

COMMITTEE ON NEGOTIATIONS WITH SPECIALIZED AGENCIES

SUMMARY RECORD OF THE FORTY-FIRST MEETING

Held at Lake Success, New York, on Thursday, 7 August 1947, at 3:00 p.m.

Present:

Chairman:	Mr. Papanek	Czechoslovakia
	Mr. Smith	Canada
	Mr. Gonzales	Chile
	Mr. Cha	China
	Mr. de Clermont-Tonnerre	France
	Mr. Lunde	Norway
	Mr. Phillips	United Kingdom
	Mr. Griffiths	United Kingdom
	Mr. Chernyshev	Union of Soviet Socialist Republics
	Mr. Kotschnig	United States of America

Representatives of the Trusteeship Council:

Mr. Forsyth	Australia
Mr. Noriega	Mexico

Secretariat:	Mr. Owen	Department of Economic Affairs
	Mr. Andersen	Bureau of Administrative Management and Budget
	Mr. Saba	Department of Legal Affairs
	Mr. Yates	Joint Division of Co-ordination and Liaison
	Mr. Bloch	Department of Security Council Affairs
	Mr. Chudson	Department of Economic Affairs
	Mr. Krcmery	Joint Division of Co-ordination and Liaison

Continuation of the Discussion of the Draft Agreements With the International
Bank for Reconstruction and Development and the International Monetary Fund

ARTICLE II - REPRESENTATION

Paragraph 1

Mr. LUNDE (Norway) proposed that the title be changed to "Reciprocal Representation," as in other agreements.

/Mr. CHERNYSHEV (Union of Soviet Socialist Republics)

Mr. CHERNYSHEV (Union of Soviet Socialist Republics) asked why paragraph 1 limited the attendance of the United Nations to meetings of the Board of Governors of the Bank only, and suggested that it be extended to cover all conferences and other meetings of the Bank.

Mr. LUNDE (Norway) agreed.

Mr. SMITH (Canada) stated that, according to his information, the meetings of the Board of Governors were the only relevant ones, with the exception of the regular meetings of the Executive Directors who were salaried employees of the Bank.

Mr. LUNDE (Norway) referred to Article VI, Section 10 of the Articles of Agreement of the Bank recommending the establishment of regional councils for the Bank.

The CHAIRMAN stated that he understood that no such councils had been established.

Mr. KOTSCHNIG (United States of America) proposed that it be suggested to the Bank negotiators that the United Nations should be invited to attend meetings of the Executive Directors, but that the point need not necessarily be insisted upon.

DECISION: The proposals of both Mr. KOTSCHNIG (United States of America) and Mr. LUNDE (Norway) were adopted.

The representative of the Trusteeship Council, Mr. FORSYTH (Australia) asked if the expression "United Nations" in paragraph 1 could be understood to mean that any particular organ of the United Nations was entitled to be represented at the meetings of the Bank.

The CHAIRMAN explained that in practice the Secretary-General had been given the task of insuring representation on behalf of all organs of the United Nations.

Mr. KOTSCHNIG (United States of America) suggested that the question be brought up before the Joint Committee of the Economic and Social Council and the Trusteeship Council.

DECISION: This suggestion was adopted.

Paragraph 2

The CHAIRMAN suggested that the expression "in a consultative capacity" be replaced by "for purposes of consultation."

DECISION: This was agreed.

Paragraphs 3 and 4

DECISION: These paragraphs were adopted without change.

Article on Proposal of Agenda Items

Mr. LUNDE (Norway) proposed that an article on agenda items be included with wording similar to Article III of the Agreement with the ILO.

/Mr. CHERNYSHEV (Union of Soviet Socialist Republics)

Mr. CHERNYSHEV (Union of Soviet Socialist Republics) agreed with this proposal which was also supported by Mr. KOTSCHNIG (United States of America).

DECISION: It was decided to include an Article III on Proposal of Agenda Items.

