

Question by Judge Guillaume

“Je serais reconnaissant au représentant des Nations Unies de fournir toute information en sa possession sur les travaux préparatoires de la décision 1998/297 par laquelle le Conseil économique et social a saisi la Cour.” [CR 98/17, p.53]

Answer

1. The Economic and Social Council formally considered the Note by the Secretary-General (E/1998/94) at its 47th and 48th meetings of its substantive session of 1998 held on 31 July 1998 and considered the draft decision (E/1998/L.49) at its 49th meeting on 5 August 1998. The Economic and Social Council adopted the draft decision as decision 1998/297, without a vote, at its 49th meeting on 5 August 1998. The relevant extracts of the summary records of the 47th, 48th and 49th meetings of the Council, in English only, are attached hereto. While we are in a position to provide the members of the Court with these summary records, it should be noted that they are otherwise embargoed by the Secretariat, and therefore will not be distributed or made available, until such time as they are also available in the other five official languages of the United Nations.

2. While the Secretariat makes and keeps sound recordings of the meetings of the Economic and Social Council, the Council is not entitled to verbatim records and there are therefore no transcripts of the sound recordings of the meetings of the Council.

Question by Judge Koroma

“In the present case, what meaning is to be given to the expression ‘words spoken or written in the course of performance of his mission’?” [CR 98/17, p. 53]

Answer

1. With respect to the privileges and immunities of experts on missions within the meaning of Article VI of the Convention, the chapeau of Section 22 refers to “such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions”, and applies to the particular privileges and immunities accorded to them in the six sub-paragraphs of Section 22. The immunity from legal process of every kind in respect of words spoken or written and acts done by them in the course of the performance of their missions, accorded to experts on missions under Article VI, Section 22(b), is therefore, strictly functional.

2. The Court, in the **Mazilu** Advisory Opinion, made clear that the meaning of provisions in the Convention on “experts on mission” is to be ascertained by examining these provisions in their legislative context, and then applying them to the particular facts of the case before the Court (see *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory opinion of 15 December 1989*, I.C.J. Reports 1989, p. 177 at pp. 192 -198).

3. The Court in **Mazilu** first noted that the Convention was adopted pursuant to Article 105, paragraph 3, of the Charter and that the Convention determined the privileges and immunities to be accorded to: (1) the United Nations as such (Articles I and II); (2) representatives of members of the United Nations (Article IV); (3) officials of the Organization (Article V); and (4) experts on missions (Article VI) (*ibid.*, at p. 192). The Court then noted that Section 22 of the Convention, in setting out the privileges and immunities that are to be accorded to experts on mission, made it clear that only experts performing missions for the United Nations are covered but that the “Section does not, however, furnish any indication of the nature, duration or place of those missions.” (*ibid.*, p 193). The Court then observed:

“47. The purpose of Section 22 is nevertheless evident, namely, to enable the United Nations to entrust missions to persons who do not have the status of an official of the Organization, and to guarantee them such privileges and immunities as are necessary for the independent exercise of their functions. The experts thus appointed or elected may or may not be remunerated, may or may not have a contract, may be given a task requiring work over a lengthy period or a short time. The essence of the matter lies not in their administrative position but in the nature of their mission.” (At p. 194)

4. It is uncontested that a Special Rapporteur of the Commission on Human Rights is an expert on mission and that an expert on mission has immunity for any words spoken or written “in the course of the performance” of his mission. The Court in **Mazilu** stated that it “considers that Section 22, in its reference to experts performing missions for the United Nations, uses the word ‘mission’ in a general sense” (at p.195) and that “the intent of Section 22 is to ensure the independence of such experts in the interests of the Organization by according them the privileges and immunities necessary for the purpose” (at p. 195). It also concluded that these privileges and immunities are “applicable to persons (other than United Nations officials) to whom a mission has been entrusted by the Organization and who are therefore entitled to enjoy the privileges and immunities provided for in this Section with a view to the independent exercise of their functions” (at p. 196). It is submitted that the Court’s jurisprudence thus requires that the phrase “words spoken or written in the course of performance of his mission” means that a determination must be made as to whether the words were spoken by Dato’ Param Kumaraswamy as part of the mission entrusted to him by the Commission on Human Rights and it is to this question that this answer now turns.

