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## ECONOMIC COMMITTEE

## SUMMARY RECORD OF THE SEVENTEENTH MEETING

Lake Success, New York

Wednesday, 3 March 1948, at 10.30 a.m.

## Present:

## Chairman:

Mr. SANTA CRUZ (Chile)

Australia

Mr. Heyward

Brazil

Mr. Campos

Byelorussian Soviet Socialist  
Republics

Mrs. Uralova

Canada

Mr. Warren

Chile

Mr. Gonzales

China

Mr. Chang

Denmark

Mr. Borberg

France

Mr. Ordonneau

Lebanon

Mr. Ghorra

Netherlands

Mr. Patijn

New Zealand

Mr. Lendrum

Peru

Mr. Monge

Poland

Mr. Lange

Turkey

Mr. Savut

United Kingdom

Mr. Phillips

United States

Mr. Stinebower

Union of Soviet Socialist Republics

Mr. Arutiunian

Venezuela

Mr. Fleury

Also Present: Yugoslavia

Mr. Vilfan

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UNITED NATIONS  
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17 P.

/Representatives

Representatives of the Specialized Agencies:

International Bank for Reconstruction  
and Development

Mr. Lopez-Herrarte

Secretariat:

Mr. Kerno

Assistant Secretary-  
General in charge of the  
Legal Department

Mr. Dumontet

Secretary of the Committee

DEBATE ON THE REQUEST OF THE FEDERATED PEOPLE'S REPUBLIC OF YUGOSLAVIA  
CONCERNING THE DAMAGE CAUSED TO IT BY THE WITHHOLDING OF ITS GOLD  
RESERVES BY THE UNITED STATES OF AMERICA (Document E/624)

The CHAIRMAN invited the representative of Yugoslavia to be seated  
at the Council table and to take part in the discussion without the right  
to vote.

Mr. BORBERG (Denmark) said that he was not so much concerned with the  
particular problem of the Yugoslav gold as with the future effect of the  
Council's decision. The Council's resolution did not ask the Economic  
Committee to find a solution for the specific point dealt with in the  
Yugoslav and United States draft resolutions, the sole object of which was  
to determine the competence or incompetence of the Council. It instructed  
the Committee to consider whether the Council was generally competent to  
deal with all matters of this kind and to submit a reasoned report,  
serviceable for future similar cases.

He was not a legal expert and did not feel able to adopt a definite  
attitude. He could not say what was the exact interpretation which should  
be given to the term "international". In his view a dispute, to be  
called international, should involve at least two nations; but the term  
"international" seemed nowadays to have acquired a more general application.

It was the Economic Committee's duty to base its action on a careful legal  
analysis, and he therefore proposed the appointment of a committee of  
jurists to study the legal opinion submitted by the Secretariat.  
Meanwhile he would feel bound to oppose both draft resolutions.

Mr. ARUTIUNIAN (Union of Soviet Socialist Republics) said that this  
was a problem of general implications, far transcending the interests of the  
two countries involved or of any other countries concerned. It had lost its  
original procedural character and had become a political problem.

The question was whether the Economic and Social Council was competent  
to consider the attitude adopted by the United States with regard to the

/monetary



monetary reserves which had been entrusted to it. Representatives had realized as soon as the matter came before the Council that in refusing to return the Yugoslav gold the United States was not moved by a desire for international economic co-operation. It was true that if the question had been put to the vote, the majority of the Council would doubtless have supported the American standpoint; but the case was so glaring that some delegations had been prevented by conscience from completely blinding themselves to the facts.

There was a Great Power, enriched by the war, refusing without valid reason to return the monetary reserves entrusted to it by an Ex-ally during the struggle against the common enemy. The justice of the Yugoslav cause was demonstrated by the fact that in November 1945 the United States Government had informed the Yugoslav representative in that country that all that had to be done to withdraw these reserves was to give express instructions to a duly authorized representative. Only the fact that Yugoslavia had delayed designating such a representative for four or five months had provided the United States Government with a sudden pretext for refusing a restitution which it had been prepared to make a short time before.

In the eyes of some delegations the reply to the question of the Council's competence would provide two alternatives. A positive reply would make it possible to decide for restitution, and a negative reply would help to appease the scruples of some delegations which were troubled by the injustice of the American attitude, by providing them with a legal pretext.

