

CONFIDENTIAL

May 19, 1948

REPORT OF THE UNITED STATES DELEGATION TO THE
NINTH INTERNATIONAL CONFERENCE OF AMERICAN STATES
BOGOTA, COLOMBIA
MARCH 30-MAY 2, 1948

COMMISSION IV ON ECONOMIC MATTERS

INTRODUCTION

Commission IV of the Ninth International Conference of American States elected the representative of Venezuela as Chairman, the representative of Guatemala as Vice-Chairman and the representative of the United States as Relator. Senor Luis Lander represented the Venezuelan Delegation in the Chair, Senor Manuel Noriega Morales represented the Guatemalan Delegation as Vice-Chairman, and the Honorable W. Averell Harriman represented the United States Delegation as Relator. The full Commission held approximately 12 sessions, and created 4 formal sub-commissions and 5 working parties to consider various parts of the proposed Economic Agreement and various economic resolutions.

As a basis for its principal task, the drafting of an Economic Agreement, Commission IV had before it the text of the Draft Basic Agreement for Inter-American Economic Cooperation, which had been prepared by the Inter-American Economic and Social Council in Washington and submitted as a working paper to the American Governments in advance of the Bogota Conference, as well as the many amendments to the draft agreement which were introduced by various delegations at the Conference. Commission IV was also responsible for study of and action upon a number of draft economic resolutions which were introduced by various delegations, and there were others finally approved which resulted from the discussions in the Commission.

Chairman Lander was, in the opinion of a number of delegates, not an entirely satisfactory chairman, principally because at times he permitted confusing parliamentary situations to be created, which might have been avoided had the Chairman exercised a firmer hand with various of the delegates who were not inclined to be bound by the usual rules of procedure. As a matter of fact, when a representative of Venezuela was suggested and elected as the Chairman of Commission IV, it was expected that the post would be occupied by a member of the Venezuelan Delegation other than Senor Lander.

THE ECONOMIC AGREEMENT OF BOGOTA

The text of the Economic Agreement of Bogota, as it emerged from Commission IV and was approved in Plenary Session and signed, is on the whole a satisfactory document from the standpoint of the United States Delegation. This general statement should be qualified, however: the Agreement contains much in the way of surplus verbiage, the elimination of which would have made possible a cleaner and tighter document; the Agreement is in some sections poorly drafted and many improvements could be made in this respect; it has appended to it a considerable number of reservations by various delegations, including that of the United States, which will create serious problems in the future as to the effectiveness of various

articles

CONFIDENTIAL

CONFIDENTIAL

- 2 -

articles of the Agreement with respect to individual countries; finally, the Agreement contains various provisions which, although not the subject of formal reservations, may be considered unsatisfactory from the viewpoint of the United States, and in other cases provisions are omitted which were considered by the United States Delegation as highly desirable for inclusion. It was not to be expected, however, in view of basic differences of views between the United States and certain Latin American delegations, and between various of the latter delegations, that a document would emerge from Commission IV upon which all of the delegations could so fully agree and at the same time contain so much of substance. Also, the difficult conditions which existed during a considerable part of the time during which the Conference was in session had a disrupting effect on the work, and the rush to conclude the Agreement by a fixed date made it impossible to have such thorough discussion of various points as to make possible a greater degree of unanimity. Everything considered, it was in some respects remarkable that Commission IV and its sub-commissions and working parties were able, within a space of approximately two weeks of active meetings, to produce the Economic Agreement which finally emerged. This is true despite the fact that there were a number of important and highly controversial issues upon which agreement could not be reached in the time available at Bogota, and which therefore had to be referred to the Inter-American Economic and Social Council for further study and for possible later consideration by the proposed Economic Conference which, it was agreed, would be held in Buenos Aires during the last quarter of 1948, and despite the fact that there were a number of important reservations by a number of delegations to various articles.

From the standpoint of advancing economic development throughout the Western Hemisphere, a primary objective of the Economic Agreement, Chapter II on Technical Cooperation, Chapter III on Financial Cooperation, and Chapter IV on Private Investments are perhaps the most important.

Without creating a large autonomous inter-American agency in the field of technical cooperation, the Governments nevertheless agreed, in Chapter II, to a specific program of technical cooperation activities through a staff directly responsible to the Economic and Social Council, and through other existing agencies. While undertaking to augment the budget of the Pan American Union for technical cooperation work, there were avoided commitments for the expenditure of vast sums of government money in this field, as had been proposed by certain Latin American delegations. Various safeguards are placed on this work so as to discourage governments from requesting technical assistance on anything but potentially sound and practical projects and so as to avoid duplication of effort with other national and international agencies already operating in this field.

In Chapter III on Financial Cooperation, the States undertake to continue (in effect through such means as currency stabilization loans from the United States Treasury and economic development credits from the Export-Import Bank) the kind of governmental financial operations which have been carried on for a number of years on a voluntary basis.

During

CONFIDENTIAL

CONFIDENTIAL

- 3 -

During the course of the Conference it was announced that the President of the United States had sent to the Congress a request for an increase of \$500,000,000 in the lending authority of the Export-Import Bank. Whether because information on this, but not the amount of money involved, had been made public in Secretary Marshall's opening address, or because the amount seemed small to the Latin American delegations in relation to the amounts which the United States Congress was at that time approving for the European recovery program, or because of other reasons, this announcement was greeted with complete silence and apparent indifference by the Latin American delegations.

Chapter IV is discussed in considerable detail in a later section of this report. It should be noted, however, that it provides a number of general and specific assurances regarding the treatment of private foreign investments in the American republics and also assures that such investments shall not be used as a means of interfering in domestic politics in the countries receiving the investments or for prejudicing the security or fundamental interests of such countries. Provisions are also included placing foreigners and nationals on an equal footing in the matter of laws relating to expropriation, and it is provided that every expropriation shall be accompanied by the payment of a just price in a prompt, adequate and effective manner. There are a number of reservations or interpretations by various delegations to this Chapter.

Other Chapters of the Economic Agreement included: setting forth the general principles to govern economic cooperation between the American States; and others dealing with cooperative measures in connection with industrial and general economic development; provisions regarding commodity agreements and commercial preference and social guarantees; provisions regarding maritime transportation, but it should be noted that it was not possible to reach agreement on the most difficult questions in this field, which were referred to the Economic and Social Council for further study. There were other Chapters dealing with freedom of transit in Inter-American travel, arrangements for the settlement of economic disputes between the American States and for the necessary coordination between inter-American economic organizations and other international agencies. A final Chapter includes the usual provisions found in agreements of this character for ratification by the respective constitutional procedures in each country, the conditions under which the Agreement shall enter into force and provisions for its amendment.

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In a resolution related to the foregoing, the Inter-American Council of Jurists and the Inter-American Economic and Social Council were requested to prepare a draft agreement to eliminate the use of passports and to establish an American identification certificate not requiring consular visas and fees. Further, until such an agreement might be concluded, it was recommended to the American Governments that they enter into administrative agreements for the purpose of eliminating the use of passports for tourist travel by citizens of the American nations.

Another

CONFIDENTIAL

CONFIDENTIAL

- 4 -

ECONOMIC RESOLUTIONS

In addition to approving the Economic Agreement of Bogota and transmitting it to the Plenary Session, Commission IV also approved a number of resolutions of an economic character, several of which referred various unresolved questions to the Inter-American Economic and Social Council for further study and possible transmittal to the Economic Conference for final action.

Of the eight resolutions approved by Commission IV, one dealt with the proposed Economic Conference, and provided that it should meet at Buenos Aires during the last quarter of 1948 on a date to be fixed by the Inter-American Economic and Social Council, with provision that it might be postponed until the first quarter of 1949, but only for reasons of extreme urgency; the Council was to propose the subjects which should be included in the program; the delegations should be headed by the appropriate Cabinet Ministers or by other individuals important in economic activities in the various countries; and in order that the Conference might study the most urgent problems facing the American States and their participation in joint plans for economic development, the Inter-American Council was requested to prepare a questionnaire to be sent to the American Governments, in order to determine the needs and possibilities for equipment, basic products, raw materials, capital and credit, so that the Council might prepare an objective study of the needs and possibilities of the American countries.

Another resolution dealt with a division of functions between the United Nations Economic Commission for Latin America and the Inter-American Economic and Social Council, and provided that the Council should send a group of not more than three persons to the June 1948 meeting of the Commission at Santiago, in order to draft an appropriate formula for the functioning of the two organizations, and to outline their respective fields of activity and general programs, in order to avoid duplication in organization, personnel and functions. The resolution provided further that the results of this meeting should be submitted for approval to the Economic and Social Council of the United Nations and to the Inter-American Economic and Social Council and that, pending approval by these organizations, substantive work should be carried out only after detailed consideration of the results of the joint meeting.

In a recommendation approved by Commission IV on tourist travel, various proposals were presented with a view to stimulating tourist travel, reducing restrictions on travel and making various suggestions to the Third Inter-American Travel Congress as to various measures which might be adopted by the American States in order to promote tourist travel.