5. In a report on "Respect for the privileges and immunities of officials of the United Nations and the specialized agencies", the Secretary-General stated that "the distinction between acts performed in an official capacity and those performed in a private capacity, which lies at the heart of the concept of functional immunity, is a question of fact which depends on the circumstances of the particular case." (Dossier No. 113, paragraph 7). Similarly, the Secretary-General maintains that the question whether words or acts were spoken, written or done in the course of the performance of a mission is a question of fact which depends on the circumstances of each particular case.

6. In the circumstances of the present case, the Secretary-General noted that it is within the discretion of the Special Rapporteurs of the Commission on Human Rights to publicize their activities and that the Commission values such publicity as a means to raise consciousness about human rights standards and violations. In this connection, the High Commissioner for Human Rights, in her letter to the Secretary-General of 2 October 1998, also confirmed that "it is more common than not for Special Rapporteurs to speak to the press about matters pertaining to their investigations, thereby keeping the general public informed of their work" and that "press coverage is, indeed, an effective way of raising awareness of an expert's concerns" (Dossier No. 54 bis, p.2). Moreover, the Special Rapporteur had specifically reported to the Commission on his working methods and intention to conduct his own promotional activities in addition to those of the Centre for Human Rights (Dossier No. 4).

7. Having concluded that it is within the proper discharge of the functions of the Special Rapporteur's mandate to publicize his activities, the Secretary-General then determined that, with regard to the capacity in which the particular words complained of in this case were spoken, Dato' Param Kumaraswamy had been interviewed in his official capacity as Special Rapporteur and that the article "Malaysian Justice on Trial" in the November 1995 issue of the British magazine International Commercial Litigation explicitly referred to his official United Nations title and capacity. With regard to the relation of the words spoken by the Special Rapporteur to the mission entrusted to him by the Commission on Human Rights, the Secretary-General noted that the article again explicitly referred to his United Nations' global mandate to investigate allegations concerning the independence of the judiciary and that the article and passages at issue clearly related to allegations concerning the independence of the Malaysian judiciary. Bearing in mind the independence, impartiality and integrity of United Nations' Special Rapporteurs, the Secretary-General also considered the content of the remarks and concluded that, as they express the Special Rapporteur's concerns about the independence of the Malaysian judiciary, they were attributable to the mission entrusted to him by the Commission on Human Rights.

8. Based on the foregoing, the Secretary-General determined that the words which constitute the basis of Plaintiffs' complaints in this case were spoken by the Special Rapporteur in the course of the performance of his mission within the meaning of Section 22(b) of the Convention, and he, therefore, maintained that Dato' Param Cumaraswamy was immune from legal process with respect thereto.

9. In this regard, the United Nations again recalls that, in its resolutions 1995/36 of 3 March 1995, 1996/34 of 19 April 1996 and later in 1997/23 of 11 April 1997 and 1998/35 of 17 April 1998 (Dossier Nos. 5, 6, 7 and 8), the Commission on Human Rights has consistently noted with appreciation the Special Rapporteur's determination to achieve wide dissemination of his activities. Moreover, when it renewed the Special Rapporteur's mandate for an additional three years in its resolution 1997/23 (Dossier No. 7), the Commission, having had the benefit of three of his reports, was fully aware of the basis for his investigation of the Malaysian judiciary (Dossier Nos. 9, 10 at paras. 158-160, and 13); of his dealings with the press (See Dossier No. 10, paras. 152 and 160 and Dossier No. 11, paras. 32-34 and 39); and of the lawsuits against him in the national Malaysian courts (Dossier No. 11 at paras. 122-134). The Commission's decision to renew the Special Rapporteur's mandate, therefore confirmed its approval of the Special Rapporteur's working methods as well as of the performance of his mission of which public statements were a part, including making statements to members of the press. In so doing, the Commission has also confirmed the determination by the Secretary-General that the words complained of were spoken by Dato' Param Cumaraswamy in the course of the performance of his mission as the Commission's Special Rapporteur on the independence of judges and lawyers.

