

**ECONOMIC
AND
SOCIAL COUNCIL**

**CONSEIL
ECONOMIQUE
ET SOCIAL**

UNRESTRICTED

E/AC.6/SR.16

8 March 1948

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ECONOMIC COMMITTEE

SUMMARY RECORD OF THE SIXTEENTH MEETING

Lake Success, New York

Tuesday, 2 March 1948, at 3.10 p.m.

Present:

Chairman:

Mr. SANTA CRUZ (Chile)

Australia

Mr. Heyward

Brazil

Mr. Campos

Byelorussian Soviet

Socialist Republic

Mrs. Uralova

Canada

Mr. Pollock

Chile

Mr. Gonzales

China

Mr. Chang

Denmark

Mr. Borberg

France

Mr. Ordonneau

Lebanon

Mr. Ghorra

Netherlands

Mr. Parijn

New Zealand

Mr. Lendrum

Peru

Mr. Monge

Poland

Mr. Lange

Turkey

Mr. Savut

Union of Soviet

Socialist Republics

Mr. Arutiunian

United Kingdom

Mr. Phillips

United States of America

Mr. Stincbower

Venezuela

Mr. Stolk

Also present: Yugoslavia

Mr. Vilfan

Representatives of Specialized Agencies:

International Bank for

Reconstruction and

Development

Mr. Lopez-Herrarte

International Monetary Fund Mr. Wang

10 P.

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/Secretary:

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Secretariat: Mr. Kerno (Assistant Secretary-General in charge
of the Legal Department)
Mr. Dumontet (Secretary of the Economic Committee)

CONTINUATION OF THE DISCUSSION OF THE REQUEST BY THE FEDERAL PEOPLE'S
REPUBLIC OF YUGOSLAVIA CONCERNING THE DAMAGE CAUSED TO IT BY THE WITHHOLDING
OF ITS GOLD RESERVES BY THE UNITED STATES OF AMERICA (Documents E/624,
E/AC.6/21, E/AC.6/23 and E/AC.6/25)

The CHAIRMAN pointed out that the Economic Committee should confine
itself to considering the question of the Council's competence and asked
speakers not to discuss the substance of the question.

On the strength of Article 69 of the Charter he would invite the
representative of Yugoslavia to take part in the discussion without a
right to vote.

Mr. VILFAN (Yugoslavia) was anxious, he said, to help in settling
the problem of the Council's competence, not only in the present case, but
in all cases of that kind.

He dealt first with the objections raised by certain delegations.
It had been said that this was a dispute between two countries and
that the Council was not competent to deal with a dispute. The Australian
representative maintained that it was a dispute which could be settled by
negotiations, arbitration, or recourse to the International Court of Justice.

It had also been argued by the United States representative for
instance that the Council could not deal with a question that affected
the interests of one country only, for its function was to study the major
social and economic problems which arose throughout the world in their broad
outlines and in their general aspect, and not to deal with disputes between
nations; this argument was taken up by the Brazilian and Australian
representatives.

He wished to restate his country's position. Yugoslavia had not
asked the Council to act as a tribunal, to pass judgment or to decide
such questions as the ownership of the gold, its exact amount, the legal
obligation to restore it or the time within which it should be restored.
Yugoslavia was only asking the Council to recommend that the United States
restore the gold reserve, and this was an economic recommendation. There
was no question of a dispute between the United States and Yugoslavia.
All questions of substance and law which might call for the intervention
of the International Court of Justice, as the Australian representative
had suggested, were perfectly clear. There was no legal dispute. The
United States Government admitted that the gold reserves were the property

/of the

of the Yugoslav Government. The question of claims and counter-claims was absolutely separate and any attempt to connect the two tended to confuse the problem. None of the cases mentioned in the Australian representative's note (document E/AC.6/23) applied to the question before them. He quoted from a statement made by the United States representative at a plenary meeting in which he had referred to a simultaneous settlement as being the most practical and the easiest solution. The United States Government was talking not of what was right but of what was advisable; it thought that the withholding of the Yugoslav gold was the "most practical" method of dealing with other outstanding questions connected with Yugoslavia. The question was a simple one: was it admissible for one country to achieve the aims of its national policy by damaging another country? It was for the Council to decide whether the attitude of the United States could be reconciled with achievement of the purposes laid down in Article 55 of the Charter.

The general question was the interpretation of an obligation arising out of the Charter, and the Council could not refuse to admit its competence in such a matter; it could only reply yes or no to the question whether or not a State was violating the provisions of the Charter. If the Council was not interested in a violation of the Charter, the question arose whether such an obligation still held good. If the Council admitted that the question concerned only two countries and did not, therefore, fall within its competence, this meant that it was interested in the statements of principles in Chapter IX, but not in their application.