In a resolution related to the foregoing, the Inter-American Council of Jurists and the Inter-American Economic and Social Council were requested to prepare a draft agreement to eliminate the use of passports and to establish an American identification certificate not requiring consular visas and fees. Further, until such an agreement might be concluded, it was recommended to the American Governments that they enter into administrative agreements for the purpose of eliminating the use of passports for tourist travel by citizens of the American nations.

Another

CONFIDENTIAL

CONFIDENTIAL

- 5 -

Another resolution, which the United States Delegation did not support, referred to the importance of the Amazon Railway and to the Santos-Arica Transcontinental Railway across Bolivia, and recommended the completion of these railroads and the financing thereof by the States concerned or by other American States.

There were several projects introduced by certain of the Latin American delegations providing for the creation of new inter-American governmental institutions. These projects were not approved by the Bogota Conference, but it was agreed that they should be referred to the Inter-American Economic and Social Council for further study with a view to their possible presentation to the later Economic Conference at Buenos Aires. These projects related to an Inter-American Bank, an Inter-American Development Corporation, an Inter-American Institute of Commerce and an Inter-American Institute of Immigration.

Other topics which the Conference resolved should be placed on the agenda for the later Economic Conference included maritime and river transportation, and railroads and communications in general; a Bolivian proposal on freedom of transit and a Peruvian proposal on transportation and communications, as well as development of the principle, by detailed regulations, which was established in Chapter IX of the Economic Agreement, also on the subject of freedom of transit. To assist in the preparation of the agenda for the Economic Conference, the American Governments were requested to transmit their views to the Economic and Social Council.

Finally, Commission IV approved a recommendation that the Economic and Social Council should study measures to facilitate international trade by means of commercial credits; and a resolution calling the attention of the American Governments to the continuing destruction of the renewable natural resources of the continent, and recommending that the American Governments make the fullest possible preparation for their participation in the forthcoming Inter-American Conference on the Conservation of Renewable Natural Resources to the end that it might deal effectively with this problem.

There follows a more detailed discussion of the individual chapters and articles of the Economic Agreement of Bogota.

PREAMBLE

CONFIDENTIAL

CONFIDENTIAL

- 6 -

PREAMBLE

The Preamble to the Economic Agreement was not the subject of extended discussion in the Subcommittee, and the principal changes from the United States proposals (which in turn followed the Washington draft of the Agreement fairly closely) resulted from transferring to the body of the Agreement what were considered to be matters of substance which, it was generally felt, were not appropriate for the Preamble.

CHAPTER I

PRINCIPLES

Consideration of the articles proposed for inclusion in this Chapter produced a considerable amount of debate, particularly with respect to an Ecuadoran proposal which called upon the American Governments to take action to maintain, in some unspecified manner, a so-called "parity" relationship between the prices of raw materials and the prices of manufactured goods.

Article 1. This Article, dealing with the general obligation of the American States to cooperate with one another in the solution of their economic problems, was adopted with little discussion in substantially the same form in which it had appeared in the Washington draft of the Economic Agreement.

Article 2. This Article follows closely the Washington draft, with an additional reference to the Economic Charter of the Americas as one of the basic documents which should guide the American nations in their economic cooperation with one another.

Article 3. The final draft of the first paragraph of this Article follows fairly closely the proposal introduced by the United States to amend the Washington draft, and relates to measures to facilitate access, on equal terms, to trade and to means of production for economic development.

The second paragraph of this Article covers the Ecuadoran proposal referred to above, under which the American States would recognize the necessity of taking action to compensate for the alleged disparity existing at times between the prices of raw materials and manufactured goods. This proposal was accepted by all the delegations except that of the United States, which entered a formal reservation. After the vote had been taken on this proposal, one or two of the Latin American delegates made it clear that even though they had voted affirmatively, there was, in reality, no practical way in which the Ecuadoran proposal could be given effect. The vote on this proposal having represented the only actual accomplishment of the Ecuadoran delegation at the Conference, that delegation strongly resisted subsequent efforts to have the proposal eliminated on the ground shared by the U.S., that it was entirely unworkable.

Article 4.

CONFIDENTIAL

CONFIDENTIAL

- 7 -

Article 4. This Article, which merely points out the desirability of further bilateral or multilateral agreements to supplement the Economic Agreement, caused no discussion and was adopted in approximately the same form as it appeared in the Washington draft.

Article 5. This Article picks up to some degree provisions regarding the desirability of economic development and industrialization which had originally appeared in the Preamble (and which for a time during the discussions were included in the chapter dealing with cooperation for economic development), and did not cause a great deal of discussion.

Article 5 of the Washington draft, which merely provided that economic cooperation should be extended in accordance with the terms of this Agreement and any others which might be in force or which might be concluded, was eliminated following a suggestion of the United States delegation that such a provision was obvious and unnecessary.

Article 6. This Article in the Washington draft, referring to the general terms upon which economic cooperation would be extended by the American States to one another, and which the United States delegation had proposed to eliminate, was finally included by adding the limitation that the provisions of international agreements (as well as domestic laws) should be taken into account in determining the extent and character of economic cooperation.

Article 7. The substance of Article 7 of the Washington draft was, at the suggestion of the United States delegation, transferred to the beginning of Chapter III on Financial Cooperation. In its place there was included a new article, based upon a suggestion by the United States delegation, under which the American States recognized their common interest in maintaining world conditions favorable to a balanced and expanding world economy and a high level of international trade. This Article occasioned little discussion except for a slight amendment proposed by the Mexican delegation so as to maintain a "balance" between expanding domestic economies and increased international trade.

Article 8. This Article, which did not appear in the Washington draft, is the final compromise version of the original Cuban proposal on "economic aggression". In the early stages of the Conference, the Cuban delegation temporarily withdrew from Commission IV its economic aggression proposal, preferring to introduce this in another Commission dealing with political subjects. Because of this arrangement a Commission IV Working Party at one time refused to consider the reintroduction of the Cuban proposal and it was only in the final session of the full Commission IV that the Cuban delegation succeeded in obtaining a favorable vote to include in Chapter I of the Economic Agreement the same provisions which had previously been approved in Commission I for inclusion in the Charter of the Organization of American States. The United States representative on Commission IV did not vote against the Cuban proposal because it had already been accepted by another United States representative on Commission I.

The delegation of Paraguay introduced a proposal to include in Chapter I provisions which would have allowed a general exception from the most-favored-nation clause for economic arrangements entered into by such land-locked countries as Paraguay and Bolivia, but this proposal did not receive support.

CONFIDENTIAL

- 8 -

CHAPTER II

TECHNICAL COOPERATION

This Chapter was satisfactory to the United States delegation in the form in which it was finally drafted in the Economic Agreement; in fact, the final version is in some respects considerably better than the Washington draft. The majority of the proposals advanced by the United States were accepted. Proposals for amendments either to the entire Chapter as it appeared in the Washington draft, or to individual Articles, were made by the delegations of Argentina, Bolivia, Guatemala, Peru and Uruguay. The proposals of Argentina were for a redraft of the entire Chapter and were in rather less precise terms than either the Washington draft or the United States proposals; it was the United States' amended text, however, rather than the Argentine proposals, which became the basis of discussion in Subcommittee. The Bolivian proposal was only for certain unimportant changes in Article 8, as likewise the proposal of Guatemala. The Peruvian delegation proposed minor amendments to Article 12. The Uruguayan proposal, however, was rather different in substance than any of the other proposals, and suggested the creation of an Executive Board of seven members which might, in addition to other functions, act temporarily or permanently as a subsidiary of the United Nations Economic Commission for Latin America.

Article 9. This provides a general pledge of technical cooperation by the American States to carry out studies, plans and projects directed to the general end of economic development and strengthening of the economic structures of the various countries.

Article 10. This Article sets forth in considerable detail in eight subparagraphs the type of technical cooperation measures for which the Economic and Social Council will have a general promoting and coordinating responsibility, the specific carrying out of such measures to be by a technical staff with which the Council is to be provided, by specialists engaged for a particular project for the account of a particular government or governments, or to be referred to other governmental or private national or international agencies in those cases in which it would be more appropriate for such agencies to undertake particular technical cooperation activities. The actual drafting of this Article represented an improvement over the somewhat greater detail in which the technical cooperation activities were set forth in the Washington draft.

Article 11. This Article, which describes the administrative machinery by which, in part at least, technical cooperation activities are to be carried out, was the subject of considerable discussion, with views ranging from those which favored the creation of an autonomous technical organization to those which desired that any technical unit created be integrated with the administrative structure of the Pan American Union. In the end the latter view, which was supported by the United States, prevailed, and provision was made for the creation of a permanent technical staff directly

responsible

CONFIDENTIAL

CONFIDENTIAL

- 9 -

responsible to the Economic and Social Council, within which staff there would be absorbed existing inter-American agencies engaged in similar functions (i.e., the Inter-American Development Commission.)

Article 12. In addition to providing that the Council should maintain close contact and exchange of information with agencies in the various countries engaged in the study of economic problems, particularly those related to development, provision was made that the Council should maintain continuous liaison with the United Nations Economic Commission for Latin America for the purpose of assuring close cooperation and a practical division of functions to avoid duplication of work and expenditures. This Article did not cause very much discussion.

