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Memorandum From Viron P. Vaky of the National Security Council Staff to the President's Assistant for National Security Affairs (Kissinger)

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Nota de Archivo: *Washington. Source: National Archives, Nixon Presidential Materials, NSC Files, Box 773, Country Files, Latin America, Chile, Vol. I. Confidential. On May 10, Rogers sent a memorandum to Nixon discussing developments in Chilean copper, recommending that Nixon meet with Meyer and Korry to receive Frei's letter and that the initial U.S. Government reaction be to let the copper companies decide whether to seek an accommodation with the Chilean Government. On May 16, Kissinger submitted a memorandum to Nixon echoing Rogers's recommendations. Nixon declined to meet with Meyer and Korry, authorized Kissinger to see them on his behalf, and approved Rogers's policy recommendation. (Ibid.)*

Your Meeting with Ambassador Korry and Assistant Secretary Meyer on the Chilean Copper Situation—May 20, 5:00 p.m.

You have agreed to see Ambassador Korry and Assistant Secretary Meyer on behalf of the President so they can brief you on the Chile copper situation. A brief biographic sketch on Ambassador Korry is attached (Tab A).

Briefly the situation is as follows:

—On May 9 the GOC informed the American copper companies that it wished to renegotiate the terms established in 1967 under which the firms now operate. Specifically, it seeks:

(1) to increase the tax rate on profits in excess of a "normal" level of 50% over production costs, and

(2) to buy part of the equity of Anaconda's two operating companies, as it did in 1967 with Kennecott. (Anaconda is now 100% US-owned copper producer in Chile; Kennecott has a 49% ownership).

—Frei argued that there is urgency in reaching such an agreement because (1) it is the only way to head off rising political pressure for outright nationalization and (2) it is necessary to the success of the stiff anti-inflation program he must present to the Congress May 21.

—The political pressures for nationalization are rising fast and this may be an issue in the 1970 presidential elections; Frei probably is trying to keep the initiative, head off a politically difficult problem of a nationalization bill in Congress, and defend his 1964 decision to Chileanize the industry rather than nationalize. The agitation to nationalize and the desire to revise the agreements are both fed by unusually high prices which have given the companies windfall profits in the last few years.

—Frei has indicated that if a satisfactory negotiation of the proposals is not achieved, he will seek legislation to the same effect; and in those circumstances he may not politically be able to resist or avoid a move in the Congress to expropriate.

The Companies have so far reacted calmly. Anaconda indicates it will negotiate; Kennecott indicates it will talk but that it can agree to no tax rise and will stand on the contractual nature of the investment decree authorizing the expansion plans. So far, neither have asked the US Government to intervene. If, however, agreement with the GOC cannot be reached, or the companies decide to resist the GOC action, they may seek to get us to use pressure and leverage on their behalf. We will then be faced with the question of whether we should try to prevent or react against the GOC's actions.

There appears to be no causal relationship with the Peruvian IPC problem. Greater Chilean control of the copper industry has been a major political issue for years, and what happens will almost surely be the result of internal Chilean political and economic imperatives.

There is no immediate Hickenlooper problem, and possibly none likely over the longer run. Expropriation is not impossible, but uncompensated expropriation is unlikely in Chile. Kennecott's investment in any case is not covered by Hickenlooper since it has a minority interest.

Some immediate problems are the following:

—Is the tax proposal confiscatory? Not enough details have been made known to the companies for them to judge the impact fully. Our calculations indicate the proposals are not confiscatory, but that they would result in a sizeable decrease in net income. Thus, future investment in expansion may be jeopardized.

—Would legislation changing the tax base which in turn changes the agreement under which the companies undertook expansion mean a violation of a contractual agreement? The legal status of the present operating conditions is unclear in this sense. Sanctity of contract may be involved, and if so, local judicial remedy—which in Chile is a respected system—is available.

A more fundamental issue, however, is what the status of foreign investments should be and how much a foreign government may intervene to promote or protect the interests of its investors. This touches on Latin American sensitivities to the "Big stick", to growing fear of foreign control of economic sectors through "conglomerates" (the Servan-Schreiber thesis), and to Latin American concepts of international law and the limitations on diplomatic protection of foreign investors (the Calvo doctrine).

Coming on the heels of IPC, the Chilean action may well discourage US investors at a time when development requires greater capital flow; it may encourage other governments to squeeze foreign investment for advantage. On the other hand, it is not clear that reduced aid or diplomatic pressure are effective deterrents. Moreover, diplomatic intervention and pressure by us could actually inhibit the companies from an otherwise acceptable accommodation to local political conditions, i.e., they might feel they could use the USG and do not have to compromise.

A basic issue we must consider, therefore, is to what extent the US should officially involve itself in this situation, and, if it should, when and for what purpose.

It is very unlikely that Frei can be dissuaded from some move to increase the tax take and buy some equity in Anaconda. We almost certainly could not prevent him from doing so by economic pressure. To try to do so would provoke a nationalistic reaction that could well sweep the radical left into power in the 1970 elections and kill moderate Conservative Alessandri's chances (now the front-runner). It would also surely stimulate support for nationalization and almost make it inevitable.

The US thus has three options:

—Actively pressure Frei to drop all plans and be prepared to use our aid leverage to do so; this seems counter-productive as noted above.

—Stay aloof and let the companies try to work it out. This is our present policy. It is reasonable, but runs the risk that negotiations will fail, that the companies may not seriously seek to compromise, figuring we will in the crunch have to bail them out if they force a confrontation. In any case, developments are difficult to control and there is some possibility that we will still be faced with difficult “protection” problems later.

—Actively use our influence with both sides to persuade (1) the companies to find an accommodation, and (2) the GOC to be reasonable in its demands. This may not work either, and may appear to domestic US interests to sacrifice private investment. But it makes an effort, and may give us the best chance of coming out of the present situation with the fewest losses.

You may wish to discuss these general policy lines with Korry and Meyer, and ask for their thoughts.