

**ECONOMIC
AND
SOCIAL COUNCIL**
**CONSEIL
ECONOMIQUE
ET SOCIAL**

E/AC.7/SR.30
20 February 1948
ENGLISH
ORIGINAL: FRENCH

SOCIAL COMMITTEE

SIXTH SESSION

SUMMARY RECORD OF THE THIRTIETH MEETING

Lake Success, New York

Wednesday, 18 February 1948, at 10.30 a.m.

Present:

Chairman: Mr. KAMINSKY (Byelorussian Soviet Socialist Republic)

Australia	Mr. Jocket
Brazil	Mr. Souza-Gomez
Canada	Mr. Curry
Chile	Mr. Larraín
China	Mr. Wu
Denmark	Mr. Friis
France	Mr. Lamarle
Lebanon	Mr. Azkoul
Netherlands	Mr. Van Heuven
New Zealand	Mr. Lendrum
Peru	Mr. Labarthe
Poland	Mr. Katz-Suchy
Turkey	Mr. Savut
Union of Soviet Socialist Republics	Mr. Borisov
United Kingdom	Miss Salt
United State of America	Mr. Kotschnig
Venezuela	Mr. Perez-Perozo

Representatives of Specialized Agencies:

International Labour
Organization Mr. Metall

Secretariat: Director, Department
of Social Affairs Mr. Stanczyk

Director of the Social
Activities

Sir Raphael Cilento

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/Mr. Messing-Mierzejewski

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Mr. Messing-Mierzejewski

Secretary of the Committee

CONTINUATION OF THE DISCUSSION ON THE SOCIAL COMMISSION'S REPORT ON ITS
SECOND SESSION (Document E/578/Rev.1)

The CHAIRMAN informed the Social Committee that the representative of New Zealand had submitted a draft resolution (document E/AC.7/61) on the question of the prevention of crime and the treatment of offenders, which had been the subject of the ninth resolution of the Social Commission, at its second session.

Mr. LENDRUM (New Zealand) said that the Social Commission's report appeared to indicate that Spain had ceased to be a member of the International Penal and Penitentiary Commission; and that there was therefore no further reason to refrain from establishing contact with that Commission of experts.

The last paragraph of the New Zealand draft resolution authorized the Secretary-General to establish immediate contact. He was prepared to withdraw that paragraph, since the rest of his draft contained enough concrete proposals to permit establishing the proposed relations.

Mr. KATZ-SUCHY (Poland) recalled that a General Assembly resolution had recommended that Franco Spain be excluded from organizations collaborating with the United Nations. The Social Commission was not in a position to establish relations with the International Penal and Penitentiary Commission as long as Franco Spain remained a member.

According to a letter from the International Penal and Penitentiary Commission, Franco Spain had decided to withdraw from that Commission if it entered into an agreement with the United Nations. Its withdrawal was therefore conditional. The Franco Government was still a member of the International Penal and Penitentiary Commission. It was the Commission's duty to expel such a member, but it had not done so. Was the reason the high contribution paid by Spain, or were there other reasons?

The Secretariat should ascertain why the International Penal and Penitentiary Commission did not break off relations with Franco Spain.

He proposed that the New Zealand draft resolution should be rejected, and asked Mr. Lendrum to withdraw his proposal. At the first session of the Social Commission, the New Zealand representative had definitely opposed the attempt to establish relations with Franco Spain. It was the less desirable to make contact with the International Penal and Penitentiary Commission inasmuch as that body's past was not clear: it had done nothing during the war, and it had never protested against the crimes of mass extermination. In 1944, Germany, Italy and Japan had
/been members

been members of the Commission, which had met in Berlin in 1943, under a German President.

Any recommendation to establish contact between the Social Commission and the International Penal and Penitentiary Commission was contrary to the principles of the United Nations.

Sir Raphael CILENTO (Director of the Division of Social Activities) said that the Secretariat was anxious that this question should be cleared up. What must be ascertained was, first, whether the Government of Franco Spain had in fact withdrawn from the Commission; and second, if so, what contact should be sought with the International Penal and Penitentiary Commission? The history of this question went back to the activities of the League of Nations.