Article 13. This Article authorizes the Council to seek such assistance from the governments as it deems necessary, allows the governments to withhold from the Council information which they consider confidential and provides that the Council may carry out its functions in the field of technical cooperation within a particular country only if it receives the approval of the government of that country.

Article 14. The substance of this Article was carried over from the Washington draft, was not the subject of any lengthy discussion, and provides an additional safe-guard against duplication of functions in that the Council shall determine whether special studies which may be requested of it are within its own competence or should be referred to other national or international institutions or to private agencies.

Article 15. This Article was carried over largely from the Washington draft, and under it the States undertake to take into account, within the budget of the Pan American Union, the amounts necessary to cover the larger expenses foreseen for the Council and its technical staff in carrying out the activities outlined in Article 10.

Article 16. This Article represents a further safe-guard on the activities of the Council and its technical staff in the field of technical cooperation, in that when specific economic development or immigration projects are requested by one or more countries, these may be carried out by the technical staff or by specialists engaged for the purpose at the expense of the country or countries requesting the project. The Council in such cases will determine the share of the cost to be borne by the countries concerned and only in exceptional cases approved by the Council itself shall the cost of specific reconstruction or economic development projects be charged to the general budget of the Council. The provisions of this Article should have the effect of causing the governments to restrict their requests for studies or projects to those having practical possibilities.

Article 17. This Article carries over from the Washington draft without substantial change and is intended to insure that there will be no interference between the work of the Council in the technical cooperation field and the activities which are carried on by individual governments on a bilateral basis, such as the technical cooperation program which has been carried on for the past 10 years by the United States Government with individual Latin American countries.

CHAPTER III

CONFIDENTIAL

CONFIDENTIAL

- 10 -

CHAPTER III

FINANCIAL COOPERATION

The United States delegation had been prepared to accept the substance of most of the Washington draft on this subject, as had been most of the other delegations. However, because Argentina had not become a member of either the International Monetary Fund or the International Bank for Reconstruction and Development, the delegation of that country had introduced amendments to the Washington draft which would have eliminated all reference to those institutions as elements in inter-American financial cooperation. After a considerable amount of discussion it was found possible, however, to obtain unanimous agreement upon a text which distinguished, in its various parts, between those American countries which were members of the two international financial institutions and those which were not. In substance, the Chapter follows to a considerable extent the Washington draft.

Article 18. This Article sets forth a general reciprocal undertaking by the American States for financial cooperation, and in addition recognizes the obligation of each country to adopt the internal measures within its power to assist in its own economic development. This latter undertaking had previously appeared in the General Principles under Chapter I, but was transferred to Chapter III.

Article 19. This Article opens with an undertaking by the American States to continue their efforts toward expanded international trade and greater economic and social progress through encouraging the local investment of national savings and the introduction of private foreign capital, and goes on to provide that the American States which are members of the International Monetary Fund shall in normal circumstances utilize its services to achieve the objectives of the Fund. Further, all of the American States agree, in appropriate cases, to complement the operations of the Fund by means of bilateral currency stabilization agreements, on mutually advantageous and non-discriminatory bases. Against the possibility that at some future date there might be established other international financial institutions in this field, the American States agree to make use of any such institution of which they may be members.

Article 20. Again, in the case of this Article, a distinction is made between those American States which are members of the International Bank and those which are not. Those States which are members of the Bank reaffirm its objectives and agree to coordinate their efforts so that it may be an even more effective organization, especially in promoting economic development. There then follows an undertaking by all of the American States that, in appropriate cases, they will continue extending to one another medium and long-term credits through governmental institutions for economic development and increased international trade, as a supplement to the flow of private investments. It is recognized that projects for which such credits may be available should have a sound economic basis, should be well adapted to local conditions and should be able to survive without the

necessity

CONFIDENTIAL

CONFIDENTIAL

- 11 -

necessity of excessive, permanent tariff protection or subsidies. Finally, the States agree that in cases in which there is a great scarcity of foreign exchange, they will attempt to establish criteria under which it might be possible to grant facilities to debtor countries with respect to the conditions and/or the currency in which payment of loans should be made, when it is not possible to fulfill a loan agreement according to its original terms.

Article 21. This Article begins with the recognition that the lack of national savings or their ineffective use has contributed to creating inflationary practices in many American countries, which eventually may endanger the stability of exchange rates and the orderly development of their economies. Because of this, the American States agree to encourage the development of local capital markets so as to provide, from non-inflationary sources, the funds necessary to cover local currency expenditures for such needs, as for example, economic development. While they agree that in general they should not seek international financing for the purpose of meeting local currency requirements, they nevertheless recognize that while available local savings are not sufficient it may be possible, in justified circumstances, to consider local currency needs in connection with the financing which, it was agreed under the provisions of Article 20 they would extend to one another.

CHAPTER IV

CONFIDENTIAL

CONFIDENTIAL

- 12 -

CHAPTER IV

PRIVATE INVESTMENTS

From a negotiating standpoint, this was probably the most difficult Chapter in the entire Agreement. The United States Delegation had strong pressure upon it from the business community at home to obtain satisfactory provisions regarding the treatment of private investments, which would encourage the flow of private United States capital to the other American republics, and in Secretary Marshall's opening address the role which private capital might play in the economic development of Latin America was a dominant theme. On the other hand, the United States was not prepared to offer the other American republics the type of financial and other economic cooperation, such as through new inter-American financial and development institutions backed by government funds, which a number of the Latin American delegations were strongly seeking. Likewise, there was and is a strong feeling in a number of the other American republics that their economic development should be carried forward and given its principal impetus, not by private initiative as it is known in the United States, but through governmental development corporations financed by foreign (i.e. United States) and local government capital, or at the most mixed governmental and private financing, with a considerable degree of government influence and control in planning and operations. Finally, there remained in a number of Latin American countries, carried over from years past, a strong feeling that to open the doors wide to foreign capital would lead to abuses, interference with domestic politics and other undesirable developments and consequently that foreign capital should be guaranteed no better treatment than the respective constitutions now provide for domestic capital.

Against this, the United States Delegation took the position that we strongly favored sound economic development, that we believed that private capital, whether domestic or foreign, would have to be counted upon and should be allowed to do the main part of the job, that only through private capital channels could an adequate total volume of foreign capital be furnished, and that the United States Government itself had no interest or desire to force private American capital into any country where it was not welcome: it was clearly up to the receiving countries to determine for themselves to what extent and upon what terms they would admit private foreign capital. If these terms were attractive and a favorable climate were created, the capital would flow; if the conditions were not right, the capital would not flow, and the decision on these points was one to be made by the representatives of the other American republics.

While the United States Delegation did not succeed in obtaining fully the provisions which were desired on private investments, and while there may be some ground for complaint by the business community that sufficient assurances were not obtained in Bogota to encourage an individual businessman to risk his capital in ventures in Latin America, it can nevertheless be said that Chapter IV of the Economic Agreement is a considerable improvement over the corresponding provisions of the ITO Charter and includes more satisfactory provisions for American investors than have ever been obtained in any

previous

CONFIDENTIAL

CONFIDENTIAL

- 13 -

previous agreement or resolution at an inter-American conference. The provisions of Chapter IV likewise represent a great improvement over the corresponding provisions of the Washington draft, which were very unsatisfactory from the United States point of view.

Article 22. In the opening paragraph the American States recognize the importance of foreign private capital and the introduction of modern methods and skills in their general economic development and the resulting social progress. They then recognize that the flow of such capital will be stimulated to the extent that investors are afforded opportunities and are given security for existing as well as future investments.

Recognizing that foreign capital must receive equitable treatment, the American States undertake to implement this general principle by agreeing not to take unjustified, unreasonable or discriminatory measures impairing the rights or interest of foreigners in the enterprise, capital, skills, arts or technology supplied by them.

In a more positive way, the American States then agree to grant appropriate facilities and incentives for the investment and reinvestment of foreign capital and to this end undertake not to impose unjustified restrictions on the transfer to the home country of capital and earnings. Reciprocally, countries having capital, skills and technology needed by other countries, agree not to create unreasonable or unjustified impediments to prevent other countries from obtaining such needed elements on equitable terms.

While the provisions of this Article were the subject of some discussions in the early stages of Subcommittee work, they were not generally controversial and the final version of the Article followed fairly closely the United States amendments to the Washington draft.

Article 23. In its final version, the first two paragraphs of this Article follow quite closely the United States amendments to the Washington draft. There is set forth in the first paragraph a declaration that an increase in the national income and acceleration of sound economic development of the country in which the investment is made should be given due regard in the placing of foreign investments, as well as the making of a legitimate profit by the investors. There is likewise recognition of the importance of promoting the economic and social welfare of the persons directly dependent upon the enterprises. In the second paragraph there was a further declaration that just and equitable treatment should be accorded to all personnel, both national and foreign, with respect to employment and the conditions thereof, and that technical training of local personnel should be encouraged.