ARTICLE III - CONSULTATION AND RECOMMENDATIONS

Mr. CHERNYSHEV (Union of Soviet Socialist Republics) stated that this article contradicted Article 58 of the Charter as well as Article 62, Article 63, paragraph 2, and Article 64. He therefore suggested a general discussion on the article.

Mr. LUNDE (Norway) agreed with the statement of the USSR representative and added that in his opinion the formulation of the article also contradicted Article V, section 8, of the Articles of Agreement of the International Bank which stated:

"...(b) In making decisions on applications for loans or guarantees relating to matters directly within the competence of any international organization of the types specified in the preceding paragraph and participated in primarily by members of the Bank, the Bank shall give consideration to the views and recommendations of such organization."

Mr. SMITH (Canada), while agreeing that Article III could be improved in form, thought that the substance of paragraph 3 of Article III should be maintained in order to preserve the free judgment of the Bank in the granting of loans.

Mr. CHERNYSHEV (Union of Soviet Socialist Republics) stated that the text submitted by the Bank seemed to suggest that the Bank was trying to avoid being bound by the provisions of the Charter. He suggested the adoption of an article similar to Article IV of the Agreement with ILO. However, if some of the members of the Committee should press for the adoption of the text submitted by the Bank, he urged the Committee to request an opinion from the Legal Department of the Secretariat to determine whether this article was in conformity with the Charter.

Mr. de CLERMONT-TONNERRE (France) submitted that, in his opinion, recommendations on the part of the United Nations were not of much use if the recommendations were not going to be followed by the Bank.

Mr. PHILLIPS (United Kingdom) pointed out that Article 63 of the Charter related to the co-ordinating functions of the Council but should not be interpreted in such a way as to interfere with the specific projects of the specialized agencies.

Mr. KOTSCHNIG (United States of America) supported the Canadian proposal and further stressed the fact that the Bank had to count on the support of the public in marketing its securities. The exercise of political pressures upon
/the Bank

the Bank would hamper its operations. He believed that Article III was essential from the Bank's point of view and that the Bank would not yield on this point.

Mr. SMITH (Canada) stated that while there might be differing interpretations of Articles of the Charter, it would be untimely to precipitate unnecessarily a constitutional crisis during the infancy of the international organizations and the development of a world system.

Mr. CHERNYSHEV (Union of Soviet Socialist Republics), answering the remark of Mr. PHILLIPS (United Kingdom), pointed out that the co-ordinating functions of the United Nations covered the policies and activities of the specialized agencies, and reiterated his request that an opinion be obtained from the Legal Department.

The CHAIRMAN introduced for consideration paragraph 2 of Article V of the informal paper prepared by the Secretariat.

Mr. PHILLIPS (United Kingdom) said that if the Bank's text of this article were submitted to the Legal Department for an opinion, it should be accompanied by a record of the different views expressed by the members of the Committee in the course of the discussion. In the United Kingdom, co-ordination did not necessarily imply control. Mr. SMITH (Canada) opposed the submission of this article for a legal opinion unless the exact terms of the question to be referred were previously agreed by the Committee. It was clear from the Charter that the United Nations had the legal power to co-ordinate the activities of specialized agencies, and to make recommendations to them. In his opinion, the question was whether the United Nations could, as a matter of policy, undertake for the duration of an agreement not to make specific recommendations on specific loan projects, etc., while remaining free to make general recommendations, and of course while carrying out its obligatory co-ordinating function. He maintained that the real issue was not a legal question, but that a policy decision was required and that the Committee should not shift the responsibility of advising on high policy matters to the Secretariat. The Committee should remember that a large part of the funds which it was hoped the Bank would lend would come from private investors. It would not be in the interest of the devastated or under-developed countries, which hoped to obtain assistance from the Bank, to discourage such private investment, even though the United Nations could legally do so.

Mr. de CLERMONT-TONNERRE (France) did not agree with the remarks made by the representative of Canada. He supported the suggestion to submit the draft for a legal opinion.

/The CHAIRMAN

The CHAIRMAN agreed that this article, together with the record of the discussions of the Committee, would be transmitted to the Legal Department of the Secretariat for a legal opinion. He invited further discussion on this subject.