This was how he interpreted the submission to the Committee of the legal question of competence. It was strange to hear the United Kingdom representative claim so naively and so irrelevantly that it was not the Council's business to discuss in substance the question of the withholding of the Yugoslav gold reserves. In fact he knew from the outset that he would be obliged to vote in favour of the American attitude and suited his attitude to that fact.

They now had before them the legal opinion submitted by the Secretariat. The Legal Department stated a first and affirmative principle when it declared that the Council was competent to deal with the question raised by the Yugoslav delegation involved. It stated a second principle to the effect that it was for the Council itself to resolve the question of competence.

The Committee had to decide whether or not it wished to act in

/accordance

accordance with the impartial opinion of the Legal Department. In spite of that objective conclusion, some representatives - for example the representative of Denmark - were saying: I am not a jurist; a committee of jurists must be set up.

This was a somewhat curious attitude if it was remembered that it was the representative of Denmark himself who had originally raised the legal aspect of the question.

Although the legal experts of the Secretariat had already been consulted, it was again being sought to postpone a solution, because certain countries, while their conscience would not permit them to accept the American standpoint, were unfortunately unable to vote against the United States. This was the reason for all these marches and counter-marches within the Council with the object of enabling certain delegations to salve their consciences without opposing the standpoint of a Government which gave it to be understood very politely that it possessed very powerful means of pressure, officially cloaked under the name of the Marshall Plan, to persuade the various countries to accept principles and decisions contrary to their interests or feelings.

The effects of this policy of pressure were extremely dangerous to international economic co-operation, as was demonstrated by this small affair of the Yugoslav gold reserves.

The United States representative's whole speech had dealt with the nature of a possible recommendation by the Council, and its conclusion had been that such a recommendation could only apply to a number of Governments, and not to a single one.

He agreed with this standpoint; but that being so, all the United States representative's objections fell to the ground. The previous day the representatives of Poland and Yugoslavia had suggested a recommendation of a general character, in which the Council would request Member States not to withhold the monetary reserves belonging to other Member States deposited with them in certain circumstances.

The historical retrospect in which the United States representative had indulged with regard to the character of any recommendations which might be adopted by the Council did not in any way preclude the Council from considering the question of the Yugoslav gold reserves and from making a recommendation in that connection.

The United States representative, invoking the Economic and Social Council's resolution of 3 October 1946 on the general question of the Yugoslav and Czechoslovak barges and vessels on the Danube, had said that  
/there was



there was a difference between the nature of that problem and the present problem of the Yugoslav gold reserves.

He could not see wherein this difference lay. A short time ago the United States was obstinately refusing to return Yugoslav vessels. Now it was the Yugoslav gold reserves which it did not want to return. A short time ago the Council was discussing a concrete case and adopting a recommendation of general character. Now, in a concrete case of a similar nature, the Council was perfectly competent to make a similar recommendation.

It was beside the point to state, as the United States representative had done, that at its third session the Council might have committed an error in its handling of the question of the Yugoslav and Czechoslovak vessels, and that it would be undesirable to repeat that error.

The summary records of the Council showed that at that time the United States, among other countries, was in favour of such a discussion. Was it an error that eleven countries, including the United States, had voted for the resolution of 3 October 1946? It was difficult to think so.

It had been attempted to present the problem in a legal light, but a legal dispute would involve the question of the ownership of the gold. In the case before the Council that question did not arise. Furthermore there was no dispute as to the amount involved. No aspect of the question required legal investigation.

He could not agree with the United Kingdom representative's contention that a detailed consideration of a question of this kind would require the Economic and Social Council to transform itself into a court of justice. This was out of the question in a case which involved no elements of a legal nature.

The United Kingdom representative had gone on to observe that every question had its economic aspect, and that therefore the claim that the withholding of the Yugoslav gold reserves had an economic aspect did not necessarily call for its examination by the Council.

No one would deny that in this world everything was interdependent, and that therefore every question had an economic aspect of greater or less importance. According to the United Kingdom representative's reasoning one might speak of the economic aspects of the Aurora Borealis, but it was doubtful whether the astronomers who studied that phenomenon felt any need to refer to Lord Keynes or his colleagues in Great Britain or the United States.

