

**United Nations**  
**ECONOMIC**  
**AND**  
**SOCIAL COUNCIL**

**Nations Unies**  
**CONSEIL**  
**ECONOMIQUE**  
**ET SOCIAL**

RESTRICTED

E/CN.1/Sub.3/W.16  
1 April 1949

ORIGINAL: ENGLISH

---

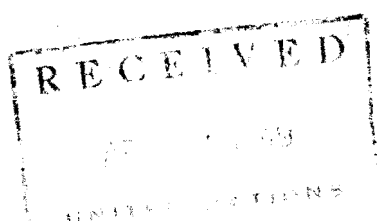
ECONOMIC AND EMPLOYMENT COMMISSION  
Sub-Commission on Economic Development  
Third session

PROPOSED INTERNATIONAL AGREEMENTS RELATING  
TO FOREIGN INVESTMENTS

(Prepared by the Secretariat)

In document E/CN.1/Sub.3/W.14, entitled "Memorandum on Foreign Investment", reference is made by Mr. Collado on page 4 to two proposed international agreements relating to foreign investments; (1) The Economic Agreement of Bogotá, signed at the Ninth International Conference of American States, Bogotá, Colombia, on 2 May 1948 and submitted for approval to the participating Governments, and (2) A proposed International Code of Fair Treatment for Foreign Investments to be submitted for consideration at a Congress of the International Chamber of Commerce at Quebec, Canada in June 1949. For the convenience of members of the Sub-Commission the text of the relevant provisions of the Economic Agreement of Bogotá is appended to this memorandum. The text of the proposed code of the International Chamber of Commerce has not yet been released.

In view of the relevance of certain provisions of the Havana Charter for an International Trade Organization, namely articles 11 and 12, the text of these is also appended.



APPENDIX A

EXTRACT FROM THE HAVANA CHARTER FOR  
AN INTERNATIONAL TRADE ORGANIZATION

Articles 11 and 12

Article 11. Means of Promoting Economic Development and Reconstruction

1. Progressive industrial and general economic development, as well as reconstruction, requires among other things adequate supplies of capital funds, materials, modern equipment and technology and technical and managerial skills. Accordingly, in order to stimulate and assist in the provision and exchange of these facilities:

(a) Members shall co-operate, in accordance with Article 10, in providing or arranging for the provision of such facilities within the limits of their power, and Members shall not impose unreasonable or unjustifiable impediments that would prevent other Members from obtaining on equitable terms any such facilities for their economic development or, in the case of Member countries whose economies have been devastated by war, for their reconstruction;

(b) No Member shall take unreasonable or unjustifiable action within its territory injurious to the rights or interests of nationals of other Members in the enterprise, skills, capital, arts or technology which they have supplied.

2. The Organization may, in such collaboration with other inter-governmental organizations as may be appropriate:

(a) Make recommendations for and promote bilateral or multilateral agreements on measures designed:

(i) to assure just and equitable treatment for the enterprise, skills, capital, arts and technology brought from one Member country to another;

(ii) to avoid international double taxation in order to stimulate foreign private investments;

(iii) to enlarge to the greatest possible extent the benefits to Members from the fulfilment of the obligations under this Article;

(b) Make recommendations and promote agreements designed to facilitate an equitable distribution of skills, arts, technology, materials and equipment, with due regard to the needs of all Members;

/(c) Formulate

- (c) Formulate and promote the adoption of a general agreement or statement of principles regarding the conduct, practices and treatment of foreign investment.

Article 12. International Investment for Economic Development and Reconstruction

1. The Members recognize that:

- (a) International investment, both public and private, can be of great value in promoting economic development and reconstruction, and consequent social progress;
- (b) The international flow of capital will be stimulated to the extent that Members afford nationals of other countries opportunities for investment and security for existing and future investments;
- (c) Without prejudice to existing international agreements to which Members are parties, a Member has the right:
  - (i) to take any appropriate safeguards necessary to ensure that foreign investment is not used as a basis for interference in its internal affairs or national policies;
  - (ii) to determine whether and to what extent and upon what terms it will allow future foreign investment;
  - (iii) to prescribe and give effect on just terms to requirements as to the ownership of existing and future investments;
  - (iv) to prescribe and give effect to other reasonable requirements with respect to existing and future investments;
- (d) The interests of Members whose nationals are in a position to provide capital for international investment and of Members who desire to obtain the use of such capital to promote their economic development or reconstruction may be promoted if such Members enter into bilateral or multilateral agreements relating to the opportunities and security for investment which the Members are prepared to offer and any limitations which they are prepared to accept of the rights referred to in sub-paragraph (c).

2. Members therefore undertake:

- (a) Subject to the provisions of paragraph 1 (c) and to any agreements entered into under paragraph 1 (d),
  - (i) to provide reasonable opportunities for investments acceptable to them and adequate security for existing and future investments, and

(ii) to give

- (ii) to give due regard to the desirability of avoiding discrimination as between foreign investments;
  - (b) Upon the request of any Member and without prejudice to existing international agreements to which Members are parties, to enter into consultation or to participate in negotiations directed to the conclusion, if mutually acceptable, of an agreement of the kind referred to in paragraph 1 (d).
3. Members shall promote co-operation between national and foreign enterprises or investors for the purpose of fostering economic development or reconstruction in cases where such co-operation appears to the Members concerned to be appropriate.