10. The United Nations respectfully submits that, in the present case, the meaning of the expression "words spoken or written in the course of performance of his mission" means words spoken to a member of the press in the discharge of the functions of the Special Rapporteur and published with explicit reference to the official capacity and the official title assigned to the Special Rapporteur by the Commission on Human Rights, containing the fact of his investigation of, and his concerns about, the independence of the Malaysian judiciary, a matter directly related to and attributable to the mission entrusted to the Special Rapporteur on the independence of judges and lawyers by the Commission on Human Rights.



Economic and Social Council

PROVISIONAL

E/1998/SR.47
18 December 1998

ORIGINAL: ENGLISH

Substantive session for 1998

PROVISIONAL SUMMARY RECORD OF THE 47th MEETING

Held at Headquarters, New York,
on Friday, 31 July 1998, at 10 a.m.

President: Mr. SOMAVÍA (Chile)

CONTENTS

OPERATIONAL ACTIVITIES OF THE UNITED NATIONS INTERNATIONAL DEVELOPMENT
COOPERATION (continued)

(b) FOLLOW-UP TO POLICY RECOMMENDATIONS OF THE GENERAL ASSEMBLY
(continued)

(c) REPORTS OF THE EXECUTIVE BOARDS OF THE UNITED NATIONS DEVELOPMENT
PROGRAMME/UNITED NATIONS POPULATION FUND, THE UNITED NATIONS
CHILDREN'S FUND AND THE WORLD FOOD PROGRAMME (continued)

COORDINATION OF THE POLICIES AND ACTIVITIES OF THE SPECIALIZED AGENCIES AND
OTHER BODIES OF THE UNITED NATIONS SYSTEM RELATED TO THE FOLLOWING THEME:
COORDINATED FOLLOW-UP TO AND IMPLEMENTATION OF THE VIENNA DECLARATION AND
PROGRAMME OF ACTION (continued)

INTEGRATED AND COORDINATED IMPLEMENTATION OF AND FOLLOW-UP TO MAJOR UNITED
NATIONS CONFERENCES AND SUMMITS (continued)

COORDINATION, PROGRAMME AND OTHER QUESTIONS (continued)

/...

Corrections to this record should be submitted in one of the working
languages. They should be set forth in a memorandum and also incorporated in a
copy of the record. They should be sent within one week of the date of this
document to the Chief, Official Records Editing Section, room DC2-750, 2 United
Nations Plaza.

98-81179 (E)



/...

CONTENTS (continued)

(a) REPORTS OF COORDINATION BODIES (continued)

(d) INTERNATIONAL COOPERATION IN THE FIELD OF INFORMATICS (continued)

IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTIONS 50/227 AND 52/12 B (continued)

ECONOMIC AND ENVIRONMENTAL QUESTIONS (continued)

(a) SUSTAINABLE DEVELOPMENT (continued)

(d) INTERNATIONAL COOPERATION IN TAX MATTERS (continued)

(e) PUBLIC ADMINISTRATION AND FINANCE (continued)

(f) CARTOGRAPHY (continued)

SOCIAL AND HUMAN RIGHTS QUESTIONS (continued)

(a) ADVANCEMENT OF WOMEN (continued)

(e) UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (continued)

(f) IMPLEMENTATION OF THE PROGRAMME OF ACTION FOR THE THIRD DECADE TO
COMBAT RACISM AND RACIAL DISCRIMINATION (continued)

(g) HUMAN RIGHTS (continued)

ADOPTION OF THE AGENDA AND OTHER ORGANIZATIONAL MATTERS (continued)

action on draft decision E/1998/L.48, which was the result of informal consultations.

