

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

RESTRICTED

E/C.1/SR.55
18 September 1947

ORIGINAL: ENGLISH

COMMITTEE ON NEGOTIATIONS WITH SPECIALIZED AGENCIES

SUMMARY RECORD OF THE FIFTY-FIFTH MEETING

FIRST JOINT MEETING OF THE COMMITTEE ON NEGOTIATIONS WITH
SPECIALIZED AGENCIES OF THE ECONOMIC AND SOCIAL COUNCIL
AND THE REPRESENTATIVES OF THE INTERNATIONAL BANK
FOR RECONSTRUCTION AND DEVELOPMENT AND
THE INTERNATIONAL MONETARY FUNDHeld at Lake Success, New York, on Friday,
15 August 1947, at 10:30 a.m.

Present:

Chairman:	Mr. Papanek	(Czechoslovakia)
Rapporteur for United Nations:		
	Mr. Kotschnig	(United States of America)
	Mr. Blais	(Canada)
	Mr. Sang	(China)
	Mr. Clermont-Tonnerre	(France)
	Mr. Lunde	(Norway)
	Mr. Veysey	(United Kingdom)
Trusteeship Council:	Mr. Heyward	(Australia)
	Mr. Noriega	(Mexico)
Secretariat:	Mr. Owen	(Department of Economic Affairs)
	Mr. Schachter	(Legal Department)
	Mr. Chudson	(Department of Economic Affairs)
	Mr. Kromery	(Joint Division of Co-ordination and Liaison)
International Bank for Reconstruction and Development:		
	Mr. McCloy	
	Mr. Demuth	
	Mr. Lopez-Herrarte	

International Monetary Fund:

Mr. Gutt

Mr. Van Campenhout

Mr. Williams

Negotiations for Relationship Agreements between the United Nations and the International Bank for Reconstruction and Development and the International Monetary Fund

The CHAIRMAN welcomed Mr. John J. McCLOY, President of the International Bank for Reconstruction and Development, and Mr. Camille GUTT, Managing Director of the International Monetary Fund, who would speak on behalf of their respective institutions, and suggested that Mr. Walter KOTSCHNIG (United States of America) who had worked on the draft agreements, should act as rapporteur for the United Nations.

Mr. McCLOY (Bank) felt that it was important to reach an agreement. The success of the Bank was dependent upon the success of the United Nations in its overall purpose of preserving peace. On the other hand, if the Bank could make an economic contribution to the rehabilitation of the world, it would be conducive to the maintenance of peace. There seemed to be certain apparent inconsistencies between the United Nations Charter and the Articles of Agreement of the Bank and Fund, which, however, should not be obstacles to reaching an agreement.

The independent character of the Bank was necessary to its effective functioning and would therefore be stressed as the basic principle guiding the Bank in the present negotiations. The stand the Bank would wish to take in these negotiations was one of emphasis upon its independent character; independent, not because it wished to divorce itself from the purposes of the United Nations, but so that it could be effective in accomplishing its purposes. It was important that it should have a very substantial degree of independence. The Bank was dependent upon its good relations with the investing public, which must have the assurance that the Bank would make only productive loans on a business basis without regard to political considerations. Any suggestion which would have the effect of bringing the Bank's independence into question would jeopardize the Bank's ability to market its securities.

Mr. GUTT (Fund) stated that Mr. McCloy's remarks concerning the requisite independence of the Bank were equally applicable to the Fund. He recalled that the two institutions were established simultaneously at Bretton Woods, as independent economic organizations motivated solely by economic considerations. The nature of the institutions as then defined could not now be contravened.

/Mr. KOTSCHNIG

Mr. KOTSCHNIG (United Nations) called attention to the fact that the draft agreements submitted by the Bank and Fund were identical except for one or two points and that both could therefore be considered together with the United Nations draft prepared by the Negotiating Committee.

Article I

Mr. KOTSCHNIG (United Nations) pointed out that paragraph 1 of Article I was the same in all three drafts. Two changes, however, were suggested for paragraph 2. The term "specialized agency" had first been used in the Charter and therefore had a definite and accepted meaning. He suggested modification of paragraph 2 of the Bank's draft to make it conform to the Committee's draft and to bring out the fact that the Bank was a specialized agency established by agreement among its member governments.

