

SOCIAL COMMITTEE

SIXTH SESSION

SUMMARY RECORD OF THE FORTIETH MEETING

Lake Success, New York

Wednesday, 3 March 1948, at 3.00 p.m.

Present:

Chairman: Mr. KAMINSKY (Byelorussian Soviet Socialist Republic)

Australia	Mr. Jockel
Brazil	Mr. de Souza-Gomes
Canada	Mr. Curry
Chile	Mr. Larrain
China	Mr. Cha
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 States of America	Mr. Kotschnig
Venezuela	Mr. Perez-Perozo

Representative of Specialized Agencies:

International Labour Organization	Mr. Metall
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Note: Corrections of this summary record provided for in the rules of procedure should be submitted in writing within the prescribed period to Mr. Delavenay, Director, Editorial Division, Room CC-87, Lake Success. Corrections should be accompanied by or incorporated in a letter written on headed notepaper and enclosed in an envelope marked "Urgent" and bearing the appropriate symbol number.

/Consultants

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Consultants from Non-Governmental Organizations:

	World Federation of	
	Trade Unions	Miss Spiegel
Secretariat:	Sir Raphael Cilento	(Director of the Social Activities Division)
	Dr. Saba	(Director of the Division of Privileges and Immunities and Registration of Treaties)
	Mr. Messing-Mierzejewski	(Secretary of the Committee)

CONSULTATIONS WITH THE INTERNATIONAL PENAL AND PENITENTIARY COMMISSION
CONSIDERATION OF THE SECRETARIAT'S LEGAL OPINION ON THE QUESTION WHETHER
SPAIN HAS CEASED TO BE A MEMBER OF THE IPFC. CONSIDERATION OF THE
NEW ZEALAND DRAFT RESOLUTION

At the Chairman's request, Dr. SABA (Director of the Division of Immunities and Registration of Treaties) commented briefly on the Legal Opinion on the question whether Spain has ceased to be a member of the International Penal and Penitentiary Commission "IPFC" (document E/AC.7/66), which the Social Committee had requested from the Secretary-General. After examining the documents placed at its disposal, the Legal Department of the Secretariat had reached the conclusion that the Spanish Government was not now a member of the IPFC. He pointed out, however, that under the present terms of Article 2 of the Constitutional Regulations of the International Commission any Government willing to concur in the work of the Commission had, in principle, the right to membership of the IPFC.

Mr. LENDRUM (New Zealand) explained the New Zealand delegation's viewpoint when preparing the draft resolution (document E/AC.7/70) that it was submitting to the Social Committee for approval. He drew the Member's attention to an amendment that he wished to make to the text of paragraph 3, beginning with the words: "REQUEST the Social Commission...." He thought it preferable to replace the words "...providing that...." by the words "provided and so long as....", which exactly defined the Committee's attitude regarding the Spanish Government.

As it appeared from the Secretariat's legal opinion that the Spanish Government had ceased to be a member of the International Commission, there was no longer any reason why the Social Commission should not comply with the Council's request concerning consultations with the IPFC.

Miss SALT (United Kingdom) thought that the new form which the New Zealand representative had just given to the draft resolution, and
/the explanations

the explanations with which he had accompanied it should be sufficient to make the question clear and dispel any doubts which the members of the Committee might still have.

However, she suggested that a slight amendment be made to paragraph 4 by adding the following words: "...and that the above-mentioned consultations should include consideration of such revisions." This amendment provided a remedy for the lack of precision of the International Commission's Regulations; it did not, on the other hand, prejudge the nature of the relations to be established between the Social Commission and the IPPC.

With regard to the Spanish Government's possible re-admission to the IPPC, the New Zealand draft resolution provided the necessary guarantees.

She requested that the excellent account of the negotiations between the United Nations and the IPPC, which Sir Raphael Cilento had given at a previous meeting, be published as an official document.

The United Kingdom delegation would support the New Zealand draft resolution if the latter accepted the amendment proposed by the United Kingdom.

Mr. LENDRUM (New Zealand) stated that his delegation was ready to accept the amendment proposed by the United Kingdom representative.