Draft decision E/1998/L.48 was adopted.

The PRESIDENT invited the Council to take action on draft resolution L.36*, concerning the International Research and Training Institute for the Advancement of Women, which had been re-issued for technical reasons. The draft resolution had no budget implications.

Ms. SINGGIH (Observer for Indonesia), speaking on behalf of the Group of 77 and China, announced that Austria, Italy, Netherlands, Portugal, Spain and Turkey had become sponsors of the draft resolution.

Draft resolution E/1998/L.36* was adopted.

Ms. SINGGIH (Observer for Indonesia), speaking on behalf of the Group of 77 and China, expressed appreciation for the cooperation and flexibility demonstrated during negotiations. Steps should be taken to ensure that the resolution was implemented effectively, strengthening the Institute for the benefit of all Member States.

Mr. THEUERMANN (Observer for Austria), speaking on behalf of the European Union, expressed the hope that implementation of the resolution would help the Institute overcome the difficulties it was currently facing.

The PRESIDENT suggested that the Council should take note of the report of the Secretary-General on the follow-up to and implementation of the Beijing Declaration and Platform for Action (E/1998/53); the report of the Committee on the Elimination of Discrimination against Women (A/53/36 (Part I)); the report of the United Nations High Commissioner for Refugees (E/1998/7 and Corr.1); the report of the Secretary-General on the implementation of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination (E/1998/51); the report of the Committee on Economic, Social and Cultural Rights on its sixteenth and seventeenth sessions (E/1998/22); and the report of the United Nations Commissioner for Human Rights (E/1998/84).

It was so decided.

The PRESIDENT said that informal consultations on the note by the Secretary-General, entitled "Privileges and immunities of the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers" (E/1998/94), had not yielded a consensus. In view of the urgency of the matter,

he took it that the Council wished him to refer it to the Bureau for consideration and subsequent referral back to the Council.

It was so decided.

~~ADOPTION OF THE AGENDA AND OTHER ORGANIZATIONAL MATTERS (continued) (E/1998/L.44 and L.47)~~

~~Mr. AL-HASSAN (Oman), supported by Mr. HAMDAN (Lebanon) and Mr. AL-HARIRI (Syrian Arab Republic), said that his delegation wished to express its strong concern and dissatisfaction with the tendency for Arabic-language versions of documents needed for consideration of items on the Council's agenda to be distributed late or, in some cases, not at all.~~

~~The PRESIDENT said that, while practical reasons existed for late distribution of documents in some cases, he agreed that the principle of having documents distributed in all six official working languages of the Organization must be upheld.~~

~~Mr. REYES RODRIGUEZ (Cuba) pointed out that certain documents contained substantive errors of translation, which altered their meaning. The Secretariat should take steps to correct them.~~

~~The PRESIDENT said that such problems occurred quite often and that it was normal practice to point out errors to the Secretariat, so that they could be rectified.~~

~~Mr. CORDEIRO (Brazil) said that translation errors often led to texts no longer reflecting the agreement which had been reached between delegations. The Secretariat should check the text with the facilitator to ensure consistency.~~

~~Mr. HAMDAN (Lebanon) said that it was extremely important to ensure consistency between original texts and their translations. His delegation had noted errors in the Arabic versions of documents and felt very strongly that it had a right to raise objections about them.~~

~~The PRESIDENT said that the Secretariat would follow normal procedure and consult with the translation services in question about that issue.~~

~~He invited the Council to take action on draft decision E/1998/L.44, entitled "Dates of sessions of subsidiary bodies of the Economic and Social Council".~~

Draft decision E/1998/L.44 was adopted.