DECISION: The proposed amendment was accepted.

Mr. KOTSCHNIG (United Nations) suggested the omission of the last sentence of paragraph 2 and of paragraphs 3, 4 and 5 of the Bank's draft. He explained that the suggestion was based on the fact that the Charter made it clear that the specialized agencies were not to be under the control of the United Nations and that the relations between the United Nations and the specialized agencies as regards policies and activities were based upon recommendations. This applied to the last sentence of paragraph 2 and to paragraph 4. In regard to paragraph 3, the Committee agreed that the confidential nature of the information of the Bank and Fund must be safeguarded, but felt that they were fully and clearly protected by Article IV of the Bank's draft. It was felt that paragraph 5 added nothing.

Mr. GUTT (Fund) said that the Bank and Fund differed from the other specialized agencies inasmuch as they were self-supporting agencies. He considered that the advantage of fully explicit statement was of greater importance than economy of words.

Mr. McCLOY (Bank) agreed with the point made by Mr. Gutt and emphasized that, in Anglo-Saxon terminology at least, the terms "principal" and "agent" implied a very substantial measure of domination. Whereas the Charter might be clear, it was nevertheless important that the agreement which would be subject to the scrutiny of lawyers and others interested in the legality of the Bank's transactions should be unambiguous on this point. He favoured the use of these words in accordance with their usual connotation and reminded the Committee that the Bank must deal with persons who were not skilled in interpreting the Charter but who were asked to part with their money. Any impression that the Bank was not fully independent would be a hindrance to its operations as an investing agency. The apparent redundancy of words would in the end assist the Bank in its operations.

/Mr. KOTSCHNIG

Mr. KOTSCHNIG (United Nations) recognized the need for independence on the part of the Bank and the Fund, but thought that the agreements which were being negotiated implied such independence. The Committee had considered the possibility of retaining the second sentence of paragraph 2 but had not yet come to a decision. He inquired whether, if the Committee should find it possible to accept this sentence, perhaps in modified form, the Bank and Fund would still insist upon the inclusion of paragraphs 4 and 5.

In regard to paragraph 3, he again pointed out that the substance of the paragraph was, in the opinion of the Committee, covered by Article IV of the Bank's draft.

Mr. McCLOY (Bank) thought that the Bank would probably not insist upon paragraphs 4 and 5 under the condition mentioned.

Mr. GUTT (Fund) tentatively expressed the same opinion. He inquired as to the importance attached to paragraph 3 as compared to Article IV.

Mr. McCLOY (Bank) replied that paragraph 3 was very much more important than paragraphs 4 and 5. He thought that the question of confidential material should be defined beyond the possibility of doubt.

Mr. GUTT (Fund) supported this view.

Mr. KOTSCHNIG (United Nations) quite understood the point, but thought that Article IV of the Bank draft fully safeguarded the confidential nature of certain information. He was of the opinion that paragraph 3 was simply a repetition.

Mr. GUTT (Fund) said that paragraph 3 was intended to be more general in scope than Article IV of the Bank's draft. It was intended to cover all activities of the Bank and Fund, whereas Article IV referred only to an exchange of information.

Mr. KOTSCHNIG (United Nations) called attention to the fact that paragraph 3 referred to "confidential material" and inquired as to the difference between "confidential material" and "confidential information".

Mr. GUTT (Fund) replied that the distinction had been clear in earlier drafts and that the present draft could be modified, if necessary, to make it clear once again.

Mr. KOTSCHNIG (United Nations) felt that the Committee might have difficulty in agreeing to the inclusion of paragraph 3 since the point envisaged was, in its opinion, adequately covered by Article IV.

It was agreed to postpone a decision on this point.

Article II

Mr. KOTSCHNIG (United Nations) suggested that the term "Reciprocal Representation" be used instead of "Representation" in the title.

The amendment was accepted.