Mr. KATZ-SUCHY (Poland) absolutely refused to accept the New Zealand draft resolution. It was essential that all the ways by which the Franco Government might gain readmission to the IPPC should be closed before there could be any question of establishing relations between the Social Commission and that organization. Thus the first condition to be fulfilled was the revision of the IPPC's Constitutional Regulations mentioned in the legal opinion, which would enable the IPPC to acquire effective control of admissions. The idea of upsetting, in the present case, the procedure habitually followed by all the specialized agencies, was out of the question. There was no justification for the haste with which certain Members wished to act.

The Secretary-General should communicate to the Social Commission all fresh information collected on this question since the Commission had decided that in view of the General Assembly's Resolution on relations of Members of the United Nations with Spain, it could not enter into relations with the IPPC.

The Commission would then have to decide whether the events that had taken place since its first decision permitted it to take a different attitude.

/He recalled

He recalled that the IPPC had asked permission to enter into relations with the United Nations at a time when the Franco Government was actually a member of the IPPC, which was not mentioned in the request. Certain Members, among them Poland and France, had had to draw the Social Commission's attention to this point. Considerable doubt remained today - as even the legal opinion had shown - concerning the possibility of the Franco Government again participating in the IPPC. No hasty decision must be taken as long as the situation with regard to Spain was not absolutely clear.

In conclusion, he repeated his suggestion that the Social Commission be asked to take a decision based on the new, or apparently new aspects of the situation.

Mr. LEMARLE (France) stated that the French delegation had no further doubt that the IPPC did not at present fulfil the required conditions under which the United Nations could enter into relationship with it in accordance with the principles stated in the General Assembly's Resolution of 12 December 1946. It was a question of fact, not a question of law that Spain was no longer a member of the IPPC, since no article of the IPPC's Constitutional Regulations laid down conditions for the admission or exclusion of members. The relations to be established between the United Nations and the IPPC would be de jure relations, which could not be based on a de facto situation.

He quoted a precedent regarding the Franco Government's participating in international organizations: the Universal Postal Union had resolved, in Article 17 of a Protocol signed in Paris in 1946, to suspend the participation of the Franco Government until the conditions stated in the General Assembly's Resolution of 12 December 1946 were fulfilled. There was a similar precedent in connection with the International Telecommunications Union.

Consequently, he did not accept the New Zealand draft resolution, but agreed with the remarks of the Polish representative. He pointed out, however, that if, during a later discussion, part of the New Zealand draft resolution were to be resubmitted in another form, it should be made clear in the fifth paragraph, in the phrase: "...how international activities in the field of prevention of crime...can best be carried out...", that such action was taken within the competence, or under the auspices of, the United Nations.

Replying to various remarks made during the debate, Mr. KOTSCHEWIG (United States of America) said that the matter in question had been under /discussion

discussion for five months, and consequently a decision could not be called hasty; on the contrary, a decision must be reached. Furthermore, the Social Commission was to consult the IPPC on a particular point, and there was no question of concluding with an agreement of the kind that had been reached with the specialized agencies.

With regard to consultation with the IPPC, there was no question of concluding any agreement which would make the IPPC a specialized agency; no permanent link or co-operation need be established. All that had been proposed was to facilitate the determination of how international activities in the field of prevention of crime and the treatment of offenders could best be carried out; which meant: how they could best be carried out by the United Nations.

He proposed deleting the fourth and sixth paragraphs of the New Zealand draft resolution. The fourth paragraph, which recommended that the IPPC should give consideration to the question of revising its Constitutional Regulations, seemed inconsistent with the limited and specific nature of the consultation in question. The sixth paragraph was not clear and might be understood to mean that an agreement of the type reached with the specialized agencies was being considered.

Speaking as Byelorussian representative, the CHAIRMAN said that he could not understand the haste with which certain Members wished to solve this question. There was a whole series of international organizations of which the Franco Government was not a member; they had well-defined statutes and could be usefully consulted on the same points as the IPPC. One example was the International Association of Criminal Law, which was going to receive status "B" as a specialized agency.