It was with regard to the third paragraph of this Article as it appears in the final version, and which was derived from part of a United States proposal which opposes obligatory joint participation by nationals and national capital in business enterprises involving foreign investments, that a great deal of controversy arose. The United States proposal against

obligatory

CONFIDENTIAL

CONFIDENTIAL

- 14 -

obligatory participation of national capital was soundly defeated, but almost at the last moment the United States Delegation succeeded in having included, as the third paragraph of Article 23, at least a recognition of the desirability of allowing enterprises to employ and utilize the services of a reasonable number of technical experts and executive personnel, regardless of nationality. This paragraph also provides, however, that this shall be without prejudice to the laws of each country, which means in effect that at least as a result of this Agreement, there will be no change in the present laws of various countries restricting the employment of foreign personnel. The representatives of the Latin American countries which were members of the Working Party considering private investments, frankly but confidentially admitted that the questions raised by the United States proposals against obligatory participation of local nationals and capital were politically too difficult to handle at home.

Article 24. In substance the final version of this Article represents something of a compromise between the original Washington draft and the United States proposals for amending that draft.

Some difficulties were raised, particularly by delegates representing Guatemala and Ecuador, with respect to continued guarantees for the validity of such contractual arrangements as those between Latin American governments and individual United States corporations. Those difficulties were resolved amending the Washington draft of the Article so as to refer to the guarantees provided for foreign capital under Article 22, rather than referring directly to the validity of existing contractual arrangements of the kind mentioned above. There were also difficulties with respect to the question of whether foreign capital should be subject only to national laws, or whether other considerations, such as international obligations, should also be given due weight in settling problems that might arise affecting such capital. The peculiar parenthetical insertion of "acuerdos" after the word "obligations" in the English text and the word "obligations" after "acuerdos" in the Spanish text arose as a compromise after lengthy discussion in a working group. The Latin American countries did not wish to accept the U.S. term "obligations" but preferred the word "agreements", translated from the Spanish "acuerdos". The U.S. position was that "obligations" between States may be broader than obligations directly arising from agreements. The Latin American view was that obligations under international law can only arise from agreements, and it would be better to refer to the source of the obligation. As a compromise, both terms were used, as indicated in the respective texts. This point may possibly cause some difficulty in the future if some specific case should arise, as there was not a full common agreement, each side more or less maintaining its original position.

Following the opening section of this Article, it goes on to reaffirm the rights of the American States to establish (within a system of equity and of effective legal and judicial guarantees) measures to prevent foreign investments from being used directly or indirectly to intervene in local politics or to threaten the security or fundamental interests of the

countries

CONFIDENTIAL

CONFIDENTIAL

- 15 -

countries receiving the investments; and to establish standards regarding the extent, conditions and terms upon which future foreign investments will be permitted. With respect to this last point, there is a considerable improvement over the ITO Charter in that the Bogota provisions refer only to the conditions surrounding future investments and do not provide a possible method of reopening existing contractual arrangements on an arbitrary basis.

Article 25. The first part of this Article, following substantially the Washington draft, was generally acceptable and laid down the rule that the American States should not take discriminatory action against investments in such a way that the deprivation of property rights legally acquired by foreign capital would be carried out under conditions different from those which the constitution or laws of each country established for national property. This was as far as several Latin American delegations desired to go, as they feared to establish more favorable conditions for foreign than for national investments, and without qualification this provision appeared to establish the rule that national laws were to be the sole criteria in expropriation cases. It was the additions to the foregoing which gave rise to extended debates, as the United States had proposed that there be added "and there should be no expropriation of foreign-owned property except for clearly defined public purposes and accompanied by prompt, adequate and effective compensation". Three elements in this proposed addition caused the difficulty: (1) the reference to foreign-owned property; (2) the reference to clearly defined public purposes; and (3) the reference to prompt and effective compensation. With regard to the first point, this seemed, in the minds of some delegations, to set up a special and more favorable regime for foreign-owned property than for national, and in the final version of the Article, these words were omitted. With regard to the second point of expropriation only for clearly defined public purposes, several of the delegations raised difficulties based upon constitutional provisions. In the final version of the Article, it was found necessary to eliminate this phrase. With regard to the third point, and despite the fact that the constitutions of about sixteen of the Latin American nations provide not merely for "prompt" compensation in the event of expropriation but for "prior" compensation, this caused many hours of discussion. The opposition was led chiefly by the delegates of Mexico, Venezuela and Guatemala who stated that it was in conflict with the constitutional provisions of their countries and therefore was unacceptable. At one point in the discussion, the United States position weakened to the extent that a "deal" was attempted privately with the Mexican Delegation, under which this Article would be withdrawn from the Agreement for later study and action at the proposed Economic Conference, but the Agreement as a whole would be reduced to the level of an executive instrument not subject to Congressional approval in the various countries. Fortunately, in the light of the final outcome, this proposed compromise was not generally supported by other delegations. The United States Delegation then informed the Mexican Delegation that the compromise was to be considered withdrawn, and the United States returned to its former position that we were prepared to sign a formal, binding treaty. We announced that we understood the position

of such

CONFIDENTIAL

CONFIDENTIAL

- 16 -

of such countries as Mexico, Venezuela and Guatemala, the delegates of which stated that for constitutional reasons, they could not accept the United States proposal, and that we were prepared to cooperate with them in any necessary public explanation of their position (so that it would not appear that in opposing the United States proposal those countries were thereby preparing to embark on expropriation programs). Nevertheless, if the proposal were not in conflict with the constitutions of some sixteen of the Latin American countries, we saw no reason why such of those countries as wished to encourage the investment of foreign capital and create a more favorable climate should not have the opportunity to do so through approval of the United States proposal.

To bring the issue to a definitive conclusion, the Mexican Delegation had introduced two proposals: one to eliminate the additional clause proposed by the United States, and the other, if such elimination were not agreed upon, to add to the United States proposal a further clause to the effect that there would be prompt, adequate and effective compensation for expropriation "except when the constitution of each country provided otherwise". When the Mexican proposals were put to a vote, the first proposal to eliminate the United States amendment was defeated by 14 to 5 (with two delegations absent). The second Mexican proposal, to add the phrase quoted above, was defeated by the narrow margin of 10 to 9. Then in the vote on the question of formally accepting the United States amendment, the result was again 14 to 5 in favor.

The United States was seeking, in the inclusion of "prompt, adequate and effective" as much a psychological as a legal advantage, as that phrase had come, over the years, to have certain interpretations attached to it, and we felt that its inclusion would serve to create an increasing degree of confidence by investors in those countries in which the governments were prepared to ratify an agreement containing such a clause, without reservations.

Article 26. This Article, which resulted from a proposed United States addition to the Washington draft, was accepted without much discussion or difficulty. It is intended to promote investment by developing uniform principles of corporate accounting and of standards of fair disclosure to private investors. The qualifying clause contained in the Article "whenever possible and in accordance with the laws of each country", however, may remove some of the useful effects intended by the United States in introducing this idea.

Article 27. The subject of this Article had been discussed at considerable length in the Inter-American Economic and Social Council in connection with the preparation of the Washington draft. It originated with the proposals by several of the Latin American countries that the American governments should accept the principle that income might be taxed only by the government of the country in which the income was produced. The United States consistently opposed this, but indicated a willingness to see what measures, short of acceptance of this principle, might be taken in order to stimulate foreign investment through liberalization of taxes as applied to income derived from the foreign operations of business corporations. At the Bogota Conference, some of the Latin American delegations

again

CONFIDENTIAL

CONFIDENTIAL

- 17 -

again defended the principle of exclusive right to tax by the government of the country in which the income was produced, but in the final version of this Article, the United States' view prevailed so that the Article merely provides that each American State shall, within the framework of its own institutions, i.e. its traditional tax principles, seek to liberalize its tax laws so as progressively to eliminate double taxation on income derived from foreign sources and to avoid unduly burdensome and discriminatory taxation, without, however, creating international means for tax avoidance. In a further provision, the States agreed to seek conclusion as soon as possible of agreements to prevent double taxation.

There were a number of reservations and interpretations entered by certain delegations to Chapter IV. In the case of Mexico, Guatemala and Venezuela, there were express reservations to the final part of Article 25 regarding prompt, adequate and effective compensation for expropriation, or to the entire Article. The statements made by other countries, including Ecuador, Argentina, Uruguay, Cuba and Honduras, were for the principal purpose of making it clear that in any case of a legal conflict between the provisions of Chapter IV and of the constitution of the country, the latter would prevail, and also to the effect that in no case would foreigners receive a preferred status over nationals in the operation of the laws. In connection with the problem created by the number of reservations to the Economic Agreement, and particularly to Article 25, the office of the Legal Adviser of the Department of State has prepared a memorandum which is attached as Annex A.

CHAPTER V

COOPERATION FOR INDUSTRIAL AND ECONOMIC DEVELOPMENT

This Chapter, consisting of Articles 28 and 29, was the subject of considerable discussion in Subcommittee, and in its final form consists of two Articles, one of which sets forth various general principles and obligations as a basis for Inter-American cooperation in industrial and economic development, and various undertakings in connection with the furnishing of materials, machinery, equipment, et cetera, needed for economic development, particularly under conditions when such materials and equipment are in short supply.