/He pointed

He pointed out that under the provision of the Bank's draft of Article II, the United Nations would be entitled to attend meetings of the Board of Governors only, while the Bank would be entitled to participate in almost all meetings of the United Nations: the General Assembly, the Economic and Social Council, its Committees and Commissions and the Trusteeship Council. He felt that this was not a truly reciprocal arrangement and inquired whether representatives of the United Nations might not be invited to attend certain meetings of the Executive Directors of the Bank and Fund when questions of direct concern to the United Nations were under consideration. To this end, he suggested the addition of paragraph 1 of the Committee's draft (document E/C.1/35, Article III, paragraph 1, second sentence: "Representatives of the United Nations shall be invited to participate without vote in meetings of Executive Directors when matters of concern to the United Nations are under consideration.") to paragraph 1 of the Bank's draft. This arrangement would still give the Bank and Fund entire discretion in the matter of United Nations representation at their meetings, but was desirable from the standpoint of reciprocity.

Mr. McCLOY (Bank) called attention to the fact that the meetings of the Executive Directors of the two institutions differed from United Nations meetings since the Executive Directors met in continuous session, and were an integral part of the Bank and Fund. Moreover, since the Bank and Fund were engaged in work to stabilize the economies of the world, any matter under their consideration might be construed as being of interest to the United Nations. He felt that that formulation suggested by Mr. Kotschnig would require the Bank and the Fund to consider inviting the United Nations representatives to all meetings of the Bank and Fund. He believed that the two institutions were disposed to request United Nations representation whenever matters of direct interest to the United Nations were under discussion. He admitted that attendance at the meetings of the Board of governors might be a somewhat empty form of representation, but thought that it would be dangerous to make it a matter of agreement that United Nations representation at directors' meetings would be accorded whenever matters of direct concern to the United Nations were under discussion, since this might jeopardize relations with the investing public and the maintenance of confidential relationships with clients.

Mr. KOTSCHNIG (United Nations) recognized the difficulty faced by the Bank and the Fund, and suggested tentatively, subject to final approval by the Committee, the following restrictive addition to the sentence he proposed for inclusion in paragraph 1 of Article II: "due regard being had to the requirements of the Articles of Agreement of the Fund regarding the confidential nature of certain types of information." This might also meet
/the difficulty

the difficulty found in paragraph 3 of Article I of the Bank's draft, since it would apply, in more general terms than Article IV, to the confidential nature of the work of the Bank and Fund. It would also furnish a standard to apply when considering invitations to United Nations representatives.

Mr. McCLOY (Bank) said that the suggestion would meet only one of the points which he had raised. He felt that according to the wording proposed by Mr. Kotschnig the Bank would be under compulsion to invite a United Nations representative to every meeting of the Executive Directors. This procedure would be incompatible with the nature of the Bank. The Bank must resist every tendency which would make it appear as a political lending agency and that would be inevitable if it were known that there was constant political supervision of the deliberations of the Executive Directors. This consideration was even more important than that bearing upon confidential material.

Mr. KOTSCHNIG (United Nations) inquired whether the difficulty could be met by inserting the word "particular" to make the suggested phrase read "when matters of particular concern to the United Nations are under consideration." The phrase concerning the safeguarding of confidential information would then follow.

Mr. McCLOY (Bank) thought that the addition of this single word would not suffice to meet his point. The Bank and the Fund maintained the closest relationship, but the Bank was under no obligation to invite a representative of the Fund to its meetings. Since it was no more than "authorized" to invite Fund representatives, it seemed to him that it should not be under compulsion to invite representatives of other organizations to its meetings.

Mr. GUTT (Fund) concurred in this view, particularly since the Fund was more closely interested in the meetings of the Bank than was the United Nations.

Mr. KOTSCHNIG (United Nations) recognized the point made by Mr. Gutt and suggested that the negotiators consider the point further.

In regard to the further paragraphs of Article II, there seemed to be no divergence between the two texts. He suggested that the words "in a consultative capacity" be replaced by "for purposes of consultation".

DECISION: It was agreed that paragraph 1 of Article II (document E/C.1/35) should be held in abeyance; paragraphs 2, 3 and 4 were adopted.

