to arrive at a modus vivendi within the Committee, so that it could deal with communications in a manner consistent with the aims of the Security Council resolutions on Iraq. It was important not to lose sight of what those aims were: the main object of resolution 661 (1990) had

been to place a trade and financial embargo upon Iraq, while that of resolution 670 (1990) had extended the embargo to air transport. Under the procedure set forth in the non-paper, States would be required to provide the Chairman of the Committee and the Office of the Iraq Programme with prior notification, in writing, of every proposed flight, and the Chairman would immediately distribute the notification to Committee members. The notification would include information about the proposed flight: its purpose, the scheduled route, the countries overflown, the type and registration number of the aircraft concerned, and the like. To ensure that all flights conformed to the provisions of the relevant resolutions — in other words that no unlawful cargo was carried to Iraq — inspections would be carried out at the points of departure and arrival, as well as at any stopovers. Baghdad international airport would be the only point of entry in Iraq, and inspections there would be conducted by the independent agency, Cotecna Inspection S.A., which was already in charge of inspection duties at border crossing points. Inspections at the point of departure or any stopovers would be conducted by the State concerned.

6. Mr. Ross (United Kingdom) said that, while he welcomed the discussion, his delegation was disappointed that some Member States had recently been allowing flights to Iraq without seeking the Committee's approval, thereby breaching the Committee's long-standing practice based on the relevant Security Council resolutions, and thus, in his delegation's view, committing a breach of the sanctions regime. Moreover, such flights sent the wrong message to the Government in Baghdad; they were being interpreted as evidence that the sanctions regime was eroding, and were thus undermining the authority of the Committee and of the Security Council itself. The Committee's purpose was to oversee the implementation of the sanctions against Iraq, and thus to bring Iraq to compliance with its legal obligations under the relevant Security Council resolutions. Those who undermined that purpose in effect undermined the resolutions. Assertions of a humanitarian purpose for the flights under discussion could not be taken seriously and, in any case, humanitarian supplies such as medicines could lawfully be imported into Iraq more cheaply overland. His delegation continued to believe that the Committee and the Security Council should work together for the implementation of the relevant resolutions. Until that goal was achieved, humanitarian

needs must be met within the framework of the sanctions regime. The issue was of concern to all members of the Security Council; the authority of the United Nations and its decisions was at stake.

7. Mr. Smirnov (Russian Federation) said that the non-paper submitted by the delegation of France provided the Committee with a good basis for agreement on a suitable procedure to follow when it was notified of proposed flights to Iraq. The relevant Security Council resolutions, especially resolution 670 (1990), did not prohibit passenger flights unrelated to the delivery of commercial cargo. A number of subsequent decisions by the Committee had confirmed that the same applied to shipments of medicines and food products. Consequently, it was irrelevant to ask whether a given flight was humanitarian in nature or not; the issue was whether it carried passengers or commercial cargo, and the flights under discussion had not carried such cargo. The Committee had precedents at its disposal: there had been a number of instances, involving humanitarian flights as well as other flights, where bordering States had requested a signed letter from the Chairman of the Committee before authorizing an overflight, and the Committee had considered each such case individually and decided whether the letter should be provided. The suggestion that in permitting the flights under discussion the States concerned were undermining the Council's authority was unfounded. On the other hand, that authority was undermined by an excessively broad interpretation of the Council's resolutions and the application of conditions not contained in them, such as the imposition of so-called "no-fly zones" and the systematic violation of Iraqi airspace by military aircraft.

8. Under the circumstances, then, it was time for the Committee to consider the substance of the proposal contained in the non-paper submitted by France.

