COPY

10

May 27, 1944

Mr. Luxford

Mr. Brenner

When we worked on the first drafts of agreements embodying the plans for an International Monetary Fund and a Bank for Reconstruction and Development, we attempted to phrase them in a manner which would permit the delegates to the conference to sign them without in any way committing their governments to take the steps necessary to effectuate the plans. In attempting to achieve this result, we concentrated on avoiding two pitfalls - one, the possibility of writing what would be in effect a treaty subject to ratification by the Senate and, two, highlighting the fact that the agreements did not bind the governments represented and thus reducing their effectiveness.

The first draft of the Fund, as slightly amended to conform with the language used in the first draft of the Bank, begins as follows:

> "The undersigned, delegates of the Governments of the countries above enumerated, meeting in the City of Washington, D. C., have by common accord concluded the following agreement for the establishment of an International Monetary Fund in which their respective governments may accept membership."

The final provisions of both drafts follow the same general approach and substitute for the usual provisions concerning ratification, a somewhat similar device through which governments represented at the conference can accept membership in the organizations.

I do not believe that such a document could be considered a treaty. It does not use the technical terms normally found in treaties nor does it provide for ratification by the legislative bodies of the respective governments. If it is not to be considered an entirely new type of animal, it would seem to be most closely related to the type of Executive Agreement used in the case of UNRRA. In that situation, the President signed what purported to be a binding international agreement. It was recognized, however, from the very beginning, that the agreement could not be made effective without Congressional action by way of appropriation. In the drafts which we have prepared the only difference is that the documents themselves do not purport to be binding agreements between the governments but I think a strong argument can be made that although there is a distinction between the two types, it is a distinction without a difference.

The criticism leveled at UNRRA by various elements in Congress will probably be avoided in this instance, partly because the agreements do not purport to be binding and partly because Congress will be represented at the conference which agrees upon the terms. Of the two factors, the latter is by far the more important one.

The second pitfall which we tried to avoid - that of highlighting the fact that the agreements are not binding - is purely a matter of tone and we may have overstressed it. Our feeling was that this objective could be attained just as completely through the device of permitting signatory nations to accept membership as would be possible by any less subtle provision.

After the agreements have been signed, there will be three legislative problems:

(1) Approval of the agreements;

(2) Enactment of affirmative legislation authorizing participation and the carrying out of commitments; and

(3) An appropriation of dollars and gold.

We visualized, with respect to each agreement, the introduction of a bill containing the full text of the agreement, the necessary affirmative provisions of law and an authorization for an appropriation. After enactment of the initial legislation, an appropriation bill would be introduced. In this way, we would get Congressional approval of the agreements and the necessary authorizations at the same time but could still avoid clearance through the committees on appropriations.

RB:tmh 5-27-44