

THE AMERICAN CONGRESS AND FOREIGN POLICY MAKING:  
A CASE STUDY OF THE HICKENLOOPER-ADAIR AMENDMENT

Donna McInnis

Department of Political Science

Master of Arts Degree

Introduced and passed by Congress over the strong objections of President John F. Kennedy, the Hickenlooper-Adair Amendment to the Foreign Assistance Act of 1962 sought to cut off all aid to countries expropriating American property without adequate and speedy compensation. This thesis attempts to explore, through a case study of the amendment's passage, Congress as a foreign policy-maker--a subject which, because of the Vietnam War, has come increasingly under debate. In particular, the thesis examines the circumstances under which Congress came to take an initiative in policy-making, the ability Congress showed in handling a foreign policy problem, and the sources of executive-legislative friction. The conclusions reached about Congress as a policy-maker are evaluated in the light of the lessons of Vietnam on what is needed of Congress.

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Introduit et adopté par le Congrès sur les objections du Président John F. Kennedy, l'Amendement Hickenlooper-Adair à la Loi d'Assistance Étrangère de 1962 a cherché à couper toute assistance aux pays qui avaient séquestré des propriétés américaines sans indemnité adéquate et prompte. Nous essayerons d'analyser, par une étude du vote de l'Amendement, le Congrès en tant que faiseur de politique étrangère--quelque chose qui, à cause de la guerre au Vietnam, est devenu de plus en plus sujet de discussion. En particulier, nous examinerons les circonstances sous lesquelles le Congrès est arrivé à prendre l'initiative pour initier la politique, la capacité que le Congrès a montrée dans le maniement d'un problème de politique étrangère et les sources du désaccord entre la législation et l'exécutif. Les conclusions faites sur le Congrès comme initiateur de politique seront évaluées en considération des leçons du Vietnam selon ce qui est requis du Congrès.

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## TABLE OF CONTENTS

	PAGE
CHAPTER I. INTRODUCTION . . . . .	1
CHAPTER II. BACKGROUND. . . . .	9
Post-war Attitudes on Foreign Aid; The Nixon Tour and the Cuban Revolution; The Formation of the Alliance for Progress; Congressional and Business Reactions to the Alliance.	
CHAPTER III. INTRODUCTION OF THE AMENDMENT. . . . .	20
The Expropriation in Brazil; I.T. & T.'s Reactions; Early State Department Position; Congressional Reaction.	
CHAPTER IV. PASSAGE OF THE AMENDMENT. . . . .	29
Administration Reaction to Proposed Amendments; Growing Support in Congress; Goulart's Visit and I.T. & T.'s Protest; The Hearings; I.T. & T. Actions; Other Companies' Opinions; Committee Action on the Amendment; Modifications on the Senate Floor; Modifications on the House Floor; The Senate-House Conference.	
CHAPTER V. POSTSCRIPT . . . . .	54
Executive Avoidance of the Amendment; Continued Congressional Support; Executive-Legislative Friction; Business Opinion; The Effectiveness of the Amendment.	
CHAPTER VI. CONCLUSIONS . . . . .	65
Circumstances of Initiation; Influence of I.T. & T.; Congressional Ability in Making Policy; Sources of Executive-Legislative Friction; Executive Failure to Halt the Amendment; The Current Debate on Congress and Foreign Policy-Making.	
SOURCES CONSULTED. . . . .	77

## CHAPTER I

### INTRODUCTION

It is widely agreed that since World War II, primary responsibility in American foreign policy has rested with the President. It has been the President who each year has formulated and pushed for a coherent legislative program. Congress has been primarily concerned with legitimating, vetoing and amending executive proposals; it has rarely proposed major foreign policies of its own.<sup>1</sup> Indeed, Congress has frequently assumed that responding to the President's leadership and initiative is its proper role in foreign affairs.<sup>2</sup>

Given the little credit that Congress enjoys as an initiator of foreign policy, it is not surprising that studies of this aspect of congressional participation in foreign policy-making have been rare.<sup>3</sup> At least three points may be made here. In the first place, however infrequent congressional initiation of major foreign policies may be, the importance of such legislation cannot be denied when it significantly affects U. S. relations with other countries. Few would deny, for

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<sup>1</sup>See, for example, the findings of James A. Robinson, Congress and Foreign Policy-Making (Homewood, Ill.: Dorsey Press, 1967), pp. 6-15.

<sup>2</sup>Holbert N. Carroll, The House of Representatives and Foreign Affairs (Boston, Mass.: Little, Brown and Company, 1966), pp. 23-24.

<sup>3</sup>Robinson, pp. 64-65. Of the twenty-two published case studies which Robinson found covering the thirty years prior to 1962, only three concerned congressional initiative in foreign policy-making; the remainder studied executive proposals.

example, the importance of the merely attempted congressional legislation to end the war in Vietnam. Secondly, while Congress may rarely initiate major proposals, it frequently initiates policies concerned with seemingly peripheral areas of foreign affairs.<sup>4</sup> During the 1949 to 1958 period one scholar found that 80% of the Senate bills and resolutions reported by the Committee on Foreign Relations originated with senators and 20% with the executive.<sup>5</sup> Collectively, such apparently insignificant proposals constitute a major portion of U. S. foreign policy. Congress is generally credited, for instance, with dominant influence over decisions on economic aid policy, military assistance, agricultural surplus disposal and the location of facilities.<sup>6</sup> Such evidence indicates that Congress is under-rated as an innovator in the foreign policy-making process.<sup>7</sup> Finally, it should be noted that the Vietnam War has called into question presidential leadership in foreign affairs and has caused major reassessments by scholars, congressmen and the public in general of the role of Congress. Recent legislative efforts to end the war indicate that there is a greater willingness on the part of many senators and representatives to participate in setting basic American foreign policy, to challenge the preeminence of the President in these matters, and to press claims that are at odds with executive-sponsored proposals. The Vietnam War has thus opened the door to a possible rise by Congress as a vocal partner in formulating U. S.

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<sup>4</sup>Ronald C. Moe and Steven C. Teel, "Congress as Policy-Maker: A Necessary Reappraisal," Political Science Quarterly, LXXXV (September, 1970), 466.

<sup>5</sup>Robinson, p. 14.

<sup>6</sup>Moe and Teel, p. 466.

<sup>7</sup>Ibid., pp. 443-470.

foreign policy.<sup>8</sup>

These points suggest that congressional initiative in making foreign policy deserves greater attention. A variety of questions need to be explored. Under what circumstances does Congress tend to take an initiative in making foreign policy? What understanding does Congress show of foreign policy problems? How effective or how inadequate have its proposals been? Do the House and Senate differ from one another either in the degree to which they tend to initiate policies or the skill with which they handle foreign policy problems? What friction does congressional initiation of a policy cause between Congress and the Executive? Should speculation prove correct and should the war in Vietnam lead to increased congressional participation in policy formulation, does the past suggest that Congress and the President can be effective partners?

In seeking answers to these questions, this thesis explores in depth one instance of congressional initiative in foreign policy-making. While a single case study cannot provide final answers, it can suggest conclusions which may be compared with other studies. Moreover, a case study allows the fullest possible investigation of congressional understanding of a foreign policy problem.

The case chosen here for analysis, the Hickenlooper-Adair Amendment of 1962, provides a clear study both of congressional initiative and ability and of executive-legislative tensions in making foreign policy. Named after its two principal sponsors, the Hickenlooper-Adair Amendment

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<sup>8</sup> John F. Manley, "The Rise of Congress in Foreign Policy-Making," Annals of the American Academy of Political and Social Science, CCCXCVII (September, 1971), 60.



sought to cut off all aid to those countries which expropriated American property without adequate compensation.<sup>9</sup> It was passed by Congress as a rider to the foreign aid bill over the strong objections of President John F. Kennedy who felt, among other things, that it would subject broad U. S. interests in many countries to the private interests of American businessmen.

In exploring the foreign policy-making process through a study of this amendment, the thesis focuses specifically on the conditions under which Congress came to initiate the policy, on the ability Congress showed in handling a foreign policy problem and on the sources of executive-legislative tension. The thesis also focuses on the part played

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<sup>9</sup>Foreign Assistance Act of 1962, Statutes at Large, LXXVI, sec. 620, 260-261 (1962). The amendment as originally passed reads:

620 (e) The President shall suspend assistance to the government of any country to which assistance is provided under this Act when the government of such country or any governmental agency or subdivision within such country on or after January 1, 1962--

(1) has nationalized or expropriated or seized ownership or control of property owned by any United States citizen or by any corporation, partnership, or association not less than 50 per centum beneficially owned by United States citizens, or

(2) has imposed or enforced discriminatory taxes or other exactions, or restrictive maintenance or operational conditions, which have the effect of nationalizing, expropriating, or otherwise seizing ownership or control of property so owned, and such country, government agency or government subdivision fails within a reasonable time (not more than six months after such action or after the date of enactment of this subsection, whichever is later) to take appropriate steps, which may include arbitration, to discharge its obligations under international law toward such citizen or entity, including equitable and speedy compensation for such property in convertible foreign exchange, as required by international law, or fails to take steps designed to provide relief from such taxes, exactions, or conditions, as the case may be, and such suspension shall continue until he is satisfied that appropriate steps are being taken and no other provision of this Act shall be construed to authorize the President to waive the provisions of this subsection.

by business groups in the initiation and passage of the amendment in so far as this affected congressional action. Judgments on congressional ability are determined by the nature and degree of congressional discussion, by the understanding congressmen showed about the issue of expropriation and by their consequent reasons for voting for the amendment's passage. Discussion of executive-legislative tension includes an analysis of the reasons for the President's failure to halt the amendment.

The following chapter of the thesis discusses the events prior to 1962 which affected the attitudes of the participants when Brazil expropriated an International Telephone and Telegraph subsidiary. Chapters III and IV discuss the amendment's initiation and trace its passage through Congress. These chapters attempt to bring out congressional understanding of the issue and to describe presidential and business influences on Congress. Chapter V attempts to put the amendment into perspective by tracing its history since its passage and evaluating its effectiveness. Chapter VI summarizes the conclusions reached in the study and evaluates their relevance to the current debate on the role of Congress in foreign policy-making.

Data for the case study has been obtained from books, periodicals, newspapers, public documents and personal interviews with or letters from congressmen, congressional staff, government and company officials, and private lawyers. All interviews were conducted in Washington, D. C. during May, 1972. Information derived from interviews and letters is indicated by footnotes stating the profession, but not the name, of the source.

In attempting to reconstruct the attitudes and events behind the initiation and passage of the amendment, the author found personal

interviews, the Congressional Record and committee hearings to be the most valuable sources of information. From interviews and letters, the author obtained much information on the nature, degree and effectiveness of business and executive pressures on Congress. Interviews also provided useful insight into the personal influence which Senator Hickenlooper and Congressman Adair were able to exert during the amendment's passage. Through the Congressional Record, the author obtained information on congressional attitudes toward the amendment, on congressional reaction to presidential opposition and on congressional disagreements over the provisions of the amendment. In the Congressional Record the author also found information about letters sent to the State Department and to congressmen from I.T. & T. The author found books and periodical literature to be a most useful source of information on the background events and on the history and effectiveness of the amendment since its passage.

Several difficulties were encountered in gathering information. The number of years that have elapsed since the amendment's passage made it difficult and, in a few cases, impossible to locate or interview the people who had been involved. While those located were usually most cooperative in granting interviews, many had only hazy remembrances of the details. Where interviews are an important source of information, future researchers would do well to avoid cases in which much time has elapsed since the events occurred. The author was lucky in this case in receiving much information from a congressman and a lawyer who had been intimately involved and from another lawyer who had previously worked with I.T. & T. on the problem of expropriation. I.T. & T. itself made no reply to the author's request for an interview. The author however, wrote only one letter and made no further attempts to obtain

the interview when it became obvious that other interviews would provide the necessary information.

The author regrets not having been able to find out as much as she would have liked on the number and content of talks between Secretary of State Rusk, Senator Hickenlooper, Congressman Adair and various company officials. The author also regrets not having been able to discover the validity of various rumors about I.T. & T.'s actions affecting the passage of the amendment. These rumors have not been mentioned in this thesis. In spite of these gaps in knowledge, however, the author feels that the information which was obtained is accurate and is sufficient enough to allow an analysis of the event.

It has been pointed out by other scholars that congressional participation in foreign policy-making today is an indicator of its utility as an instrument of democratic rule. Even before the Vietnam War a few voices were heard cautioning against too much presidential control over foreign affairs. Such a situation, wrote one scholar, clearly threatens the balance of power under the Constitution and "exposes the people to the danger that the most important decisions affecting the policy of the country will be made on the basis of facts not disclosed to the public and by methods so secret as to impair the practical capacity of the House and Senate to ensure due deliberations."<sup>10</sup> The Vietnam War has brought home in full force the truth of this statement and has stimulated discussion on the need for a new balance of power between the legislative and executive branches of government. "Unrestricted Presidential

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<sup>10</sup> Arthur N. Holcombe, Our More Perfect Union (Cambridge, Mass.: Harvard University Press, 1950), p. 282.

power in foreign policy," declared Senator William Fulbright in a statement reflective of the new feeling, "is neither necessary to current circumstances nor tolerable in a democratic society."<sup>11</sup> "The only way to restrain the power of the regal figure in the White House," he added, "is to maintain a strong and independent role for Congress."<sup>12</sup> To explore what that role may be is part of the purpose of this thesis.

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<sup>11</sup>John C. Stennis and J. William Fulbright, The Role of Congress in Foreign Policy (Washington, D. C.: American Enterprise Institute for Public Policy Research, 1971), p. 37.

<sup>12</sup>Ibid., p. 67.

## CHAPTER II

### BACKGROUND

Any discussion of the initiation and passage of the Hickenlooper-Adair Amendment must take into account the longstanding attitudes of the participants toward foreign aid and the manner in which those attitudes were affected by the Nixon tour of South America in 1958, the Cuban revolution in 1959 and the formation of the Alliance for Progress in 1960.<sup>1</sup> By 1962 the foreign aid attitudes and events in Latin America had created in Congress an atmosphere in which expropriation could and did become a heated issue. Congress came to feel that U. S. pride, international justice and even Latin American socialist tendencies would stand or fall on America's answer to the problem of expropriation.<sup>2</sup>

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<sup>1</sup>Even a superficial survey of statements in the Congressional Record points to the importance of these factors in the amendment's passage.