9. Ms. Price (Canada) said that her delegation could not accept the proposals contained in the non-paper submitted by France, although it was quite true that all flights arriving in or departing from Iraq should be subject to inspection. The procedures that the Committee had followed to date in dealing with proposed civilian flights into and out of Iraq had conformed both to the letter and to the spirit of the relevant Security Council resolutions, and should be maintained. In all cases, the Security Council's approval, through the Committee, should be sought in

advance to ensure that the proposed flight did not contravene the sanctions regime. The issue was not humanitarian supplies as such, but the symbolic gesture of flights made without the Committee's prior approval, which would only encourage Iraq's intransigence and delay the lifting of sanctions. All members of the Committee should reaffirm their commitment to the full enforcement of the will of the international community as reflected in the various United Nations resolutions pertaining to Iraq, including the procedures established for civilian air traffic. Iraq must be left with no illusions that its defiance of the United Nations would be rewarded by the gradual erosion of sanctions; it must be held to its obligations.

10. Mr. Li Junhua (China) said that his delegation's position on resolution 670 (1990) was clear and was essentially similar to that of the Russian Federation and France. In some cases no authorization was required, although the Committee should be notified of such flights, and he therefore believed that the flights in question did not constitute violations of the relevant resolutions. The source of the dispute was two differing interpretations of the provisions of those resolutions and, like the Chairman, he believed that some way must be found to resolve those differences. He regretted that the Legal Counsel seemed unable to provide any assistance concerning the interpretation of the provisions of the resolution and he therefore supported the proposal of the representative of France as a sincere attempt to resolve the situation and a good starting point for further discussions. He was also ready to consider other suggestions in the context of those discussions with a view to reaching agreement on the interpretation of the resolutions so that the Committee would remain united and effective. He further added that, although China had not thus far allowed any flights to Iraq, it would certainly not need the approval of the Committee to do so.

11. Mr. Mauriès (France), in response to the questions raised by the representative of the United Kingdom, stressed, like the representative of the Russian Federation, that the flights in question were passenger flights. It had never been claimed that the flight from France had been for humanitarian purposes. Similar flights had been approved in the past, including flights which had contained small quantities of medical supplies, and in the past other delegations, including that of the United Kingdom, had agreed that all flights did not have to be brought to the attention of the

Committee. It seemed that it was other delegations which had changed their attitude; his delegation's position had always been clear and had been explained once again in the Security Council on 23 September 2000, after the flight of 22 September. Clearly the current situation regarding flights to Iraq was unsatisfactory, and his delegation was therefore simply seeking to clarify and implement the relevant resolutions correctly and to provide guarantees for appropriate inspection upon arrival in Baghdad.

12. Mr. Young (United States of America) agreed with the representatives of the United Kingdom and Canada that there was no need for new procedures since the Committee had been operating effectively for 10 years. The current situation had only been provoked by the two recent flights, which he believed to be violations of the sanctions regime. The Committee and the Chairman had been put in an awkward position and he was dismayed that the end result would be to encourage Iraq in resisting the full implementation of resolution 1284 (1999). His delegation was nevertheless ready to discuss the proposal put forward by the representative of France, but he reiterated, as stated in the letter dated 25 September 2000 from the Deputy Permanent Representative of the United States of America to the United Nations addressed to the Chairman of the Committee (S/AC.25/2000/COMM.112), that the Committee should consider the recent flights by French and Russian aircraft to Iraq. Letters of inquiry should be addressed to France, the Russian Federation and the overflight countries requesting disclosure of information on those flights, which he stressed would in no way prejudice the outcome of the Committee's discussions. It was important that the Committee should receive reports on inspections carried out at the point of origin of the flights as well as upon arrival, including whether the inspections on arrival had been undertaken by independent inspectors. He noted that Iraq had blocked such inspections in the past. The representative of France maintained that there had been no cargo on board the French flight, yet some overflight countries seemed to have been informed that there was indeed cargo on board. If there had been any financial compensation provided to Iraq for services on the ground, that would also be a violation.