In 1946 the Economic and Social Council had set up a Commission to report on the desirability of transferring to the Council the former functions of the League of Nations, and its work on the treatment of offenders. The Economic and Social Council had subsequently asked the Social Commission to come to an understanding on this problem with the International Penal and Penitentiary Commission. In February 1947 the Social Commission had informed the Economic and Social Council that it was unable to act upon the recommendation with regard to the International Penal and Penitentiary Commission as long as that body had not broken off its relations with the Franco Government. This decision had been approved by the Economic and Social Council.

He continued his historical sketch of the development of problems relating to the prevention of crime and the treatment of offenders, and described the activities of the League of Nations in that field. A procedure was followed establishing minimum rules for the treatment of prisoners. Texts had been adopted and communicated to the Governments, which had been requested to collaborate in the institution of reforms. It had subsequently been felt that the League of Nations should assume a more positive role in this important field.

The problems with regard to the administration of justice and treatment of prisoners had been submitted to the Fifth Committee of the United Nations. The tendency had been to entrust these problems to the Permanent Consultative Committee of the Social Commission. Then the question of collaboration between the United Nations and the International Penal and Penitentiary Commission had arisen; the object being precisely the solution of these problems.

He indicated the bases upon which the International Penal and Penitentiary Commission on the one hand, and the Temporary Social Commission on the other hand, considered it possible to achieve agreement between the

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International Commission and the United Nations. It had been proposed that it be left to the Economic and Social Council to decide whether consultation could be undertaken with the International Penal and Penitentiary Commission and what should be the objective of such consultations.

He read the text of the letter in which the Spanish delegation had informed the Commission that it would withdraw if the Commission collaborated with the United Nations. The President of the Commission had stated that he considered the withdrawal immediate, and that contact might therefore be established between the Commission and the United Nations.

The Secretariat, for its part, had set up working parties to study the prevention of crime and the treatment of offenders. It was now for the members of the Committee to state their views.

Mr. BORISOV (Union of Soviet Socialist Republics) regretted that he had only been given a historical outline, whereas what he wanted was an answer to the question whether Franco Spain had or had not resigned from the Commission.

Sir Raphael CILENTO (Director of the Division of Social Activities) said that he could not give his personal opinion on the matter. The Legal Department should be approached.

Mr. BORISOV (Union of Soviet Socialist Republics) thought that it could be deduced from the documents which had been read that the Franco Government had not withdrawn from the Commission. That body ignored the recommendations made by the United Nations and Franco dictated its decisions. The Committee should adhere to the Assembly's recommendation that there should be no relations between the United Nations and the International Penal and Penitentiary Commission.

The outline which had been given was, rather in favour of establishing relations with the Commission but the New Zealand draft resolution was contrary to the decisions of the General Assembly, and should therefore be rejected.

Mr. CURRY (Canada) thanked Sir Raphael Cilento for his historical outline of the question. He explained certain points with regard to the attitude adopted by the Social Commission towards the International Penal and Penitentiary Commission.

What now remained was a question of law. It was necessary to interpret the document which had been read: had Spain withdrawn? If so, contact could be established between the International Penal and Penitentiary Commission and the United Nations. Certain subsidiary questions

questions depended on the way in which that problem was solved; and in particular, the following: would the establishment of contact with the Commission make it unnecessary for the United Nations to set up an organ of its own - which would enable it to save money?

Mr. KOTSCHNIG (United States of America) said that the United States of America could not deal with the International Penal and Penitentiary Commission if Franco Spain was still a member of it, but he thought that was not the case.

It was true that the Spanish representative's letter mentioned a conditional withdrawal. It was no longer now a case of future contingencies: the contingencies were present, for the President of the International Penal and Penitentiary Commission had announced that that Commission no longer maintained relations of any kind with Franco Spain. That must be believed; and besides it had been confirmed by a letter from the Polish Vice-President of the International Penal and Penitentiary Commission. The Polish representative had reproached the Commission with failing to function during the war; but that did not prove that it had collaborated with the enemies of the Allies. Moreover, the Commission's executive body had completely changed and it now had an American President and a Polish Vice-President.

The International Penal and Penitentiary Commission was bound to be of interest to the United Nations, which was eager to take part in penitentiary and penal reform. What must be done was to integrate the activities now carried on by the International Penal and Penitentiary Commission into the general work of the United Nations.

