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Telegram From the Department of State to the Embassy in Chile

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Nota de Archivo: *Washington. Source: National Archives, RG 59, Central Files 1970–73, INCO 15–2 CHILE. Secret; Immediate; Exdis. Drafted by Fisher and Feldman; approved by Crimmins; and cleared in draft by Irwin, Selden, Knowles, Nachmanoff, Broe, and Brims. The draft was first sent for approval from Meyer to Irwin on January 21. (Ibid., INCO COPPER CHILE)*

16544. 1. Unless you see serious problems in light of most recently reported developments in which event you should inform us by return cable, you should promptly seek appointment with FonMin and tell him that you are instructed to give him following message. You should convey message to him orally.

2. Begin quote. As you know, President Nixon has indicated that U.S. relations with Chile will depend on the actions which the Chilean Government takes towards the United States and U.S. interests. We hope these will be normal relations, but we are concerned that the proposed constitutional amendments submitted to the legislature on December 22, 1970 could raise a number of serious questions. Chilean officials have told us that we should be careful to communicate with one another to avoid misunderstandings of one another's position. Therefore, at this time it seems appropriate for the United States Government to reiterate its position on the question of expropriation.

The United States, of course, recognizes the right of every sovereign state to expropriate private property within its territory for a public purpose, assuming, of course, that the taking of alien property is not discriminatory or otherwise violative of international law, and provided that reasonable provision is made for the payment of just compensation. Under established principles of international law, just compensation means compensation that is paid promptly, in an amount that is adequate, and in a form that is effectively available to the investor. We are naturally concerned at the proposed amendments, which do not hold the promise of just compensation and which, moreover, would abrogate solemn agreements of the GOC with U.S. investors, some of which were concluded barely a year ago. We had hoped that the GOC would negotiate equitable settlements with the companies, and we still hope it will do so.

It is the policy of the United States Government in these situations to proceed in a constructive spirit with full respect for the sovereign authority of the host government. The United States Government does, however, have certain responsibilities under its domestic law, of which I am sure you are aware, as well as under international law, to safeguard the interests of U.S. investors. (FYI for Amb. Korry: If FonMin shows interest in hearing details of domestic law, referred to here, you should supply them to him. End FYI) Further, in the case of a number of investments in Chile, the United States Government has a substantial financial interest of its own under the investment guaranty contracts it has concluded with the investors with the full knowledge and approval of the GOC. The Government of Chile should understand that we take these concerns seriously. We see no need for these problems to become questions of an inter-governmental character, and we would hope that they would not develop in a way that would give rise to serious prob-lems under U.S. as well as international law, adversely affecting the availability of resources for development. It is the policy of the United States to

encourage its investors to settle disputes with foreign governments by direct negotiation. It is my understanding that the companies are prepared to negotiate. If the GOC wishes to do so, it will be able, I believe, to negotiate equitable, voluntary settlements with the companies and avoid controversy between our two governments. End quote.