He did not wish to re-emphasize the serious effects which the United States attitude would have on the economic life of Yugoslavia; such as the lowering of the standard of living, the irrational use of manpower, due to the impossibility of importing machinery, and the paralysis of the country's production and reconstruction efforts. Yugoslavia had to export badly needed produce, especially foodstuffs, at the expense of her population in order to be able to import essential goods. The damage thus done to Yugoslav economy affected European economy as a whole; he need hardly remind the Council how interdependent the economy of Europe was.

Although the Australian representative had admitted at a plenary meeting (document E/AC.6/18) that the Council had every right to deal with disputes when a question of economic policy had to be decided, this view found no further place in the arguments submitted by the Australian representative on 1 March (document E/AC.6/23); that indicated an attempt to treat the question of Yugoslav gold as a "legal dispute".

By virtue of Article 55, which laid down the principles of international economic and social co-operation, of Article 56, in which Member States pledged themselves to "take joint and separate action" for the achievement of these purposes, of Article 60, which vested in the Economic and Social Council, under the authority of the General Assembly, responsibility for the discharge of the functions set forth in Chapter IX, and, lastly, in view of Article 62, paragraph 1, which enacted that the Council might make recommendations to States Members on all the questions referred to in Chapter IX, the Council was fully competent to consider and settle the question brought up by the Yugoslav delegation. The Yugoslav representative, accordingly, submitted the draft resolution contained in document E/AC.6/27.

Mr. STINEBOWER (United States of America) said the reason why the United States delegation had not insisted on the question of the Yugoslav gold being withdrawn from the agenda was because they did not want to give the impression that they were trying to avoid a discussion. After long discussion in plenary session, it was now time to decide whether questions of this kind lay within the Council's jurisdiction, and whether it had power to make recommendations to individual States Members.

The position of the United States delegation on this matter had not changed since the San Francisco Conference.

The only Article in the Charter which gave the Council power to make recommendations was Article 62 (1). The historical background of this Article should be recalled in order to decide whether its text implied that the Council could make direct recommendations to any Government concerning a disagreement between two parties, or whether it merely referred to recommendations of a general nature.

The Dumbarton Oaks proposals aimed at giving the Council the power to make recommendations, without specifying to whom such recommendations should be addressed. When the Australian representative explicitly suggested that the Council be empowered to make recommendations to particular Members, the San Francisco Conference decided to reject that proposal. As there were no official records of the proceedings of sub-committees at San Francisco, Mr. Stinebower showed by quotations from the notes of the United States delegation, that the drafting sub-committee had adopted a text designed to indicate clearly that the recommendations and reports of the Council should be addressed to all the States Members and not merely to certain of them. The question had not been brought up again at the Conference and Article 62 had not been basically modified.

/Further,

Further, Article 62, as at present worded, made a clear distinction; it gave the Council power to make recommendations "to the specialized agencies concerned", whereas it merely talked of "Members of the United Nations" without going into detail.

In the light of this historical survey it was obvious that the Charter could not be construed as empowering the Council to make recommendations to any Member Government in particular. The Council was therefore not competent to deal with the Yugoslav resolution.

With regard to the alleged precedent of the decision taken when the question of the Yugoslav and Czechoslovak vessels was discussed, the United States, in submitting its resolution, had widened the scope of the problem, which at the outset had concerned only two countries, by regarding it as an important element in the economic reconstruction of that part of Europe, and calling for a political decision.

With regard to the Secretariat's note (document E/AC.6/25), Mr. Stinebower also agreed that the Council had power to decide as to its own jurisdiction. But he observed that the Secretariat note distinguished between a dispute and a problem. That distinction did not apply in this particular case, since the assertion of the Yugoslav delegation was invalidated by the juridical history of Article 62. Again, from the Secretariat note, it would appear that the powers of the Council were defined by Article 62 (1) as amplified by Article 55. Actually, under the terms of Article 60, the powers of the Council were defined by Chapter X (Article 61 to 72), so that Article 55 could not be invoked to extend these powers. On the question whether the Council was competent to consider an economic dispute, the note concluded that it was, since there was no provision to the contrary in the Charter. That kind of negative solution was, he thought, dangerous.

The Charter did not overlook the problem of the settlement of disputes, which was dealt with in Chapter VI. If the signatories had desired to lay down the procedure for the settlement of disputes of an economic nature, they might have taken Chapter VI as a model. That was why the United States delegation thought the Council had no power to deal with individual cases of this type. On this point the delegation disagreed with the Secretariat's note.

He recalled what the United States representative had said at a plenary meeting of the Council, to the effect that Article 62 (1) was the only part of the Charter which could serve as a juridical basis for action by the Council on a question such as that of the Yugoslav gold, and that the Council had no power whatsoever to act as a court of arbitration, as a conciliator or as a court of justice.