<sup>2</sup>Consider, for example, these statements by Senator Long, Congressman Curtis and Senator Lausche:

Confiscation became wholesale in Cuba and was a prelude to communism in the island. It threatens to become wholesale in Brazil. Should it herald the establishment of a Communist State in Brazil, we should not have a small infection to contend with, but a mighty cancer in the largest country in Latin America that could easily spread throughout the rest of Central and South America.

U. S., Congress, Senate, 87th Cong., 2nd sess., March 1, 1962, Congressional Record, CVIII, 3134.

Are we trying to promote socialism as a system of government and economics in these other countries, or are we trying to provide them a system that has proved to be so successful

Post-War Attitudes on Foreign Aid

In the immediate period after World War II, the belief was widespread that economic development in the poor countries rested on local efforts and on the encouragement of external capital from private sources.<sup>3</sup> During the 1950's, however, as the failure of self-help and private capital became more obvious, this belief began to change, especially within the executive branch of government. Seeing increased importance in the economic development of underdeveloped countries due to the cold war,<sup>4</sup> the President desired to experiment with new techniques, including the increased use of public funds.<sup>5</sup>

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in our country, the private enterprise system?  
U. S., Congress, House, 87th Cong., 2nd sess., March 5, 1962, Congressional Record, CVIII, 3395.

We have been pushed around in the Congo. We are now being pushed around by international law being violated. Our sovereignty and our honor are being insulted by this confiscation of property throughout the world.  
U. S., Congress, Senate, 87th Cong., 2nd sess., October 2, 1962, Congressional Record, CVIII, 21619.

<sup>3</sup>David A. Baldwin, Economic Development and American Foreign Policy, 1943-1962 (Chicago: University of Chicago Press, 1966), p. 29. This belief was affected by the traditional American predilection for private enterprise on the grounds that it is guided by productive criteria, not by political or social considerations, but it carries built-in contributions of know-how and organizational experience, and that it conserves public funds. See: Marian V. Whitman, Government Risk-Sharing in Foreign Investment (Princeton N. J.: Princeton University Press, 1965), pp. 21-22.

<sup>4</sup>As the cold war continued, economic growth was seen as related to American security in two main ways: (1) there was the concept of the relationship between economic development and democracy, and (2) there was the concept of the relationship between economic development and the ability of underdeveloped nations to resist the demands made on them by Communist nations. Both concepts are to be found in the philosophy on which the Alliance for Progress is based.

<sup>5</sup>The Charter of Punta del Este, providing that the greater part of U. S. aid should be in public funds, reflects this trend.

Congress, however, continued to favor the use of private capital, remaining generally hostile to foreign aid, especially as it required appropriations.<sup>6</sup> The foreign assistance acts reflected congressional encouragement and protection of private investment. The Foreign Assistance Act of 1961, for instance, stated: "Wherever appropriate [the President shall] carry out programs of assistance through private channels. . . ."<sup>7</sup> In addition the FAA of 1961 gave the agency administering the foreign aid program a number of tools with which to promote private investment, including loans, investment guarantees and financial assistance in making surveys of investment opportunities.<sup>8</sup> Businessmen meanwhile began to tolerate aid programs while continuing to favor private investment as a means of stimulating economic development.<sup>9</sup>

Beginning in 1958, foreign aid attitudes, particularly those of Congress, were shaken by events in Latin America. These events put congressmen in the unusual position of willingly appropriating public money for a new foreign aid program.

#### The Nixon Tour and the Cuban Revolution

The first shock to the United States after the post-war lull in its relations with Latin America came in 1958, when Vice-President Nixon on a "good-will" tour of South America encountered extremely hostile

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<sup>6</sup>Baldwin, Economic Development, pp. 152-163.

<sup>7</sup>The Alliance for Progress was a part of this act.

<sup>8</sup>Bruce E. Clubb and Verne W. Vance, Jr., "Incentives to Private U. S. Investment Abroad Under the Foreign Assistance Program," Yale Law Journal, LXXII (January, 1963), 475.

<sup>9</sup>Baldwin, Economic Development, p. 215.



receptions in Peru and Venezuela. The fact that a vice-president of the United States could be spat upon and insulted and could have his life threatened focused U. S. attention forcefully on the disintegration of its Latin American policy.<sup>10</sup> The Cuban revolution a year later gave the need for a new Latin American policy an even greater sense of urgency. Americans responded with alarm, fear and anger as Castro's government and the Cuban press became increasingly anti-American and pro-Communist during 1959 and 1960. The mass of expropriations of American property in 1960 climaxed the worst fears that many Americans felt as to the future direction of events in Latin America. "It was as though a veil had been torn away, revealing an unhealthy and frustrated continent where revolutionary forces were at work which could not only pull that continent away from the rest of the Free World, but could also pose a serious threat to the peace and security of the United States."<sup>11</sup>

#### The Formation of the Alliance for Progress

The tearing away of the veil sent the United States into remedial actions which eventually culminated in the Alliance for Progress. Following the Nixon episode, President Eisenhower sent his brother Milton on a tour of Latin America to survey the situation and to investigate the problems. At the same time, he declared that the United States must stand ready to provide expanded aid to meet the development needs of

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<sup>10</sup> Harvey S. Perloff, Alliance for Progress: A Social Invention in the Making (Baltimore, Md.: Johns Hopkins Press, 1969), p. 30.

<sup>11</sup> Herbert K. May, Problems and Prospects of the Alliance for Progress (New York: Frederick A. Praeger, 1968), p. 30.

Latin America. By September, 1958, a Committee of Twenty-One of the Organization of American States had been established to formulate new measures of economic cooperation. As the events in Cuba increased the shock begun by the Nixon episode, the United States encouraged the creation of a Latin American Free Trade Association and a new agency of the World Bank, the International Development Bank, which would extend "soft loans" to Latin American countries. In July of 1960, while U. S. embassies were reporting from all parts of Latin America that the Castro victory had excited interest in a revolutionary approach to winning long-denied reforms from the ruling elites, President Eisenhower announced that the United States would support sweeping reforms in Latin America with financial assistance. The third meeting of the Committee of Twenty-One, held in Bogotá, Colombia in September, 1960, focused on the social aspects of development and on the righting of the many wrongs that had so long existed in most of Latin America. The meeting was given encouragement and substance by the fact that the President had requested and Congress had authorized a general commitment of \$500 million in advance of the meeting.<sup>12</sup>

By the time of the United States presidential campaign of 1960, it had become evident that Communism had established its first national base in the Western Hemisphere in Cuba. The Republican and Democratic candidates for the presidency each gave considerable emphasis during the campaign to the need for a more vigorous and imaginative program of action in Latin America. Kennedy was convinced that it was necessary to move ahead on several fronts. Immediate security considerations, he

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<sup>12</sup>Perloff, pp. 14-16.

said, must not be overlooked and Communism must be contained, but it was also essential to launch an economic program capable of raising the living standards of the masses. He felt that it was equally important to speed social reforms and to support political leaders and parties committed to democratic objectives.<sup>13</sup> In his inaugural address he stated: "To our sister republics south of the border, we offer a special pledge--to convert our good words into good deeds--in a new alliance for progress--to assist free men and free governments in casting off the chains of poverty."<sup>14</sup>

Shortly afterwards, on March 14, he sent a message to Congress requesting the appropriation of the \$500 million which Congress had authorized just before the Bogota Conference.<sup>15</sup> Two months later, Congress appropriated the money. Then, in August, the Inter-American Economic and Social Council convened at Punta del Este, Uruguay. The conference resulted in the "Charter of Punta del Este" which formally brought into being the Alliance for Progress. The goals of the Alliance were stated in the "Declaration to the People of America" signed at the same time as the Charter:

To improve and strengthen democratic institutions; to accelerate economic and social development; to carry out urban and rural housing programs, thus providing decent homes for all Americans; to encourage programs of agrarian reform to correct unjust systems of land tenure and use; to assure fair wages and satisfactory working conditions to all; to maintain fiscal policies which will protect purchasing power; to stimulate private enterprise in order

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<sup>13</sup>Ibid., p. 20.

<sup>14</sup>U. S., Department of State Bulletin, "The Inaugural Address of President Kennedy," February 6, 1961, p. 175.

<sup>15</sup>Ibid., "Alianza Para Progreso," April 3, 1961, p. 474.

to encourage economic development; to solve the problems created by excessive price fluctuations in basic exports; to accelerate the economic integration of Latin America.<sup>16</sup>

To achieve the agreed upon developmental objectives, the U. S. government made a commitment to provide most of the external assistance to complement the Latin American self-help efforts. The Declaration announced:

The United States, for its part, pledges its efforts to supply financial and technical cooperation in order to achieve the aims of the Alliance for Progress. To this end, the United States will provide a major part of the minimum of \$20 billion, principally in public funds, which Latin America will require over the next ten years from all external sources in order to supplement its own efforts.<sup>17</sup>

President Kennedy asked for \$3 billion (of the \$10 billion the U. S. expected to provide) of such funds over a four year period, and Congress authorized 2.1 billion of this amount for the fiscal years 1962-66.<sup>18</sup>

"A new era was dawning, and everyone knew it. Some of the delegates [to the Punta del Este Conference] may have been skeptical about one feature of the Alliance or another, but there was no question about the general enthusiasm for the Alliance as a whole."<sup>19</sup> The Latin American countries through self-help measures and U. S. assistance were going to rise out of their poverty.

#### Congressional and Business Reactions to the Alliance

It was Kennedy's belief that to maintain contact with a continent

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<sup>16</sup>Ibid., "American Republics Establish an Alliance for Progress," September 11, 1961, pp. 462-463.

<sup>17</sup>Ibid.

<sup>18</sup>"The Question of the Effectiveness of the Alliance for Progress," Congressional Digest, March, 1963, p. 96.

<sup>19</sup>May, p. 31.

seized by the course of revolutionary change, a policy of social idealism was the only true realism for the United States.<sup>20</sup> Congress' willingness to be a part of the Alliance for Progress, in spite of its traditional dislike of foreign aid programs, indicates that it, like the delegates to Punta del Este, was caught up in this social idealism.<sup>21</sup>

Business, however, remained wary. In the first place, by 1960 the United States Chamber of Commerce, the Inter-American Council and the National Association of Manufacturers had all drafted and sent to the State Department resolutions to the effect that the United States should not extend aid to those countries that confiscated the property or the property rights of American citizens without compensation.<sup>22</sup>

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<sup>20</sup>Arthur M. Schlesinger, A Thousand Days (Boston: Houghton Mifflin Company, 1965), p. 201. Schlesinger notes that Kennedy had a personal interest in Latin America stemming from a trip there as a boy (p. 191).

<sup>21</sup>A year later, Senator Long stated: "I must say that I had high hopes when this administration sought a new approach to foreign aid with a strong emphasis on self-help by the countries receiving aid." U. S., Congress, Senate, 87th Cong., 2nd sess., March 1, 1962, Congressional Record, CVIII, 3922. According to one source, congressional enthusiasm reflected less Congress' compassion for the needy millions than its fear of a spread of Castroism. As the urgency of the Castro threat diminished, so did the annual Alliance appropriation. Jerome Levinson and Juan de Onis, The Alliance That Lost Its Way (Chicago: Quadrangle Books, 1970), p. 15.

<sup>22</sup>Letter to the author from a former counsel to the International Telephone and Telegraph Corporation, June, 1962. An example of such resolutions is that sent by the Inter-American Council to Secretary Herter in July, 1959, which reads:

We therefore urge that the Department of State issue a statement--not with reference to Cuba alone, but of world-wide application--to this effect:

That the Government of the United States recognizes the right of any sovereign nation to manage its internal affairs as it sees fit, including the right to take property within its jurisdiction for a public use, but that it firmly maintains that all rights, sovereign or otherwise, are coupled

Nothing, however, was done by the State Department, and following the Cuban expropriations, new private investment in Latin America dropped significantly.<sup>23</sup>

In the second place, with the creation of the Alliance for Progress, capital requirements for Latin American development presupposed an annual flow of \$300 million of private United States' funds to southern neighbors. Kennedy had mentioned to Congress that private enterprise would play a part in the program, but he did not stress it.<sup>24</sup> The Latin American representatives of the democratic left had warned him in March, 1961, that the Alliance would be politically jeopardized if it seemed to be

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with reciprocal obligations, and that the right to take private property for a public use is coupled under international law with a corresponding obligation of prompt and adequate and effective compensation: that it is therefore the policy of the United States, which by virtue of its sovereign right to manage its own affairs, it is its right and intention to enforce in all cases except where the national defense is directly involved, that no agency of the United States Government shall lend, grant or give public funds to any government which expropriates, or in any other manner takes possession of or impairs the property, or property rights, of a United States citizen or of a corporation owned or controlled by citizens of the United States, or which dishonors the contractual or legal rights of such citizens or corporation, without payment of prompt, adequate and effective compensation.

Copies of the resolution were sent to all members of Congress. See: "Hickenlooper Amendment to Foreign Aid Bill Originated With USIAC in 1959," Inter-American Bulletin, XXII (October, 1962), 6.

<sup>23</sup>Levinson, p. 135. The Cuban expropriations were a psychological as well as a financial blow to U. S. businessmen.

<sup>24</sup>"United States business concerns have always played a significant part in Latin American economic development," he told Congress. "They can have an even greater role in the future." U. S., Department of State Bulletin, "Alianza Para Progreso," April 3, 1961, p. 478. But neither the Declaration of the Peoples of America nor the Charter of Punta del Este mentioned a role for American private enterprise.

the entering wedge for a great new expansion of U. S. investment;<sup>25</sup> and his task force reported early in 1961 that while private enterprise "had a major part to play," the United States should give greater relative emphasis to indigenous as against foreign capital and end its "doctrinaire opposition" to loans to state enterprises. The hemisphere is large enough "to have diverse social systems in different countries. . . . Our economic policy and aid need not be limited to countries in which private enterprise is the sole or predominant instrument of development." The government should make clear that private enterprise "is not the determining principle or sole objective of American policy."<sup>26</sup> It was not until about three days before the Punta del Este conference that a group of businessmen were invited to attend as observers (rather than as members of the delegation).<sup>27</sup> The reaction of businessmen to being, as they saw it, snubbed by the Kennedy administration did not end until 1964.<sup>28</sup>

These were the attitudes which affected both the initiation and passage of the Hickenlooper-Adair Amendment in 1962. Congress, frightened by what it considered the Communist trend in Latin America and caught up in the idealism of the Alliance for Progress, had temporarily overcome its dislike of foreign aid and had agreed to finance development in Latin America. Congress firmly believed, however, that the Alliance for Progress required both self-help by Latin Americans and large amounts of private U. S. capital. Kennedy had stressed these two aspects of the

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<sup>25</sup>Levinson, p. 72.