It was not true to say that the question of the Yugoslav gold had an  
/economic

economic aspect; in reality it was an essentially economic question. Every question had an economic aspect, but some were essentially economic; that was the reason for the Economic and Social Council's existence.

A similar remark applied to the United Kingdom representative's third argument, to the effect that this was a dispute of bilateral character, which it was therefore not for the Council to consider.

A dispute of bilateral character might easily - as in this case - have an international significance and bearing.

He explained how the dispute between the United States and Yugoslavia had become a problem which transcended the scope of the relations between the two parties. One point emerged, namely, that in its external policy the United States Government was resorting to methods incompatible with international economic co-operation and contrary to the terms of the Charter. In the case in point it was using the Yugoslav gold reserves deposited in its territory to exercise pressure for very definite objectives.

The United States representative himself had said that the withholding of the gold would provide the easiest method of bringing negotiations with Yugoslavia to a satisfactory issue. Yesterday it had been Czechoslovakia, today it was Yugoslavia, and tomorrow it might be Denmark or Hungary. The methods followed with regard to the Yugoslav gold reserves were clearly related to those employed in connection with the Marshall Plan. In both cases the pressure was the same, and only the formula differed. Was that not a matter of interest to the Council?

Another point deserved consideration. The retention of the Yugoslav gold reserves constituted an obstacle to the economic reconstruction of a country which had suffered particularly severely from the war. Was that not a matter within the Council's jurisdiction. Had not definite decisions been taken at previous sessions with regard to the economic reconstruction of the countries devastated by the war?

It had been said that the economies of the various countries of Europe were interdependent. That meant that any obstacles to the reconstruction of Yugoslavia's economy also affected the reconstruction of Europe's economy.

The debate which had taken place round this modest question proved that the effect of the Marshall Plan was essentially to hinder the economic reconstruction of Europe under the cloak of alleged aid. Looked at from this aspect too, the question was within the Council's jurisdiction, and he believed he had sufficiently demonstrated that the Council would be competent to adopt a recommendation of a general character applying to all

/Members



Members of the United Nations.

Mr. PATIJN (Netherlands) considered that the first error had been to submit the question to the Council, which was not competent to deal with disputes of a bilateral character. If a different view was taken, there was no reason why there should not be brought before the Council all kinds of difficulties resulting from trade agreements, which could, of course, be defined as disputes related to an international economic problem.

If the Council decided upon the appropriateness of the steps taken in this matter by one or both parties, the consequence would be that all bilateral disputes having an economic aspect (and what dispute had not an economic aspect in international relations?) could be brought before the Council.

Even the liberal interpretation of the Charter advocated by Dr. Lange would not allow of the creation of a sort of economic tribunal whose decisions would be based not upon the law, but upon whether or not the measures taken by one of the parties to a dispute were justified. The Council was not a tribunal. It had no legislation available on which it could base judgments on the economic aspect of bilateral disputes.

He thought that the second mistake had been to study the question of the Council's competence. The legal opinion given by the Secretariat did not seem to him clear. When the Assistant Secretary-General explained that no interpretative document had been drawn up at the San Francisco Conference in order not to burden future generations with historical studies, he was himself burdening the Council with history. The history of law-making was an important element in the study of legal texts. Even if the Council considered itself competent to study a dispute of this type, it would be well to undertake such a historical study. The Council should not waste time in studying a question of competence, but consider what it ought to do from the point of view of common sense.

Addressing the USSR representative, he formally declared that no pressure had been brought to bear on him.

Mr. WARREN (Canada) thought there was general agreement on the fact that the Council was competent to decide questions coming within its jurisdiction. The Council should weigh carefully any precedent which might be established.

He did not think that the Committee should consider itself bound by the legal opinion of the Secretariat, which had not other purpose than to facilitate the Council's work.

/The line

The line of argument followed by the Secretariat seemed to imply that the Council was competent to study a whole range of questions, insofar as they had an economic aspect and that since the Security Council and the International Court of Justice had been assigned definite powers as regards disputes, any disputes not expressly defined to them should be studied by the Economic and Social Council; in fact, the latter was to deal with residual questions.

It might well be doubted whether the Secretariat's interpretation rested on a sound basis.