13. The flight paths and cargo manifests should be provided to the Committee. If the passengers on the French flight had not been on a humanitarian mission,

he wondered what their purpose was. He did not agree with the representative of the Russian Federation that food and medical supplies were exempted. He also ordered what the overflight countries had been told about the flights and on what basis they had decided to permit them in the absence of any information regarding inspections or any letters of authorization from the Committee. He stressed that the only allowable exceptions were flights for humanitarian purposes. It was important to send letters of inquiry to request further information from the countries concerned so that the Committee might take a decision on whether or not the flights in question constituted violations.

14. He took exception to the reference by the representative of the Russian Federation to the "no-fly zones", which he stressed had been created to protect vulnerable groups. Such remarks could only serve to encourage Iraq to undermine the sanctions regime.

15. Mr. Lawrence (Jamaica), said that, while his delegation had some sympathy for the French interpretation of resolution 670 (1990), it nevertheless had some concerns. Any change in the Committee's procedures should be orderly and based on discussion and he was disappointed that the two flights in question had caught the Committee unaware. There were grey areas in resolution 670 (1990). He agreed with the representatives of the United Kingdom and Canada that there was a need for constructive dialogue and called on all delegations to show flexibility and a willingness to compromise in order to reach a common position which would not undermine the procedures of the Committee. That would ensure the Committee's continued effectiveness within the international community.

16. Mr. Ross (United Kingdom) agreed with the representative of the United States that letters of inquiry should be sent to the countries concerned. He noted that the representative of France had said that it had never been claimed that the French flight was for humanitarian purposes; he therefore wondered what the purpose of that flight had been. The representative of the Russian Federation had stated that the only question relevant to the resolutions was whether there had been cargo on board, not whether the flights had had a humanitarian purpose, yet the Russian letter of notification regarding the flight had described it as a humanitarian flight. He wondered what humanitarian

purpose the very diverse group of people on the flight could have had.

17. **Mr. Krokhmal** (Ukraine) stressed the need for the Committee as a whole to reach some agreement on the procedures to be followed for passenger flights to Iraq and on what exactly constituted a violation of the relevant resolutions. Clear guidelines were especially important should third party States wish to send passenger or humanitarian flights to Iraq. He agreed with the Chairman that the basic problem was one of interpretation of the resolutions, but, in light of the position taken by the Legal Counsel that there were indeed grey areas in the resolutions, he would withdraw his delegation's request that a survey of the Committee's past practice should be undertaken, especially since that practice seemed inconsistent, as the representative of France had pointed out. His delegation was ready to continue discussions on the correct interpretation of resolutions 661 (1990) and 670 (1990) but, like the delegation of France, it believed that, based on a strict legal interpretation of the resolutions, only cargo seemed to be proscribed. He noted that there had been no problems in the past with the reporting of passenger flights. He was therefore inclined to see the suggestions made in the non-paper from France as a possible solution and was pleased that the representative of the United States had expressed a willingness to continue discussions. He stressed, however, that his delegation attached great importance to the need for proper independent inspection upon arrival in Baghdad.

18. **Mr. Rani Ismail Hadi** (Malaysia) reiterated that his delegation shared the representative of France's interpretation with regard to resolution 670 (1990) and stressed the importance of such flights for alleviating the sense of abandonment and isolation felt by the people of Iraq. Like the representatives of the Russian Federation, China and France, he believed that passenger flights were allowable; the real problem was to establish clear procedures for a notification process. The French non-paper was a good starting point for discussions in that regard.

19. **Mr. Smirnov** (Russian Federation) stressed that the real question was not whether a flight had a humanitarian purpose but whether it was a passenger or a cargo flight and whether there was commercial cargo on board. He reassured the Committee that all flights from the Russian Federation to Iraq were subject to thorough inspection. With regard to the question put by

the representative of the United Kingdom, he said that the purpose of the passengers on the two flights to Iraq was beyond the purview of the Committee.