<sup>26</sup>Schlesinger, p. 196.

<sup>27</sup>Levinson, p. 72.

<sup>28</sup>Ibid., p. 71.

program to Congress, but he personally favored a good neighbor approach to Latin America which minimized foreign private investment. Businessmen felt pushed aside. The Cuban expropriations had been a heavy blow and appeals to the State Department for a foreign aid-expropriation policy had been ignored. Against this background, the final igniting spark occurred in February, 1962.



## CHAPTER III

### INTRODUCTION OF THE AMENDMENT

#### The Expropriation in Brazil

Unfortunately for all, the Alliance for Progress encountered problems from the start.<sup>1</sup> By early 1962, Congress (for a short while optimistic) was beginning to sink into its usual disillusionment with foreign aid.<sup>2</sup> In January 1962, Brazil, the first and principal beneficiary of the \$20 billion from the Alliance for Progress,<sup>3</sup> refused to vote with the United States for the expulsion of Cuba from the OAS.<sup>4</sup> Then on February 16, Leonel Brizola, the leftist governor of the Brazilian state of Rio Grande do Sul, cancelled in the name of the state the operating

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<sup>1</sup>One evaluation of the Alliance for Progress early in 1962 observed that: "The new aid program has, so far, produced few concrete results. Kennedy introduced the new criterion of self-help into the aid program last year--saying that the U. S. would give most help to governments that forged long-range development programs and undertook essential internal economic and social reforms. Only a few countries so far have come up with long-range development plans." "Foreign Aid Bill: Bigger and Touchier," Business Week, March 17, 1962, p. 31.

<sup>2</sup>Typical of the disillusionment was the feeling which went along the lines of: "We promised to help them, we pledged our money and what has happened? They turn around and stab us in the back by expropriating American property."

<sup>3</sup>Certain countries, felt to be more advanced, were chosen as show-cases for the Alliance and particular attention was paid to their development.

<sup>4</sup>Jack Raymond, "U. S. Scores Expropriation of Phone System in Brazil," New York Times, February 18, 1962, sec. 1, p. 33.

title of the Companhia Telefonica Nacional, a subsidiary of the International Telephone and Telegraph Corporation of New York. I.T. & T. valued the telephone system at between \$6 and 8 million. The governor, however, deposited only 149,758,000 cruzeiros (about \$400,000 at the local rate of exchange) as an indemnity for the company's assets.<sup>5</sup> This event proved to be the igniting spark for the introduction of the Hickenlooper-Adair Amendment.

The expropriation did not come as a surprise to I.T. & T. The controversy between it and the state of Rio Grande do Sul was of a long standing and difficult nature. The state government had refused to allow the public utility significant rate increases since 1954.<sup>6</sup> With growing inflation, this made the company unable to maintain or expand its existing operations. As service deteriorated, public dissatisfaction mounted. The company became a target for demagogic politicians. Brizola was one politician who found it politically expedient to attack the company.<sup>7</sup>

In 1959 the company approached the state government with an offer to invest \$40 million in new facilities if it could obtain rate increases. This offer was not accepted and in 1960 the state government formed its own telephone company and requested I.T. & T. to participate. At that

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<sup>5</sup>Juan de Onis, "Brazilians Seize U. S. Phone System," New York Times, February 17, 1962, p. 1.

<sup>6</sup>U. S., Congress, Senate, Committee on Foreign Relations, Foreign Assistance Act of 1962, Hearings on S. 2996, 87th Cong., 2nd sess., 1962, p. 417.

<sup>7</sup>Interview with Washington lawyer. I.T. & T. had made proposals to the embassy to get Brizola out of his difficulties. It wanted the U. S. to make a loan out of Public Law 480, which would allow Brizola to expropriate with compensation. It would have liked to have lost the property, since it was losing money. Twice it wrote to the embassy with little or no response.

time I.T. & T.'s representative in Brazil and officials of the state of Rio Grande do Sul reached an agreement on a valuation of the equivalent of \$7.3 million for the property. However, this figure was not accepted by the Governor of the state, who considered it too high, or by I.T. & T., who considered it too low. I.T. & T. also rejected participation in the proposed mixed company until the terms of participation were made clearer. The controversy culminated in the expropriation of the Companhia Telefonica Nacional.<sup>8</sup>

#### I.T. & T.'s Reactions

Immediately following the expropriation, Harold S. Geneen, president of I.T. & T., issued a statement in which he said that I.T. & T. had asked the State Department to take immediate steps with the government of Brazil for a rescinding of the order of expropriation. Geneen declared that Governor Brizola had refused to grant a rate base that would assure I.T. & T. a just return on its investment. Instead, he said, Brizola had been "violently critical of the United States in the local press at Porto Alegre and in the national press, as he travelled Brazil peddling the line of those whose favorite game it is to label the United States government and United States business as 'imperialist.'" He added that because of the long difficult relations which the company had had with the government of Rio Grande do Sul, the property of Companhia Telefonica Nacional had not been profitable for a considerable period of time.<sup>9</sup>

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<sup>8</sup>U. S., Congress, Senate, Committee on Foreign Relations, Foreign Assistance Act of 1962, Hearings on S. 2996, 87th Cong., 2nd sess., 1962, p. 417.

<sup>9</sup>Juan de Onis, "Brazilians Seize U. S. Phone System," New York Times, February 17, 1962, p. 1.

Letters and a fact sheet containing background information on the expropriation were sent to congressmen.<sup>10</sup> In the letter the Vice-President of I.T. & T., Edward J. Gerrity, stated that I.T. & T. did not challenge the right of Brazil to expropriate property if, "proper legal procedures" were observed and if "prompt and adequate" compensation was paid. But in this case, he said, I.T. & T. challenged the very method of procedure under Brazilian law,<sup>11</sup> and had therefore filed suit in Porto Alegre for an injunction compelling Governor Brizola to return the property. He mentioned the earlier negotiations which I.T. & T. had had with Governor Brizola and the fact that Brizola had ignored or rejected the company's proposed solutions. "The company is willing," he informed congressmen in the letter, "to participate in negotiations--if they have a chance of succeeding." However, he continued:

We have been unable in 9 years to negotiate with Governor Brizola and so are requesting that the Brazilian Federal Government at least assume responsibility for negotiations that have a chance of success. We feel the Brazilian Federal Government should assume responsibility for prompt action and should guarantee payment of the final indemnity within a mutually agreed upon period. On that basis the company is ready to arbitrate as to the value of the property.<sup>12</sup>

The fact sheet included with the letter stressed the fact that the state of Rio Grande do Sul had fixed the company's rates at a level

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<sup>10</sup>Some congressmen mention that the information was sent to them; others use it as a part of their speeches. See, for example, U. S., Congress, Senate, 87th Cong., 2nd sess., March 21, 1962, Congressional Record, CVIII, 4633.

<sup>11</sup>Specifically, I.T. & T. challenged the fact that, in violation of Brazilian law, no notice of impending seizure was given and no hearing on the petition to expropriate was held.

<sup>12</sup>U. S., Congress, Senate, 87th Cong., 2nd sess., March 21, 1962, Congressional Record, CVIII, 4634.

which would not permit the recovery of depreciation, let alone a fair return on the investment, and the fact that the company had tried on numerous occasions to work out a solution to the situation with Brizola but with no results. It stressed as well Brizola's leftist leanings. It quoted him as telling law students that if the United States was really interested in helping Latin Americans, it would help Brazil expropriate and expel the foreign countries "now exploiting its people." It reported that, in a meeting with U. S. senators, Brizola had bitterly attacked the behavior of American companies operating public utilities in Brazil. The report also drew President Joao Goulart into the situation, explaining how Brizola, his brother-in-law, had helped him get into office in spite of certain military ministers who disliked Goulart's "extreme leftist leanings."<sup>13</sup>

The expropriation had in fact put President Goulart in an embarrassing situation. It came only six weeks before his planned trip to Washington to discuss aid funds for Brazil with President Kennedy. Goulart himself felt that he could not be held responsible for the actions of a state governor. The day after the expropriation, however, the Brazilian foreign minister announced that the federal government would use its offices to obtain fair payment for the property expropriated.<sup>14</sup>

#### Early State Department Position

On the same day, the State Department issued a statement in which

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<sup>13</sup>Ibid., p. 4633.

<sup>14</sup>Juan de Onis, "Brazil Offers to Help," New York Times, February 18, 1962, sec. 1, p. 33.

it recognized Brazil's right to expropriate property belonging to nationals of other countries if provision was made for the payment of prompt, adequate and effective compensation, but criticized the compensation made by Brizola as "so far below book value that the valuation appears to have been made unilaterally." It declared that:

. . . when a government expropriates existing resources or uses its funds to buy out existing operations, rather than using those funds to create new wealth, new jobs and new taxpayers, and to increase productivity, this action appears to be a step backward in the mobilization of available resources for the success of the Alliance for Progress.<sup>15</sup>

The statement angered Brazil and annoyed President Kennedy, who felt that the U. S. should not criticize a whole nation because of the actions of one of its governors, but it pleased many congressmen.<sup>16</sup>

#### Congressional Reaction

Congressional reaction to the expropriation began in the House. On February 20, Congressman Thomas B. Curtis (D., Mo.) remarked that under the Act of International Development, private investment was intended to play a strong and increasing role in bringing the needed development capital to Latin America. He pointed out that the expropriation of the I.T. & T. subsidiary raised certain questions not only about the ability of the law, as enacted, to protect American private overseas investments, but about the intention of the administration to fulfill the

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<sup>15</sup>Jack Raymond, "U. S. Scores Expropriation of Phone System in Brazil," New York Times, February 18, 1962, sec. 1, p. 33.

<sup>16</sup>"Foreign Aid Bill: Bigger and Touchier," Business Week, March 17, 1962, p. 31. The degree to which the statement annoyed President Kennedy may be judged by the fact that it was one of the factors behind his replacement of Assistant Secretary of State Robert Woodward.

policy, which Congress had put into the Act, of favoring the use of private investment. Until the U. S. took steps to defer foreign aid to Brazil, he said, it would be using foreign aid to finance the confiscation of private property belonging to American citizens. The Department of State protest was an inadequate response to the confiscation. He stated:

I believe the Members of this House will agree with me when I say that it is now time to ask the administration some pertinent questions with regard to our aid policies. Are we going to continue to provide vast amounts of foreign aid to countries which breathe defiance and hostility against the theories of the private enterprise system and of representative government? Is it truly in the interests of the United States to provide foreign aid through the governmental officials of Latin American countries who follow Communist theories and who refuse--as did Brazil at Punta del Este--to even denounce Communism in our hemisphere and who, while clamoring for our aid dollars, use them to steal our private properties in defiance of the very policies which should be laid down in this aid legislation?<sup>17</sup>

The following day, Congressman Bruce Alger (R., Tex.) again brought up the subject in the House. He asked how Goulart could be expected to assume the responsibility of handling the vast sums of money that the U. S. intended to give him when he refused to accept the responsibility for Brizola's seizure of an \$8 million U. S. company. He said:

The fact is that under International Law, Mr. Goulart must accept responsibility for Brizola's unwarranted act of expropriation. But we need more information, we need more facts, before this Congress--in my opinion--should consider permitting one more dime of American taxpayer's dollars to be turned over to such a man as Goulart. . . . The offer of \$400,000 in exchange for a \$8 million property is more than outrageous. It is in view of our wish to send more millions to Brazil, simply beyond the realm of belief.<sup>18</sup>

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<sup>17</sup>U. S., Congress, House, 87th Cong., 2nd sess., February 20, 1962, Congressional Record, CVIII, 3134.

<sup>18</sup>Ibid., February 21, 1962, 2699.

On March 1st, with such sentiments spreading, Senator Russell Long (D., La.) proposed the first amendment to the foreign aid bill directing the President to stop aid to any country which permitted expropriation of the property of U. S. citizens without compensation. In so doing, he remarked that confiscation had been a prelude to Communism in Cuba and indicated that the same thing could happen in other Latin American countries if it was not stopped. He stated that the United States had reached a crossroads in its foreign aid program in general and in the Alliance for Progress in particular; rather than giving generosity without end and without constructive purpose, it should lay down conditions for receiving U. S. funds. The problem is now before us, he said:

Do we tell countries such as Brazil that their aid is stopped until they learn to handle it in a way we think proper and until they help us in our life or death struggle against Communism? Or do we say: 'You do with the aid as you see fit-- if you think it can be best put to use by financing your takeover of our citizens' property, that is your privilege: we attach no conditions to your use of our funds?'<sup>19</sup>

Four days later Congressman E. Ross Adair (Ind.), a Republican opponent of foreign aid, took the floor. Adair had long been interested in promoting private overseas investment<sup>20</sup> and had for some time been thinking of a legislative means to protect such investments.<sup>21</sup> In a fiery speech he recited the facts which he had received from I.T. & T.,

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<sup>19</sup>U. S., Congress, Senate, 87th Cong., 2nd sess., March 1, 1962, Congressional Record, CVIII, 3134.

<sup>20</sup>Interview with staff member of the House Foreign Affairs Committee.