As regards the legal point at issue, the delegations had expressed various very valuable opinions. The main thing was that the Council itself should be competent to decide in each particular case whether or not it intended to examine the question. The question should be studied first by the Agenda Committee, then in plenary meeting, in order to avoid having the problem of competence still unsolved at the end of a session.

It was necessary to think of the precedent which might be established. He had serious doubts as to the wisdom of a decision which might lead to the formulation of a strict rule and to an over-rigid interpretation of the Charter. The competence of the Council was in danger of being seriously restricted in the future. He hoped that it might be possible, at future sessions, to decide on a line of conduct which would build up a body of jurisprudence.

In the present case it might be advisable to take a decision similar to that adopted in the case of the Yugoslav vessels, although it might be considered unfortunate to establish a second precedent.

The Council should take its decision independently on each case, and should avoid binding itself, at the present stage of the discussion, by a general decision as regards competence. The Council was sovereign. It must shoulder its responsibilities, and each of its members should ask himself honestly whether the precedent to be established was of a kind which would hinder or facilitate future action.

Mr. ORDONNEAU (France) observed that the problem before the Committee was of the greatest importance as it was of a constitutional nature, and required an interpretation of the Charter in connection with the functions and the competence of one of the principal organs of the United Nations. It should be studied without regard to any contingent matter or to any personal consideration. The French delegation was grateful to the Yugoslav representative for having had the wisdom to keep his arguments on the juridical plane, regardless of his own feelings on the matter.

/In June 1945,



In June 1945, two methods of ensuring peace were open to the planners at San Francisco.

The first, which was a long-range method, consisted of organizing an international community, defining the general rules applicable to the whole world and laying the foundation for a common administration. Once this task had been accomplished, peace would be assured and the problems which presented themselves to the San Francisco planners would be solved. To this end, it was necessary to maintain peace and security from day to day and this was the purpose of the second method.

These two aspects of the work of the United Nations were both visible in the institutions set up by the Charter. The powers of the Assembly were limited. Hence, it had seemed necessary as early as 1945 to create more specialized organs such as the Security Council, - a kind of executive authority with a limited sphere of activity - the Trusteeship Council, the International Court of Justice, the Economic and Social Council, not to mention all the specialized agencies or other bodies included under that name.

A survey of the spheres of competence of these various organs showed that the field before the authors of the Charter was not completely covered. Thus, for example, there existed a Council of economic organization; but there was no Council of political organization, as the Security Council only dealt with disputes serious enough to endanger international peace and security and the International Court of Justice did not deal with disputes of a juridical nature arising out of agreements concluded between Members of the United Nations.

The reasons for these gaps were not far to seek. The Charter could not embrace all problems at once, and the political difficulties had been such that it was wiser to deal with such questions as appeared possible of immediate solution and to leave the completion of this work for the future.

More particularly, as regards disputes, document E/AC.6/25, which set forth the Legal Department's opinion, listed (page 4 of the English text) the relevant articles of the Charter and reached the conclusion that this list was not exhaustive, and that since there was no explicit statement to the effect that the Economic and Social Council was not competent, that Council was competent.

The French delegation could not conceal its surprise at such an interpretation. It considered that when the careful authors of a text made an enumeration without expressly stating that it was illustrative, it should most certainly be considered as limitative. It was a curious idea

/to talk

to talk of a liberal construction when defining the powers of an institution. In this connection there could be no wide construction but only a correct one. When the authors of the Charter felt it necessary to define precisely, in studied terms under consideration, the jurisdiction of an organ, it was childish to maintain before a Council of legal and political experts that the functions listed were only a few of those actually assigned to it. If the Economic and Social Council were to adopt such methods, only disorder and confusion could result.

The French delegation therefore considered that, as regards international disputes, there were no other means of settlement beyond the four set forth in the Charter and mentioned in document E/AC.6/25 (page 4 of the English text).

At that very moment, and in the same building, an organ of the General Assembly was studying plans put forward by certain Members of the United Nations for the creation of general institutions of conciliation and arbitration to fill the intentional gaps left in the provisions of the Charter.