The legal opinion supplied by the Secretary-General was not even confirmed by the facts. It was stated that Spain was no longer a Member of the IPPC, but in fact, she had agreed to withdraw on condition that she maintained consultative relations with the IPPC.

The Economic and Social Council could not agree to establish relations with the IPPC when it might perhaps be forced to revoke that decision later.

He recalled that the Social Commission had had to point out that the Franco Government was a member of the IPPC before any question was raised as to the relations to be established between the United Nations and the IPPC, and the Economic and Social Council had at first agreed to these relations in principle.

The Social Commission should examine the substance of this question and reach a decision which, in his opinion, should be negative. The

Commission would undoubtedly seek to enter into relations with a more reputable organization.

Mr. PEREZ-PIEROZO (Venezuela) expressed his delegation's approval of the French representative's statement. The legal situation was not sufficiently well-defined. It would be wise to postpone consultation with the IPPC until the latter had finally excluded the Franco Government from membership.

Mr. KATZ-SUCHY (Poland) asked whether the Secretariat's activities in the prevention of crime would be held up in the absence of consultation with the IPPC. Incidentally, he would like to have some idea of the work done by the Secretariat in this field.

He recalled that the League of Nations had been in contact with a series of international legal research organizations and that other institutions of the same kind, such as the Association of Democratic Jurists, the International Criminal Police Commission, The Howard League for Penal Reform and The International Bureau for the Unification of Criminal Law, etc., still existed. What steps had been taken to enter into consultation with these various organizations, and was the IPPC really the only body of its kind?

Nothing in the New Zealand draft resolution required an amendment of the IPPC Constitution prohibiting readmission of the Franco Government. The exact position of the Franco Government with regard to the IPPC was not even clear at the present time: if any fact concerning it had been established, it had only been at the time when the Franco Government addressed a letter to the Secretary-General of the IPPC. The Committee did not know what the position was now.

In reply to the Venezuelan representative's remarks and to questions raised by the representative of Poland, Sir Raphael CILENTO (Director of the Social Activities Division) stated that the Secretariat was fully aware of the need to forestall any possible readmission of the Franco Government to membership of the IPPC. The Secretariat would have to draft various proposals for amendment of that body's rules of procedure.

As to consultation with existing organs, he stated that the Secretariat had consulted about a hundred experts on criminal matters and maintained close contact with about forty of them. He added that the Social Activities Division had decided to set up groups of experts in various countries. Such groups already existed in the United States of America, Canada, South Africa and Cuba. One would shortly be set in the United Kingdom and negotiations were in progress to form two in Belgium.

/As indicated

As indicated in a document read to the Committee, the Social Activities Division had established contact with numerous international organizations, seven of which had had relations with the League of Nations.

A Plenary meeting of the IPPC would be required if its rules of procedure were to be amended, and the next regular session was not due until August. But a report had to be drawn up for the next session of the Social Commission in April.

Recapitulating the work of the Social Activities Division, he said that a report had been sent to Members and thirty-four had replied. The present study plan was based on consideration of these replies and progress was being made daily. The opportunity to consult the IPPC would be valuable for the completion of this programme.

He asked for specific information on the nature of the proposed consultation with the IPPC.

Was it intended to hold a joint meeting of the IPPC and the Social Commission at the United Nations headquarters, or merely to consult certain members of the IPPC, and if the latter, which members?

Mr. BORISOV (Union of Soviet Socialist Republics) could not accept the New Zealand draft resolution. The matter was not as limited as certain Members wished to suggest. The question was to decide whether they would safeguard the principles laid down by the General Assembly's resolution against the Franco Government and its ban on the establishment of relations with international organs of which that Government was a member. The United States representative urged the establishment of relations with the IPPC and gave great publicity to that institution. On the other hand, the Legal Department was not even in a position to state that the Franco Government was no longer a member of the IPPC, as that organization had no means of effective control of admissions or of excluding any government.

Thus the New Zealand resolution had no solid foundation. That was quite obvious. The draft provided that the Economic and Social Council should establish contact with the IPPC although the position of the latter with regard to the Franco Government remained extremely doubtful. Moreover, why was the Committee made to waste its time discussing this matter when it should be referred to the Social Commission? It was the Commission that would have to establish any future contact with the IPPC; hence as a matter of tact it should be left to make the decision.