<sup>21</sup>Letter to the author from a former Congressman, July, 1972. Senator Long and Congressman Adair had helped to embody into the Mutual Security Act of 1959 an amendment similar to the Hickenlooper-Adair Amendment of 1962. (Interview with Washington lawyer.)



stressing the leftist leanings of Goulart and Brizola and concluding that Communism was in the southern part of Brazil to stay. The expropriation, he declared, was just one of the many crimes perpetrated against an American economy by a foreign government. He asked his fellow congressmen whether or not there was a mockery in the phrases which Congress embodied in the 1961 Act of International Development, which stated the policy of the U. S. to be to strengthen foreign countries by minimizing barriers to the flow of private investment capital. In a clear statement of what became the view of most congressmen, he declared:

It seems to me that our Government has no policy regarding the seizure of American property abroad and--what is more important--no policy guaranteeing adequate compensation. If we do have a policy, then what is it? The Foreign Assistance Act of 1961 encourages the investment of private capital. What is our policy of protecting this investment? How can we expect American capital to be invested abroad without a definite plan for the protection of this capital? We cannot, and American businessmen are not fools. Private capital flowing to Latin America has been reduced to a mere trickle.

We need a strong tool if we are to encourage American investment abroad. That tool could be the withholding of aid funds to all countries that seize American property and do not pay its owners just compensation.<sup>22</sup>

He then introduced an amendment into the House similar to Senator Long's.<sup>23</sup> Five of his colleagues immediately arose to add their support,<sup>24</sup> and Congress began a lengthy debate on the merits and mechanics of legislation linking aid and expropriation.

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<sup>22</sup>U. S., Congress, House, 87th Cong., 2nd sess., March 5, 1962, Congressional Record, CVIII, 3393-94.

<sup>23</sup>Ibid.

<sup>24</sup>Ibid. These were William G. Bray (R., Ind.), Thomas B. Curtis (R., Mo.), Peter H. Dominick (R., Colo.), Richard L. Roudebush (R., Ind.), and Armistead I. Selden (D., Ala.).

## CHAPTER IV

### PASSAGE OF THE AMENDMENT

#### Administration Reaction to Proposed Amendments

President Kennedy gave the administration's reaction to the proposed amendments at a news conference on March 7. Stating that the United States was already involved in attempting to adjust the matter with the Brazilian government, he declared that he could think of nothing "more unwise" than to pass such a resolution at that time. It would, he said, put the United States into disagreement with a country with which it must have the closest relations. He concluded:

I must say that if you look at the map and realize the vitality of Brazil--I think we ought to keep a sense of proportion.

We don't want to make those who dislike us work easier by reacting to things which happen in a way which strengthens them and weakens the position of the United States.<sup>1</sup>

#### Growing Support in Congress

While Brazilians expressed approval of Kennedy's statement,<sup>2</sup> congressional feeling in favor of an expropriation amendment continued to grow. The day after the press conference, Republican congressional

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<sup>1</sup>"Transcript of the President's News Conference on Foreign and Domestic Matters," New York Times, March 8, 1962, p. 14.

<sup>2</sup>"Kennedy Praised in Brazil on Aid," New York Times, March 10, 1962, p. 8.

leaders expressed their support for such an amendment;<sup>3</sup> and in both the House and Senate Kennedy's remarks were criticized. Congressman Alger called them naive. They were, he said, perhaps the reason for the failure of U. S. foreign policy.<sup>4</sup> In the Senate, Long expressed the disillusionment with the Alliance for Progress shared by many of his colleagues. He explained that he had had high hopes when the Kennedy Administration sought a new approach to foreign aid with a strong emphasis on self-help measures by the countries receiving aid. He said he had thought that there would be some conditions placed upon the free dispensing of aid, but that it was obvious that only lip-service was being given to the self-help principle. He declared that certain conditions should be put on aid: the first being that aid-receiving countries should not expropriate American property. When a country expropriates American property, he explained, the cost of aid doubled, because public funds had to supply what private funds should have supplied. Moreover, only a "head-in-the-clouds" idealist could think that U. S. public loans would ever be repaid by a country which had expropriated U. S. property. If the President and the administration would not do something, he concluded, he hoped his fellow congressmen would support him in an effort to impose reasonable control over the expenditure of their constituents' hard-earned dollars.<sup>5</sup> With this conclusion, he reported that Senator George Smathers (D., Fla.)

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<sup>3</sup>"G.O.P. Leaders Seek Foreign Aid Pledge," New York Times, March 9, 1962, p. 4.

<sup>4</sup>U. S., Congress, House, 87th Cong., 2nd sess., March 8, 1962, Congressional Record, CVIII, 3742.

<sup>5</sup>U. S., Congress, Senate, 87th Cong., 2nd sess., March 13, 1962, Congressional Record, CVIII, 3922.

had joined him in sponsoring his amendment and that Senators Ernest Gruening (D., Alas.) and Sam Ervin (D., N.C.) were joining them as co-sponsors.<sup>6</sup>

Later the same day, President Kennedy sent down his foreign aid message. The money requested for foreign economic aid included \$600,000,000 for social and economic development through the Alliance for Progress with Latin America. This was to be the first installment on a four year program for which the President asked a continuing authorization of \$3,000,000,000.<sup>7</sup> The bill contained no reference to the expropriation of American property by recipient countries.<sup>8</sup>

#### Goulart's Visit and I.T. & T.'s Protest

Toward the end of the month a second telephone company, this time Canadian-owned, was seized by the governor of the Brazilian state of Guanabara, and Brizola announced plans to seize the Rio Grandese Light and Power Corporation, an American-owned concern.<sup>9</sup> President Goulart arrived in Washington on April 3rd to discuss the situation. He stressed the fact that he wanted to encourage foreign investment in Brazil.<sup>10</sup> He suggested a plan under which U. S. investors could switch from the field

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<sup>6</sup>Ibid.

<sup>7</sup>Felix Belair, Jr., "President Urges Congress to Vote 4.8 Billion in Aid," New York Times, March 14, 1962, p. 1.

<sup>8</sup>U. S., Congress, Senate, 87th Cong., 2nd sess., Congressional Record, March 13, 1962, pp. 3956-57.

<sup>9</sup>"Rio Phone Lines Seized by State," New York Times, March 31, 1962, p. 3.

<sup>10</sup>"Goulart Here Today for Important Visit," Washington Post, April 3, 1962, p. 1.

of public utilities--which through inflation had become profitless and politically explosive. The utility companies would be taken over by the state, their owners would be compensated and encouraged to invest in other enterprises.<sup>11</sup> Kennedy expressed great interest in the approach.<sup>12</sup>

Geneen immediately sent a protest to Secretary of State Rusk and copies of the protest to congressmen, in which he declared that ITT was "greatly disturbed" by press reports that the U. S. Government was prepared to give its blessings to a plan devised by the Brazilian government, which called for the takeover and payment of utility properties over 15 years without any indication that the bonds or any other instrument would have any U. S. Government or equivalent financially acceptable guarantee of payment or protection against devaluation or inadequate interest rates at local levels. He stated that the effect of such a plan would be "politically disastrous" on all U. S.-owned property, encouraging as it would by such an inadequate payment plan further expropriations.<sup>13</sup>

In the House Congressman Edgar W. Hiestand (R., Calif.) obviously affected by the ITT telegram which he read aloud, declared that "seizure begets seizure." While Goulart was in Washington, he said, the United States should take a stand and show that Americans "are not the suckers so many of the world's people are beginning to think we are." With such remarks,

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<sup>11</sup>Washington Post, April 4, 1962, p. 10.

<sup>12</sup>U. S., Congress, Senate, Committee on Foreign Relations, Foreign Assistance Act of 1962, Hearings on S. 2996, 87th Cong., 2nd sess., 1962, p. 418.

<sup>13</sup>U. S., Congress, House, 87th Cong., 2nd sess., April 4, 1962, Congressional Record, CVIII, 5946.

he then introduced another bill to prohibit aid to any country not establishing equitable procedures for compensating expropriations of American property.<sup>14</sup>

In the Senate, Senators Richard B. Russell (D., Ga.) and Henry C. Dworshak (R., Ida.), excusing themselves for speaking in front of the attending President Goulart, discussed the Alliance for Progress in Brazil, and questioned Brazil's worthiness for aid. Those countries which receive U. S. aid, said Russell, should be friendly toward the United States and should conform to the standards which have been laid down as conditions for receiving aid. U. S. policy should be "friends before enemies" and "those who support us before those who don't." The U. S., he remarked, does not have enough gold reserves to be aiding Communists and neutralists.<sup>15</sup>

Mr. Alger reiterated basically the same thoughts in the House. He accused Goulart, in his speech before a joint session of Congress, of not showing any appreciation of U. S. aid and of not offering "to stand shoulder to shoulder with us in defense of the freedom of his people and ours." He declared that he himself would vote against giving money to any government which would not declare itself on the side of the free world in a contest which would determine whether or not mankind would be free or slave. "It is time the United States stopped letting itself be kicked about," he concluded.<sup>16</sup>

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<sup>14</sup>Ibid.

<sup>15</sup>U. S., Congress, Senate, 87th Cong., 2nd sess., April 4, 1962, Congressional Record, CVIII, 5894-97.

<sup>16</sup>U. S., Congress, House, 87th Cong., 2nd sess., April 5, 1962, Congressional Record, CVIII, 6015.

The Hearings

During the last part of March and throughout April, as such feelings against the expropriation were being expressed on the floor, the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs conducted their hearings. The hearings brought forth the clearest view of the administration's position and the reasons for it. The United States, Secretary of State Rusk informed the Senate Committee, could not afford to stake its interests in other countries on a particular private investment in a particular situation. In order to tie American policy by law to the foreign investor, it would be necessary to delve into the operations, conduct, financial structure and other aspects of the private investors.<sup>17</sup> He asked for time in which to give a fully considered reply and later submitted a comprehensive statement.

The statement pointed out that there were well established diplomatic and legal procedures for securing fair compensation. To make judgment on the amount of compensation before the case had gone through the court system of the expropriating nation would be to assume that justice would not be done; the United States would not and could not make that kind of assumption. The proposed amendments would advance the interests of the American citizen only marginally; on the other hand, they could seriously injure the vital U. S. national interests which the foreign assistance program was designed to further. The statement listed six ways in which an amendment on expropriation could hurt U. S. interests.

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<sup>17</sup>U. S., Congress, Senate, Committee on Foreign Relations, Foreign Assistance Act of 1962, Hearings on S. 2996, 87th Cong., 2nd sess., 1962, pp. 31-32.

In the first place, it would make it appear that U. S. private aid programs were substantially motivated by a desire to protect U. S. private investment and that they were, in effect, tools of U. S. capital. Second, it would place a crucial element of U. S. policy at the mercy of one unreasonable action by a foreign official, perhaps not even a member of the national government of that country. Third, it could retard some of the economic and social reforms that the U. S. was seeking in connection with the aid program. Land reform involving expropriation, for example, might be avoided if the country felt the U. S. would unilaterally decide compensation was inadequate and cut off foreign aid. Fourth, it could commit the whole U. S. policy into the hands of one intransigent American citizen, whose actions could provoke expropriation and whose obstinacy could prevent a reasonable settlement. Fifth, the question of judging the reasonableness of the compensation offered is frequently difficult. The U. S. cannot well review another country's court decision in a private case. Finally, flexibility rather than rigidity is necessary in the aid program.<sup>18</sup> The statement concluded by saying:

The interests of the United States as a nation require the balancing of many factors, and the availability of our foreign assistance must depend on the same factors. . . .

The interests of single citizens in matters of eminent domain are among the factors to be evaluated in the decision in formulating our foreign policy, but those interests should not control it.<sup>19</sup>

In response to a request by Senator Morse for a memorandum on the expropriation, the State Department also submitted a fact sheet containing background information.<sup>20</sup>

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<sup>18</sup>Ibid., pp. 557-58.

<sup>19</sup>Ibid., p. 558.

<sup>20</sup>Ibid., p. 417.



In both the Senate and House hearings Rusk and Teodoro Moscoso, the Assistant Administrator for AID, emphasized the fact that because of inflation public utilities presented an especially difficult situation.<sup>21</sup> "Other private investments in Latin America," Rusk informed the Foreign Affairs Committee, "are doing well indeed."<sup>22</sup> Rusk also remarked that to stop aid to a country that expropriated an American industry would be a drastic remedy for the particular problem.<sup>23</sup>

Behind the executive position, as expressed during the hearings, lay a realistic appraisal of the political, economic and emotional difficulties of expropriation in Latin American countries. Unfortunately for the State Department, the force of its arguments during the hearings was lessened by the fact that witness after witness, including Secretary Rusk, admitted to both committees that a great contribution from private capital was absolutely necessary to the success of the Alliance for Progress.<sup>24</sup> Committee members continued to express the same feelings that were being expressed on the floor. Senator Capehart informed Secretary Rusk:

In our own country you cannot confiscate property without paying fair value for it. Why should we assist another country unless we have the understanding that it will not expropriate American property. Why can't we do it by legislation, rather than leaving it up to the Government to do with in individual cases. Aren't we going to discourage foreign investment, and aren't we defeating the very thing

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<sup>21</sup>Ibid., pp. 27 and 417; and U. S., Congress, House, Committee on Foreign Affairs, Foreign Assistance Act of 1962, Hearings on H. R. 11921, 87th Cong., 2nd sess., 1962, pp. 819-820.

<sup>22</sup>U. S., Congress, House, Committee on Foreign Affairs, Foreign Assistance Act of 1962, Hearings on H. R. 11921, 87th Cong., 2nd sess., 1962, p. 820.

<sup>23</sup>Ibid., p. 811.

<sup>24</sup>See, for example, ibid., p. 1093.

we are trying to do, and that is to help these nations improve their standard of living and improve their economic conditions?<sup>25</sup>

Committee members later received two additional pieces of information from the Department of State. On May 7 Senator Fulbright, Chairman of the Foreign Relations Committee, received an article which he had requested on the major instances of expropriation of property belonging to U. S. nationals since World War II. Along with the article was an edition of the Department of Commerce publication survey of Current Business, which indicated the geographic areas and amounts of current U. S. private investment.<sup>26</sup> The letter accompanying this information noted that it would be a difficult matter to characterize accurately the significant trends regarding expropriation and confiscation: that except for countries which embarked on programs of full-scale socialization of their economies, completely repudiating the concept of private property, expropriation of foreign-owned property had been relatively infrequent.<sup>27</sup> When it occurred, it had usually involved the taking over by the government of companies which had operated in the country concerned over a long period of time, which had held key positions in the economy of the country, and which, in many cases, had become politically vulnerable due to widespread resentment of foreign economic power.<sup>28</sup> Like previous State

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<sup>25</sup>U. S., Congress, Senate, Committee on Foreign Relations, Foreign Assistance Act of 1962, Hearings on S. 2996, 87th Cong., 2nd sess., 1962, p. 31.