APPENDIX B

EXTRACT FROM "ECONOMIC AGREEMENT OF BOGOTA"

Signed at Ninth International Conference of American States  
Bogotá, Colombia, on 2 May 1948

CHAPTER IV - PRIVATE INVESTMENTS

- Article 22. The States declare that the investment of private capital and the introduction of modern methods and administrative skills from other countries, for productive and economic and socially suitable purposes, are an important factor in their general economic development and the resulting social progress. They recognize that the international flow of such capital will be stimulated to the extent that nationals of other countries are afforded opportunities for investment and security for existing and future investments.
- Foreign capital shall receive equitable treatment. The States therefore agree not to take unjustified, unreasonable or discriminatory measures that would impair the legally acquired rights or interests of nationals of other countries in the enterprises, capital, skills, arts or technology they have supplied.
- The States shall reciprocally grant appropriate facilities and incentives for the investment and reinvestment of foreign capital, and they shall impose no unjustifiable restrictions upon the transfer of such capital and the earnings thereon.
- The States agree not to set up within their respective territories unreasonable or unjustifiable impediments that would prevent other States from obtaining on equitable terms the capital, skills, and technology needed for their economic development.
- Article 23. The States declare that foreign investments should be made with due regard not only for the legitimate profit of the investors, but also with a view both to increasing the national income and accelerating the sound economic development of the country in which the investment is made and to promoting the economic and social welfare of the persons directly dependent upon the enterprise in question.

/They further

They further declare that, with respect to employment and the conditions thereof, just and equitable treatment should be accorded to all personnel, national and foreign, and that the development of the technical and administrative training of national personnel should be encouraged.

The States recognize that, for private capital to contribute as much as possible to their development and progress and to the training of their nationals, it is desirable to permit enterprises, without prejudice to the laws of each country, to employ and utilize the services of a reasonable number of technical experts and executive personnel, whatever their nationality may be.

Article 24. Foreign capital shall be subject to national laws, with the guarantees provided for in this chapter, especially Article 22; and without prejudice to existing or future obligations (acuerdos) between States. The States re-affirm their right to establish, within a system of equity and of effective legal and judicial guarantees:

- (a) Measures to prevent foreign investments from being utilized directly or indirectly as an instrument for intervening in national politics or for prejudicing the security or fundamental interests of the receiving countries; and
- (b) Standards with respect to the extent, conditions, and terms upon which they will permit future foreign investments.

Article 25. The States shall take no discriminatory action against investments by virtue of which foreign enterprises or capital may be deprived of legally acquired property rights, for reasons or under conditions different from those that the Constitution or laws of each country provide for the expropriation of national property. Any expropriation shall be accompanied by payment of a fair price in a prompt, adequate and effective manner.

Article 26. The States declare their intention to promote sound investment by developing, whenever possible and in accordance with the laws of each country, uniform principles of corporate accounting, and of standards of fair disclosure to private investors.

/Article 27.

Article 27. Each State, in order to stimulate private investment for the purpose of economic development, shall, within the framework of its own institutions, seek to liberalize its tax laws so as progressively to reduce or eliminate double taxation as regards income from foreign sources and to avoid unduly burdensome and discriminatory taxation, without, however, creating international avenues for tax avoidance. The States shall also seek to conclude as soon as possible agreements to prevent double taxation.

RESERVATIONS OF CHAPTER IV OF THE ECONOMIC AGREEMENT OF BOGOTA

Reservation of the Delegation of Mexico to  
Articles 22, 24, and 25 of the Economic  
Agreement of Bogotá

1. The delegation of Mexico makes an express reservation to the last part of Article 25, to the effect that the principle established there should be subordinated to the constitutional laws of each country.
2. Although in agreement with the spirit of equity that inspires Article 22, paragraph 3, and the first paragraph of Article 24, the delegation of Mexico at the same time makes an express reservation on the texts thereof, since in their present wording, they could be interpreted as a limitation to the principle that aliens, as well as nationals, are subject to the laws and courts of the country.

Reservation of the Delegation of the  
Argentine Republic

Argentina wishes to record in the Minutes that -- as it stated in making known its vote on Article 25 of the Economic Agreement of Bogotá on the amendment proposed thereto by the delegation of Mexico -- it confirms the fact that it gave its approval to the above-mentioned text primarily with the understanding that that text does not in any way indicate that international treaties or agreements shall prevail over the constitutional texts of the American countries, nor that foreign capital investments shall be subject to any jurisdiction other than that of their own courts. It further understands that the concepts expressed with regard to the above-mentioned article apply to all pertinent provisions of the Agreement.

Declaration of the Delegation of Uruguay

The delegation of Uruguay understands that Chapter IV grants foreign capital entering its country no guarantee not already afforded it by constitutional provisions. And, with regard to Article 25, it considers that the express reference to the constitution, in matters relative to the system of expropriation and payment therefor, is unnecessary, because constitutional provisions always govern the settlement of all situations, since all inhabitants are subject to the jurisdiction of the national courts.

/Reservation of



Reservation of the Delegation of Guatemala

The delegation of Guatemala makes an express reservation to the last part of Article 25 in the sense that the principle established there should be subject to the constitutional rules in force in each country.

It also makes an express reservation regarding the third paragraph of Article 22, and the first paragraph of Article 24, insofar as they restrict the principle that aliens, as well as nationals, are subject to the laws and courts of the country.

Declaration of the Delegation of Cuba

The delegation of Cuba has voted affirmatively on Article 25 with the understanding that the last paragraph thereof, interpreted dogmatically, contains provisions in accordance with the Constitution of Cuba.

Reservation of the Delegation of Venezuela

Venezuela makes an express reservation to Article 25 for the reasons set forth during the debate. Regarding the rest of Chapter IV, it states that in no case will it admit the preeminence of international treaties or agreements over the text of its constitution, nor will it accept any jurisdiction for foreign investments other than that of its own courts.

Reservation of the Delegation of Honduras

The delegation of Honduras declares that it has voted affirmatively on Article 25 of the Economic Agreement of Bogotá, with the interpretation that the application of the last part of that article -- like the application of the other parts thereof -- remains subject to the primacy of the National Political Constitution.

-----