He was glad the representative of New Zealand had not insisted on retaining the last paragraph of his resolution, according to the terms of which the Secretariat might subsequently be called upon to formulate a plan of action. He supported the rest of the New Zealand proposal.

Mr. LENDRUM (New Zealand) stated that the New Zealand Government had not changed its attitude toward Franco Spain, as the representative of the Soviet Union seemed to think, and that it still thought that Franco Spain should not be a member of an international organization. The draft resolution submitted by New Zealand was a working document which could be amended at the request of members of the Committee. It was in this spirit that he had agreed, after hearing Sir Raphael Cilento's statement, to withdraw the last paragraph of his draft resolution. He supported the Canadian representative's view, that any doubt with regard to the legal side of the question should be dispelled. The Secretariat's statement seemed to meet that point: from it he concluded that Spain was no longer a member of the International Penal and Penitentiary Commission.

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Nevertheless, if that was not the opinion of the members of the Committee, he agreed that the question should be referred to the Legal Department of the United Nations for further clarification.

Mr. LAMARLE (France) said that all delegations agreed that relations between the United Nations and the International Penal and Penitentiary Commission should be strictly subordinate to the unequivocal implementation of the General Assembly's resolution of 10 December 1946. Opinions differed as to whether that condition had been satisfied; and the question might be controversial, as was apparent from the hesitation reflected in the statement of the representative of the Secretariat. But it was to the Secretariat, whose concern it was that the United Nations resolutions should be respected and implemented, that all delegations turned, if not for a definite opinion, at any rate for the beginnings of enlightenment.

Sir Raphael CILENTO (Director of the Division of Social Activities) replied that the Secretariat had begun its inquiry into the foundations for the statement that Spain had withdrawn from the International Penal and Penitentiary Commission. Photostat copies of the letters concerning the withdrawal had been received only a few days before, and the Secretariat had submitted the question to the Council for any decision it might see fit to take. If the Committee thought a legal opinion should be obtained, the Secretariat would refer the question to the Legal Department.

Mr. Perez PEROZO (Venezuela) recalled that his country's attitude to Franco Spain was well known: not only had Venezuela no relations with Franco Spain, but she had maintained relations with the Republican Government in exile. If there were doubts as to whether the Government of Franco was not represented in the International Penal and Penitentiary Commission, it was for the Social Commission to dissipate them. The Venezuelan delegation thought that the New Zealand proposal should be amended in that sense.

Mr. WU (China) speaking of juvenile delinquency, stated that that problem was not as acute in China as in other countries. The United Nations Secretariat should help underdeveloped countries to profit from the experience acquired.

Miss SALT (United Kingdom), supported by Mr. FRIIS (Denmark) said, in answer to the doubts expressed by the representative of the Soviet Union, that she entirely agreed with the other delegations with regard to the complete exclusion of Spain from the International Penal and Penitentiary Commission. It was quite clear to the United Kingdom Government that all relationships, financial and otherwise between Franco Spain and the

International Penal and Penitentiary Commission had ceased. The United Kingdom delegation held that it was the Members of the United Nations, and not the Secretariat, as stated by the representative of France, who were the guardians of the Assembly's decisions. Besides, the Social Commission was a body of experts and should not be asked, as had been suggested by the Venezuelan representative, to take political decisions of this kind. It could also be questioned whether it would be useful to approach the Legal Department, since the majority of the Committee's members had had legal consultations with their governments.

Mr. CURRY (Canada) said the Secretariat had certain information and documents which would allow it to assist the Social Committee to formulate its opinion on this question.

Mr. KOTSCHNIG (United States of America) did not understand why additional information was desired. He admitted that the letter from the representative of Spain was couched in rather vague terms, and that it might leave doubts as to whether Spain had withdrawn; but the withdrawal could be accepted as a fact in view of the reply received from the Polish Vice-President of the International Penal and Penitentiary Commission. He proposed that the New Zealand draft resolution should be amended accordingly.

Mr. LAMARLE (France) said that the French delegation had not proposed that the Council or the Committee should delegate its responsibility to the Secretariat but merely that the latter should give its opinion and interpretation of the letters it had received. He proposed amending the last paragraph of the New Zealand draft resolution in the sense indicated by its author and giving more emphasis to the second paragraph as the United States representative had just suggested. He further proposed that the Secretariat should communicate the text of that resolution - if it were adopted - to the President of the International Penal and Penitentiary Commission, in order to make it clear that the resolution would not take effect until the Commission had accepted all its terms.