<sup>26</sup>U. S., Congress, Senate, Foreign Assistance Act of 1962, S. Rept. 1535 To Accompany H. R. S. 2996, 87th Cong., 2nd sess., 1962, pp. 91-95.

<sup>27</sup>Ibid., pp. 93-95.

<sup>28</sup>Ibid., pp. 91-93.

Department arguments, this information stressed the difficult nature of expropriation.

#### I.T. & T. Actions

Well aware of this progression of events and sentiments in Congress, I.T. & T. approached Senator Bourke B. Hickenlooper of Iowa and asked him to sponsor an expropriation amendment in the Senate.<sup>29</sup> Hickenlooper was one of the senior Republicans on the Foreign Relations Committee and was extremely popular with both Republicans and Democrats.<sup>30</sup> Like Adair, who was his close personal friend, he was strongly interested in the protection of private property and personally favored the amendment.<sup>31</sup> Some years later, in an article on the international rights of property, he reflected:

It was quite apparent by 1962, at least to those of us who served on the Senate Foreign Relations Committee, that there could be no real progress in Latin America so long as a favorable climate for private investment did not exist. Our governmental assistance could not hope to accomplish anything substantial so long as capital continued to flee faster than we sent it in. Capital investment would not grow in Latin America, or in the developing nations of Asia and Africa, while there existed the threat of confiscation without compensation, whether it be direct or creeping expropriation in its many forms. The Congress enacted and fully supported the investment guarantee program, but it was growing very slowly. The Administration appeared helpless, or at least not desirous of taking any real action.

I felt if we did not act then, all could be lost, and the tide of Castroism would sweep over all the Southern Hemisphere. In the summer of 1962, I introduced what has generally been called the Hickenlooper Amendment.<sup>32</sup>

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<sup>29</sup>Interview with Washington lawyer.

<sup>30</sup>Interview with former staff director of the House Committee on Foreign Affairs.

<sup>31</sup>Interview with former counsel to I.T. & T.

<sup>32</sup>Bourke B. Hickenlooper, "International Rights of Property--Some

He introduced the amendment on May 8.<sup>33</sup> He soon became the chief sponsor of the amendment in the Senate; Adair continued to be the chief exponent in the House.

I.T. & T. continued to take actions. On May 10 at the annual stockholder meeting, President Geneen urged investors not to retire from Latin America or other foreign areas in panic, but to persuade the Government that its Alliance for Progress should not grant aid to countries that expropriated private United States investments without fair and prompt compensation.<sup>34</sup>

About the same time I.T. & T. contacted an attorney skilled in international law to help write an amendment.<sup>35</sup> It already had in its possession the earlier resolutions which had been prepared for the United States Chamber of Commerce, the United States Inter-American Council and the National Association of Manufacturers between 1958 and 1960. One of these, an NAM resolution of February 11, 1960, based on an earlier USIAC resolution of June 12, 1959, stated:

It is the policy of the United States that, unless there exists imperative reasons of national security, no agency of

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Observations," The International Lawyer, I (October, 1967), 52-53. I have referred to it as the Hickenlooper-Adair Amendment, since Adair played an equally important role in its passage.

<sup>33</sup>U. S., Congress, Senate, 87th Cong., 2nd sess., May 8, 1962, Congressional Record, CVIII, 7893.

<sup>34</sup>Gene Smith, "I.T. & T. Chief Asks Ban on Aid to Nations Seizing Investments," New York Times, May 10, 1962, p. 51.

<sup>35</sup>Interview with Washington lawyer. In addition to approaching Senator Hickenlooper and hiring a lawyer, I.T. & T., according to one source, launched a public relations on Capitol Hill which "badly besmirched Brazil and drained the feeling of good-will that the country had built up in this country." Simon G. Hanson, Five Years of the Alliance for Progress: An Appraisal (Washington, D. C.: Inter-American Press, 1967), p. 174. The author found no other source of this information and cannot judge its validity.

the United States Government shall lend, grant, or give public funds or economic assistance to any foreign government or to any agency of such government which expropriates or in any manner takes possession of or impairs the property rights of a United States citizen or of a corporation owned or controlled by citizens of the United States, or which impairs the contractual or legal rights of such citizens or corporations, without payment of prompt, adequate, and effective compensation.<sup>36</sup>

The idea behind this early resolution, which had been sent at the time to all congressmen, became the basis of the Hickenlooper-Adair Amendment as finally passed. The I.T. & T.-drafted amendment and those drafted elsewhere all expressed its thought.<sup>37</sup>

I.T. & T. hoped to use the amendment as leverage for gaining compensation. I.T. & T. officials felt that if they waited for the Brazilian courts to act, they would never get a settlement. In addition, the cruzeiro was rapidly declining on the world market and the business community in Brazil was very shaky. I.T. & T.'s interest in the amendment, however, also stemmed from a fear that further expropriations would occur, not only in Brazil, but in other Latin American countries, if the matter was not brought to a halt right then. It had large investments in Peru and Chile which it did not want to lose.<sup>38</sup>

#### Other Companies' Opinions

The opinions of other companies varied. At least twelve of them got together to discuss the amendment. Some, including American and

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<sup>36</sup>Letter to the author from former counsel to I.T. & T., June, 1962.

<sup>37</sup>Ibid. For this information, see also: "Hickenlooper Amendment to Foreign Aid Bill Originated With USIAC in 1959," Inter-American Bulletin, XXII (October, 1962), 5-6.

<sup>38</sup>Interview with Washington lawyer.

Foreign Power, which had lost a subsidiary to Brizola in 1959, Standard Oil and United Fruit Company favored it. They wrote letters to committee members and sent representatives to talk to them in person.<sup>39</sup> A few, however, had some reservations about such an amendment. These reservations were based largely on two considerations. In the first place, these companies felt that the amendment was not necessary, because their relations with the governments of countries in which they had interests had been and were good and they anticipated no trouble. Secondly, they felt that such a provision written into U. S. law might irritate host countries and make it more difficult to deal with them.<sup>40</sup> Those who indicated reservations, however, did not press any opposition very vigorously.<sup>41</sup>

#### Committee Action on the Amendment

As the Senate and House committees met to discuss and vote on amendments to the foreign aid bill, congressional sentiments, reinforced by company appeals, made it unlikely that an expropriation amendment would not be added. Indeed, at no time did organized opposition to the amendment appear in Congress. Most congressmen took the view that the amendment was a generally reasonable approach in conformity with international law and the desire of Congress to protect and encourage private American interests and investments abroad; only a few strongly opposed the amendment for philosophical reasons.<sup>42</sup> One persuasive argument in favor was that the protection afforded by this amendment would encourage more

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<sup>39</sup>Interview with United Fruit Company official.

<sup>40</sup>Letter from former congressman, July, 1962.

<sup>41</sup>Ibid.

<sup>42</sup>Ibid.

companies to establish installations abroad, thus producing income and employment for the host governments and hopefully reducing the amount of U. S. governmental aid that might be given.<sup>43</sup> Another was that, in an election year, constituents might fail to vote for a congressman who did not protect American property abroad.

In addition, Adair and Hickenlooper had been working very hard for the amendment. They had discussed it frequently with each other, with company officials, fellow congressmen and Secretary of State Rusk. The State Department, meanwhile, had not exerted quite so much effort in opposing it.<sup>44</sup> Although Kennedy felt that the legislation would invade his right to administer foreign affairs<sup>45</sup> and would inflexibly embroil the U. S. government in quarrels between U. S. companies and foreign governments, regardless of the merits of each case, he was not prepared to make a public fight over it.<sup>46</sup> For one thing, he faced at the time and was much more interested in halting, an amendment which would stop aid to Communist countries, particularly to Yugoslavia and Poland. He therefore expended his forces primarily in that direction.<sup>47</sup> For another, he apparently felt that he could defeat the amendment either on the floor or in conference.<sup>48</sup>

Administration objections to the amendment did have some effect during the committee sessions, where unsure congressmen both expressed

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<sup>43</sup>Ibid.

<sup>44</sup>Ibid.

<sup>45</sup>Interview with AID official.

<sup>46</sup>Jerome Levinson and Juan de Onis, The Alliance That Lost Its Way (Chicago: Quadrangle Books, 1970), p. 144.

<sup>47</sup>"Aid With Strings," The New Republic, August 13, 1962, pp. 7-8.

<sup>48</sup>Interview with Washington lawyer.

doubts as to the workability and effectiveness of the amendment<sup>49</sup> and argued about the strength of the amendment's provisions. Discussion about the exact provisions of the amendment was particularly comprehensive. Adair and Hickenlooper, as the amendment's chief sponsors, desired strong provisions. In the Foreign Relations Committee, Hickenlooper presented an amendment which provided that the expropriating nation should pay "immediate and effective" compensation within ninety days of the seizure. The amount of compensation would be determined by the Foreign Claims Settlement Commission. Hickenlooper made it clear that "immediate and effective" meant convertible currency, not bonds or long deferred payments, which he felt "could be subject to deception in one way or another, according to strange manipulations of foreign governments." If the expropriating nations did not comply with these conditions, aid would be cut off.<sup>50</sup>

The Senate committee, after some initial discussion, accepted Hickenlooper's I.T. & T.-drafted amendment. But during the following week, with more discussion, modifications were made and features of less stringent proposals were incorporated.<sup>51</sup> Senator Wayne Morse (D., Ore.) later recalled that he felt that Hickenlooper's amendment went too far. He himself offered a more moderate substitute, which set out a procedure giving assurance that if there could not be a settlement through diplomatic channels and negotiations within six months, the dispute would go to

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<sup>49</sup>Letter from former congressman, July, 1972.

<sup>50</sup>U. S., Congress, Senate, 87th Cong., 2nd sess., October 2, 1962, Congressional Record, CVIII, 21616.

<sup>51</sup>Ibid., June 5, 1962, p. 9681.



arbitration.<sup>52</sup> Part of this was incorporated into the final version of the amendment.<sup>53</sup>

In the House committee Adair presented an amendment providing that aid would be cut off and no further assistance provided to the expropriating nation until the President determined that the government had established procedures satisfactory to him providing for "equitable and speedy" compensation to U. S. citizens.<sup>54</sup> Adair's provisions were also modified, as he, Cornelius Gallagher (D., N.J.) and Harris McDowell (D., Del.) worked for several days trying to find appropriate language.<sup>55</sup>

As reported by the Senate committee on May 28, the amendment provided that, upon an expropriation of American property by a foreign country, aid would be cut off unless that country (1) within a reasonable time (not more than six months) took steps determined by the President to be appropriate to discharge its obligations under international law, including the prompt payment in convertible foreign exchange to those persons whose property was expropriated or taken, or (2) arranged to submit the question in dispute to arbitration or conciliation in accordance with the procedure under which a final and binding decision or settlement would be reached and full payment or arrangements therefore made within twelve

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<sup>52</sup>Ibid., October 2, 1962, p. 21620.

<sup>53</sup>Ibid.

<sup>54</sup>Charles M. Bruch, "Expropriation May Threaten the Alliance for Progress," Public Utilities Fortnightly, January 31, 1963, p. 31. The amendment presented by Adair was put in its final form by lawyers in the Office of the Legislative Counsel of the House of Representatives (Letter from former congressman).

<sup>55</sup>U. S., Congress, House, 87th Cong., 2nd sess., July 11, 1962, Congressional Record, CVIII, 13154.

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months following such submission.<sup>56</sup>

The Senate Report stated:

This subsection reflects the committee's considerable concern with the problem of confiscation of American property, and discriminatory treatment of American property owners in other countries. Expropriation of property is the sovereign right of any government. But the right of the property owner to a timely and equitable settlement is equally valid, in the committee's judgment. . . . The Committee's amendment, the result of considerable effort, is intended to protect American property owners against such arbitrary practices. Moreover, by providing greater security to American property owners abroad, the amendment should serve the collateral purpose of encouraging more private American investment in less developed countries.<sup>57</sup>

The Senate, at the request of Senator John J. Sparkman (D., Ala.), approved the committee's addition of the new subsection (e).<sup>58</sup> Senator Sparkman noted that the amendment reflected a unanimous committee judgment, nearly every member, Republican and Democrat, having participated in drafting the final version of the amendment.<sup>59</sup> He remarked that to provide aid without stipulating conditions that would advance the purpose of aid would be to court disaster. "In this sense," he said, "we should be frank in stating that our development aid programs carry clear and precise 'strings.'"<sup>60</sup>

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<sup>56</sup>Richard B. Lillich, "The Protection of Foreign Investment and the Foreign Assistance Act of 1962," Rutgers Law Review, XVII (Winter, 1963), 411.

<sup>57</sup>U. S., Congress, Senate, Foreign Assistance Act of 1962, S. Rept. 1535 to Accompany H. R. S. 2996, 87th Cong., 2nd sess., 1962, p. 36.

<sup>58</sup>U. S., Congress, Senate, 87th Cong., 2nd sess., June 5, 1962, Congressional Record, CVIII, 9681. Section 620, of which subsection (e) is a part, related to restrictions on assistance to certain countries.

<sup>59</sup>Ibid.

<sup>60</sup>Ibid., p. 9679.

Discussion on the amendment did not stop. Neither Hickenlooper nor I.T. & T. was satisfied with the amendment as it had been adopted by the Senate committee.<sup>61</sup> Hickenlooper felt that unless stronger provisions were included, the administration would go around the amendment and it would never be applied. He particularly objected to the phrases "reasonable time" and "appropriate steps." He called them "weasel words" and declared that they left the gate wide open for the Executive or the State Department to say that the steps were reasonable or appropriate, or to say that the time was reasonable. In other words, he informed his fellow senators, "there could be endless delay without making these countries come up to the till and lay the money on the line, if they were going to seize American property."<sup>62</sup>

#### Modifications on the Senate Floor

On June 7, therefore, Hickenlooper introduced on the floor two additional amendments.<sup>63</sup> The first, admittedly aimed at the two expropriations in Brazil and at one in Ceylon, provided that the subsection should apply retroactively to any seizure of United States property after January 1, 1962. In introducing this amendment, Hickenlooper presented a comparison of the Cuban confiscation decree of July 7, 1960 and the Brazilian expropriation decree of May 30, 1962, which had been drawn up for him by the I.T. & T. lawyer.<sup>64</sup> He pointed out that the plans for compensation

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<sup>61</sup>Interview with Washington lawyer.