New Article III

Mr. KOTSCHNIG (United Nations) pointed out that Article III of the Committee's draft did not appear in the Bank's draft. The Committee was aware of the Bank's apprehension lest some organ of the United Nations request inclusion on the Bank's agenda of, say, a definite recommendation regarding a particular loan. This apprehension was legitimate but could be met in another article. The Committee's concern was to ensure inclusion of items of mutual interest on the agendas of both organizations for the purpose
/of effective

of effective collaboration. He inquired whether this Article might be accepted subject to satisfactory wording of the following Article IV of the Committee's draft on Consultation and Recommendations.

Mr. McCLOY (Bank) thought that this provision was unwise from the viewpoint of both the Bank and the United Nations. He explained that the Bank and the Fund sometimes operated informally, and more effectively because of that informality. An item formally placed on the agenda had to be accorded definite action whereas informal consultations were desirable often on many occasions in the operation of the Bank and Fund. Any right of the United Nations to impose a particular discussion on the Bank's agenda would infringe upon the independence and non-political character of the Bank, and might open the way to press comment which might be undesirable, particularly in view of the type of transaction in which the Bank and Fund engaged.

Mr. GUTT (Fund) wished it to be understood that when he did not add anything to Mr. McCLOY's remarks it meant that he was in complete agreement.

Mr. KOTSCHNIG (United Nations) felt that Mr. McCLOY's point was well taken but that it was safeguarded by the clause "subject to such preliminary consultation as may be necessary" and by the fact that the Bank could deal with any item on its agenda as it saw fit, including session held in camera. Besides, the same governments were represented in both organizations, which should help in avoiding conflicts over the inclusion of agenda items.

Mr. McCLOY (Bank) was doubtful about the possibility of maintaining the secrecy of executive session and felt that in any case Mr. Kotschnig's suggestion did not meet his point since the agreement between the United Nations and the Bank would be public. He still felt that the Bank and the Fund would be receptive to discussion of any point which could be properly placed on their agenda. Membership in the two specialized agencies and in the United Nations was not identical and representatives of the governments members of the Bank had frequently taken positions divergent from those taken by other representatives of the same governments in United Nations organs.

Mr. KOTSCHNIG (United Nations) remarked that the last-mentioned fact indicated the independence of the Bank.

Mr. McCLOY (Bank) again emphasized that the Bank and Fund would be responsive to any suggestion to include particular items in their agendas, even if an obligation to do so were not included in the formal agreement.

Mr. KOTSCHNIG (United Nations) inquired whether it might not be advantageous to the Bank and Fund to have an article enabling them to put items on the agenda of the various United Nations organs.

Mr. McCLOY (Bank) replied that the Bank and Fund would like to be able to do this as a matter of co-operation and consultation rather than as a matter of right. He very strongly opposed the inclusion of the Article suggested by the Committee.

/DECISION:

DECISION: It was agreed that the point would be reversed and reconsidered by the Committee.

Article IV (Article III in Bank Draft)

Mr. KOTSCHNIG (United Nations) said that there was full agreement as to the purposes of consultation and exchange of views contemplated in paragraph 1 of the Bank's draft.

The Committee had difficulty in accepting paragraphs 2 and 3 in the form contained in the Bank's draft. It had been suggested that these provisions differed from the corresponding provisions of the other agreements, and, what was more important, were contradiction to the Charter. He believed that these difficulties might be resolved and, to that end, suggested approval of paragraphs 2 and 3 of the Committee's draft. He believed that paragraph 3 limited paragraph 2 and that it obviated the danger that political pressure might be brought to bear on the Bank.

Mr. McCLOY (Bank) considered that the question was of particular importance to the Bank. He recalled that a recommendation for a loan to a particular country made by one of the specialized agencies had at one time constituted a serious obstacle to the Bank by raising doubts in the minds of Investors as to the Bank's absolute independence. The suggestion that the Bank should accept United Nations recommendations, act upon them, or report to the United Nations on them, would be an unacceptable limitation of the Bank's independence of action. He therefore strongly opposed the suggested paragraph.