He recalled that there were many other organizations to consult, apart from the IPPC. In conclusion, he stated that the General

/Assembly's

Assembly's resolution ought to be the deciding factor in the present discussion and that no one in the United Nations should be allowed to violate decisions of the General Assembly. As several members had already said, it was essential to have de facto and de jure assurance that the Franco Government would not be a member of the IPFC.

Mr. KOFCHWIG (United States of America) wished to stress the fact that it was only a question of consulting the IPFC, and not of establishing consultative relations with it. He thanked Sir Raphael Cilento for his account of the Secretariat's activities in the field of crime prevention. He pointed out that present consultations took place mainly with individual experts and that moreover, the members of the IPFC were governments, including those of France, Belgium, Poland, Czechoslovakia, Yugoslavia, the United States, etc. How could it be said that such an organization was suspect?

The Social Commission had not the necessary powers to take a decision. It was for the Economic and Social Council to take this decision, which was of a political nature, as the USSR representative had pointed out. The fact that the Social Commission had informed the Council of the Spanish Government's membership of the IPFC, did not increase its powers.

In reply to Sir Raphael Cilento's question he said that the proposed consultation would take place between certain members of the Social Commission and certain members of the IPFC.

Mr. LARRAIN (Chile) supported the New Zealand draft resolution with the amendments proposed by the United States of America and the United Kingdom. The third paragraph of the draft was in conformity with the General Assembly's decision in regard to relations of Members of the United Nations with Spain. Taking up a suggestion by the French representative, he proposed inserting in paragraph 5 some such explanation as "under the auspices of the United Nations" after the words "international activities".

The CHAIRMAN, speaking as representative of Byelorussia, suggested that if it was correct that the General Assembly was responsible for decisions concerning the establishment of relations with specialized agencies, possibly the Charter contained some provision for consultation with an international organization.

Mr. KATZ-SUCHY (Poland), after thanking Sir Raphael Cilento for his statement on his Department's activities, said he had not meant to suggest that it was the business of the Social Commission to take

a final decision concerning the IPPC. The facts were that the Economic and Social Council had taken the decision to enter into relations with the IPPC, that that decision had not been revoked and that it was the Social Commission which had concluded that it need not implement the Council's decision until the IPPC had eliminated certain conditions.

In reply to the Byelorussian representative's question, he pointed out that although Articles 57 and 63 of the Charter provided for agreements with specialized agencies, the occasional consultation now in question was an entirely different matter, for which the Charter made no provision.

Mr. SABA (Director of the Division of Privileges and Immunities and the Registration of Treaties) stated that although, apart from Articles 57 and 63 of the Charter, which provided for the establishment of regular relations with the specialized agencies, and Article 71, which referred to non-governmental organizations, there was no formal provision in the Charter authorizing United Nations organs to enter into consultations, he did not believe that the possibility of these organs entering into occasional consultations with individuals or organizations was excluded by reason of that omission in the text of the Charter.

Mr. LAMARLE (France) thought that the point just raised concerning the provisions of the Charter was a good illustration of the complexity of the problem. He accepted the legal explanation given by Dr. Saba. In conclusion, the Committee must revert to the General Assembly's resolution on relations of Members of the United Nations with Spain, which was the authoritative ruling on this matter. No guarantee had been given that the Franco Government was not or would not become a member of the IPPC, and under the terms of the IPPC's constitutional regulations no such guarantee could exist. If the Franco Government wished to be readmitted to the IPPC, there was no way of excluding it. Thus, the will of the Franco Government was the decisive factor and this alone should enable the Committee to form a judgment.

Mr. LENDRUM (New Zealand) pointed out that it would require a considerable time to revise the constitutional regulations of the IPPC, as that organization had no session scheduled until August and it would still be necessary to await the ratifications. Moreover, the New Zealand Draft resolution specifically provided that all consultation with the IPPC must cease if the Franco Government were readmitted to membership. He agreed that, on this important subject, the right of decision belonged to the Economic and Social Council and not to the Social Commission.

