

FOURTH CONFERENCE OF THE INTER-AMERICAN BAR ASSOCIATION*

The Fourth Conference of the Inter-American Bar Association was held at Santiago, Chile, from October 20th to 29th, 1945. In all there were 115 delegates nominated by the different member associations, excluding those from Chile, of whom forty-two attended from the United States. The Honourable Lucien Moraud, K.C., and Mr. D. L. McCarthy, K.C., were the representatives of the Canadian Bar Association and in addition the following delegates from Canada were nominated:

The Hon. Antonio Talbot, K.C., Batonnier of the Bar of the Province of Quebec, Quebec;

The Hon. Onesime Gagnon, K.C., Provincial Treasurer of the Province of Quebec, Quebec;

Mr. Lynn Spencer, K.C., Welland;

Major L. M. Bloomfield, Montreal; and

Major J. Richard Hyde, Montreal.

Unfortunately, Mr. Gagnon and Major Hyde were unable to attend.

The arrangement and management of the conference were under the brilliant leadership of Dr. Oscar Davila, the President of the Inter-American Bar Association, who is to be congratulated upon the scheme for the holding of the many meetings and for the lavish entertainment of the representatives and delegates. The chairmen and vice-chairmen of the different committees had been appointed in advance and each committee was furnished with secretaries and interpreters. Distinguished members of the bar from member countries had also been invited to read papers on subjects in which they were interested or had special qualifications.

After a meeting of the Executive Committee on October 18th, at which changes in the rules and by-laws submitted at the meeting of the Committee in Havana last February were discussed, there was a meeting of the Council on October 19th, followed the next day by the first plenary session of the Association in the Hall of Honour of the National Congress. At this session a notable address was delivered by Mr. David A. Simmons, the President of the American Bar Association, on "The Distribution of Power in Government", which has since been published in full in the November issue of the *American Bar Association Journal*.

*For an announcement of the Conference, see [1945], 23 Can. Bar Rev. 588.

Mr. Lynn Spencer, K.C., of Welland was Chairman of the Committee on Penal Law and Procedure. The Honourable Lucien Moraud and the Honourable Mr. Talbot were active in the Committee on International Post-War Juridical Problems and Major Bloomfield in the Committee dealing with comparative civil and commercial law. Mr. D. L. McCarthy attended all the meetings of the Committee on Legal Education. At the final meeting of the Council the Honourable Lucien Moraud was appointed a member of the Council and Mr. McCarthy a member of the Executive Committee and of the Council.

At a meeting of the Council on October 25th the Honourable Antonio Talbot, K.C., *Batonnier* of the Bar of the Province of Quebec, presented an application on behalf of the Bar of that province to join the Inter-American Bar Association. After some discussion it was decided to waive the rule requiring the application to be submitted to the Canadian Bar Association and the Bar of the Province of Quebec was enrolled as a member of the Association.

The President, Dr. Davila, was in the chair at the final plenary session and in his opening speech thanked the delegates for the excellent work they had done, not only in cementing inter-American relations, but in the intricate problems facing the conference. The reports of the various committees and the resolutions adopted were then read. It is hoped eventually to have English translations prepared of the resolutions and such of the papers presented to the committees as are available.

It has been announced that an invitation has been received to hold the Fifth Conference of the Association at Lima, Peru.

The programme of the work of the committees at the Fourth Conference follows:

COMMITTEE I

IMMIGRATION, NATIONALITY AND NATURALIZATION

Theme 1.—The need of developing a controlled immigration as an attribute to sovereignty, which will assure a demographic unity in the face of the varied elements of colonization required by the different geographic conditions and climates in the countries of the Continent.

Theme 2.—Distribution and compilation of legal provisions of the American countries tending to prevent or to solve the conflicts between nationality and personal status.

Theme 3.—Suppression of impediments to international travel by the citizens of American nations. The identification ticket or card to be the only requirement for entering and leaving the national territory.

COMMITTEE II

TAXATION

Theme 1.—Taxation of business income.

Theme 2.—Adaptation of tax legislation to actual income, without burdening the capital, eliminating the system of presumed income.

Theme 3.—Judicial powers of administrative organs; procedures and appeals against their tax settlements and decisions.

