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RELATIONS OF THE ECONOMIC COMMISSION FOR LATIN AMERICA
WITH THE INTER-AMERICAN ECONOMIC AND SOCIAL COUNCIL

Memorandum by the United Nations Legal Department

dated 15 October 1953

1. Responsibility for the discharge of the functions of the United Nations under Chapter IX of the Charter "International Economic and Social Co-operation" belongs to the General Assembly and under its authority to the Economic and Social Council (Article 60). In the implementation of its responsibilities the Economic and Social Council established the Economic Commission for Latin America. Its authority in this respect is Article 68 which reads as follows:

"68. The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions".

2. Resolution 106 (VI) of the Economic and Social Council established ECLA and provided its terms of reference. Resolution 106 (VI) was subsequently amended by resolutions 234B (IX) and 414 (XIII). Under the latter, the Council decided to continue the regional economic commissions indefinitely. The Economic Commission for Latin America is accordingly now a permanent subsidiary organ of the Economic and Social Council.

3. ECLA's terms of reference establish its status as an integral part of the United Nations, and define its distinctive functions (see in particular paragraphs 1, 2 and 5).

4. The Economic and Social Council devoted special attention to co-operation and co-ordination between the Commission and other inter-governmental organizations in Latin America. Accordingly, the Commission's

terms of reference as adopted by the Council, besides providing for relations with specialized agencies recognized under the United Nations Charter, also provided for the establishment of relations with certain other inter-governmental organizations in Latin America. Paragraph 9 of ECLA's terms of reference states:

"9. The Commission shall co-operate with and take the necessary measures to co-ordinate its activities with the appropriate organs of the Inter-American System and as may be necessary with the Caribbean Commission in order to avoid any unnecessary duplication of effort between those organs and itself; to this end the Commission is empowered to and shall seek to make working arrangements with the appropriate organs of the Inter-American System regarding the joint or independent study or execution of economic problems within its competence and the fullest exchange of information necessary for the co-ordination of efforts in the economic field. The Commission shall invite the Pan American Union to nominate a representative to attend meetings of the Commission in a consultative capacity".

5. The last sentence of paragraph 9 of ECLA's terms of reference has particular significance as it specifically deals with relations at the Secretariat level. (The Pan American Union also serves as the Secretariat of IA-ECOSOC.)

6. Accordingly, ECLA has developed extensive co-operation with IA-ECOSOC and its Secretariat, as summarized in document E/AC.34/6 as well as in documents of its fourth and fifth sessions (see in particular ECLA's Mexico and Rio annual reports, E/2021 and E/2405 respectively, and also E/CN.12/311 and Add.1/Rev.1).

7. The Inter-American Economic and Social Council based its relations with ECLA on Article 13 of its Statutes approved by the Council of the Organization of American States in May 1950. This article, which is based on Article 61 of the Charter of Bogota, states that:

"13. The Inter-American Economic and Social Council, in agreement with the Council of the Organization of American States, is authorized to establish co-operative relations with the corresponding organs of the United Nations ... that function within its sphere of action".

8. The rules of procedure of ECLA (rules 6, 7, 8 and 9) and of IA-ECOSOC (Articles 57 - 61 of the Regulations of IA-ECOSOC adopted on 14 December 1950) contain detailed provisions concerning relations between the two bodies.

9. Provisions for co-operation and co-ordination between ECLA as an organ of the Economic and Social Council, and IA-ECOSOC, as an organ of the Organization of American States, which are included in their basic documents and their rules of procedure or regulations as well as in decisions of both bodies, are based on full recognition of the constitutional independence of both bodies and safeguard fully their rights as separate inter-governmental entities responsible to their respective superior organs. Neither of them under their basic instruments can enter into any arrangement which would not be fully consistent with their responsibilities established respectively by the Economic and Social Council under the United Nations Charter and by the Organization of American States under the Charter of Bogota.^{1/} These constitutional limitations regarding arrangements for co-operation and co-ordination were acknowledged on various occasions by both bodies.