Economic and Social Council

PROVISIONAL

E/1998/SR.48
15 December 1998

ORIGINAL: ENGLISH

Substantive session for 1998

PROVISIONAL SUMMARY RECORD OF THE 48th MEETING

Held at Headquarters, New York,
on Friday, 31 July 1998, at 3 p.m.

President: Mr. SOMAVIA (Chile)

CONTENTS

SOCIAL AND HUMAN RIGHTS QUESTIONS (continued)

(g) HUMAN RIGHTS (continued)

IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTIONS 50/227 AND 52/12 B (continued)

ADOPTION OF THE AGENDA AND OTHER ORGANIZATIONAL MATTERS (continued)

SUSPENSION OF THE 1998 SUBSTANTIVE SESSION OF THE COUNCIL

Corrections to this record should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, room DC2-750, 2 United Nations Plaza.



The meeting was called to order at 4 p.m.

SOCIAL AND HUMAN RIGHTS QUESTIONS (continued)

(g) HUMAN RIGHTS (continued) (E/1998/94)

Mr. CHOWDHURY (Bangladesh), Vice-President, reporting on the informal consultations held on the note by the Secretary-General contained in document E/1998/94, said that it had been agreed that it would not be possible for the Council to take a decision on the note since delegations needed time for consultations both within their Missions and with their respective capitals. Members had also agreed that the proposed Council resolution should both request an advisory opinion from the International Court of Justice and call upon the Government of Malaysia to ensure that all judgements and proceedings in the matter were stayed pending receipt of the advisory opinion. It was agreed, lastly, that the proposed Council resolution should be translated into all official languages and made available to members so that a decision on the matter could be taken the following week.

The PRESIDENT said that he took it that the Council wished to resume its consideration of the matter at its resumed session to be held the following week.

It was so decided.

Mr. HASMI (Observer for Malaysia) expressed his delegation's deep regret at the difference which had arisen between Malaysia and the United Nations as a result of the action of the United Nations Special Rapporteur on the Independence of Judges and Lawyers, a national of Malaysia. It took note of document E/1998/94 and of the Secretary-General's decision to seek an advisory opinion from the International Court of Justice through the Economic and Social Council. Malaysia would formally present its position on the issue at the appropriate time, but wished to make a number of comments on the note by the Secretary-General.

With reference to paragraph 7 of the note, the Minister for Foreign Affairs of Malaysia had not refused to amend his certificate but had been unable to do so, given the difference in interpretation by Malaysia as to the extent of the Special Rapporteur's immunities.

/...

With reference to paragraph 14 of the note, it was not correct to say that the Government of Malaysia had insisted that, in order to negotiate a settlement, Maître Fortier must return to Kuala Lumpur. While the Government of Malaysia had requested a second visit by Maître Fortier to Kuala Lumpur to assist in resolving the issue, it was prepared and had in fact decided to send a senior legal official to New York to explore further the possibility of a settlement with the United Nations, an offer that had been acceptable to the Secretary-General. It had been at the further suggestion of the Secretary-General to once again dispatch his Special Envoy to Kuala Lumpur in order to expedite a settlement that the Government of Malaysia had readily agreed to receive Maître Fortier from 25 to 28 July 1998.

Lastly, with reference to paragraph 15, it was not true to state that "the Government of Malaysia was not going to participate ... in settling this matter". While it was true that the Government of Malaysia was not going to participate in preparing a joint submission to the current session of the Council, given the legal constraints, it had cooperated in every way possible with the United Nations in its efforts to resolve the issue.

His delegation deeply appreciated the efforts of the Secretary-General to find an amicable solution to the problem. Notwithstanding the unfortunate difference that had arisen with the United Nations, Malaysia remained fully committed to the Organization and would continue to play an active part in all its activities.