/This statement

This statement of the limitations laid down in the Charter clearly indicated that the Council could not deal with this item of the agenda, or with other similar cases which might occur in the future. The United States representative submitted a draft resolution, which had been distributed as document E/AC.6/26, to the effect that the matter did not fall within the Council's jurisdiction.

Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) gave the views of the Secretariat (document E/AC.6/25). First of all, it should be understood that the Council itself could decide whether or not a question was within its jurisdiction and the United States representative had signified his agreement on this point. The matter at issue was whether a dispute between two or more Members of the United Nations could lie within the jurisdiction of the Council. It was the Secretariat's opinion that the Council was not competent to deal with such matters unless the dispute were of an economic nature. It was for the Council in each case to determine whether the juridical or the economic aspect was of greater importance in the dispute referred to it. If it were decided that the economic problem was the more important, then it would lie within the jurisdiction of the Council.

The United States representative had opposed this interpretation of Article 62 (1) of the Charter, and had based his arguments on the preparatory work done at San Francisco; but he had himself pointed out that there were no minutes of the meetings to which he was referring. The reason why no minutes had been kept was precisely because it was desired to avoid excessive resort being made in future to the method of historical interpretation. The desire expressed at San Francisco was that the Charter should be interpreted in a liberal fashion. In the case of the Economic and Social Council in particular, satisfaction had been felt at San Francisco because this new body had been established with very wide powers, which was a new departure as compared with the League of Nations.

The Legal Department of the Secretariat had conscientiously carried out the task entrusted to it. It was for the Committee to decide the matter.

Mr. LANGE (Poland) thought there was little to add to the Secretariat's note. Everyone apparently agreed with its first two conclusions, namely, that the Council could determine the scope of its own jurisdiction, and that it was entitled to deal with any international economic problem. But opinions differed on the last two points as to whether the Council could deal with a dispute of an economic character. The dispute between Yugoslavia and the United States did not really raise any legal difficulty.

The ownership of the Yugoslav gold deposited with the United States was not contested and the two parties also agreed on the essential facts of the case. The problem was actually whether or not certain measures taken by the United States were proper from the point of view of their influence on international economic relations and their effect on Yugoslavia's economic recovery.

Could the Council express an opinion on this point? Here the Secretariat note did a useful service by pointing out that Articles 55 (b) and 62 (1) of the Charter defined the Council's responsibilities and powers of recommendation so far as international economic and social problems were concerned. Was a bilateral dispute an international economic problem? The United States representative maintained that, according to a report by a San Francisco Drafting Committee, the Council could only intervene in a problem that affected all the Members of the Organization. But it would seem difficult to base a legal argument on that consideration, particularly as the Assistant Secretary-General had made it clear that the intention of the San Francisco Conference had been to prevent the Charter being given a too limited historical interpretation.

Moreover, there were precedents. The Council had already considered problems which did not directly affect all the Members of the United Nations. Examples which could be quoted were the problems of the devastated areas and regional conferences, and international control of the Danube, which directly concerned only a group of Members.

The question now at issue affected the interests of only two States, but economic interdependence was such that delay in the economic reconstruction of any one country could obviously be injurious to Europe as a whole and even to the entire world.

Incontestably, the reconstruction of the European countries was a general problem and it could therefore hardly be argued that the question of the Yugoslav gold was not an international economic problem, concerning which Article 62 of the Charter clearly gave the Council authority to make recommendations. To admit that the Council was not entitled to deal with this matter would be to create a dangerous precedent. If the Economic and Social Council had no power to examine the matter, what organ had? As had already been stated, it was not a legal dispute and therefore did not fall within the jurisdiction of the International Court of Justice. Again, although the problem was indeed important, still it could not be said that it was likely to endanger international peace and security, so it did not come within the jurisdiction of the Security Council. The General Assembly could probably deal with it, but it was not due to meet until next autumn.

/Consequently,

Consequently, the Economic and Social Council was the only organ that could without excessive delay remedy the situation which had been brought to its notice.

As the Council had the power and as none of its Members would wish to allow the indefinite continuance of a situation which was hampering the recovery of a State Member, the Council ought to deal with the matter.

Mr. HEYWARD (Australia) supported the view taken by the Secretariat that disputes of a specifically economic nature fell within the jurisdiction of the Council. Any other decision might prove very awkward, for it might happen that an economic problem of an international nature, on which there were certain differences of opinion, would suddenly assume the proportions of a dispute and thus cease to be within the jurisdiction of the Council which was engaged in examining it. Some points in the Secretariat's note, however, were not very clear to the Australian delegation. For instance, the note stated that a dispute involving an "intricate" point of law fell outside the jurisdiction of the Council. A preferable criterion would seem to be to decide whether a dispute ought to be settled by legal procedure or whether it was essentially an international one of an economic nature.