Mr. KOTSCHNIG (United States of America) pointed out that the point on which the Committee desired a legal opinion was not whether the text of Article III was in conformity with the Charter. The question was whether the United Nations had legal power under the Charter to accept such an article.

ARTICLE IV - EXCHANGE OF INFORMATION

The article as drafted in document E/C.1/20 was adopted without change.

ARTICLE V - SECURITY COUNCIL

Mr. SMITH (Canada) submitted an alternative draft of paragraph 1 of this article which was distributed as document E/C.1/31.

Mr. CHERNYSHEV (Union of Soviet Socialist Republics) proposed that the text contained in the ILO Agreement be adopted in place of the Bank draft.

Mr. LUNDE (Norway) proposed that the following text be adopted:

"...Assistance to the Security Council

The Bank agrees to co-operate to the greatest extent possible within the terms of its Articles of Agreement in rendering such assistance to the Security Council as the Council may request, including assistance in carrying out decisions of the Security Council for the maintenance or restoration of international peace and security.

In taking action in regard to any loan, (transaction), the Bank will pay due regard to any relevant measures being taken pursuant to decisions of the Security Council for the maintenance or restoration of international peace and security under Article 41 or 42 of the United Nations Charter."

DECISION: The proposal of Mr. LUNDE (Norway) was rejected by five votes to two, with one abstention.

The proposal of Mr. CHERNYSHEV (Union of Soviet Socialist Republics) was rejected by four votes to three, with two abstentions.

The proposal of Mr. SMITH (Canada), further amended by replacing "the Bank may guarantee, participate in or make any loan" by "when the Bank guarantees, participates in or makes any loan," was adopted by six votes to two with two abstentions.

Article on Assistance to the Trusteeship Council

The representative of the Trusteeship Council, Mr. NORIEGA (Mexico) asked whether, in accordance with Article III of the Articles of Agreement of the
/Bank,

Bank, the Bank could provide funds for the development of trust territories.

Mr. KOTSCHNIG (United States of America) suggested that the question should be raised directly with the Bank authorities, but added that the negotiators on behalf of the Bank would probably not be in a position to answer definitely in the affirmative.

Mr. de CLERMONT-TONNERRE (France) stated that in his opinion such a loan was possible if it were made to a country member of the Bank for the development of a territory under its trust.

The CHAIRMAN proposed that a separate article on Assistance to the Trusteeship Council be included in the Committee's draft and put forward to the Bank negotiators without making it a sine qua non.

Mr. KOTSCHNIG (United States of America) felt that the discussion of such an article, if proposed, might possibly elucidate certain questions, but he expressed great doubts as to its chances of being adopted.

Mr. SMITH (Canada) supported this view.

DECISION: It was decided to include the following article in the draft:

"ARTICLE VII

Assistance to the Trusteeship Council

The Bank agrees to co-operate with the Trusteeship Council in carrying out of its functions and in particular agrees that it will, to the greatest extent possible, render such assistance as the Trusteeship Council may request, in regard to matters with which the Organization is concerned."

Mr. CHERNYSHEV (Union of Soviet Socialist Republics) pointed out that there were a few articles which were included in agreements with other specialized agencies but which did not appear in the Bank draft, such as articles on:

- (a) non-self-governing territories,
- (b) personnel arrangements, and
- (c) budgetary and financial arrangements.

He stated that he would raise the question of their inclusion as the occasion arose.

ARTICLE VII - REGISTRATION OF TREATIES

Dr. SABA (Legal Department) stated that under Article 102 of the Charter, the States Members of the United Nations were under an obligation to register every treaty or international agreement entered into by them and that there was a sanction to this obligation, namely, that a party to a treaty which had not been registered could not invoke that treaty before any organ of the United Nations.

/The Bank draft

The Bank draft would have the effect of establishing an exception to the rule in Article 102 of the Charter, as it aimed at exempting a State which had contracted a financial agreement with the Bank from the obligation of registering such agreement.