The Bank had suggested inclusion of a provision that no agency of the United Nations would make any recommendations without prior consultation with the Bank. He thought this should be acceptable to the United Nations as a matter of policy. The Bank could then consult the United Nations about any recommendations the United Nations might wish to make. The Bank would be most anxious to receive from the United Nations any technical data which would assist the Bank in arriving at a conclusion with regard to a loan.

Mr. GUTT (Fund) said that virtually all Mr. McCLOY's remarks were equally applicable to the Fund and emphasized the importance of the fullest secrecy for the Fund's reports. This was an additional reason why the Fund, like the Bank, should not be obliged to report to the United Nations on recommendations made.

Mr. KOTSCHNIG (United Nations) was aware of the loan recommendation made by one of the specialized agencies to the Bank to which reference had been made. There was nothing the United Nations could do about the situation since it had no control over the recommendations of the specialized agencies. There was no provision in the agreements concluded with specialized agencies which would empower the United Nations to prevent them from making such
/recommendations.

recommendations. In regard to the point raised, that there should be preliminary consultation, he was authorized to agree to inclusion of the phrase "and subject to such preliminary consultation as may be necessary."

He recognized that the Bank might wish to strengthen paragraph 3. If an acceptable formulation could be found, he suggested that the Bank and Fund might be able to accept paragraph 2 with the insertion of the phrase as suggested.

Mr. McCLOY (Bank) was unable to compromise on paragraph 2, since he did not want to be compelled to act on recommendations made by the United Nations as a matter of contract. The Bank was dependent upon individual investors who did not want their capital to be subjected to political risk. The Bank could not function if its relations with such investors was jeopardized.

He suggested that the United Nations could declare as a matter of policy that it would be unwise for any of its organs to make specific recommendations as to a particular loan or type of financing. He felt that every question should be resolved in favour of the liberality and flexibility of the operations of the Bank and the Fund, particularly in the initial stages.

Mr. KOTSCHNIG (United Nations) remarked that paragraph 2 of the Bank's draft recognized that the United Nations could and would make formal recommendations.

Mr. McCLOY (Bank) agreed, but added that these were not formal recommendations that the Bank adopt a particular course of action.

Mr. KOTSCHNIG (United Nations) thought that this point could be discussed under paragraph 3. Articles 58, 59, 62, 63, paragraph 2 and 64, paragraph 1 of the Charter enabled the United Nations to make recommendations. The Committee had received legal advice from the Legal Department of the Secretariat to the effect that the United Nations could not relinquish the rights and functions whereby it was empowered to make recommendations.

DECISION: It was agreed that the Negotiating Committee and the representatives of the Bank and Fund would reconsider their respective drafts.

Mr. KOTSCHNIG (United Nations) added that the intention of paragraph 3 of the Committee's draft was to indicate that the decisions of the Bank and the Fund would be made in the light of their own Articles of Agreement. He believed that Mr. McCLOY had agreed that the wording of the Bank's draft was unacceptable to the United Nations since it asked the United Nations to do something which that organization was formally unable to do.

Mr. McCLOY (Bank) thought that the legal issue could be avoided if the United Nations made it a rule of policy that recommendations of United Nations bodies with respect to reconstruction or development plans should not include recommendations that such plans be financed by the Bank. Such recommendations

/had the

had the effect of impairing the credit of the Bank.

Mr. KOTSCHNIG (United Nations) said that the United Nations legal advisor was of the opinion that a provision based on this approach might be worked out without violating the Charter.

Mr. GUTT (Fund) was ready to support a formulation along the lines stated.

Mr. KOTSCHNIG (United Nations) thought that recognition on the part of the Bank and the Fund of the usefulness of technical material and advice available within the United Nations would make it easier for the General Assembly to approve this Agreement.

Mr. McCLOY (Bank) agreed to this.

Mr. KOTSCHNIG (United Nations) suggested that the legal advisors of the two parties meeting during the noon recess and produce a joint text for further consideration.

The meeting rose at 12:10 p.m.