Theme 4.—Incentive taxation for international business, including prevention of (a) discriminatory taxation; (b) double taxation through means of reciprocal exemption of certain items of income, or the allowance of the credit for a tax paid at source against the tax paid at the fiscal domicile of the recipient; (c) extra-territorial taxation through agreement on appropriate rules of allocation.

COMMITTEE III

ADMINISTRATIVE LAW AND PROCEDURE

Theme 1.—Administrative tribunals.

Theme 2.—Execution of decisions of foreign tribunals.

Theme 3.—Advantage of providing judicial review on the merits of the case.

Theme 4.—Responsibility of the state.

COMMITTEE IV

COMMERCIAL TREATIES AND CUSTOMS LAWS

Section A—Commercial Treaties

Theme 1.—Inter-American economic cooperation on the basis of the preservation of the development of the natural industries of each American nation.

Theme 2.—Protection methods in inter-American commerce.

Section B—Customs Laws

Theme 1.—Pacts or agreements for continental customs unity.

Theme 2.—Free zones and free ports.

Theme 3.—Analytical study of the various American customs tariffs in order to fix and determine the amount of aid that the industrialists of each country receive from the state.

Theme 4.—Customs violations.

Theme 5.—Problems introduced by the customs regulations in freight contracts.

COMMITTEE V

NATIONAL CENTERS OF LEGAL DOCUMENTATION AND
BIBLIOGRAPHICAL INDICES OF LAW MATERIALS

Theme 1.—Advantage of cataloguing on cards the opinion of each decision rendered by the superior tribunals of each nation. Form and conditions to be included in this work.

Theme 2.—Advantage of cataloguing on cards every law or regulation of general and permanent interest enacted in each country. Form and conditions to be included in this work.

Theme 3.—Advantage of making uniform and simplifying the legal terminology to the point of formulating a Pan-American Legal Dictionary.

Theme 4.—Advantage of cataloguing on cards articles in periodicals dealing with legal subjects. Form and conditions to be included in this work.

Theme 5.—Advantage of cataloguing on cards the debates on legislation. Form and conditions to be concluded in this work.

COMMITTEE VI

COMPARATIVE CONSTITUTIONAL LAW

Theme 1.—Study of the principles consecrated in the constitutions of the American nations relative to the development of the judicial power. Criticism of the various systems of appointment of magistrates and judges. Influence that the rules which may be adopted on this subject may have on the independence and permanency of the judiciary.

Theme 2.—Study of the powers of the superior courts or tribunals of the American republics to declare unconstitutional or inapplicable the law in a certain case because it is contrary to a precept of the constitution; advantages and disadvantages offered by this system.

Theme 3.—Study of the principle of the constitutional supremacy established among the American countries, the practical and legal methods for its maintenance, through an analogous or similar suit to the Mexican suit of “amparo.”

(a) The suit of “amparo”, as it has been developed in the Mexican Republic, is a complete institution with regard to the protection of juridical interests of private persons when these are affected, or by violation of the individual guarantees that the country’s constitution gives, or by invasions of federal authorities in matters that compete with those of the states or vice-versa.

(b) Anyhow, the suit of “amparo”, as it is instituted in the Mexican Republic, does not comprise the violation of constitutional precepts when this does not cause concrete harm to particular interests, either because these interests are taken care of by the state, as a person with private rights, or because the interest of the private person may only be affected indirectly. In this case it is convenient that the suit of “amparo” commence a proceeding so that the competent tribunals may judge these acts constitutionally, as long as these are not of political order but of penal nature.

(c) The same federal authorities, or ordinary class of authorities, must also vie to know the questions of constitutional order that arise in the course of any juridical proceeding, even if they do not refer to cases that may be matter for the suit of “amparo”, without fear that the resolution which is dictated by those common tribunals might be revised by the supreme court of justice of the country with regard to constitutional questions, by means of interposed resources of any of the parts or by representatives or agents of the national executive power.

(d) As a means to avoid an unnecessary multiplicity of judgments of constitutional order, as long as a given case of law is recognized as opposite to the constitution of the country, every authority is obliged to deny the

observance of this law in identical cases. For the stability of this principle it may be established that a law is acknowledged as opposed to the constitution when this has been determined by the highest juridical authority, for jurisprudence thus established is then compulsory for all authorities of the country.