20. With regard to the work of the Committee, he noted that the non-paper from the Permanent Mission of France seemed to have been put on hold, although the United States had indicated its willingness to discuss that document further under certain conditions. He believed that the Committee should concentrate on the proposal put forward by France. He also believed that the sending of letters of inquiry, as suggested by the United States, would be counterproductive, although he would not categorically exclude further discussion on that topic under certain conditions, preferably within the framework of discussions on the French proposal.

21. **Ms. González Posse** (Argentina) said that there appeared to be nothing specific in the law or in the Committee's guidelines relating to flights to Iraq, and she suggested that a definite procedure should be established in that regard. Her delegation would welcome any proposals aimed at finding a practical solution based on consensus.

22. **Mr. Mauriès** (France), responding to the question raised by the representative of the United Kingdom, regarding the purpose of the flight of 22 September, said that the flight had been a private undertaking, organized by a non-governmental organization. The question therefore had no meaning from the point of view of the Security Council resolutions, as such flights were not forbidden by any such resolution. While members of the Committee were free to speculate on possible motives for the flight, that issue was ultimately beside the point.

23. With regard to the suggestion of the United States representative regarding ways for the Committee to follow up on the letter dated 25 September from the Deputy Permanent Representative of the United States addressed to the Chairman, his delegation's position was the same as that of the Russian Federation. He noted that, despite the United States representative's claim that the proposed letter of inquiry would not prejudge the nature of the action taken, the letter dated 25 September itself clearly implied that United States already regarded the two flights as constituting violations. Since his delegation did not share that view, it would be unable to agree to the sending of such a letter of inquiry to France, or, for that matter, to the

States overflowed by the flight in question as they, too, had done nothing to violate the Security Council resolutions.

24. **Mr. Young** (United States of America) said that, during his tenure at the United Nations, Albania, Bulgaria, Burkina Faso, the Gambia, Liberia, Mali, Uganda and Ukraine had all received letters of inquiry from Security Council sanctions committees. Those letters had not pre-judged the actions of those countries as constituting sanctions violations, but had simply been sent to elicit information needed to address the concerns of members of the Committee as to whether violations had in fact occurred. Furthermore, in view of the fact that the French and Russian delegations had supported the sending of the letters to all the countries he had mentioned, he regretted that those two delegations were preventing the Committee from obtaining the information it needed in the present instance. His delegation would welcome the opportunity to review the issue in the future, as had been proposed by the Russian representative, and therefore wished to retain the item on the Committee's agenda for the time being.

25. **Mr. Liswaniso** (Namibia) said that his delegation supported the French proposal and sincerely hoped that the Committee would look into the matter in a progressive and constructive manner. His delegation also supported the views expressed by the French, Russian and Chinese delegations with regard to the flights under discussion.

26. **The Chairman**, speaking as the representative of the Netherlands, said that although both the French and Russian delegations had stressed that the flights had been correctly and thoroughly inspected on departure by their own local authorities, he could not accept as serious, the suggestion that any flight originating anywhere needed to be inspected by only the local authorities of the country in which the flight originated. Moreover, assuming for the moment that Security Council resolution 670 (1990) required only that the Committee should be notified in the event of such flights, the purpose of the notification remained unclear if the Committee was not to be allowed to pursue further inquiries. Nor could he accept as serious the implication that notification was just an empty ritual.

27. **Mr. Smirnov** (Russian Federation) said that, while he was not in a position to discuss the inspection procedures in place at international airports in other

countries, those at airports in France and Russia were certainly serious. Nor could he agree that the notification procedure as specified under Security Council resolution 661 (1990) was not serious; there was a fine distinction to be made between a "request for approval" and a "notification". The former implied a need for permission to carry out an action, while in the case of the latter, the Committee was simply being made aware of certain events. The distinction between the two was based on the magnitude of the events involved; as such, it was of great seriousness and was central to the entire debate.

28. **Mr. Mauriès** (France) said that pre-departure inspections of air cargo were relatively easy to carry out, and his delegation would welcome the chance to discuss further proposals in that regard. On the question of inspections, he noted that the proposal under discussion called for monitoring or inspection to be carried out *on arrival*.