Mr. KATZ-SUCHY (Poland) did not think the Committee should act until Spain's exclusion from the International Commission had become effective, since the question was to be considered by the Social Commission at its third session. It was for that Commission to decide.

The CHAIRMAN, speaking as representative of the Byelorussian Soviet Socialist Republic, advised against undue haste in settling this question, the political aspect of which was more important than the practical. No decision could be taken until the General Assembly and Economic and Social

Council resolutions on Franco Spain had been implemented. The fact that Spain no longer paid her contribution to the International Commission did not necessarily imply her withdrawal from that body. The question was on the agenda of the third session of the Social Commission and should be decided in accordance with the General Assembly and Economic and Social Council resolutions.

The general debate was closed.

The CHAIRMAN noted that there were some amendments to the New Zealand draft resolution, and that a proposal had been submitted by the representative of Poland, supported by the representative of the Byelorussian Soviet Socialist Republic, to withdraw the question from the Social Committee's agenda. That proposal had priority and should be put to the vote first.

Mr. JOCKEL (Australia) asked that a decision be taken whether or not the problem should be referred to the Legal Department for its consideration.

Mr. KOTSCHNIG (United States of America) said that he would vote against the proposal to refer the question to the Social Commission, since that would mean entrusting the responsibility for what seemed to be a political decision to a subsidiary body of the Economic and Social Council. It was for the Council, if not for the Assembly, to decide such questions.

Mr. BORISOV (Union of Soviet Socialist Republics) said the Committee could not take a decision on a political question, having only vague and dubious data at its disposal.

Mr. KATZ-SUCHY (Poland) pointed out that he had not proposed removing the question from the agenda, but requested that it be considered at the third session of the Social Commission. As for the question whether or not that Commission was empowered to take a political decision, it had already done so several times. Its decision would have to be confirmed by the Economic and Social Council at its seventh session; the final decision would therefore still rest with the latter.

Sir Raphael CILENTO (Director of the Division of Social Activities), replying to the representative of Australia, who asked if it would be possible to have the opinion of the Legal Department before the close of the Economic and Social Council's present session, said that would depend on how much study the question required. They could be certain that the Legal Department would be asked to give the matter priority.

Mr. KOTSCHNIG (United States of America) was surprised that the Legal Department could not give an opinion on such a clearly defined case

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within two weeks. He was prepared to support the New Zealand proposal provided they had the Legal Department's opinion before the close of the present session.

Sir Raphael CILENTO (Director of the Division of Social Activities) regretted that he had created the impression voiced by the representative of the United States. The Legal Department would do its best but it could not be said in advance how much time such a study would require.

Mr. BORISOV (Union of Soviet Socialist Republics) was surprised at such haste. The Legal Department would give its opinion when it was in a position to do so.

Mr. KOTSCHNIG (United States of America) recalled that he had proposed an amendment to the Australian resolution, requesting that the Legal Department's opinion be communicated to the Council before the close of the present session.

The CHAIRMAN reminded the United States representative that his amendment had been accepted by the Australian representative. He put the Polish proposal to the vote.

The proposal was rejected by 12 votes to 3 with 2 abstentions.

The CHAIRMAN put to the vote the proposal submitted by the representative of Australia and amended by the representative of the United States. The representative of Poland requested a vote part by part, pointing out that he was in favour of the first part but not of the second.

The SECRETARY OF THE COMMITTEE read the first part of the Australian proposal, as follows: "The Social Committee requests the opinion of the Legal Department of the United Nations as to whether or not Spain has ceased to be a member of the International Penal and Penitentiary Commission...".

The first part of the proposal was put to the vote and adopted by 14 votes with 2 abstentions.

The SECRETARY OF THE COMMITTEE read the second part of the Australian proposal (United States amendment), as follows: "...and requests that that opinion be submitted to the Committee before the close of the Economic and Social Council's present session".

The second part of the proposal was put to the vote and adopted by 13 votes to 3 with 2 abstentions.

The proposal as a whole was then put to the vote and adopted by 13 votes with 5 abstentions.

The meeting rose at 1.20 p.m.