~~IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTIONS 50/227 AND 52/12 B (continued)
(E/1998/81)~~

~~..... Mr. ATIYANTO (Observer for Indonesia), speaking on behalf of the Group of 77 and China, said that it had not been possible to hold informal consultations on the issue of the utilization of the development dividend. The Group of 77 and China, however, attached great importance to the issue and regretted that the report of the Secretary-General contained in document E/1998/81 had been submitted to the Council for consideration instead of to the relevant intergovernmental bodies, as provided for in paragraph 6 of General Assembly resolution 52/235. The Group of 77 and China, which had always negotiated in good faith, therefore wished to propose the following draft decision:~~



Economic and Social Council

PROVISIONAL

E/1998/SR.49
15 December 1998

ORIGINAL: ENGLISH

Resumed substantive session for 1998

PROVISIONAL SUMMARY RECORD OF THE 49th MEETING

Held at Headquarters, New York,
on Wednesday, 5 August 1998, at 10.30 a.m.

President: Mr. CHOWDHURY (Bangladesh)
(Vice-President)

CONTENTS

SOCIAL AND HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS (continued)

ADOPTION OF THE AGENDA AND OTHER ORGANIZATIONAL MATTERS (continued)

SUSPENSION OF THE RESUMED 1998 SUBSTANTIVE SESSION

Corrections to this record should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Office of Conference and Support Services, room DC2-794, 2 United Nations Plaza.



The meeting was called to order at 10.50 a.m.

SOCIAL AND HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS (continued) (E/1998/94 and Add.1, E/1998/L.49)

The PRESIDENT introduced the draft decision contained in document E/1998/L.49. He stressed the urgency of referring the case to the International Court of Justice and requesting that the Malaysian Government stay proceedings until the Court had issued an opinion.

Mr. REYES RODRÍGUEZ (Cuba) said that his delegation would like to amend operative paragraph 1 by deleting from lines 7 to 9 "in the circumstances ... in this case." That section could be included as a last preambular paragraph and would then read "Taking note of the circumstances ... in this case;". He believed that the reference to the note by the Secretary-General (E/1998/94) might prejudice the Court's decision. Moreover, each party would in any case have an opportunity to explain its position.

In operative paragraph 2, "Calls upon" should be replaced by "invites".

Mr. HYNES (Canada) said that it would be difficult to accept any changes to the text without consultations concerning the legal implications. With regard to operative paragraph 1, it was important to retain the reference to the note by the Secretary-General in order to provide the Court with the basic facts to which to refer in making its decision.

Mr. LAVALLE-VALDÉS (Observer for Guatemala) agreed with the representative of Canada that it was important to retain the reference to the note of the Secretary-General in operative paragraph 1, although he felt that it could be amended to read "paragraphs 4 to 15" since paragraphs 1 to 3 only provided background information.

Mr. REYES RODRÍGUEZ (Cuba) pointed out that his delegation had not participated in the drafting or adoption of the note by the Secretary-General, which simply represented the point of view of the Secretary-General. The operative paragraph as it stood conferred legal status on the note and his delegation therefore could not agree to retain it since that would tend to prejudice the deliberations of the Court.

Mr. THEUERMANN (Observer for Austria), speaking on behalf of the European Union, said that it would be difficult to make changes to the text without further consultations and instructions from Governments. It was his opinion that the text should stand as written since it was very important that reference be made to the note by the Secretary-General; the note explained the circumstances of the case, and the opinions it expressed were certainly not binding on the Court. The Court would base its opinion on the presentations by the parties. It was also important to retain the reference to the "legal obligations of Malaysia" at the end of operative paragraph 1.

Mr. ZACKLIN (Assistant Secretary-General for Legal Affairs), speaking on behalf of the Secretary-General, stressed the importance of retaining the reference to the circumstances of the case in operative paragraph 1, since the phrasing was not binding on the other party, which had in any case approved the text. In addition, the deletion of the reference to the legal obligations of Malaysia would strip the referral to the Court of all meaning. He reiterated that the Secretary-General felt that it was imperative that the text stand as written. With reference to the amendment suggested by Guatemala, he believed it important that the original text be retained since paragraphs 1 to 3 contributed to the explanation of the facts.