A definition of what constituted a treaty or an international agreement had not been given, either during the San Francisco Conference or during the consideration by the General Assembly of the regulations on registration, although the question had been raised. It had been established precisely, however, during the discussions of the Legal Committee of the General Assembly, that an agreement entered into between a State and a specialized agency might be an international agreement falling within the scope of Article 102.

The draft presented by the Bank would therefore, be in contradiction to the Charter and to the interpretation which had been given by the Legal Committee, and could not be accepted.

Mr. CHERNYSHEV (Union of Soviet Socialist Republics) concurred with this view and suggested the deletion of the article.

Mr. KOTSCHNIG (United States of America) favoured deletion of the article as unnecessary.

Mr. SMITH (Canada) and Mr. de CLERMONT-TONNERRE (France), although having some doubts as to whether the granting of a loan to a government by the Bank was, as such, an international agreement subject to the provisions of Article 102, did not feel strongly about it.

DECISION: It was decided to delete this article.

Article on Non-Self-Governing Territories

The CHAIRMAN explained that the Bank, according to its Articles of Agreement, had only to deal with countries that were fully self-governing.

Mr. CHERNYSHEV (Union of Soviet Socialist Republics) agreed that the inclusion of an article of this kind was not necessary.

DECISION: It was agreed not to include an article on this subject.

The representative of the Trusteeship Council, Mr. FORSYTH (Australia) further explained that non-self-governing territories were considered as forming part of the metropolitan territory responsible for their administration.

ARTICLE VIII - STATISTICAL SERVICES

Mr. SMITH (Canada) presented a text worked out between the Secretariat of the United Nations and the Secretariat of the Fund.

DECISION: The Committee agreed to replace the text of Article VII of the Bank draft by the text proposed by the Canadian representative.

/ARTICLE IX -

ARTICLE IX - ADMINISTRATIVE RELATIONSHIPS

Mr. SMITH (Canada) stated that, in his opinion, the second sentence in paragraph 3 was inconsistent with the provisions of the Charter.

Mr. CHERNYSHEV (Union of Soviet Socialist Republics) stated that mention should be made of the submission of the Budget of the Bank to the General Assembly in accordance with Article 17, paragraph 3, of the Charter.

Mr. KOTSCHNIG (United States of America) declared that the Bank and Fund did not wish to be subjected to recommendations of the General Assembly on this item and that the United States Government was prepared to accept this view.

Mr. SMITH (Canada) supported this view.

DECISION: The second sentence in paragraph 3 was deleted.

Mr. KOTSCHNIG (United States of America) stated that paragraph 4 did not seem to be in accordance with the terms of the Convention on Privileges and Immunities adopted by the General Assembly of the United Nations.

DECISION: It was agreed that the opinion of the Legal Department would be requested on this subject.

ARTICLE X - AGREEMENTS WITH OTHER ORGANIZATIONS

Mr. KOTSCHNIG (United States of America) suggested that an explanation be asked of the representatives of the Bank of the phrase "of a general character." Unless good reasons were presented, he suggested that the phrase should be deleted since the Economic and Social Council should be informed of all formal agreements in order to be in a position to carry out its co-ordinating functions.

DECISION: The suggestion was adopted. It was further agreed to add the phrase "of the nature and scope" before "of any such agreement before it is concluded."

ARTICLE XI - LIAISON

DECISION: The text of this Article was adopted.

ARTICLE XII

Mr. CHERNYSHEV (Union of Soviet Socialist Republics) suggested a rewording of paragraph 2 in order to make this agreement more stable than would the wording proposed by the Bank,

Mr. KOTSCHNIG (United States of America) agreed, and suggested the following text:

"After a period of two years this Agreement may be terminated by either party thereto on six months written notice to the other party or
/the intention

the intention of the party giving such notice to terminate this Agreement and thereupon all rights and obligations of both parties hereunder shall cease."

Mr. PHILLIPS (United Kingdom) concurred and also suggested the addition of a paragraph on revision similar to the one appearing in Article XIX of the Agreement with the ILO.

DECISION: These two suggestions were adopted.

The meeting rose at 5:15 p.m.