Mr. KATZ-SUCHY (Poland), reverting to the legal question, did not accept the interpretation according to which everything not formally

prohibited by the Charter was permissible. In the present case, the Committee should revert to the General Assembly's resolution and act in conformity with it.

Mr. AZKOUK (Lebanon) thought that as the Franco Government was no longer a member of the IPPC, consultation should be authorized. The New Zealand draft resolution, moreover, took all necessary precautions to meet a change in the situation; it was fully understood that all relations with the IPPC could be severed if the Franco Government were readmitted to membership.

Mr. KOTSCHNIG (United States of America) stated that a too limited interpretation of the lack of any provisions in the Charter, concerning consultations, would lead to prohibiting even consultations with experts. He therefore supported the Lebanese representative's statement.

The CHAIRMAN, speaking as Byelorussian representative, asked whether the Economic and Social Council should authorize all consultation regarding its activities.

Sir Raphael CILENTO (Director of the Social Activities Division) stated that the organs of the United Nations had the right to draw on all sources for information and to enter into consultation without special authorization. It was the establishment of consultative status that was provided for by Articles 63 and 71 of the Charter.

Miss SALT (United Kingdom) agreed with the representative of the United States of America in requesting the deletion of the fourth and sixth paragraphs of the New Zealand draft resolution.

Mr. KATZ-SUCHY (Poland) fully understood that the Secretariat could ask for any expert opinions it deemed necessary. He would not, for example, object to the Secretariat's consulting the Chairman of the IPPC personally. But the very fact of the Economic and Social Council deciding on consultation with the IPPC tended to give that organization a special position.

It was important to note that the IPPC regarded itself as a "specialized agency" and that it envisaged eventual collaboration with the Economic and Social Council of the United Nations.

He would like to repeat that even the New Zealand draft resolution raised doubts regarding the position of the Franco Government in relations to the IPPC and consequently included certain precautionary measures.

Lastly, it was necessary to revert to the recommendations of the General Assembly's resolution and conform to them. There was no reason for a hasty decision, and delay would in no way prejudice the work of the

/Department

Department of Social Affairs or the United Nations as a whole.

Mr. JOCKEL (Australia), speaking on a point of order, moved the closure of the debate.

The CHAIRMAN put the motion for closure to the vote.

The motion for closure of the debate was adopted by eleven votes to three.

The CHAIRMAN observed that the decision taken by the Committee would not prevent a resumption of the discussion by the Council at a plenary meeting.

He would put to the vote the proposed amendments to the New Zealand draft resolution, beginning with that of the United Kingdom delegation. He had that proposal read; it suggested the addition to the fourth paragraph of the following words: "...and that the above-mentioned consultations should include consideration of such revisions."

Mr. BORISOV (Union of Soviet Socialist Republics) stated that the draft resolution submitted by New Zealand referred to a general question and recalled the position taken by the United Kingdom representatives, both in the past and on this occasion, whenever the question of relations with organizations of which the Franco Government was a member was brought up.

Mr. KATZ-SUCHY (Poland) expressed astonishment at the proposal to delete the paragraph providing guarantees against the re-admission of the Franco Government to membership of the IPPC.

Mr. LENDRUM (New Zealand) pointed out that he had accepted the amendment proposed by the United Kingdom delegation, but did not agree to the deletion of the paragraph as proposed by the United States representative.

Miss SALT (United Kingdom) remarked that the representative of the Union of Soviet Socialist Republics had implied that the draft resolution really emanated from the United Kingdom and not from New Zealand. The United Kingdom delegation asked for the withdrawal of that assertion which was entirely untrue.

Mr. LENDRUM (New Zealand) protested categorically against the insinuation of the USSR representative regarding the authorship of the draft resolution submitted by New Zealand. That country's sovereignty was clearly established in international law, as the representative of the Union of Soviet Socialist Republics could ascertain.

Mr. BORISOV (Union of Soviet Socialist Republics) said that the representatives of the United Kingdom and New Zealand had not understood his statement. Consequently, he was not prepared to withdraw it, but

/was ready

was ready to explain its meaning to the United Kingdom representative if she so desired.