As set forth in the Washington draft, the Chapter consisted of two rather brief Articles, one of which included a general obligation by the American States to cooperate so that industrialization would be stimulated; and an undertaking by the American States to satisfy, under favorable conditions, and at just prices and without discrimination, orders for materials and equipment needed for industrialization or exploitation of natural resources (this latter provision had been considered unacceptable by the United States because it imposed obligations which could not be fulfilled by this Government.)

In the

CONFIDENTIAL

CONFIDENTIAL

- 18 -

In the text as finally approved after much discussion and many changes, however, there are two Articles, the first of which, Article 28, within the general framework of Article 5 provides:

a) That the American States recognize their obligations to cooperate with one another so that their economic development may be accelerated;

b) That the States shall seek to make the most efficient use of their industries and their productive facilities so as to participate in joint economic plans for development; and

c) That the States consider it desirable to carry out development in accordance with the potentialities of each country in order to meet consumers' requirements at fair prices which will also provide producers with reasonable returns.

The second part of Chapter V, Article 29, recognizes that economic development requires, among other things, adequate supplies of capital, goods, raw materials, modern equipment, technology, and technical and administrative skill. Therefore, to promote assistance in supplying such facilities:

a) The States agree, as far as possible within the legal authority granted for such purposes, to facilitate the purchase and export of the elements needed, such as capital, machinery, raw materials and services;

b) The States undertake not to impose unreasonable or unjustifiable obstacles to impede the purchase, on fair and equitable terms, of such elements;

c) If exceptional conditions make it necessary to apply export restrictions or priorities for purchases and exports, such measures shall be applied by the American States on a fair and equitable basis, taking into account their mutual needs and other appropriate and pertinent factors; and

d) When it is necessary to apply the restrictions just referred to, the States shall attempt to allow the trade in the restricted products to flow as nearly as possible in the way and in the amounts which might be expected if the restrictions did not exist.

In connection with the application of the purchase and export restrictions, mentioned in the latter part of Article 29, it may be noted that upon the occasion of his departure from Bogota to Washington, former Secretary Harriman announced, in his capacity as Secretary of Commerce, that he would undertake to appoint a Special Assistant in Washington to aid the other American republics in their efforts to obtain materials, equipment and machinery in short supply. Commission IV later agreed to thank Secretary Harriman for the offer which he had made.

CHAPTER VI

CONFIDENTIAL

CONFIDENTIAL

- 19 -

CHAPTER VI

ECONOMIC SECURITY

Early in the work of Commission IV, the delegations of Bolivia and Ecuador introduced several proposals, which had received consideration at various earlier inter-American conferences, under which the more highly developed countries, particularly the United States, would have had to undertake various vague but potentially heavy obligations to guarantee economic prosperity in the less developed countries, particularly those which were producers of raw materials. One of these projects, which was introduced in substantially similar form by both delegations, would have required a country which produced manufactured goods to compensate for the price disparity existing at times in favor of such goods over prices of primary products. This project, on behalf of Ecuador, was put to a quick vote and received unanimous support, except for the delegation of the United States, which entered a reservation. Despite the favorable vote, one or two of the delegations, particularly that of Chile, informed the delegate of Ecuador that there was no practical method by which the Ecuadoran proposal could be brought into effect. Also, the Ecuadoran delegate was not inclined to recognize that at the present time the price of cacao, one of Ecuador's principle export products, was about six times higher than the pre-war price and relatively much higher than the price of the manufactured goods which Ecuador imports from the United States and other countries. Upon approval of the Ecuadoran proposal, the Bolivian delegate agreed to withdraw his similar proposal.

Another Bolivian proposal, also in this general field, would have obligated the American States to cooperate with the less developed countries of the Hemisphere which were producers of raw materials, so that such countries might sell, in quantities and under conditions favorable to their respective economies, the natural exportable products which formed the basis of their national security. This proposal was discussed at some length in Subcommittee, and it was pointed out that it was apparently aimed directly at the United States in an attempt to have that country underwrite in perpetuity the economic prosperity and welfare of all of the less developed nations of the Hemisphere which produced raw materials. The fantastic nature of this proposal finally caused it, after some discussion, to fail to receive support, and the discussion then turned toward the drafting of a proposal under which the American States would work together through inter-governmental commodity agreements in solving such problems as burdensome surpluses and excessive price fluctuations. At one point in the discussion a draft had been prepared which was not entirely unacceptable to the United States delegation, but a successful effort by the Bolivian delegation to have this proposal tied directly to the entirely unsatisfactory provisions of the approved Ecuadoran proposal regarding price relationships between raw materials and manufactured goods, forced the United States delegation to indicate that it would enter a formal reservation (this was later done in the form of reservation to Article 30).

A further

CONFIDENTIAL

CONFIDENTIAL

- 20 -

A further Bolivian proposal, which received the strong support of the Chilean delegation, provided for an agreement by the American States to adopt measures designed to avoid or limit the manufacture of synthetic products, so as not to injure the sources of natural production that support the economy of a country or region of America. This proposal was substantially the same as that which had been approved at the Rio Meeting of Foreign Ministers in 1942 and which had received considerable attention at the Chapultepec Conference in 1945. From the outset, however, there was opposition to the proposal and after lengthy discussion it was finally withdrawn, as was also a companion proposal which had been introduced in Subcommittee by the Chilean delegation.

A fourth Bolivian proposal related to additional exceptions to the most-favored-nation clause in favor of arrangements to promote economic development between neighboring countries or countries in the same economic region. This proposal, which in its original form would have, of course, run counter to what had been agreed upon by nearly all of the American republics in the ITO Charter in Habana less than one month previously, received a considerable amount of support from various of the Latin American countries. It was during discussion amended so as to recognize the validity of such international agreements as the ITO Charter, but to the extent that countries not ratifying the Charter would have, under this proposal, a free hand to introduce provisional trade relationships, it became in effect an invitation not to ratify the ITO Charter, at least on the part of those countries which desire to expand preferential trade arrangements. The United States entered a formal reservation to the Article (31).

CHAPTER VII

SOCIAL GUARANTEES

This Chapter, consisting of a single Article (32), and which in its original form in the Washington draft set forth a few fundamental principles regarding the rights of labor and certain related social questions, was not the subject of extended discussion in Subcommittee, as practically all of the delegations were prepared to accept the Washington draft without substantial modification. In the closing minutes of the final session of the full Commission IV, however, the Cuban delegate introduced what amounted to three specific provisions from Cuban labor legislation regarding paid vacations for workers, protection for workers against discharge without just cause, and social insurance. The United States delegate and the Colombian delegate indicated that their governments were as interested as any others in the Western Hemisphere in the welfare of labor, but they could not agree to the inclusion of the proposals advanced by the Cuban delegate without a reasonable time to consider questions of such importance. There was a rather heated debate on this subject, with the final result that the first two of the Cuban proposals were approved, with reservations by the United States and Colombia, as sub-paragraphs f) and g) of Article 32.

In the

CONFIDENTIAL

CONFIDENTIAL

- 21 -

In the final form of its reservation, the United States delegation stated that it was forced to enter such a reservation for the same reasons which had impelled it to make a general reservation against the entire Charter of Social Guarantees which had been approved in another Commission of the Conference. These reasons particularly related to the detailed nature of the proposals and the fact that under the system of law in the United States, detailed questions regarding such matters as working conditions, social insurance, vacations for workers, et cetera, fell within the jurisdiction of the individual states rather than of the Federal Government, or were matters for collective bargaining between employers and employees.

CHAPTER VIII

CONFIDENTIAL

CONFIDENTIAL

- 22 -

CHAPTER VIII

MARITIME TRANSPORTATION

Chapter VIII consists of Articles 33, 34 and 35, all representing statements of general principle with respect to the subject of Inter-American Maritime Transportation.

Article 33 states a general intent on the part of the American States to cooperate to secure the greatest benefits from their maritime transportation facilities; it acknowledges the need for reliable and adequate service but recognizes that costs must be geared to this. This Article was adopted as drafted by the Economic and Social Council, and no amendments were offered by any delegation at Bogota.

Article 34 is a general statement of the desirability of reducing transportation costs with recognition of the part which governments can play by improving port conditions and regulations and by reducing fees and charges against cargoes and vessels.

This Article was based on the Washington Draft Agreement, and as originally drafted provided for agreement by the American States to encourage the reduction of transportation costs through the lowering of freight rates, fees and other charges and imposts which unduly restrict inter-American maritime trade.

The Venezuelan Delegation proposed an amendment under which the American States would have agreed "to take all measures necessary to establish fair and reasonable rates, surcharges and classifications and to reduce transportation costs through the lowering of freight rates, fees and other charges that unduly restrict inter-American maritime trade." This Article would also have required steamship lines to file their tariffs with the governments of the American States as an incident to the establishment of rates. The United States Delegation construed this Article as an attempt to establish government prescription and control of freight rates in international trade and therefore opposed the amendment. The Venezuelan Delegation found no immediate support for this proposal and since it promised to be so controversial as possibly to delay the completion of the Economic Agreement beyond the date set for adjournment of the Conference, it was finally withdrawn. The Venezuelan Delegation, however, stated its intent to resume discussion of this subject at the Economic Conference.