Mr. KAMITANI (Japan) said that his delegation supported the draft decision as read and that any changes would require consultations, which would further delay a resolution of the dispute.

Mr. REYES RODRÍGUEZ (Cuba) suggested, with reference to operative paragraph 1, that a possible compromise might be simply to substitute "taking note of" for "in" before "circumstances" in the last part of operative paragraph 1.

Mr. ZACKLIN (Assistant Secretary-General for Legal Affairs) said that that amendment to operative paragraph 1 would be acceptable. In operative paragraph 2, the Secretary-General would prefer to use the stronger verb "calls upon".

Mr. XIE Bohua (China) asked how long it was expected to take for the International Court of Justice to issue its opinion and whether Malaysia was under any obligation, as a State party to the Convention on the Privileges and Immunities of the United Nations, to stay the actions in its courts pending the rendering of that opinion.

Mr. THEUERMANN (Observer for Austria), speaking on behalf of the European Union, said that the Union could accept the proposed amendment to paragraph 1. It would prefer to leave paragraph 2 as drafted.

Mr. PFIRTER (Observer for Switzerland) said that perhaps the difficulty lay in the translation, in that the word "Exhorta", used in the Spanish version, was stronger than the terms used in English and French.

Mr. AZLAN (Observer for Malaysia) reiterated that his delegation had noted three factual errors in the note by the Secretary-General. With regard to the last sentence of paragraph 7, the Minister of Foreign Affairs had not refused to amend his certificate, but had been unable to do so. Turning to paragraph 14, the Government of Malaysia had not insisted that Maitre Fortier should return to Kuala Lumpur, but rather, had requested him to do so. Finally, referring to paragraph 15, he said that the Government of Malaysia would prepare its own submission to the International Court of Justice.

Mr. ZACKLIN (Assistant Secretary-General for Legal Affairs) said that, based on material made available to the Office of Legal Affairs by the International Court of Justice, the case would be considered as a priority and would be taken up in the fall of 1998. In reply to the representative of China, staying the proceedings was not an obligation of the State party under the Convention, and did not imply termination of the proceedings, but simply suspending them until the advisory opinion was received. In the early stages of the negotiations with the Government of Malaysia, they had stayed the proceedings. Any action by the Malaysian courts, however, would prejudice the opinion of the International Court of Justice.

Mr. REYES RODRÍGUEZ (Cuba) asked whether all language versions of the text of the draft resolution had equal validity.

Mr. ZACKLIN (Assistant Secretary-General for Legal Affairs) said that all the official language versions had equal value. However, in the event of a difference in meaning the Court could use the original language, which in that case was English.

The meeting was suspended at 11:40 a.m. and resumed at 11.55 a.m.

In the light of an exchange of views in which Canada, Guatemala, Austria and Switzerland took part, Mr. REYES RODRÍGUEZ (Cuba) proposed that in paragraph 2, the word "Exhorta" should be replaced by "Invita" in the Spanish version only. The English text would remain unchanged.

Ms. MESDOUA (Algeria) said that the same amendment should be made in the Arabic version of the draft decision.

Draft decision E/1998/L.49 was adopted as amended.

ADOPTION OF THE AGENDA AND OTHER ORGANIZATIONAL MATTERS (continued) (E/1998/96, E/1998/L.47)

The PRESIDENT said that the Council had not been in a position to adopt formally the draft decision on themes for the 1999 substantive session of the Economic and Social Council at its previous meeting because the related note by the Secretary-General, E/1998/96, had not been available in all the official languages.

Draft decision E/1998/L.47 was formally adopted.

SUSPENSION OF THE RESUMED 1998 SUBSTANTIVE SESSION

The PRESIDENT declared suspended the 1998 resumed substantive session of the Economic and Social Council.

The meeting rose at 12.10 p.m.