The problem of settling disputes was an extremely general one, and, as the Australian representative had said, it was impossible to isolate the juridical, the economic and even the legal elements in any dispute. These three aspects were so closely linked that the Economic and Social Council for example could not attempt to deal with the economic side of disputes which the Security Council might consider within its own jurisdiction as being likely to endanger world peace. In the general conventions for arbitration and conciliation which had already been signed or ratified, no distinction had been drawn as regards the nature of the conflicts and the organs competent to settle them. Every dispute was a dispute in itself. It contained political, economic and legal elements, and only an organization empowered to deal with all these elements should be called upon to pronounce judgement on such problems.

To sum up, the French delegation thought that the problem referred to the Committee should be treated within the framework of a general system for settling disputes, and that, in the absence of any general convention on arbitration and conciliation, the States had at their disposal only the four methods enumerated by the Secretariat. This was tantamount to saying that the Economic and Social Council was not competent to deal with this case, since no State, when signing the Charter, had intended to subscribe to a general agreement on the arbitration of economic disputes and to entrust this arbitration to the Economic and Social Council.

/The only



The only exception to this general rule had also been mentioned by the Australian representative, i.e., the case where a dispute, owing either to the number of members involved in it, or its very wide nature, might raise a general problem with which the Economic and Social Council might be called upon to deal on a United Nations basis.

The very restrained terms in which the Yugoslav request was couched did not make him think that the case came under this exceptional heading. On the other hand, it should not be forgotten that any dispute, however small, might in some way or other be connected with general and international considerations.

The Yugoslav representative had tried to show that this was not a legal dispute coming under one of the heads of which he had spoken. He was not convinced. The Yugoslav request raised a problem of restitution which gave rise to a problem of damage. It was asked that this should cease, and by this very act a purely legal problem was raised, for the mention of the word "damage" implied "damage at law".

The French delegation thought that the dispute was of a special nature, concerning two States, and arising over a very limited object and that consequently it could not concern the Economic and Social Council at the United Nations level. The Council was therefore not competent to deal with the matter, and it would have been preferable not to raise the question. The French delegation was glad, however, that this essential problem had been thrashed out. It hoped that this long discussion would be fruitful, and that the Economic and Social Council would profit from the statements made to define exactly its competence as regards problems concerning two individual members.

To conclude, he supported the suggestion of the Danish representative, brought up again by the Canadian representative, to ask a committee of legal experts to outline rapidly the general principles brought out by these discussions, so that this precedent might be established and that the Economic and Social Council might sooner or later find a line of conduct already marked out for it, and not again be obliged to enter into long discussions on the subject.

Mr. CAMPOS (Brazil) thought that the principal questions raised in document E/AC.6/25 were the following:

1. Was the problem brought up by the Yugoslav delegation of general economic interest? Did it affect a large area of the world or was it simply of a bilateral nature?

/2. Was this

2. Was this problem essentially economic or essentially legal?
3. Was it a dispute of secondary interest or, on the contrary, an important dispute which the Council had to examine in virtue of the functions assigned to it by Articles 55 and 62 of the Charter?

In connection with the first question, he reviewed the arguments in favour of both opinions and arrived at the conclusion that it was a problem which more particularly concerned two States, and that the Economic and Social Council, in view of the bilateral nature of the question, could not make recommendations under the terms of Article 62 of the Charter, to which the United States representative had referred.

As regards the second question, it should be emphasized that the Yugoslav representative had dealt with the problem purely from the economic point of view, and that he had maintained that there was no legal dispute. However, it was almost impossible to separate the two aspects of the question, and it must be recognized that legal considerations were important. The United States had taken these much-discussed measures, not to obtain compensation, but in the expectation of certain payments from Yugoslavia. Thus, there was, on the one hand, a legal obligation on the part of the United States to return the gold entrusted to it and, on the other hand, a legal obligation on the part of Yugoslavia to make certain payments as an indemnity for damage caused. The legal question was thus raised as to whether one of the parties was entitled to keep the gold entrusted to it until its claims under another head had been met. If the Economic and Social Council wished to deal with the substance of the case, it could not avoid the legal question as to whether, under the terms of public international law, the United States was entitled to compensation and had the right, in order to ensure that Yugoslavia should fulfil her obligations, to retain the Yugoslav gold deposited in United States territory.

Furthermore, in order to evaluate the loss suffered by Yugoslavia owing to the retention of her gold by the United States, it would be necessary to weigh the advantages that Yugoslavia had derived from the nationalization of undertakings in her territory and from the seizure of certain assets.