10. Some specific points raised in this connexion may be presented as follows:

Spheres of action of ECLA and IA-ECOSOC

11. Although several aspects of the terms of reference of ECLA and IA-ECOSOC are similar, the mandates of the two bodies differ in important respects. The IA-ECOSOC is a purely inter-American body and is limited to action among Latin-American States and the United States of America. The Economic Commission for Latin America, as the United Nations body, has broader responsibilities, which include "maintaining and strengthening the economic relations of the Latin American countries both among themselves and with other countries of the world" (paragraph 1(a) of ECLA's terms of reference). Its membership (which includes France, the Netherlands and the United Kingdom) and geographic scope also differ from those of the IA-ECOSOC.

12. ECLA as a subsidiary organ of the Economic and Social Council has

^{1/} Article 100 of the Bogota Charter contains an explicit provision along these lines in connexion with the Inter-American Specialized Organizations. Needless to say the same principle applies with greater force to the organs of both the United Nations and the OAS. Article 100 provides: "In concluding agreements with international agencies of a world-wide character, the Inter-American Specialized Organizations shall preserve their identity and their status as integral parts of the Organization of American States, even when they perform regional functions of international agencies".

definite responsibilities which cannot be delegated. ECLA acts within the framework of the policies of the United Nations and is subject to the general supervision of the Council (paragraph 1 of the Commission's terms of reference). Accordingly, ECLA, having its place and responsibility within the United Nations, is not free to enter into arrangements with inter-governmental organizations which would limit its rights and responsibility. ECLA can enter into arrangements with such organizations only insofar as such arrangements are consistent with paragraph 9 of its terms of reference. It would not be compatible with ECLA's mandate to accept any arrangement by which IA-ECOSOC would act as co-ordinating agency for activities of an economic nature insofar as ECLA's activities are concerned. The OAS is not a regional agency within the United Nations as regards matters of co-operation in the economic and social fields (see Appendix).

Recommendations to member governments and their implementation

13. ECOSOC has the power under Article 62, paragraph 1, of the Charter to "... make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General Assembly, to the Members of the United Nations, and to the specialized agencies concerned".

14. ECLA is also specifically empowered to make recommendations directly to its member governments. Paragraph 5 of its terms of reference provides:

"5. The Commission is empowered to make recommendations on any matters within its competence directly to the Governments of members or associate members concerned, Governments admitted in a consultative capacity, and the specialized agencies concerned. The Commission shall submit for the Council's prior consideration any of its proposals for activities that would have important effects on the economy of the world as a whole".

15. Any arrangement according to which recommendations of the Commission to its members would be submitted by ECLA, either directly or through ECOSOC, for prior consideration of, or implementation by, the IA-ECOSOC would not be compatible with the rights and responsibilities of ECLA. According to its terms of reference, ECLA is empowered to make recommendations directly to its member governments, including several governments which are not members of the IA-ECOSOC, and since its establishment has exercised this right on many occasions. If, on the other hand, it is only intended that IA-ECOSOC

be kept fully informed of ECLA's recommendations in order to facilitate co-operation and co-ordination between both bodies, ECLA's terms of reference provide for such procedure.

Procedure regarding investigations and studies

16. Concerning the question of investigations and studies, ECLA is bound by paragraph 1(b) of its terms of reference. This states that ECLA shall:

"1. (b) Make or sponsor such investigations and studies of economic and technological problems and developments within territories of Latin America as the Commission deems appropriate".

The terms of paragraph 1(b) are very definite and ECLA is directed to make or sponsor only those investigations and studies which it deems appropriate. The provisions limiting this responsibility of the Commission are stated in the first part of paragraph 1 of the terms of reference, namely that the Commission shall:

- a) act within the framework of the policies of the United Nations;
- b) be subject to the general supervision of the Council;
- c) take no action in respect to any country without the agreement of the government of that country.