29. **Mr. Young** (United States of America) said that it would be highly unfortunate if the Committee were to be constrained to accept a simple notification without being able to question it or otherwise take appropriate action. Further to his earlier proposal, he therefore requested that the Office of the Iraq Programme should provide the Committee with the United Nations inspection report of the French flight, and that the Permanent Missions of France and the Russian Federation should be asked to provide the customs reports for both flights, if possible, as well as accounts detailing the countries actually overflown, the ground services provided, and the methods of payment for those services.

30. **Mr. Ross** (United Kingdom) said that, while he did not question the inspection systems of the two States concerned, a credible and satisfactory system of passenger and cargo inspection on departure from the sending State and on arrival at the Baghdad airport, as mentioned in the French proposal, was absolutely necessary for such flights. The need for such a system had been further emphasized by the inability of the two delegations concerned to furnish satisfactory explanations of the activities engaged in by the passengers on the flights that had departed from their countries. In his reply to a previous question on the topic, the Russian representative had even said that the passengers on the Russian flight had been "practising certain business" in Iraq. It was the responsibility of the Committee to supervise the sanctions on Iraq, under

which all commercial transactions with Iraq, apart from the oil-for-food programme, that were not authorized by the Committee were illegal under international law.

31. If the Committee was to be more than a mere rubber stamp, it had to have a serious procedure whereby States would inform it of their intention to send flights and the members of the Committee, its Chairman or the Secretariat would be able to request further information from those States as to the nature of the flights and their cargoes. If that information was not properly provided or proved otherwise unsatisfactory, the Committee had to be able to stop the flights, an option that was not available to it under a simple notification system. His delegation would welcome the opportunity to undertake the further detailed technical work that would be required to arrive at a satisfactory system.

32. Mr. Li Junhua (China), speaking in response to the Chairman's comments regarding the notification procedure, said that, from a legal standpoint, the process of notification was essentially different from a request for approval. His delegation's understanding was that States intending to send passenger flights to Iraq had only to notify the Committee of that intention and that such flights did not require the Committee's approval or authorization. That was not the case, on the other hand, for cargo flights, for which the inspection procedure already in place was sufficient to prevent the transfer to Iraq of prohibited items. He welcomed the willingness expressed by the United Kingdom and United States representatives to discuss the ideas contained in the non-paper submitted by the Permanent Mission of France and urged the Committee to work towards a consensus on that issue.

33. Mr. Ahmed (Bangladesh) said that, in view of the fact that the Committee appeared to be unable to reach a consensus, the Chairman should consider suspending the discussion until a later meeting.

34. The Chairman said that, as the French proposal had been welcomed by a number of delegations, the Committee should discuss it further in the near future. With regard to the proposal by the United States representative that letters of inquiry should be sent to France, the Russian Federation and the countries that had been overflowed, he said that, while it was legitimate for the Committee to ask supplementary questions referring to information previously supplied by France and the Russian Federation, it would not be

realistically feasible for the Committee to send letters to the Governments of States represented on the Committee. As the entire debate hinged on the interpretation of Security Council resolution 670 (1990) he suggested that the United States proposal should also be discussed in that context at the next meeting of the Committee. In the event of a consensus on a new procedure, he would continue to respond to all communications with regard to cargo passenger flights by initiating the notification procedure.

35. As Chairman, however, he viewed the situation as unsatisfactory. While the members of the Committee basically agreed on the interpretation of the relevant Security Council resolutions, their disagreement over the interpretation of Security Council resolution 670 (1990) had become so pronounced and public that the practice of allowing the Chairman to respond to such communication as though it were a request for approval rather than a notification was no longer tenable. He therefore suggested that the Committee should devote one more meeting to the issue in the near future. If that meeting again proved inconclusive, he intended to report back to the Security Council that the Committee had been unable to find a satisfactory solution to the problem.

*The meeting rose at 7.25 p.m.*