These were legal problems outside the Economic and Social Council's jurisdiction.

To sum up, even if the Council could for a moment isolate certain economic aspects of the question it would very soon come up against legal problems.

/As regards



As regards the third question, it was not easy to decide whether a dispute involved complex legal considerations.

If the Council adopted the Secretariat's opinion (document E/AC.6/25) it might be led to examine the problem and, after a short time, find itself obliged to admit that such complicated legal questions were involved that the examination would have to be abandoned.

If it were admitted to be within the Economic and Social Council's competence to deal with bilateral disputes, the idea would have to be accepted that the criterion of competence was not the degree of legal complexity, but merely the question whether the dispute had an important economic aspect.

On this point, therefore, he thought that the Secretariat's document was not convincing, and that the Economic and Social Council was not competent to deal with this matter.

That being the case, it was advisable to make a few observations concerning the exact interpretation of the provisions of the Charter. The Charter established the compulsory jurisdiction of the Economic and Social Council and the General Assembly. Any party could bring a dispute before one of these organs, the other party being automatically obliged to recognize its competence, without, however, being obliged to accept its decisions, subject, of course, to the provisions of Chapter VII. It was provided, moreover, that in all cases in which the Charter did not prescribe the compulsory jurisdiction of the organs of the United Nations, the parties could by common consent have recourse to an arbitrator. It might be maintained that, in the present case, this provision did not apply. During the discussions concerning the drafting of the Charter, the idea that the Economic and Social Council might in certain cases act as an arbitrator in economic disputes, had been rejected and it had been decided that, in such a case, the matter should be referred to the judicial organs of the United Nations.

The Economic and Social Council might possibly be regarded as competent in a case in which an international economic policy was accepted by the Members of the United Nations. In such an eventuality, no judicial questions would be involved.

The delegation of Brazil would be prepared to accept the Australian view that certain specified types of disputes might be examined by the Council.

In analyzing the problem, it was important to examine first of all the area of competence of the United Nations in economic questions and then the procedures contemplated for carrying out the decisions taken.

/Even if

Even if a question were within the competence of the United Nations, this did not mean that the procedures for giving effect to the decisions would also be within its competence. The same remark applied to political disputes which had economic aspects. It was obvious that the Council could not, for example, take steps to stop conflicts.

After referring to Articles 55 and 62 of the Charter, he stated that the Economic and Social Council was not a tribunal or an arbitration organ and that, in the particular case submitted by Yugoslavia, it was not competent.

Mr. LANGE (Poland) said that the United States representative had expressed doubts as to whether the Council could make recommendations to a particular Government. He did not share these doubts since, in his opinion, there was nothing in the Charter to preclude such a procedure. Article 62 dealt with the recommendations which might be addressed "to the General Assembly, to the Members of the United Nations and to the specialized agencies concerned," and it could of course be argued from this text that the recommendations should be made to all the Members.

In this particular case, however, the issue involved was of a general character. If this were not the case, the Council could not deal with it. Hence, bearing in mind these facts and also the fears expressed that the problem might be treated on too narrow a basis he submitted the draft resolution reproduced in document E/AC.6/28.

The CHAIRMAN drew attention to the fact that the Committee's task was strictly limited to the terms of the resolution referred to it, and to deciding whether the Economic and Social Council possessed the necessary competence to deal with a case such as that submitted to it by the Yugoslav Government. That being the case, it seemed difficult for the Council to examine the draft resolution of a general character moved by the representative of Poland.

Mr. LANGE (Poland) thanked the Chairman for his explanation and hoped that his draft resolution would be examined if the Committee discussed the substance of the problem.

His delegation intended to ask for the discussion of the question of all the gold reserves entrusted to Member States for safe keeping during the war, if the Council declared itself incompetent to deal with the more restricted problem of the Yugoslav gold reserves.

Mr. CHANG (China) stated that it had always been his delegation's opinion that the Economic and Social Council could decide at any time whether it would deal with a question or not. It was only when there was not enough time to discuss an item on the agenda that its examination could  
/be deferred.



be deferred. All subjects on the agenda should be examined separately and all the factors should be taken into consideration. At the moment, the Council had two items on its agenda, and both deserved special attention.

It might, however, be a good thing to carry out the suggestion to appoint a legal committee for the purpose of studying this question of competence.

