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Telegram From the Embassy in Chile to the Department of State

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5184. Pass OPIC.

1. Departure call on Allende at noon today became one-hour business session that he concluded by saying it was “surely the most unusual farewell protocol visit ever on a Chilean President” and in which he made the following substantive declarations:

A. He was fulfilling his promise to me on compensation to Cerro. The company would receive the amount agreed upon although the Comptroller would, of course, fix the interest and term. He had spoken to the Comptroller again and was confident that this matter would be settled more or less as originally negotiated. Had Cerro accepted his suggested change in May, it would have been settled then (sic).

B. The GOC was confident that its interpretation of the Constitution prohibiting appeals against the President’s excess profits deductions would be upheld by the special tribunal but he expected the companies to challenge to the maximum.

C. If he were Anaconda, he would seek payment in courts outside rpt outside Chile for the Chilean obligations issued in 1969 as compensation for the 51 per cent sold of Chuqui and Salvador. He was no lawyer but he thought the company would probably win and that “Chile would be compelled to pay.” (Outstanding principle is 160 million over some ten remaining years at six percent.)

D. Exotica would also receive some compensation but the technical problems were so difficult and were having such a ruinous impact on Chuqui’s quality and sales that the processing of Exotica ore might have to be stopped for some time and he might well have to invoke his Presidential rights under the Constitutional reform to nullify some loans for alleged misuse.

E. He agreed that it would be useful for ITT to resume the telephone negotiations promptly with the GOC and he trusted I would so inform ITT.

2. Allende said he wished this final conversation to be as straight-forward as all our previous ones. Therefore, he was volunteering the facts about Cerro. He said he had just left a meeting about Exotica and if I wished to hear the same briefing that he had just been given, he would bring in Wilhelm and Arrate, GOC copper executives. I accepted and Wilhelm provided details confirming what we already knew about the technical problems that were sharply curbing production and affecting the quality of the more valuable neighboring output of Chuqui which tolls Exotica ore. I said that it had been our hope that an amicable settlement with the US companies could have maintained technological and commercial contacts that would have permitted eventual resolution of such thorny problems. Wilhelm disclosed he was

about to sign a contract with an Arizona firm for solution of Exotica's problem. He agreed that only North America had the experience with oxide ores of the kind posed by Exotica.

3. When I reviewed my understanding of the dynamics of the relations between Chile and the US, including my feeling that the UP government had rushed into a copper reform law of historical moment without full knowledge and my disappointment that political will had not overcome either the legal or technical arguments as put forward by Wilhelm, Allende, expressing agreement, reviewed the history of the formation of the copper corporation (CODELCO) for which he took much credit and added that during his three decades in Congress no one had supplied or understood the relevant facts. Indeed, he had not understood the intricacies until very recently, particularly as they affected the USG. By then, a bill had been passed unanimously with clauses that the Christian Democrats had in particular wished. He asserted the PDC had pushed the anti-Kennecott revaluation of assets amendment that had proved particularly rigid for those who wished to be more political and less legal in their outlook. He argued again that this limitation had affected maneuverability with Anaconda.

4. Arrate interrupted to say that the President had given the fullest consideration to the alternatives that I had suggested in August but as much as they appreciated the intent and ingenuity, they simply could not be fitted into the law as passed unanimously by the Congress. Allende took up this point, adding that Latinos were extremely legalistic and that when he had cast about for a method to avoid worsening the problems, he had welcomed my suggestion as a possible starting point but the legalists had shut off any detour in that direction. Allende said I was totally correct in my analysis of past dynamics but he hoped the US could be equally realistic in its analysis of the future.

5. I countered with the political realities of the US. He had to provide some basis that would enable the USG to assume Allende was genuinely seeking a practical accommodation and not taking refuge in legalisms. I repeated my conversation with Tomic earlier this week (Santiago 5158) as an illustration of our difficulties in understanding Chilean self-righteousness in changing its own rules three times in five years. Social justice versus international norms of constructive dialogue might be a case of right versus right but we would be soft-headed to believe it could be a matter of right versus wrong. The US taxpayer had responded via OPIC and private investment to specific Chilean Govt requests made by Tomic.

6. Allende at his most disarming political best listened not only with attentive respect but articulated an assent that surprised Wilhelm. He asked where might we go.

7. I said one critical question was the outstanding Chilean paper for the 51 per cent purchased. Arrate made the point that there was a distinction between the Kennecott and the Anaconda paper. I asked if there were some way these international obligations could be honored. Also, I wished to know if there were any legal way Allende could back away from the repeated judgment that no appeal on his excess profits determination could be allowed under the constitutional reform. Arrate and Allende first argued that the amounts of the excess profits had been misinterpreted since they were not judgments against the US companies alone but against the joint ventures with CODELCO's interests being as much affected as the US companies. Thus, said Arrate, the question of any compensation depended on the Comptroller's final assessment of the book value and the proportional share that might be left for the US company. The excess profits deductions would be applied against this figure. Both acknowledged that for the three main mines (Chuqui, Teniente, Salvador) no one could reasonably expect compensation for the 49 percent holdings of the companies. As for Teniente, Arrate admitted that the 51 per cent would also be wiped out by their calculations and Allende again argued that he had no alternative under the Constitutional reform. He said Kennecott would not have received compensation even if 25 per cent per annum profit were permitted. (Comment: These assertions are simply not true since the reform bill as OPIC and our Chilean lawyers read it, did permit Allende to apply an analysis that could have permitted some compensation. I doubt if he fully understood all the alternatives and I doubt if any of his political or copper experts would have allowed him much

latitude if he had.)

8. I referred to Allende's insinuations that Anaconda was in a better position. After noting again the Controller's role, Allende said he was not a lawyer but that it seemed to him that if Anaconda tested the validity of outstanding notes for the 51 per cent, it would probably win. I asked if he were thinking of a Chilean court or a foreign one. He replied that it would probably be outside Chile and that Chile would probably be compelled to pay. Such litigations could add to tensions unless good faith were assured, I noted.

9. I said that I was certain that FonMin Almeyda would explain upon his return tonight why it was difficult for the US to accept the Chilean actions, particularly since copper coincided with telephones. Did Allende see any way that ITT's claims could be satisfied? Was he disposed to negotiate realistically with the company and to do so now? Allende replied that as with copper, the GOC only recently had fully understood the problem; it had not had the OPIC contracts. Only when I had written to Garreton had ITT's assertions been officially confirmed. He was prepared to resume negotiations immediately. I asked if he were prepared to deal in a manner that could satisfy the company since unlike copper there was neither a special law nor special legalistic inhibitions. It was a matter of will applied to fair bargaining. Allende said he could understand the advantages in a prompt effort to come to terms on CTC.

10. I concluded that in effect he was arguing for more time to permit the GOC to demonstrate its bona fides and to make its case internationally. I noted that there were already a considerable number of influential Americans who believed they had been misled and who would find it difficult to play the game of Latin legalisms. My own view was that the true power of the US resided in its position as the most vibrant market place for ideas, for products and for technology, each of which was the result of our open-minded pragmatism. I had been proud to represent those attributes in Chile the past four years and my wife, as he had said at the opening of our conversation, had demonstrated in evident and effective ways these same characteristics by her warm and sincere affection for Chile. We wanted such contacts to continue and we hoped the actions of his government would not diminish in any way the opportunities to do so. He bade me a farewell that was, given the two witnesses, astonishingly friendly and warm.