17. The carrying out of investigations and studies either by ECLA alone or, as envisaged in paragraph 9 of ECLA's terms of reference, in co-operation with IA-ECOSOC, is subject as far as ECLA is concerned, to budgetary decisions of the appropriate organs of the United Nations. Moreover such investigations and studies as are included in ECLA's programmes of work are dependent upon the over-all policy decisions of the Economic and Social Council regarding co-ordination of the work of the United Nations and the specialized agencies and are subject to established United Nations Priority Programmes (resolution 451 (XIV)). Accordingly, it would not be compatible with the Commission's mandate to undertake investigations and studies solely on the basis of recommendations of IA-ECOSOC. x

18. The results of investigations and studies undertaken by the ECLA Secretariat on the instructions of the Commission are presented to the latter for consideration and action in fulfilment of its mandate. At the same time they are made available for information to IA-ECOSOC in accordance with

arrangements made with IA-ECOSOC under paragraph 9 of ECLA's terms of reference for purposes of co-operation and co-ordination.

Procedure regarding meetings of experts

19. ECLA is empowered by its terms of reference to make or sponsor investigations and studies of economic or technological problems and developments and establish such subsidiary bodies (standing or ad hoc) as the Commission deems appropriate (paragraphs 1 and 10 of its terms of reference). The establishment of subsidiary bodies is subject to consultation with specialized agencies concerned and approval of the Council (paragraph 10 of ECLA's terms of reference). These provisions cover technical meetings and conferences, including various meetings of experts, convened under the auspices of the Commission. While paragraph 9 of ECLA's terms of reference provides for co-operation with IA-ECOSOC in regard, inter alia, to such meetings, ECLA's right to convene, and to take any other necessary measures with governments in connexion with such meetings cannot be curtailed or transferred to IA-ECOSOC. (See in particular paragraphs 13 - 15 above, "Recommendations to member governments and their implementation".)

Placing of items on ECLA's agenda

20. According to rule 8 of ECLA's rules of procedure, IA-ECOSOC can have items included in the provisional agenda of ECLA. This cannot be interpreted, however, as placing an obligation on ECLA to include such items in its final agenda. ECLA has the full authority to determine its agenda within its competence as defined in its terms of reference.

APPENDIX

RELATIONS BETWEEN THE UNITED NATIONS AND OAS
UNDER CHAPTER VIII OF THE UNITED NATIONS CHARTER

1. Under Chapter VIII of the Charter of the United Nations the existence of such organizations as the Organization of American States is acknowledged in paragraph 1 of Article 52, as follows:

"52. 1) Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations".

On the other hand, the Charter of Bogota declares that "within the United Nations, the Organization of American States is a regional agency" (Article 1).

2. The essential criteria for a regional arrangement compatible with the Charter of the United Nations as set forth in Article 52, paragraph 1, are as follows:

- a) Regional arrangements under Chapter VIII should deal with such matters relating to the maintenance of international peace and security as are appropriate for regional action.
- b) Their constitutions and their activities should be consistent with the purposes and principles of the United Nations. 1/

3. Chapter VIII of the Charter directs the Security Council to encourage the development of pacific settlement of local disputes through regional arrangements or agencies (Article 52, paragraph 3) and to utilize, where

1/ Article 103 of the Charter of the United Nations provides: "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail".

appropriate, such regional arrangements or agencies for enforcement action under its authority. But "no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state", etc. (Article 53, paragraph 1).

4. Under Article 54 the Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security. In order to comply with the provisions of Article 54 of the United Nations Charter, several communications have been sent by OAS to the Security Council concerning activities undertaken or in contemplation with regard to disputes or situations threatening inter-American peace and security.

5. The status of OAS as a regional agency under the Charter of the United Nations is limited to matters of peace and security. The provisions regarding peace and security contained in Chapter VIII have no legal bearing on the question of relations in the economic and social fields between the United Nations and such organizations as OAS.

6. Obviously the fact that all Members of the United Nations under the provisions of Article 56 in Chapter IX of the Charter have pledged themselves "to take joint and separate action in co-operation with the Organization" with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations gives no reason to assume that the provisions of Chapter VIII were intended to apply to matters of economic and social co-operation.

7. Likewise it is not to be assumed that the pledge for joint and separate co-operation given by all Members according to Article 56 of Chapter IX would create obligations for them under Chapter VIII, for example in regard to reporting to the Security Council on all activities undertaken by OAS in order to create conditions of stability and well-being in the inter-American economic and social field. The obligation to report under Article 54 refers only to activities undertaken or in contemplation for the maintenance of international peace and security, and the OAS has indeed always limited its reports to the Security Council to matters in this field.