The United States Delegation proposed that the Washington draft of this Article be amended to substantially the form which was adopted. The principal change was the elimination of a direct reference to freight rates since this might have implied that freight rates in international trade should be fixed by government action, which is contrary to the existing law and policy of the United States. It was also desired to place a more direct emphasis on actions which might be taken by governments to lower a number of costs which

pertain

CONFIDENTIAL

CONFIDENTIAL

- 23 -

pertain to transportation such as improvements in port facilities and in the management of ports, terminals and customs houses and the supervision and control of port practices which are within the control of national or local authorities.

The United States amendment was accepted upon the making of the foregoing explanation in Subcommittee. However, at the Plenary Session of the Economic Commission, Uruguay proposed the addition of the words "by all means possible" as applying to the reduction of transportation costs. This proposal received general support from other countries present and was adopted; it is believed that most of the supporting delegations had in mind that this phrase would include freight rates but the reference is so qualified and obscure that the United States Delegation considered it harmless. To have opposed the amendment would have almost certainly resulted in the incorporation of language which would have been still less acceptable.

The United States amendment to this Article was the same as that suggested by a Committee of United States steamship lines engaged in inter-American trade and by the National Foreign Trade Council. The precise language suggested referred to the lowering of fees and other charges and imposts "which restrict or impose undue burdens on inter-American maritime trade". The language adopted was reduced to read "which unduly restrict inter-American maritime trade", at the request of Spanish-speaking delegations who professed to be unable to see any distinction between the shorter phrase adopted and the slightly more specific language proposed by the United States. The United States Delegation did not consider that the point was of sufficient importance to warrant a battle and accepted the curtailed language in view of the fact that Venezuela and other supporting countries had agreed to forego their insistence on incorporation of a specific reference to freight rates in this article.

Article 35 incorporates into the Economic Agreement Article 1 (b) of the Convention on the Intergovernmental Maritime Consultative Organization which was signed at Geneva on March 6, 1948. Specific proposals that this be written into the Economic Agreement were made by the delegations of the United States, Argentina and Colombia. These received general support from most of the other delegations. The United States Delegation pointed out that the United States and various of the other American States had signed the Geneva Shipping Convention and that if any changes in language were made at Bogota, various of the countries might find they were signatories to pacts which were in conflict.

The Delegations of Ecuador, Venezuela and Colombia jointly stated that they considered the Flota Mercante Grancolombiana, S.A. to be their national merchant marine because of the participation of the capital of the three countries in that enterprise, regardless of whether the vessels of the company fly the flag of Ecuador, Colombia or Venezuela. This declaration had specific reference

to

CONFIDENTIAL

CONFIDENTIAL

- 24 -

to Article 35, particularly that portion reading "assistance and encouragement given by a government for the development of its national merchant marine **** does not in itself constitute discrimination". Ecuador grants a 50 percent reduction in consular invoice fees to shippers who use vessels of the Grancolombiana regardless of flag and in the course of the Bogota Conference made it clear that she intends to continue this discrimination. Ecuador considers that this is "assistance and encouragement given by a government for the development of its national merchant marine" within the meaning of Article 35. Venezuela and Colombia showed no enthusiasm for this or other discrimination but both joined Ecuador in the above statement apparently because they are associated in the Grancolombiana enterprise.

At the closing session of the Economic Commission, Ecuador made certain general statements implying that Panama might also become a partner in the Grancolombiana shipping enterprise, but these were not specific and Panama, it should be noted, had no representative present at the time. Ecuador offered a series of reservations to the Economic Agreement, one of which again referred to Article 35 and reiterated Ecuador's intention to continue to grant preferences for the development of its merchant marine and "reserved" to itself the right to consider as national vessels those of the Grancolombiana "regardless of whether they fly the flags of Venezuela, Colombia or Panama".

In the course of the discussions on shipping it became quite apparent that most of the countries which discriminate or grant preferences in favor of their own vessels consider that Article 1(b) of the Geneva Shipping Convention gives them a convenient "answer" when they are pressed to give national and most-favored-nation treatment to other vessels. They immediately take the position that their preferences and discriminations are merely "assistance and encouragement" given for the development of their national merchant marines and they point to the fact that an international pact declares that this does not constitute discrimination. When pressed they are very vague as to their understanding of the qualifying proviso that "such assistance and encouragement" is not to be based on measures designed to restrict the freedom of shipping of all flags to take part in international trade. In the light of this it seems probable that the value to be derived from Article 35 will depend very greatly on the actions and interpretations which the Intergovernmental Maritime Consultative Organization may take with respect to matters placed before it which involve Article 1(b) of the Geneva Convention.

The Washington draft also contained an Article designed to bring about the granting of national and most-favored-nation treatment for vessels and cargoes of the American States in each others ports. The United States proposed that the Article be made self-executing to the extent that ratification of the Economic Agreement would make national and most-favored-nation treatment of shipping effective at once without requiring further supporting action by the legislatures of the ratifying states; it also suggested language which would have made the Article more specific as to the elimination of governmental restrictions and preferences.

The

CONFIDENTIAL

CONFIDENTIAL

- 25 -

The Argentine Delegation offered an amendment which would have assured vessels of the American States most-favored-nation treatment but not national treatment. It was stated that Argentine laws specified certain preferences for Argentine vessels which prevented the granting of national treatment; and the instructions to the Delegation forbade agreement to any provision which would itself change this.

Colombia offered an amendment, providing for "equal treatment" to the merchant vessels of the American republics. No adequate explanation was offered as to the reason for substituting this for the customary and suggested language providing for national and most-favored-nation treatment.

Venezuela proposed an amendment which would have restricted national and most-favored-nation treatment to vessels and cargoes "in the ports used for international commerce or those especially authorized in special cases." The explanation offered was that the government might grant special conditions to oil companies for handling tankers and oilwell equipment at other places. The U.S. Delegation was somewhat doubtful as to this explanation and privately considered that it might have some undisclosed purpose which would favor the Grancolombiana.

None of these proposals received sufficient support to get them out of sub-committee; the Washington draft of the Article received no greater support. Ecuador in particular opposed any provision which would prevent a government from granting preferences to favor its own shipping. Chile alone offered full support to the U.S. efforts to obtain unqualified national and most-favored-nation treatment. There was a deadlock in Subcommittee over this question, and in an effort at a compromise, the Argentine Delegation offered a proposal under which the American States would agree "to take all possible and reasonable measures to eliminate or reduce preferences **** accorded by governments to their own ships, their cargoes and passengers". This compromise had so many loopholes that it was of doubtful value; nevertheless it was tentatively agreed to by a working group. However, on presentation to the subcommittee, Ecuador announced an "interpretation" to the effect that the preferences referred to did not include any measures taken by a government in aid of its merchant marine even though the preference might have been specified in the Article. The U.S. Delegation refused to accept this interpretation. As there was no prospect of breaking the deadlock by the closing date of the Conference, which had been set for April 30, 1948, upon the motion of Argentina supported by all other members, the Article was deleted from the Agreement.

In the discussions which took place, the U.S. Delegation made it quite clear it did not consider that Article 1(b) of the Geneva Convention was a substitute for national and most-favored-nation treatment, and that deletion of an article providing for such treatment did not mean that the U.S. had abandoned its efforts in this direction and would thereafter rely upon the less stringent provisions of the Geneva Convention with respect to discriminations by governments.

So

CONFIDENTIAL

CONFIDENTIAL

- 26 -

So that the record would be entirely clear, the Delegation of the U.S. made the following declaration:

"The Delegation of the U.S. of America, in view of the declaration made by the Delegation of Ecuador at the meeting of Sub-committee IV-C held during the current month of April, on the application of certain discriminatory measures as a means of giving support to their national merchant marine,

Declares:

That it wishes to record in the minutes its opinion that certain governmental discriminations and restrictions exist in inter-American maritime commerce and that in its desire to bring about the elimination thereof, it reserves the right to make proposals and to participate in any other debates on this topic at future meetings of the American States."

The Washington draft also contained an article providing for the elimination of "unnecessary legal restrictions by governments affecting transportation engaged in international trade, so as to promote the availability without discrimination of transportation services ***".

The U.S. Delegation considered this Article to be vague as to meaning and obscure as to purpose. It was believed to be intended to strike at conference agreements and shippers' contracts and the United States Delegation therefore favored its deletion. Argentina and Colombia also proposed its deletion.

Venezuela, however, proposed an amendment which would have specifically outlawed the contract rate system in inter-American trade and would have so severely handicapped the functioning of steamship conferences as to make them virtually unworkable in inter-American trade. Little support was given to the Venezuelan proposal and the Venezuelan Delegation ultimately withdrew it, but with the understanding that it would be introduced as a subject for discussion at future inter-American economic conferences.