Theme 4.—That in the preparation of papers on constitutional law to be presented to the Inter-American Bar Association particular care should be taken in considering the living constitution, perpetuated through acts, at the same time as the written constitution based on its text.

COMMITTEE VII

COMMUNICATIONS, INCLUDING AIR LAW, TELECOMMUNICATIONS, MARITIME AND HIGHWAY TRANSPORTATION

Theme 1.—Uniform facilities in international air transportation, without detriment to the exception of coastwise transportation of the respective national services.

Theme 2.—Simplification of the requirements and uniformity of the documents required for transportation by air of passengers and merchandise.

Theme 3.—Uniformity of the provisions regulating the radio-communication services, particularly the licenses for operation and use of the same, on the basis of the principle of freedom established in Recommendation III of the Second Inter-American Conference on Radio-communications at Santiago in January, 1940.

Theme 4.—Ownership title of motor vehicles. The liability in urban and highway traffic. Accidents. Penalties. Traffic courts.

Theme 5.—Restriction on ownership for the benefit of a program of highway improvement. Legal regulation of servitudes affecting roads, such as transmitting lines of telegraphs, telephones and tubes.

Theme 6.—Legal principles that should regulate the coordination of international transportation by land, river, sea and air.

Theme 7.—Regulation of international transit on the basis of simplification of requirements and required documents.

Theme 8.—Simplification of the requirements for international maritime navigation.

COMMITTEE VIII

INDUSTRIAL, ECONOMIC AND SOCIAL LEGISLATION

Theme 1.—Legal principles regulating the procedure in cases of intervention by the state in labour conflicts.

Theme 2.—Legal principles involved in the procedure for the regulation of the use of natural resources.

COMMITTEE IX

PENAL LAW AND PROCEDURE

Theme 1.—Law on the criminal liability of corporate persons.

Theme 2.—Territoriality of criminal law.

Theme 3.—Duties of judges and attorneys in penal procedure.

Theme 4.—Civil liability resulting from crime (tort).

Theme 5.—Prescription in criminal matters.

Theme 6.—The judging and punishment before the courts of one country of an offence committed in another country.

COMMITTEE X

TERRITORIAL WATERS AND OCEANIC FISHERIES

Theme 1.—Legal principles governing the procedure to regulate the exploitation of the resources of the oceans and seas.

Theme 2.—Legal principles relative to the use of maritime waters for industrial purposes, such as the installation of "floating islands".

Theme 3.—The possibility and methods of compiling information with respect to the history of international rivers in America, relative to the legal principles involved in treaties, conventions and judicial decisions.

COMMITTEE XI

ADMIRALTY LAW

Theme 1.—Uniformity of certain concepts of maritime risks.

Theme 2.—Unification of legislation with respect to shipping documents based on the rules of the Brussels Convention of 1922.

Theme 3.—Uniformity in the regulation of collision, salvage and aid, based on the agreements of the Brussels Convention of 1910.

Theme 4.—Property rights in shipments and the methods of acquisition and transfer.

Theme 5.—Maritime credits, their classification and privileges.

Theme 6.—Maritime liens, formalities and legal effects.

COMMITTEE XII

ACTIVITIES OF LAWYERS' ASSOCIATIONS (BAR ASSOCIATIONS)

Theme 1.—Legal organization of lawyers and disciplinary jurisdiction.

Theme 2.—Social security for the legal profession.

Theme 3.—Legal aid to the poor.

Theme 4.—Professional secrecy.

COMMITTEE XIII

INTELLECTUAL AND INDUSTRIAL PROPERTY

Section A—Intellectual Property

Theme 1.—Nature of legal aid in intellectual production.

Theme 2.—The moral rights of the author and the adequate legal protection thereof.

Theme 3.—Study and discussion of the Draft of a Uniform Law on Literary, Scientific and Artistic Property.

Section B—Industrial Property (Patents and Trademarks)

Theme 1.—Advantage of making uniform the legislation with respect to what constitutes a patentable invention or a trademark proper for registration, and the reasons why one or the other would fail to be so.