<sup>62</sup>U. S., Congress, Senate, 87th Cong., 2nd sess., October 2, 1962, Congressional Record, CVIII, 21616.

<sup>63</sup>Ibid., June 7, 1962, pp. 9940-44.

<sup>64</sup>Interview with Washington lawyer.

under the two decrees were similar, yet the State Department had condemned the Cuban decree while it evidently approved the Brazilian one. The State Department, he declared, has traditionally insisted that international law requires the payment of prompt, adequate and effective compensation; however Article 2 of the Brazilian decree falls far short of these stipulations. He said that he therefore had grave reservations whether the public utility owners in Brazil would be treated in a manner consistent with the requirements of international law. Not to take the prohibition back to January 1, he concluded, would be to give tacit approval to the Brazilian expropriation and would encourage other expropriations. "In Latin America, especially, the argument is being used in many circles 'if Cuba got away with seizing American property, why cannot other countries get away with it?'"<sup>65</sup>

Supporting Senator Hickenlooper, Senator Homer E. Capehart (R., Ind.) declared that the Congress of the United States did not have any right to vote funds, loans and gifts to be given to a country that deliberately expropriated American taxpayers' property and did not pay for it in full. "We as legislators have no right to spend the American taxpayers' money in those countries," he said. "I cannot conceive of any Senator voting against this amendment." Senator Frank Carlson (R., Kan.) added that if action was not taken a "great wave" of expropriations would sweep over Latin America. He said that this was an opportunity for the Senate to render a service to those interested in the foreign aid program.<sup>67</sup> With these few comments, the amendment passed.<sup>68</sup>

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<sup>65</sup>U. S., Congress, Senate, 87th Cong., 2nd sess., June 7, 1962, Congressional Record, CVIII, 9942.

<sup>66</sup>Ibid., p. 4493.

<sup>67</sup>Ibid.

<sup>68</sup>Ibid.

Hickenlooper then introduced his second amendment. It provided that no other provision of the Foreign Assistance Act should be construed to authorize the President to waive the provisions of the subsection.<sup>69</sup> This was the most crucial addition to the amendment. The idea of terminating the aid of a country which expropriated American property was not new. It was embodied, for example, in the Mutual Security Act of 1959.<sup>70</sup> However the Mutual Security Act amendment allowed the President to continue assistance, in spite of an expropriation, if he deemed it to be in the national interest. The waiver provision would change the amendment from a simple expression of congressional sentiment (which the President could get around) to a law which could greatly affect American foreign relations. Hickenlooper had been unable in committee to get the waiver provision into the amendment.<sup>71</sup> It passed on the floor without any discussion.<sup>72</sup>

#### Modifications on the House Floor

The House Committee on Foreign Affairs presented its report on the foreign aid bill on June 7. The report included an expropriation amendment similar to that reported by the Senate. On July 9, after talks with Senator Hickenlooper, Adair informed the House that he did not feel the expropriation amendment went far enough, and two days later he

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<sup>69</sup>Ibid. In the main bill there was a provision which allowed the President to waive certain provisions of the law if he deemed it to be in the national interest.

<sup>70</sup>U. S., Congress, Senate, 81st Cong., 1st sess., July 22, 1959, Congressional Record, CV, 13983.

<sup>71</sup>Interview with Washington lawyer.

<sup>72</sup>U. S., Congress, Senate, 82nd Cong., 2nd sess., June 7, 1962, Congressional Record, CVIII, 9944.

introduced the same amendments which Hickenlooper had presented in the Senate.<sup>73</sup> In the House, however, the waiver provision, which Adair claimed would put "additional teeth" into the amendment, stimulated extensive and heated comment.<sup>74</sup>

On the opposition side, Congressman Clement J. Zablocki (D., Wis.) stated that depriving the President of his discretionary authority would make it impossible for him to deal with a new government, when it was the previous government that had done the expropriating.<sup>75</sup> Congressman Gallagher pointed out that if the President was not allowed some flexibility, once aid was cut off there would be no further basis for negotiations. He declared that in addition the foreign aid bill was not the appropriate place for legislation dealing with expropriation. He noted that the Foreign Affairs Committee had worked long and hard to find appropriate language, and he felt that the amendment should remain as it was.<sup>76</sup> Mr. McDowell stated that the amendment would take out of the hands of the President his constitutional rights in the direction of foreign policy and would put it in the hands of the Agency for International Development, since it would be that body and not the President who would decide when to cut off aid. "Not only is the Agency for International Development not adequately equipped to make such decisions," he said, "but you would even have a

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<sup>73</sup>U. S., Congress, House, 82nd Cong., 2nd sess., July 11, 1962, Congressional Record, CVIII, 13150-51.

<sup>74</sup>A former congressman suggested to the author that greater discussion in the House stemmed from the fact that the House Foreign Affairs Committee had had fuller discussion than the Senate Foreign Relations Committee. Hence questioning or doubtful attitudes had had an opportunity to develop in the House.

<sup>75</sup>U. S. Congress, House, 82nd Cong., 2nd sess., July 11, 1962, Congressional Record, CVIII, 13152.

<sup>76</sup>Ibid.

question that could be taken to the courts involving a constitutional matter. . . ."<sup>77</sup>

Continuing the opposition, Congressman Peter Frelinghuysen (R., N.J.) pointed out that an expropriation might well be made by the subdivision of a country of great strategic or economic or military value to the United States, and in such a situation, presidential inability to waive the section might well harm the national interest.<sup>78</sup> Congressman Barratt O'Hara (D., Ill.) stated that tying the President's hands and preventing him from following the national interest put power into the hands of the Communists. He said that during four administrations he had always voted to give the President the full power to exercise his judgment in foreign affairs and to do or refrain from doing that which in his judgment was or was not in the national interest.<sup>79</sup> Also in opposition Congressman Thomas E. Morgan (D., Penn.) pointed out that some sub-ruler of some tiny state in a large nation who wanted to overthrow a government friendly to the United States would be able to force the United States to cut off aid to a friendly country. "The President needs this power," he concluded. "It is absolutely essential that this amendment be defeated."<sup>80</sup>

Answering the above objections Adair called attention to the provision in the subsection giving the foreign country six months to take appropriate steps to compensate American property owners. Contending that this clause provided sufficient flexibility, he asserted that "if a country cannot begin to do something in six months, then it will not do so in

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<sup>77</sup>Ibid., p. 13153.

<sup>79</sup>Ibid., p. 13154.

<sup>78</sup>Ibid.

<sup>80</sup>Ibid.

six years."<sup>81</sup> He agreed with Representative Wayne Hays' (D., Ohio) statement that "as long as negotiation is going on, there is no mandatory cut-off involved. . . ."<sup>82</sup> If the foreign country is "willing to show any kind of good faith whatsoever," Hays explained, "it is not barred from foreign aid and the hands of the President are not tied at all." He called this "implied and implicit" in Adair's amendment.<sup>83</sup>

Congressmen John Pilcher (D., Ga.), Bray, Ralph Beermann (R., Neb.), and Silvio Conte (R., Mass.) forcefully supported Adair. Congressman Conte pointed out that realistically the President's determination of suspension of assistance would rest on the advice of the State Department, but he declared that the State Department had never been successful in protecting the rights of American citizens.<sup>84</sup> Congress therefore had to embody legislation which would result in a good climate for private investment.<sup>85</sup>

The discussion ended in high emotions on both sides. The waiver provision passed by a vote of 153-120.<sup>86</sup>

#### The Senate-House Conference

The State Department still had some hope of defeating the amendment in conference.<sup>87</sup> In the end, it evidently bargained, allowing the expropriation provision to remain in return for the elimination of the

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<sup>81</sup>Ibid.

<sup>82</sup>Ibid., p. 13168.

<sup>83</sup>Ibid.

<sup>84</sup>Ibid., p. 13166.

<sup>85</sup>Ibid., p. 13168.

<sup>86</sup>Ibid., p. 13169.

<sup>87</sup>Interview with Washington lawyer.



provision ending aid to Communist countries.<sup>88</sup> The House version of the amendment was accepted by the conferees with the addition of two small phrases. The first included the words "may include arbitration" among the appropriate steps to be taken; the second qualified the obligations of the expropriating country toward U. S. citizens or entities as obligations "under international law."<sup>89</sup> The addition of these phrases was suggested by advocates of a tough U. S. policy toward expropriation as strengthening the language of the House provision.<sup>90</sup>

As it came from conference and as it was accepted by both houses, the amendment read:

620 (e) The President shall suspend assistance to the government of any country to which assistance is provided under this Act when the government of such country or any governmental agency or subdivision within such country on or after January 1, 1962--

(1) has nationalized or expropriated or seized ownership or control of property owned by any United States citizen or by any corporation, partnership, or association not less than 50 per centum beneficially owned by United States citizens, or

(2) has imposed or enforced discriminatory taxes or other exactions, or restrictive maintenance or operational conditions, which have the effect of nationalizing, expropriating, or otherwise seizing ownership or control of property so owned, and such country, government agency or government subdivision fails within a reasonable time (not more than six months after such action or after the date of enactment of this subsection, whichever is later) to take appropriate steps, which may include arbitration, to discharge its obligations under international law toward such citizen or entity, including equitable and speedy compensation for such property in convertible foreign exchange, as required by international law, or fails to take steps designed to provide relief from such taxes, exactions, or conditions,

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<sup>88</sup>Ibid.

<sup>89</sup>U. S., Congress, House, 82nd Cong., 2nd sess., July 24, 1962, Congressional Record, CVIII, 13152.

<sup>90</sup>Ibid.

as the case may be, and such suspension shall continue until he is satisfied that appropriate steps are being taken and no other provision of this Act shall be construed to authorize the President to waive the provisions of this subsection.<sup>91</sup>

On August 1, 1962, the President signed it into law as part of the foreign aid bill.

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<sup>91</sup>Foreign Assistance Act of 1962, Statutes at Large, LXXVI, sec. 620, 260-261 (1962).

## CHAPTER V

### POSTSCRIPT

Before discussing the conclusions which may be drawn from this case study, it seems both interesting and informative to put the amendment in perspective. This chapter therefore briefly reviews the history of the amendment since its passage. While the amendment appears to have had little effect in preventing expropriations, it has caused much friction between the legislative and executive branches of government.

#### Executive Avoidance of the Amendment

During the passage of the amendment, executive-legislative tensions resulted partly from the fact that Congress felt the President would try to avoid congressional intent as expressed in the amendment. Congressional fears proved correct. Since its passage in August, 1962, the amendment has been applied only once.<sup>1</sup> Three separate presidents in their conduct of foreign affairs have preferred to interpret the phrase "appropriate steps" very broadly rather than to cut off aid. In the case of Peru's expropriation of the International Petroleum Company property in 1969, when Peru refused to take any steps at all, President Nixon simply declared that it was necessary to postpone cutting off aid under the amendment.<sup>2</sup> Congress,

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<sup>1</sup>This was to Ceylon in 1963.

<sup>2</sup>"Peru: Back from the Brink," Newsweek, April 21, 1969, p. 52.

with some grumbling, eventually acquiesced in the Peruvian action, since it was obvious that nothing would be gained by applying the amendment; Peru's military government had made it clear that it would not be coerced into action.<sup>3</sup>

#### Continued Congressional Support

In general, however, Congress as a whole<sup>4</sup> has continued to support the amendment. Congressmen have continued to feel that the amendment both expresses American sentiment about expropriation and strengthens the hand of the President in dealing with foreign nations. Senator Hickenlooper declared in 1967 that he felt the deterrent effect of the amendment had been great.<sup>5</sup> He added that, "Denied the easy demagogic 'out' of seizure and division of property of 'imperialist Americans,' politicians in various parts of the world are beginning to take a second look and consider the benefits of cooperation as against the penalties of seizure."<sup>6</sup> In addition, congressmen feel that they would have a difficult time explaining to their constituents why they voted for the repeal of an amendment intended to protect American property abroad.<sup>7</sup>

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<sup>3</sup>Interview with a staff member of the Senate Foreign Relations Committee.

<sup>4</sup>Individual congressmen have at times expressed doubt about the amendment. See the statement of Congressman Rees in U. S., Congress, House, 91st Cong., 1st sess., March 26, 1969, Congressional Record, CXV, 2234-36.

<sup>5</sup>Bourke B. Hickenlooper, "The International Rights of Property--Some Observations," The International Lawyer, I (October, 1967), 58.

<sup>6</sup>Ibid., p. 56.

<sup>7</sup>Martha Hamilton, "Repeal of Hickenlooper Urged by Two," Journal of Commerce, April 15, 1969, p. 5. Senator Frank Church stated: "It would be very hazardous to try to repeal the Hickenlooper Amendment, and then try to explain to the people back home why you voted against an amendment which punishes a foreign country for expropriating U. S. property."

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Congress has shown its support for the amendment by both adding to its provisions and incorporating it into other legislation. In late 1963, for example, Congress added to the amendment a provision cutting off aid to any country which "has taken steps to repudiate or nullify existing contracts or agreements with any U. S. citizen or any corporation, partnership, or association not less than 50 per centum beneficially owned by United States citizens."<sup>8</sup> The provision, intended to help out oil companies whose contracts had been revoked by the Argentine Government, was accepted at Senator Hickenlooper's urging during the conference after little discussion in the Senate and none at all in the House.

In 1964 Congress extended the Hickenlooper-Adair provision by adding the Sabbatino Amendment.<sup>9</sup> The Sabbatino Amendment hoped to protect American private investment abroad by preventing American-owned property which had been expropriated from being sold in the United States by the expropriating nation. Since the United States is often the biggest market for the products of its overseas companies, the Sabbatino Amendment hoped in this way to make an expropriation profitless.<sup>10</sup>

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<sup>8</sup>Foreign Assistance Act of 1963, Statutes at Large, LXXVII, sec. 620, 386-387 (1963).

<sup>9</sup>Foreign Assistance Act of 1964, Statutes at Large, LXXVIII, sec. 620, 387 (1964).