The Venezuelan Delegation, in fact, proposed that the Bogota Conference endorse a proposal that a special Inter-American Maritime Conference be called for August or September of the current year to be held in Washington, at which all maritime problems would be considered. The U.S. Delegation supported this. However, Argentina offered a counter-proposal calling for consideration of maritime problems at the inter-American economic conference which, it appeared, would be held in Buenos Aires. Venezuela accepted the Argentine proposal and ultimately all delegations present agreed to it, but only after it had been revised to record more clearly that any shipping matters could be brought up for consideration at the economic conference. The Argentine resolution as adopted reads substantially as follows:

"The

CONFIDENTIAL

CONFIDENTIAL

- 27 -

"The signatory States consider it desirable that at the next economic conference, in order to make the agreements of the Ninth International Conference more effective, questions having to do with maritime transportation shall be included in the agenda. For the preparation of said agenda, the governments of the American States will submit their points of view thereon to the Council of the Organization of American States."

The declaration of the U.S. Delegation quoted above records the intention of the U.S. to pursue the subject of national and most-favored-nation treatment for shipping at the economic conference. The Delegation of Venezuela also recorded its intention to bring up for discussion the questions of conference contracts and ocean freight rates "and the means for ensuring that such rates be fair and equitable".

The Washington draft also contained an article under which the American States would have agreed "to take all possible measures to eliminate laws or regulations restricting to national carriers goods moving in international trade".

The U.S. Delegation was unable to agree to this Article as it would have suspended Public Resolution 17 of 1934 which provides for the carriage in American ships of cargoes procured with the proceeds of loans made by such agencies as the Export-Import Bank. As administered, cargoes financed through such loans are divided equally between the vessels of the U.S. (as the lending country) and the vessels of the borrowing nation, provided such vessels are able and willing to carry up to 50 percent. No delegation at Bogota spoke in favor of retaining this article of the Washington draft and it was thereupon deleted.

The Washington draft also contained an article which was designed to permit the American States to continue the use of measures adopted to aid in the development of their national merchant marines. Since the only action taken pertaining to the elimination of discriminatory practices on the part of governments was the incorporation into the Economic Agreement of Article 1(b) of the Geneva Convention on Shipping, and since this article already recorded a somewhat similar reservation, this article of the Washington draft was discarded as unnecessary.

The Delegation of Chile presented orally a proposed article looking toward the equal division of inter-American maritime trade as between the vessels of the country of export and the vessels of the country of import, but in the interest of harmony withdrew this proposal without prejudice to its re-introduction in the future.

The foregoing records action taken with respect to articles pertaining to shipping which were considered as a part of the Economic Agreement. Certain other subjects were presented by various delegations but discussion and action were deferred until the next economic conference. These were mainly:

1. Resolution

CONFIDENTIAL

CONFIDENTIAL

- 28 -

1. Resolution of the Delegation of Peru calling for creation of an Inter-American Transportation and Communications Committee to study rates and conditions of service with respect to telephone, wireless and cable communications, postal communications, maritime and air transport of passengers and goods, port and airport services and land transportation. This resolution contemplated the imposition of "sanctions and other coercive measures against any entities that establish, attempt to establish or maintain discriminatory rate systems ***". The term "discriminatory rate systems" is not defined and the determination would be vested in the proposed Committee. The practical effect would be to give this body the right to fix rates. The Delegation of Peru did not press strongly for the consideration of this resolution at Bogota, and readily agreed that it should be passed over until the economic conference.

2. The Delegation of Bolivia proposed various amendments to the chapter of the Economic Agreement on Maritime Transportation, which related to freedom of transit through American territories without tax, charge, delay or restriction and for the protection of cargo in transit. One of the proposed articles specified that international railway, maritime, river and air transportation charges and freight rates should be the same as those fixed for national transportation under the same conditions of distance, speed, weight and class.

As a consequence of the Bolivian proposal on freedom of transit, the Conference adopted Article 36 (Chapter IX -- see below), while other parts of the Bolivian proposal were referred by general accord to the economic conference with a declaration which is set forth in Resolution XVIII of the Final Act (see below).

3. The Delegation of Paraguay proposed that the chapter on Maritime Transportation be amplified to include River Transportation. This was opposed on the ground that it was impracticable because of the inherent differences which exist between river and ocean transportation. Moreover, it was considered that the Bolivian proposals fully covered the Paraguayan proposals and the Paraguayan amendments were thereupon dropped.

4. The Delegation of Colombia proposed an article for insertion under the chapter on Maritime Transportation providing that whatever might be agreed in this chapter would not imply a limitation as regards any measures which adjoining countries might adopt for the development of their commerce. This undoubtedly referred to the joint enterprise of Venezuela, Colombia and Ecuador, in the establishment of the Flota Mercante Grancolombiana. Colombia did not press for adoption of this proposal, however, and it was dropped without discussion. Presumably Colombia considered it unnecessary in view of the joint declaration of the Delegations of Ecuador, Venezuela and Colombia to the effect that for the purposes of Chapter VIII - Maritime Transportation - of the Economic Agreement, these three States considered the

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CONFIDENTIAL

CONFIDENTIAL

- 29 -

vessels of the Grancolombiana as their national merchant marine regardless of whether the vessels were under the flags of Ecuador, Colombia or Venezuela.

5. At the final plenary session of the Economic Commission, the Delegation of Haiti proposed the adoption of a resolution which implied that an increase in ocean or air rates would constitute a discrimination and recommended that 30 days' advance notice be given to the countries concerned by air and steamship companies before increasing their freight tariffs and that all such companies should discuss the proposed increases, "in order to arrive at an understanding with those countries which might be adversely affected by such increases".

The Delegation of Peru pointed out that this resolution was presented literally at the eleventh hour, that no time was available for study and consideration, and that it should be referred to the economic conference. Cuba, however, enthusiastically supported the resolution and urged its immediate adoption, as did Venezuela. The U.S. Delegation was of the opinion that this might constitute the first step toward government control and prescription of freight rates in international trade, and urged that it be set aside for further study at some other time and place. Chile also supported this. After a prolonged discussion the resolution was put to a vote but failed to carry on a nine to nine tie. It was thereupon referred to the economic conference for further consideration.

CHAPTER IX

FREEDOM OF TRANSIT

This Chapter, consisting of the single brief Article 36, which provides that freedom of transit should exist through the territories of the American States as a means of encouraging international trade, and that regional and general agreements should be concluded to carry out this principle, was based upon a proposal by the Bolivian delegation. It was a generally non-controversial subject and was approved unanimously except for a reservation by the delegation of Honduras.

CHAPTER X

INTER-AMERICAN TRAVEL

This Chapter consists of the single Article 37, which recognized that the development of inter-American travel, including tourist travel, would constitute an important factor in general economic development. The Article further included an undertaking by the American States to take national and international action to reduce their restrictions on non-immigrant travelers of such States, Without any

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CONFIDENTIAL

CONFIDENTIAL

- 30 -

distinction between such visitors because of the reason for their travel, whether this be for pleasure, health, business or education. A Mexican proposal to delete this last clause was defeated. The Delegation of Argentina entered a minor reservation of this Article.

CHAPTER XI

ADJUSTMENT OF ECONOMIC DISPUTES

This Chapter, which consists of the single Article 38, represents an agreement by the American States to utilize only orderly and friendly means for the settlement of all economic differences or disputes between them. To this end they agree to consult through the usual diplomatic channels to find a mutually satisfactory solution, but if this is not possible, any State or party to the dispute may request the Inter-American Economic and Social Council to use its good offices to arrange further consultation under the sponsorship of the Council, to bring about a friendly settlement of the dispute. This paragraph follows closely the original Washington draft.

There was considerable discussion in Subcommittee as to the remainder of the Washington draft of this Article, which would have possibly given some juridical authority to the Inter-American Council. Most of the delegations, including the United States, opposed this. At the same time, a number of delegations wished to strengthen the machinery for friendly settlement of economic controversies, and therefore proposed that the settlement of such controversies be specifically linked with the obligatory procedure for the settlement of controversies in general, as set forth in the Inter-American Peace System. Provision was also made for the submission of economic differences to other procedures by virtue of existing or future agreements such as, for example, the ITO Charter.

CHAPTER XII

COORDINATION WITH OTHER INTERNATIONAL AGENCIES

The Delegation of the United States proposed a redrafting of the Chapter on this subject, consisting of the single Article 39 which had appeared in the Washington draft, and following a brief discussion in Subcommittee, the United States proposals were adopted with slight drafting changes. This Article provides, first, that the Inter-American Economic and Social Council shall take all measures necessary to coordinate its activities with those of other international agencies so as to avoid duplication of effort, and, second, that for this purpose the Council shall maintain full exchange of information with other international agencies regarding the preparation and carrying out of studies and programs.

CHAPTER XIII

CONFIDENTIAL

CONFIDENTIAL

- 31 -

CHAPTER XIII

RATIFICATION, ENTRY INTO FORCE AND AMENDMENTS

This Chapter includes the customary provisions in a document of this kind regarding its ratification, entry into force and amendments. It is provided that the Agreement shall enter into force with respect to those countries which ratify it, when two-thirds of the 21 signatories have done so, and with respect to the other signatories, in the order in which they deposit their ratifications. Ratifications are to be effected in accordance with the constitutional procedures of each country, and they are to be deposited with the Pan American Union. Amendments to the Agreement which may be introduced in the future shall enter into effect generally in the same way as the original instrument became effective.