Further, the conclusions contained in paragraphs (c) and (d), on pages 6 and 7 of the document (English text) did not seem very clear either.

On the real point at issue the first question to decide was: whether the United States had acted within its rights in freezing the Yugoslav gold reserves. Thus, the question was primarily a legal one, and until that point was settled there would be no solution of the problem.

In conclusion, the Australian delegate thought that the parties ought to continue their negotiations or refer the matter to the International Court of Justice. No recommendation by the Council could be contemplated so long as the legal point which was the crux of the problem remained unsettled.

Mr. STINEBOWER (United States of America) thought that any misunderstanding about the definition of an international problem must be avoided. The Charter itself stated that the Council was not entitled to address recommendations to one State Member in particular but that its recommendations must be addressed "to the Members of the Organization". The representative of Poland had spoken of precedents, but in fact the Council had never addressed recommendations to individual governments.

/In other cases,

In other cases, as for instance that of the Interim Committee, certain governments had adopted a very restrictive attitude and had maintained that anything not provided for in the Charter was anti-constitutional. It was perhaps only right that in the present case these same governments should accept a very strict interpretation of the Charter.

Mr. IANZE (Poland) pointed out that, as mentioned in the Secretariat Note, it had been the United States delegation itself which, in the case of international traffic on the Danube, proposed a resolution recommending the convening of a conference of all interested States; that resolution had been adopted by the Council. At that time, therefore, the United States delegation quite recognized, as the Polish delegation still believed, that a recommendation by the Council might apply to a group of Members of the United Nations and not to them all.

But even if the Council felt it had no power to make recommendations applying to one or two States Members only, it could nevertheless study the problem with the object of making a general recommendation, indicating, for instance, that the assets of allied countries which had during the war been deposited with other allied countries should now be unfrozen.

Mr. PHILLIPS (United Kingdom) said that the Yugoslav representative had made it clear that he was asking the Council not to act as a court of law but to adopt a resolution of an economic nature dealing with economic losses. In fact, however, the Council could not make a recommendation on the economic aspect of the problem without taking sides in the dispute; so it would, in the long run, be acting as a court of law, and that would involve the detailed study of a very complex question.

If, as the Polish representative had suggested, the Council were to adopt the course of expressing its opinion on the fitness or otherwise of economic measures taken by the United States or any other States Members, there would be a risk of its agenda being loaded with such questions and of the Council being thus prevented from devoting itself to its real task, which was to study general economic and social problems and to draft conventions in that field.

Those who wished the Council to affirm its competence had argued that this was an economic dispute; but the same could be said of any dispute. It had also been said that, though the dispute was bilateral, its consequences necessarily affected other States. It was true that in the international economic sphere everything was inter-connected, but that was no reason why every bilateral dispute should be submitted to the Council.

It was the United Kingdom delegation's opinion that a distinction should be drawn between general economic and social questions, which were within the Council's province, and questions that were the subject of disputes between two States Members of the United Nations with which the Council was not obliged to deal.

As the United States representative had said, it had been decided at the San Francisco Conference that the Economic and Social Council was not competent to take juridical action in disputes between States.

The United Kingdom delegation had no desire whatsoever to see the dispute between the United States and Yugoslavia prolonged. It was entirely for the very sound reasons advanced by the United States delegation that the United Kingdom would vote against the Yugoslav proposal.

Mr. VILFAN (Yugoslavia) noted that the centre of gravity of the United States delegation's attitude had been displaced. The accent had first been laid on the legal nature of the dispute, and now it was based on the argument that the Council was not competent because its recommendations could be addressed only to all the Members of the United Nations. This was substantial progress, because the Yugoslav delegation would be willing, as Mr. Lange had suggested, to give the proposed resolution a general extension.

Nevertheless, other members of the Council, and in particular the Australian representative, had taken over the argument that this was fundamentally a legal dispute, with which the Council had no power to deal. But, as the Yugoslav delegation had already pointed out, it could not be said that this was a legal dispute, since the two delegations were in complete agreement on the legal question. One could read and re-read Mr. Thorp's account without finding either an economic reason or a legal reason for the United States attitude, but merely an opportunist reason.

The United Kingdom representative had stressed the fact that the problem affected only the interests of two countries. It was well known that prosperity, like peace, was indivisible. But, even assuming that the interests of Yugoslavia alone were involved, could the Council remain indifferent to a problem the consequences of which directly affected the standard of living and the economic reconstruction of a European country? Yugoslavia was among the countries which benefited under the Children's Emergency Fund. It would really be a curious contradiction to assist the children of Yugoslavia on the one hand and to refuse, on the other, to take the necessary steps to help their parents feed them. The Yugoslav delegation hoped that the Economic and Social Council would not allow such a contradiction.

The meeting rose at 5.50 p.m.