Mr. LENDRUM (New Zealand) agreed with the remarks of the representative of France and with the conclusion that any too liberal interpretation of the Charter would create confusion in the future work of the Economic and Social Council. At San Francisco it had never been contemplated that the Economic and Social Council might deal with disputes such as that now before the Committee, and he did not believe that the Council was competent.

Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) thanked the members of the Committee for the attention they had given to the document prepared by his Department.

In reply to the observation of the representative of Canada, he pointed out that no Department of the Secretariat claimed to submit opinions binding on the Council. The Legal Department's text in particular, bore the character of an advisory opinion only, and the ideas it contained might or might not be approved. The discussion had shown that it had had a useful influence, if only because it had brought out the complexity of the problem.

The document in question had been reproached with not being sufficiently clear. The reason for this must be sought in this very complexity, and also in the short time the Secretariat had had to study the problem.

Referring to the observations made by the representative of the Netherlands, he had never maintained that an historical interpretation of the Charter should be excluded, but merely that they should not go too far in that direction, for such an interpretation was only a subordinate and secondary method of solving problems. When he had expressed that opinion, he had not known that Sir Hartley Shawcross had made an identical declaration at the International Court of Justice and had pointed out in particular that too much reliance should not be placed on the preparatory work of the San Francisco Conference in determining the sense of certain articles of the Charter.

The Secretariat's chief aim had been, not to resolve the specific question of the Yugoslav gold, but to reply to the general question of competence in questions of this type.

/It had not

It had not affirmed that the Council was competent without a thorough study of this question of the Yugoslav gold. It had simply said on page 3 of its opinion that the Council had a sort of preliminary competence, that is to say, that if one party to the dispute declared that the dispute was connected with very important international economic problems, the Council was competent to judge whether this was the case or not.

If, after studying the question in detail, the Council decided that the bilateral dispute did involve international economic problems directly within its jurisdiction, it could, in the Legal Department's opinion, declare itself competent and make recommendations on this matter. But once more the Council should proceed to a preliminary examination of the question, disputes in general not being within its jurisdiction, and it was only in exceptional cases and under the conditions stated above that it could deal with such problems.

Perhaps it would be advisable to follow the suggestion of the representative of China to appoint a legal committee, especially considering the complexity of the problem and the short time available to the Committee to resolve it.

Mr. STINEBOWER (United States of America) asked Mr. Kerno if he was interpreting him correctly in saying that the phrase "In the view of the Legal Department, much disputes do come within the competence of the Council" (document E/AC.6/25, page 5) did not apply to the specific question of the Yugoslav gold, but to the general question of the Council's competence in this type of problem.

Mr. KERNO (Assistant Secretary-General) replied that, on page 3 of the opinion, he had stated expressly that the Council was competent in a preliminary way to determine whether a dispute involved economic problems within its competence.

Mr. MONGE (Peru) stated that his delegation had examined the problem both from the point of view of the organizations and of the repercussions that the solution adopted might have on the Council's future work.

Having taken part in the drafting of the Charter at San Francisco, he could affirm that its authors had aimed at the establishment of an international organization which would subsequently set up a series of international organizations responsible for dealing with financial, administrative and other principles connected with international economic policy. It would be premature, therefore, to deal with questions such as that now before the Committee. To do so would be incompatible with the  
/intentions



intentions of the authors of the Charter.

If the Council decided that the solution of the Yugoslav gold problem was within its competence, it would thereby accept responsibility for examining a whole series of other problems, especially those connected with bilateral international trade. The delegation of Peru, for example, might raise the question of sugar import quotas discussed at Havana. Fortunately, however, the Council and the Assembly had very wisely taken steps to establish a special organization to deal with these questions. As the representative of France had pointed out, the Charter did not contain any provision for an organization in which controversies of this nature might be examined. For this reason many delegations did not accept the idea that the question was within the Council's competence. They would vote against the examination of this problem, not because pressure had been brought to bear upon them or because they were unacquainted with the substance of the question, but because the procedure of the Economic and Social Council did not allow of its being examined.

In regard to a problem of such importance, opinions had to be expressed very clearly, since they determined the competence and the future action of the Council.

The continuation of the discussion was deferred to the next meeting.

The meeting rose at 1.15 p.m.

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