At the time of signing, 15 "Reservations" were made by 10 different countries, 2 "Declarations" by 2 different countries, and one joint "Statement" by 3 countries. Some of the "Reservations" which are counted as a single reservation in arriving at the total of 15, actually comprised a number of reservations, i.e., Ecuador noted 5 reservations under the heading "Reservations" which it submitted; Argentina's reservation with respect to Article 25 stated that it understands that "the text does not in any way indicate that international treaties or agreements shall prevail over the constitutional texts of the American countries", and that "the concepts expressed with regard to the above-mentioned article apply to all pertinent provisions of the Agreement". In addition, it should be noted that the 2 "Declarations" appear to constitute reservations, since they appear to lessen the obligations of the declaring countries. The United States entered 3 reservations, affecting 4 articles of the Agreement.

COMMERCIAL POLICY

In the early discussions of the draft Basic Agreement in Washington, in the Inter-American Economic and Social Council, there had been an understanding that a Chapter on Commercial Policy would be included once the results of the United Nations Conference on Trade and Employment at Habana had become known. By the time the draft economic agreement was sent to the American governments for their consideration in anticipation of the Bogota Conference, however, the Habana meeting had not yet terminated, and therefore nothing on the subject of commercial policy was included in the draft Economic Agreement. At Bogota there was included, among the United States proposals in connection with the Economic Agreement, a Chapter on Commercial Policy which consisted only of three short excerpts from the Principles in Article 1 of the draft Charter for the International Trade Organization.

The

CONFIDENTIAL

CONFIDENTIAL

- 32 -

The Mexican Delegation suggested certain amendments to the United States proposals by way of "balancing" them through including references to economic development as well as to commercial policy. These amendments were acceptable to the United States Delegation, but during the course of discussion in Subcommittee it became apparent that there was a great deal of opposition from other delegations to both the United States and Mexican proposals. On the other hand, there were certain delegations which were favorable to these proposals, but they feared that any attempt to have them included in the Economic Agreement would, in effect, cause a reopening of all the discussions at Habana.

At the same time there was under discussion in another Subcommittee Bolivian proposals dealing with trade preferences and with commodity problems. While the United States Delegation indicated at first that it would be willing to withdraw its proposals on commercial policy, it was indicated that because the Bolivian proposals dealt more or less directly with commercial policy, these should be withdrawn also. There was vigorous opposition to withdrawal of the Bolivian proposals, however, inasmuch as they had already been approved (with reservations by the United States). Finally, when it was seen that there was no chance of either obtaining withdrawal of the Bolivian proposals or of obtaining approval of the United States proposals, the United States Delegation agreed to withdraw its proposals and have them referred to the Inter-American Economic and Social Council for further study.

CONFIDENTIAL

Annex A

CONFIDENTIAL

Memorandum Prepared in the Office of the Legal Adviser
of the Department of State Regarding the Effect of
Reservations to the Economic Agreement of Bogotá
of May 2, 1948, with Respect to
United States Ratification

May 21, 1948

The Economic Agreement of Bogota was signed on May 2, 1948 by 20 countries. Article 40 of the Agreement provides that it shall remain open to signature by the American States, "and shall be ratified in accordance with their respective constitutional procedures". In the case of the United States, this is a clear indication that ratification by the Senate is contemplated; it is understood that this was made plain by the American Delegate who represented the United States in connection with the Economic Agreement at Bogota. Article 41 provides that the Agreement "shall enter into effect among the ratifying States when two-thirds of the signatory States have deposited their ratifications".

At the time of signing, 15 "Reservations" were made by 10 different countries, 2 "Declarations" by 2 different countries, and one joint "Statement" by 3 countries. Some of the "Reservations" which are counted as a single reservation in arriving at the total of 15, actually comprised a number of reservations, i.e., Ecuador noted 5 reservations under the heading "Reservations" which it submitted; Argentina's reservation with respect to Article 25 stated that it understands that "the text does not in any way indicate that international treaties or agreements shall prevail over the constitutional texts of the American countries", and that "the concepts expressed with regard to the above-mentioned article apply to all pertinent provisions of the Agreement". In addition, it should be noted that the 2 "Declarations" appear to constitute reservations, since they appear to lessen the obligations of the declaring countries. The United States entered 3 reservations, affecting 4 articles of the Agreement.

Six different countries entered reservations to Article 25, the article on private investments; in addition, 2 different countries made "Declarations" with respect to Article 25, which appear to be reservations, since they appear to lessen the obligations of the declaring countries.

In advance of detailed analysis, it appears that all "reservations", "declarations", and "statements" are designed to lessen the obligations under the Agreement of the countries making them.

The question arises whether these various reservations affect ratification by the United States of the Agreement, and in what manner. Hyde, International Law (1945) Vol. II, pp 1440-1441, states:

"If a State be permitted to sign or deposit its ratifications of a treaty under a reservation that lessens rather than enlarges obligations which such State is prepared reciprocally to accept, and at a

time

CONFIDENTIAL

CONFIDENTIAL

- 2 -

time before the arrangement has become binding upon any of the other signatories or prospective parties, it is reasonable to conclude that if the latter with knowledge of the fact proceed, without more ado, to make the instrument binding upon themselves, as by deposit of ratifications, their conduct amounts to acceptance of the reservation. Under such circumstances, and in special view of the character of its reservation, there is given to the reserving State reason to demand that affirmative steps be taken by such other parties as would reject its proposal."

Since the reservations to the Economic Agreement at Bogota were made at the time of signing, the United States has been put on notice. Therefore, if the United States ratifies the Agreement without rejecting some or all of the reservations, those reservations which have not been rejected by the United States in its ratification have been agreed to by the United States. If the United States rejects some or all of the reservations, other ratifying countries must make similar rejections or withdrawals of reservations in order that there may be an agreement among such ratifying countries and the United States. Reservations to a treaty "require the assent of the other signatory Power or Powers, ---- in the absence of such assent, the treaty is not in force as between the declarant and Powers which have not so assented; for the reservation made by the declarant is a part of the agreement of that Power and acceptance of the whole agreement by the other Party or Parties is essential." (Miller, Reservations on Treaties (1919), p. 160.) The problem is probably most acute when Article 25 and the reservations to such article are considered, since 8 countries--more than one-third of the signatory States--have entered reservations to Article 25 which lessen their respective obligations. If the United States in ratifying rejects the reservations to Article 25, some of the signatories which have entered reservations to Article 25 would have to be willing to withdraw reservations in ratifying the Agreement in order for the Agreement to come into force.

Another problem which can arise concerns the effect of nonacceptance of a reservation: whether it "merely affects the party which refuses to accept the reservation, and that the state making the reservation is free to participate in the treaty with the parties that accept the reservation either expressly or by implication", or whether "in order that any reservation whatever may be validly made in regard to a clause of a treaty, it is essential that this reservation should be accepted by all the contracting parties, as would have been the case if it had been put forward in the course of the negotiations. If not, the reservation, like the signature to which it is attached, is null and void." (Sanders, Reservations to Multilateral Treaties, 33 A.J.I.L. 488, 489, 490 (1939).) Both these conflicting views are widely held. The Pan American Union has held generally with the first view:

"1. The

CONFIDENTIAL

CONFIDENTIAL

- 3 -

"1. The treaty shall be in force, in the form in which it was signed, as between those countries which ratify it without reservations, in the terms in which it was originally drafted and signed.

"2. It shall be in force as between the governments which ratify it with reservations and the signatory states which accept the reservations in the form in which the treaty may be modified by said reservations.

"3. It shall not be in force between a government which may have ratified with reservations and another which may have already ratified, and which does not accept such reservations." (op. cit.)

As can be seen, if the Agreement does come into force, the forms of Agreement pursuant to which States may be bound one to another, may vary greatly, under the Pan American Union view; the possible combinations of countries bound to one another by various forms may also be numerous.

Thus, if the Economic Agreement is to be presented to the Senate for its advice and consent as to ratification, the Department must be in a position to advise the President before such submission as to whether it desires ratification with acceptance of some reservations and rejection of other reservations, or ratification with rejection of all reservations; and the particular reservations which should be accepted or rejected must also be determined. And in determining whether to submit the Economic Agreement of Bogota to the Senate, information is desirable concerning whether, for example, some or all of the countries which made reservations which the United States is not prepared to accept, will withdraw such reservations. Ratification by the United States with rejections of reservations may be a futile act if two-thirds of the signatories are not going to ratify the same instrument.

The number of reservations appended to the Economic Agreement of Bogota, the number of countries making such reservations, and the character of reservations made are strong indications that there has probably been no meeting of minds on at least the private investment provisions of the Economic Agreement. Even where the Agreement to be accepted, with all reservations by all of the parties to it, the reservations which could thus become part of the Agreement would make it extremely difficult to interpret. Under these circumstances, it may be wise to continue negotiations concerning the Agreement and the reservations in an attempt to secure the withdrawal of the reservations and the conclusion of a more satisfactory and precise understanding.

CONFIDENTIAL