Theme 2.—Administrative measures recommended to assist in the exercise of the rights belonging to the owner of an invention patent, of a privilege of an industrial model or of a trademark, and the possibility of making the legislation uniform in this respect.

Theme 3.—To whom does the right of industrial property belong in the case of an invention made by an employee?

COMMITTEE XIV

LEGAL EDUCATION

Theme 1.—Studies and prerequisites to legal education.

Theme 2.—Description of each course of legal study and of teaching methods.

Theme 3.—Requirements for admission to the bar.

Theme 4.—Importance of ethics and equity in law studies.

Theme 5.—The Inter-American Bar Association proposes to the universities and law schools of America that they so organize their programs that they will be more comprehensible to alien students who study comparative legislation of the Americas and be easier to assimilate.

Theme 6.—That a study be made of a system to enable students in the universities and law schools of one country of the Americas to obtain recognition of their work in the universities or law schools of any other country of America.

COMMITTEE XV

COMPARATIVE CIVIL AND COMMERCIAL LAW

Section A—Laws on Trusts

Theme 1.—Study of the principles of Anglo-Saxon "trusts".

Theme 2.—Advantage of making uniform the legislation on "trusts".

Section B—Unification and Coordination of the Legislation with Respect to Legal Status of Persons

Theme 1.—Unification of legislation relative to the constitution and nationality of juridical persons (corporate bodies) in private law.

Theme 2.—Unification of legislation concerning the requirements for the validity of marriages and divorces.

Section C—Unification of the Law of Obligations and Contracts, Civil and Commercial

Theme 1.—Unification of the law on bills of exchange and promissory notes.

Theme 2.—Unification of insurance law.

Theme 3.—Unification of law on terrestrial and maritime transportation, principally with regard to the general conditions of booking-tickets and of chartering and freight documents.

Theme 4.—That a special committee be appointed to study the possibility of enacting a uniform law in the various countries of America to control international cartels and, if the committee is of the opinion that the law is practicable, for the purpose of proposing adequate legislation.

Theme 5.—Unification of obligations and contracts in general.

COMMITTEE XVI

MUNICIPAL LAW

Theme 1.—Legal principles and practice followed in the relations of a central administration and municipality, with regard particularly to municipal autonomy and administrative protection.

Theme 2.—Legal restrictions, controls and procedures with respect to municipal credit and its guarantees.

COMMITTEE XVII

INTERNATIONAL POST-WAR JURIDICAL PROBLEMS

Theme 1.—Diplomatic protection; the Calvo clause and the guarantees of the international rights of man.

Theme 2.—Diplomatic protection of citizens abroad.

Theme 3.—The proposed resolution drafted by Messrs. Riesco, Condert and Garcia Robles, which reads thus :

(a) To urge that, within the world order, the "Diplomatic Protection of Nationals Abroad" be replaced by "International Protection of the Rights of Man", maintaining the former temporarily while an appropriate international system for the application of the latter is being organized, only for those cases which are very clearly cases of denial of justice, strictly interpreted, which are to be found expressly provided for in treaties and conventions to which the claiming state, as well as the one which is the object of the claim, are parties.

(b) To declare, with respect particularly to America, that the nations of the Continent, because of the similarity of their republican institutions, their inviolable ambition for peace, their profound sense of humanity and tolerance and their absolute adherence to the principle of equality in the sovereignty of nations and individual freedom without religious or racial prejudices, "have reached an analogous reasonable standard of justice", which makes diplomatic protection unnecessary, because between nations fulfilling such conditions it is a universally accepted principle that the maximum to which a foreigner can aspire is an equality of rights with the national.

(c) That the American republics work through treaties as the first step towards a goal of total and explicit abolition of diplomatic protection, that two continental conventions be signed, which later may be transformed into world conventions, consecrating therein respectively the integral validity of the Calvo Clause — which is nothing more than a legal formula to obtain the practical application of the principle of equality in the rights mentioned in the above paragraph and the non-liability of a nation for damages caused by foreigners resident therein by virtue of or on the occasion of civil wars.

Theme 4.—The proposal of Don Octavio Vejar Vasquez, formulated at the third Conference, with respect to inter-American post-war organization.

Theme 5.—International law organizations in the post-war period.