<sup>10</sup>Reversing a Supreme Court decision, the Sabbatino Amendment provided that:

. . . no courts in the United States shall decline on the grounds of the Federal Act of State Doctrine to make a determination on the merits giving effect to the principals of international law in a case in which a claim of title or other right to property is asserted by any party including a foreign state . . . based upon . . . a confiscation or other taking after January 1, 1959, by an act of that state in

The following year, Congress inserted into the Inter-American Development Bank Act an amendment which provided that the United States would use its voting power to disapprove any loan from the Fund for Special Operations of the Bank to any country to which the President had suspended assistance under the Hickenlooper-Adair Amendment.<sup>11</sup>

In 1970 the House Foreign Affairs Committee attempted to remove the amendment entirely. The attempt received a resounding defeat on the floor itself. There were so few votes to get rid of it, that AID officials felt it would be damaging to American foreign relations to make it known.<sup>12</sup>

The following year the House tried and succeeded in putting a version of the Hickenlooper-Adair Amendment into the Sugar Quota Bill, one of the most important bills for many Latin American countries. Under the terms of the House-passed bill, countries that expropriated American property without adequate compensation would have their quotas reduced or eliminated and would be liable for a \$20 per ton reduction on what they were paid for sugar exports to the U. S. The money withheld by the U. S. would be used to compensate the expropriated firm.<sup>13</sup>

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violation of the principals of International Law, including the principles of compensation and other standards set out in this subsection. . . .

The idea was that the owner of expropriated property could take his case to court on the grounds that the expropriation was illegal, and if the court agreed, he could prevent the sale of his expropriated property in the U. S. For a full discussion of this amendment, see: Stanley G. Mazaroff, "An Evaluation of the Sabbatino Amendment as a Legislative Guardian of American Private Investment Abroad," George Washington Law Review, XXXVII (May, 1969), 788-815.

<sup>11</sup>U. S., Congress, House, 89th Cong., 1st sess., March 4, 1965, Congressional Record, CXI, 4205-4206.

<sup>12</sup>Interview with AID official.

<sup>13</sup>"New Version of Hickenlooper Amendment Attached to House Sugar Quota Bill," Business Latin America, June 17, 1971, p. 200.

Later the same year, in one of the strongest expressions of support, Senator Howard Cannon<sup>14</sup> introduced into the Senate a bill intended to strengthen the Hickenlooper-Adair Amendment. The bill required immediate suspension of assistance to any country which expropriated property in a manner prescribed by the Hickenlooper-Adair Amendment and permitted resumption only when such country had "discharged its obligations under international law . . . including speedy compensation."<sup>15</sup> In introducing the amendment, Cannon stated:

. . . the fact of the matter is, that the Hickenlooper Amendment does not cut off foreign aid when a country expropriates U. S. property and does not provide effective compensation to the owners. Although I am sure the author and the supporters of the amendment thought they were barring continued assistance to such countries, it must be recognized that the Hickenlooper Amendment has one fatal flaw--it leaves the question of cutting off aid to the discretion of the President.

This discretionary authority has served to gut the Hickenlooper Amendment and render it useless. My amendment would close this loop-hole and make the original amendment an effective provision of law.<sup>16</sup>

The amendment passed the Senate by a vote of 47-33. The administration, with intense relief, managed to defeat it in conference.<sup>17</sup>

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<sup>14</sup>Democrat, Nevada.

<sup>15</sup>U. S. Congress, Senate, 92nd Cong., 1st sess., October 28, 1971, Congressional Record, CXVII, 17094.

<sup>16</sup>Ibid. Note that the Hickenlooper-Adair Amendment cuts off aid only after the country has had time to take appropriate steps toward compensation. The Cannon Amendment was therefore quite a drastic change.

<sup>17</sup>Interview with AID official. Aiding in the defeat of the amendment were the facts that Senator Cannon was not on the Foreign Relations Committee and that many senators, in spite of its passage in the Senate, did feel the amendment was too drastic a step.

Executive-Legislative Friction

Executive avoidance of the Hickenlooper-Adair Amendment has tended to cause bitter feeling in Congress. As early as October, 1962, Senator Hickenlooper loudly denounced the administration for failing to inform American foreign offices of the amendment and for using anything as "appropriate steps."<sup>18</sup> At the time the language was adopted, he said, he had pointed out that those were "weasel words," and that "they left the gate wide open for the Executive or the State Department to say that steps were reasonable or were appropriate, or to say that the time was reasonable--in other words, that there could be endless delay without making these countries come up to the till and lay money on the line, if they were going to seize American property."<sup>19</sup> He added that while it was inconceivable that the administration would not comply with the law and with the intent of the law, he was sorry to say that there was a foot dragging someplace which prevented the operation of the law in its full vigor.<sup>20</sup> Senator Frank Lausche (D., Ohio) supported him, saying that State Department officials had to abide by the amendment and that Congress should voice its vigorous demand for its compliance.<sup>21</sup> Senator Morse remarked that although he had originally opposed the more drastic form of the amendment, he would support stronger language the next year if Congress was to be faced by evasion of the amendment. He added that he was sure

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<sup>18</sup>U. S., Congress, Senate, 87th Cong., 2nd sess., October 2, 1962, Congressional Record, CVIII, 21615-21.

<sup>19</sup>Ibid., p. 21616.

<sup>20</sup>Ibid., p. 21619

<sup>21</sup>Ibid.



that no member of the Foreign Relations Committee had expected the amendment to be flouted by an American official.<sup>22</sup>

Similar feelings were behind expressions of support for Senator Cannon's amendment in 1971. Senator Long remarked that if, in the case of Peru, the President did not follow the law and cut off aid when it became mandatory for him to do so, the only thing Congress could do would be to impeach him. Since this was not a likely thing, he felt that Cannon's amendment, which would take away the discretionary power of the President, was a good thing.<sup>23</sup> Senator Fulbright said he felt the 1962 amendment had degenerated and that its purpose was no longer evident. He said that the Cannon amendment might help, by making it harder for the President to dally as long as he had in the Peruvian case.<sup>24</sup>

#### Business Opinion

The opinions of business have continued to vary about the amendment. While some such as United Fruit Company feel that it has been useful at least as an expression of U. S. sentiment and consequently as a deterrent of expropriations, others have had their doubts that the cutting off of aid would help them recoup their losses and their fears that the amendment would even have a negative effect.<sup>25</sup> The International Petroleum Company,

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<sup>22</sup>Ibid., p. 21620.

<sup>23</sup>U. S., Congress, Senate, 92nd Cong., 1st sess., October 28, 1971, Congressional Record, CXVII, 17095.

<sup>24</sup>Ibid., p. 17096.

<sup>25</sup>Interview with United Fruit Company official.

for example, reportedly breathed a sigh of relief when President Nixon decided to postpone the aid cutoff to Peru.<sup>26</sup> It had apparently felt that such a cutoff would cause Peru to make further expropriations.

#### The Effectiveness of the Amendment

The executive's failure to use the amendment makes it difficult to determine exactly how effective it has been. Different conclusions have been reached. Pro-amendment evaluations, however, have been principally from congressmen. This author has found most other evaluations to be critical.

The amendment was originally intended to protect American private investments abroad by discouraging other nations from expropriating and by encouraging them to give "speedy," "full value" compensation in "convertible foreign exchange" when they did. Certainly the amendment has not succeeded in discouraging many expropriations.<sup>27</sup> In 1971 Senator Dominick pointed out that since the amendment's passage, expropriations had occurred in Ceylon, the United Arab Republic, Argentina, Algeria, Iraq, Haiti, Syria, Indonesia, Peru, Zambia, Bolivia, Southern Yemen, Libya and Chile.<sup>28</sup> Nor, according to most evaluations, has the threat of its use succeeded in forcing aid recipients to meet the demand for "speedy, full value"

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<sup>26</sup>"Peru: Key to Nixon Policy for Latin America," U. S. News and World Report, April 21, 1969, p. 52.

<sup>27</sup>Congress believed that it did prevent expropriations in Honduras, Panama and other countries. U. S., Congress, Senate, Committee on Foreign Relations, Foreign Assistance Act of 1963, Hearings on S. 1276, 88th Cong., 1st sess., 1963, pp. 29 and 348.

<sup>28</sup>U. S., Congress, Senate, 92nd Cong., 1st sess., October 28, 1971, Congressional Record, CXVII, 17096.

compensation in "convertible foreign exchange."<sup>29</sup> According to one source, in the cases of Argentina, Brazil, Ceylon and Indonesia--four cases where the amendment theoretically should have been most effective--its actual effect in achieving compensation varied from marginal to negligible.<sup>30</sup>

The same source found that the I.T. & T. settlement, which was not achieved until early 1963, resulted less from the threat to apply the amendment than from an overall improvement in the Brazilian political situation.

It quotes a Director and Vice-President of the Standard Oil Company of New Jersey as saying that the terms of the Brazilian settlement did not warrant congressional self-congratulations.<sup>31</sup> It also quotes Geneen as calling the settlement a "fair and reasonable agreement," but admitting that "anything we receive would be better than what we've been getting."<sup>32</sup>

Certain fears which the State Department expressed during the 1962 hearings appear to have come true. The case of the International Petroleum Company in Peru, one of the longest and most discussed of all expropriation cases, brought out many of the possible side effects of the amendment. The threat of the amendment made it more difficult for the Peruvian President Belaunde and IPC to reach agreement, since it made the company feel more secure and less willing to compromise.<sup>33</sup> IPC seemed to have believed that

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<sup>29</sup> Again Congress has felt that the amendment has helped in gaining compensation in such cases as Brazil. U. S., Congress, Senate, Committee on Foreign Relations, Foreign Assistance Act of 1962, Hearings on S. 1276, 88th Cong., 1st sess., 1963, pp. 29 and 273-274.

<sup>30</sup> Richard B. Lillich, The Protection of Foreign Investment: Six Procedural Studies (Syracuse, N. Y.: Syracuse University Press, 1965), pp. 140-141.

<sup>31</sup> Ibid., p. 142.

<sup>32</sup> Ibid.

<sup>33</sup> Richard N. Goodwin, "Letter from Peru," The New Yorker, May 17, 1969, p. 109.

the full weight of U. S. foreign policy would be brought to serve its own interests.<sup>34</sup> Moreover, the threat of the amendment made it extremely difficult for the Peruvian government to make any accommodation, since it would have appeared to have been acting from fear of economic sanctions.<sup>35</sup> While the U. S. government was threatening sanctions, Communist elements used the IPC case as a rallying point for anti-American demonstrations.<sup>36</sup> At the same time, fears were expressed that should the U. S. invoke the amendment, it might injure the very economic development which it was declaring that it wanted to promote, since the loss to Peru would have totalled some \$60 million annually.<sup>37</sup> When Nixon finally decided not to cut off aid to the new military government, most Latin American nations expressed approval. One Colombian journalist said: "This move is by no means a backdown by the U. S., but rather a demonstration of clever common sense on the part of Mr. Nixon and his advisors."<sup>38</sup> If anything, the standing of the U. S. has improved in our eyes, not diminished."<sup>39</sup>

Critics of the amendment have argued that even if the concept of using aid as a lever to prevent expropriation without compensation could be

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<sup>34</sup>David K. Eiteman, "A Model for Expropriation Settlement: The Peruvian I.P.C.," *Business Horizons*, XIII (April, 1970), 87.

<sup>35</sup>Goodwin, p. 109.

<sup>36</sup>Jon Basil Utley, "Letter from Lima," *National Review*, July 1, 1969, p. 661.

<sup>37</sup>"U. S. Delays Imposing Sanctions on Peru for Uncompensated Oil Concern Seizure," *Wall Street Journal*, April 8, 1962, p. 2.

<sup>38</sup>It no doubt was clever common sense on President Nixon's part. At a time when he hoped that the American people would grant continued confidence in his handling of the Vietnam War, he was not anxious to have another crisis erupt.

<sup>39</sup>"Peru: Back from the Brink," *Newsweek*, April 21, 1969, p. 52.

applied effectively, it nevertheless should not be applied. They reason that the specific legal justification contained in the amendment for its use of economic force is that the expropriating nation has violated what Congress considers to be international law. The rule of law specifically asserted by Congress in the amendment is that compensation for any taking must be "speedy" and must be paid in "convertible foreign exchange equivalent to the full value thereof." If steps are not taken within six months to conform to this "rule," the amendment becomes operative. More than one scholar, however, has argued that this congressional rule for the standard of compensation does not enjoy the status of a rule of international law.<sup>40</sup> These critics feel that while there is much authority in international law for this standard of compensation, it is still only one of many competing rules in an area of international law where there is no controlling rule. "Therefore the amendment's pivotal justification--merely demanding what international law already requires--is neither convincing nor viable."<sup>41</sup>

Whatever the merits or drawbacks of the amendment, congressmen as a whole tend to feel that it remains a viable solution to a difficult problem. If the President continues to resent and avoid the use of the amendment, and if some businessmen remain wary, neither of them has since come up with a good solution to the problem which Hickenlooper and Adair tried to solve. Expropriation remains a difficult international problem.

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<sup>40</sup>See, for example: Stephen R. Luce, "Argentina and the Hickenlooper Amendment," California Law Review, LIV (December, 1966), 2091-93, or Stanley G. Metzger, "Multilateral Conventions for the Protection of Private Foreign Investment," Journal of Public Law, IX (Spring, 1960), 142.

<sup>41</sup>Luce, p. 2080.

## CHAPTER VI

### CONCLUSIONS

As stated in the introduction, this study sought to explore Congress as an initiator of foreign policy. Relatively little research has been done on this aspect of congressional participation in the foreign policy-making process, yet Congress through its initiation of policies exercises greater influence over foreign affairs than is generally assumed. Moreover, the war in Vietnam has caused skepticism in many circles of strong presidential leadership in foreign affairs and has raised the conjecture that future congresses may participate more freely and more frequently in formulating as well as in amending foreign policy. Legislative attempts to end the war over presidential opposition seem to indicate this.

In exploring Congress as a policy-maker, this study focused specifically on the circumstances under which Congress came to take the initiative in making policy, on the ability Congress showed in handling a foreign policy problem and on the sources of executive-legislative friction in policy-making. The study also examined the role played by business groups in the initiation and passage of the amendment, in order that the role played by Congress could be accurately viewed. This chapter summarizes the conclusions which may be drawn from the case study. These conclusions illuminate and modify some familiar propositions about the role of Congress in making American foreign policy.