Mr. KATZ-SUCHY (Poland) proposed two amendments. The first was the deletion of that part of paragraph 2 following the words:

"...the Secretary-General....". The second was the addition, at that point, of the following new paragraph:

"REQUESTS the Social Commission to review the question of consultations in the light of the discussions that have taken place in the Committee...."

The CHAIRMAN, speaking as Byelorussian representative stated that he would vote against the draft resolution as a whole; it was contrary to the General Assembly's resolution of 12 December 1946, and was a violation of the principles of the Charter, which did not provide for such consultations.

Mr. BORISOV (Union of Soviet Socialist Republics) again affirmed that the Council should not take any decision during that session. He formally proposed that the discussion of the New Zealand draft resolution should be deferred and requested a vote on that proposal by roll call.

After discussion, during which the representatives of Canada and Lebanon protested against putting the USSR proposal to the vote at that point, the CHAIRMAN concluded that it would nevertheless be advisable to vote on this proposal first.

The vote was taken by roll call, with the following result:

In favour: Byelorussian Soviet Socialist Republics, France, Poland, Union of Soviet Socialist Republics.

Against: Australia, Brazil, Canada, Denmark, Lebanon, Netherlands, New Zealand, Peru, Turkey, United Kingdom, United States of America.

Abstentions: China, Venezuela.

Absent: Chile

The proposal of the Union of Soviet Socialist Republics was rejected by eleven votes to four, with two abstentions.

Mr. PEREZ-PEROZO (Venezuela) stated that he had abstained from voting for the USSR proposal because he thought it necessary that the Social Commission should be able to consult with the IPPC provided that the Franco Government did not belong to that organization.

The amendment proposed by the Polish delegation was rejected by ten votes to four, with three abstentions.

/The amendment

The amendment proposed by the delegation of the United States of America for the deletion of paragraph 4, was rejected by eight votes to six, with three abstentions.

The amendment proposed by the delegation of the United States of America, for the deletion of paragraph 6, was adopted by eight votes to four, with four abstentions.

The New Zealand draft resolution was put to the vote as a whole by roll call, at the request of the Polish representative.

The result of that vote was as follows:

In favour: Australia, Brazil, Canada, China, Denmark, Lebanon, Netherlands, New Zealand, Turkey, United Kingdom, United States of America.

Against: Byelorussian Soviet Socialist Republics, France, Poland, Union of Soviet Socialist Republics, Venezuela.

Abstention: Peru.

Absent: Chile.

The draft resolution submitted by New Zealand was adopted as amended by eleven votes to five, with one abstention.

Mr. LABARTHE (Peru) remarked that after the explanations provided by the Secretariat on the question of the participation of the Franco Government in the IPPC, he would have been prepared to vote in favour of the resolution if the amendments proposed by the United States of America had been adopted. He pointed out that his country always abstained from taking a position on questions relating to "Franco Spain". Peru recognized only one Spain. The wording used constituted interference in a country's internal affairs; the United Nations did not possess that right.

Mr. KATZ-SUCHY (Poland) expressed astonishment at the statement made by the representative of Peru. He hoped that Members of the United Nations might consult the summary records of meetings in order to ascertain the attitude adopted by certain Members.

Mr. FRIIS (Denmark) explained that he had voted for the draft because he considered it a provisional document and believed that the Economic and Social Council would decide the question at its next session.

The CHAIRMAN, speaking as Byelorussian representative, explained his vote. Moreover, he reserved the right to raise the same objections at a plenary meeting. He had voted against the draft because he regarded its adoption as a violation of Articles 57 and 63 of the Charter.

Mr. BORISOV (Union of Soviet Socialist Republics) explained that he had voted against the draft resolution because he thought that

/indirectly

indirectly and on the initiative of certain representatives, it contravened the resolution of the General Assembly. In spite of the doubts that remained regarding the Franco Government's participating in the IPPC, the draft had been adopted. That act was a violation of the General Assembly's resolution.

The meeting rose at 6.45 p.m.