Circumstances of Initiation

Previous studies have concluded that Congress tends to take an initiative in making foreign policy when dealing with matters of lesser importance<sup>1</sup> or with matters concerned with continuing programs.<sup>2</sup> Certainly the Hickenlooper-Adair Amendment falls into both categories. The introduction of this amendment, however, further suggests that Congress may take an initiative in making policy when (1) congressional emotions are highly aroused about an issue and (2) at the same time, congressmen feel that the executive branch will do little or nothing about the issue. In this, it appears to substantiate the findings of Holbert N. Carroll. In a study of the House of Representatives, Carroll found that the House would initiate a foreign policy if the approach of the executive branch was not satisfactory.<sup>3</sup> The passage of the Hickenlooper-Adair Amendment suggests that this is also true for the Senate.

It has been shown that with Brizola's seizure of the I.T. & T. subsidiary, expropriation became an explosive issue in Congress. Congressmen, normally distasteful of foreign aid, had already begun to sink into disillusionment with the Alliance for Progress. They saw the expropriation as evidence of ungrateful foreigners taking U. S. money with one hand and stabbing the U. S. in the back with the other. They were well aware that

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<sup>1</sup>James A. Robinson, Congress and Foreign Policy-Making (Homewood, Ill.: Dorsey Press, 1967), p. 108.

<sup>2</sup>Roger Hilsman, "The Foreign Policy Consensus: An Interim Research Report," Journal of Conflict Resolution, III (December, 1959), 377.

<sup>3</sup>Holbert N. Carroll, The House of Representatives and Foreign Affairs (Boston: Little, Brown and Company, 1966), p. 24.

large amounts of private capital were considered necessary for the success of the Alliance, and they resented voting public funds to those nations which frightened away private capital through uncompensated confiscations. Furthermore, as a result of the recent Cuban experience, many congressmen equated expropriation of foreign investments with communism. They feared therefore that letting Brazil get away with expropriation might encourage the spread of communism there and might set a bad example for the rest of the continent. "Seizure begets seizure," Congressman Hiestand warned his colleagues in the House. Congressmen, too, were concerned about whether their constituents would vote for a representative who failed to protect American property abroad. Combined with these feelings was the belief that the administration would do nothing except try to overlook the situation. President Kennedy had stated that President Goulart could not and should not be held responsible for all the actions of one of his governors. He had indicated that given the importance of Brazil to the Alliance, he felt any rash action (i.e., the amendment) should be avoided. At the same time, I.T.T. informed congressmen that the State Department had done little prior to 1962 to help protect companies against expropriation. Under these circumstances, Adair reflected the views of most congressmen when he declared that the State Department had no adequate policy concerning expropriation and that if one was to be made, Congress would have to do it.

In supporting the conclusion that Congress will initiate policy where the approach of the executive branch is not satisfactory, this study suggests that legislative attempts between 1968 and the present to end the war in Vietnam may represent a normal instance of congressional initiative rather than a trend toward new and increased congressional



participation in foreign policy formulation. Congressmen, like the public they represent, hold strong views on Vietnam, and many came to feel that given the President's position Congress itself had to take action if the war was to be ended. The war may indeed cause permanent skepticism of presidential leadership and increased congressional participation in policy formulation. The proposed legislative end-the-war amendments, however, may have been a typical reaction by Congress to presidential inaction over a heated issue, rather than an indication of this trend.

#### Influence of I.T. & T.

The influence of I.T. & T. should be noted here. The initiation of the amendment was a response on the part of Congress to I.T. & T. stimulus, not a spontaneous attempt by congressmen to make foreign policy. It was not until I.T. & T., furious over the Brazilian expropriation, wrote to congressmen, denouncing the Brazilian state government for lack of cooperation and the State Department for inactivity in helping companies obtain compensation, and urging congressmen to take action by cutting off aid, that Congress introduced the amendment. A word of caution is in order however. Regardless of the fact that I.T. & T. was the stimulus, it would be an oversimplification of the situation to consider congressional initiation of the amendment solely an attempt to aid I.T. & T. in Brazil. Congressional reaction to the problem of expropriation was too deep and too widespread and the reasons for congressional anger too deeply-rooted in foreign aid attitudes to attribute congressional sympathy simply to the plight of I.T. & T. As has been noted, a major reason for congressional support was the resentment of congressmen to giving public funds to a country which scared away private investment when such investment was

necessary to the success of the Alliance. Of the seven congressmen who sponsored bills cutting off aid, at least one, Congressman Adair, had had some kind of amendment in mind for a considerable time. He, along with many of his colleagues, deeply favored protection of private investment from personal belief. Congressmen were not the tools of private interest.<sup>4</sup> If I.T. & T. provided the stimulus and successfully played on congressional emotions, Congress still had its own reasons for supporting the amendment.

#### Congressional Ability in Making Policy

Congressional ability in handling a foreign policy problem may be determined by a consideration of the understanding congressmen showed of the issue, the nature and degree of their discussion, both on the floor and in committee, and their reasons for voting for the amendment.

In passing the amendment, it was Congress' intent to discourage expropriations and to encourage the payment of adequate compensation when expropriations did occur. Congressmen, however, revealed little understanding of the politics and problems of Latin American countries, including the difficulties surrounding the expropriation issue. Many seemed to believe, for example, that uncompensated expropriations could be easily stopped by the nation at fault if it desired to do so. Given the rising feelings of nationalism then sweeping Latin America, this was a vast oversimplification of the situation. Congressional lack of understanding of the Southern continent was also apparent in the exaggerated fears congressmen showed of the spread of communism.

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<sup>4</sup>For similar conclusions based on another case study, see: Raymond A. Bauer, Ithiel de Solà Pool, and Lewis A. Dexter, American Business and Public Policy (New York: Atherton Press, 1963).

Whatever drawbacks it may have had, the executive position was based on a more sophisticated understanding of the complications of an expropriation both for the expropriating nation and for international relations. Secretary of State Rusk and AID administrator Moscoso spent much time trying to explain to congressmen the difficulties of the public utility situation in Brazil. What doubts congressmen had of their amendment seemed to stem less from their own knowledge of the situation than from the executive arguments in opposition.

Both the foreign affairs committees and individual congressmen could have greatly profited from analyses of expropriation difficulties drawn up by their own staff. The information they did receive came either from business groups, particularly I.T. & T., or from the State Department. I.T. & T. information was biased in its favor and contained no analysis of the problems of expropriation in general. State Department arguments did include analysis of the problems of expropriation and of the drawbacks of the congressional amendment, but were not sufficiently heeded by congressmen simply because they did come from the executive branch.

Given congressional lack of understanding, the author agrees with the critic who indicated that the amendment was not a far-sighted appraisal either of a changing situation or of the policy-making tools needed to deal with it.<sup>5</sup>

In spite of poor understanding, however, congressmen showed a willingness to work hard and congressional discussion of the amendment proved to be extensive. Both Hickenlooper and Adair sought the opinions of

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<sup>5</sup>Roderick T. Groves, "Expropriation in Latin America: Some Observations," Inter-American Economic Affairs, XXIII (Winter, 1969), 55.

companies, other congressmen and State Department officials, including Secretary of State Rusk, on the merits and drawbacks of the amendment. In committee, congressmen questioned the workability and effectiveness of its provisions. As Senator Sparkman noted, the Foreign Relations Committee worked harder on the provisions of the expropriation amendment than on anything else, and almost every member, Republican and Democratic, had a hand in the final drafting of the amendment. In the House Committee, Congressmen Adair, McDowell and Gallagher worked for several days trying to find appropriate language. The result of such work was that while discussion was frequently shallow, emotional or even nonexistent (as was Senate debate on the waiver provision), it was at times penetrating. The lively House floor debate on the waiver provision brought out well most, if not all, of the pros and cons of the provision.

Differences between the House and Senate should be noted. The credit usually given to the Senate as the leading force cannot be given here. The House, on the floor and in committee, showed as great a measure of participation as did the Senate. Discussion of the key provision, the waiver provision, occurred only in the House. While the Senate did not play second fiddle, neither did it take the lead in the amendment's passage. Adair worked as hard and effectively as Hickenlooper.

#### Sources of Executive-Legislative Friction

Congressional initiation of a policy unwanted by the President did nothing to better working relations between the two branches of government. Three factors in particular caused tension during the amendment's passage. Different views toward foreign aid was the primary source of friction. Congressmen felt that no country automatically deserved U. S. aid, and they

could see no purpose in finding a program to spur economic development when the program recipients scared away needed private capital by uncompensated confiscations. Kennedy, on the other hand, indicated through his Alliance for Progress speeches that he considered it almost the duty of the U. S. to help its southern neighbors. He could see no purpose in causing ill-feeling and jeopardizing the broad, long-range goals of the Alliance because of the problems of a single U. S. investor. His task force had reported in 1961 that the hemisphere was large enough to support different social systems and that the U. S. should make it clear that private enterprise was not the sole objective of American policy. Congress, meanwhile, understood the spread of private enterprise to be a major objective of U. S. policy. Congress felt that it was a major blow to private enterprise and a step on the road to communism for Brazil to want to nationalize its public utilities. Kennedy did not. Moreover, Kennedy possessed a greater understanding than Congress of the internal difficulties surrounding expropriation in Latin American countries, and he recognized the little positive effect that cutting off aid was likely to have in helping the investor regain his investment. Neither side understood the reasoning of the other. Both felt that through unsound logic the other was failing to consider the major objectives of the Alliance.

Different concepts of foreign aid, however, was only one cause of friction. Tension also resulted from Kennedy's belief that Congress was interfering with his right to flexibly administer foreign affairs and Congress' belief that Kennedy respected neither its feelings nor its legislation. Kennedy felt that he should be allowed to work out expropriation difficulties through informal diplomatic channels. He resented what he considered Congress' attempts to tie his hands. At the same time,

Congress tended to feel that Kennedy would, if he could, avoid any acknowledgment of congressional pleas for action. This was partially the reason for the congressional attempt to "tie" Kennedy's hands. Congress also had the suspicion that the executive would try to evade applying the congressional legislation. Hickenlooper warned against the "weasel words" which would allow the administration to evade congressional intent and which would make the amendment virtually worthless.

#### Executive Failure to Halt the Amendment

Such a blanket of mutual resentment and suspicion contributed to Kennedy's failure to halt the amendment. So, however, did other factors. As has been noted, congressional feelings were both highly explosive and extremely widespread. While company pleas, particularly those of I.T. & T., probably did not alter congressional opinion, they did reinforce it, as evidenced by the degree to which congressmen used I.T.T. information to support their beliefs and arguments in floor speeches. In an election year, congressmen wondered whether their constituents would vote for a representative who did not protect American investment. The companies provided the only evidence of constituency attitude on the subject of expropriation. Since those companies not in favor of the amendment raised virtually no opposition, congressmen heard only pro-amendment voices. Moreover, both Hickenlooper and Adair wielded considerable influence with their colleagues. Hickenlooper was the senior Republican member of the Foreign Relations Committee and was personally popular with both Democrats and Republicans. Adair was on the House Foreign Affairs Committee and could therefore also keep a careful eye on the amendment through its entire passage. Kennedy, as pointed out, had other problems with Congress

than the Hickenlooper-Adair Amendment. He desperately wanted to halt the proposed amendment shutting off aid to Communist nations, particularly to Poland and Yugoslavia, and he preferred to exert more political pressure in that direction.

Although Kennedy failed to halt the amendment, in large part for these reasons, State Department arguments and pressures did succeed in moderating its provisions. During committee sessions, congressmen affected by administration views opposed Adair's and Hickenlooper's proposals and offered less stringent ones. The result was two amendments considerably more moderate than either Adair and Hickenlooper or I.T. & T. wished. Later in the House, supporters of the administration arguments, while not managing to kill the waiver provision, made the vote close through their discussion and opposition.

#### The Current Debate on Congress and Foreign Policy-Making

The war in Vietnam has been the catalyst for a major reassessment by scholars, congressmen and public in general of the role of Congress in foreign policy-making. The view of those who in the 50's and early 60's advocated strong presidential leadership in foreign affairs has been shaken. Presidential control of policy-making has led neither to sound policy nor to representative government. The result has been a growing cry for increased participation by Congress in the formulation of American foreign policy.

What contribution increased congressional participation in policy formulation can actually make to sound, democratic policies remains to be seen. Useful indications of what may be expected, however, are provided by current studies of such participation.

This particular study sought to explore both congressional strengths and weaknesses in making foreign policy. It concluded that congressmen lacked the knowledge of Latin American affairs necessary for a penetrating appraisal of the problem. What doubts they had of their amendment came less from their own knowledge of the situation than from executive arguments in opposition. The study concluded also that congressmen worked hard, with the result that, while much discussion was emotional, debate both in committee and on the floor was at times extremely illuminating of the pros and cons of a position. These have been fully discussed in this chapter.

The significance of these conclusions for an understanding of the potential contribution of Congress to sound policy and democratic government lies in a consideration of the lessons learned in Vietnam. The war has shown that the major political arguments for executive domination of foreign policy can be turned against themselves. Vietnam has taught first and foremost that expertise--a once much admired executive attribute--does not necessarily lead to sound policy, that the decision-making apparatus can achieve a blind momentum of its own, and that sound policy therefore also depends on a full presentation of the risks and rewards of the alternative strategies in international affairs. Vietnam has taught too that secrecy--another once admired executive quality--does not necessarily improve policy but can create a useless Congress and a greatly embittered country. Discussion, rather than secrecy of major policy decisions, has proven crucial to the maintenance of representative government.

In spite of limitations, Congress can provide the public discussion and debate in policy-making necessary for both sound policy and the



maintenance of democratic government. Problems such as expertise can and should be alleviated. In regard to expertise many suggestions--larger staffs, use of computers and others--have already been made. This study pointed out that congressional analysis of the problem of expropriation could have been improved through the use of staff assistance. If this aid to Congress will require much time and effort, certainly the Vietnam War has proved beyond all doubt that for the maintenance of American democracy, Congress is worth all the assistance we may choose to give it.

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