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Memorandum From the Executive Secretary of the Department of State (Eliot) to the President's Assistant for National Security Affairs (Kissinger)

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Executive Privilege—SFRC Request for Internal Communications on Chile

The Church Subcommittee on Multinational Corporations of the Senate Committee on Foreign Relations is investigating the activities of ITT and its contacts with the USG in relation to the 1970 Presidential election in Chile. One focus of these hearings is the allegation in the ITT memoranda published in the Jack Anderson column in March 1972 that CIA representatives requested ITT to take actions injurious to the Chilean economy as part of a U.S. program to prevent the election of President Allende in 1970. These ITT memoranda include other allegations of U.S. intervention including an alleged instruction to former Ambassador Korry in the name of President Nixon to do "all possible—short of a Dominican Republic-type action—to keep Allende from taking power."

Ambassador Korry is scheduled to appear before the Subcommittee on March 27 and former Assistant Secretary Meyer will testify on March 29. The Subcommittee has requested testimony from Secretary Rogers, and also from Ambassador Vaky concerning his duties while assigned to the NSC Staff. At this time, it does not appear that Secretary Rogers will be available to testify, but we have offered to send Acting Assistant Secretary Crimmins to speak for the Department. We will try to persuade the Committee to accept information concerning Ambassador Vaky's contacts with ITT without requiring him to appear.

CIA has worked out damage-limiting arrangements with the Subcommittee that reduce its testimony to classified written responses to specific written questions. Public inquiry into State Department contacts with ITT are not expected to create many problems as those contacts were innocuous.

The Subcommittee appears intent on several lines of inquiry which raise serious problems, and the hearings will inevitably produce testimony embarrassing to the administration in Latin America. The most sensitive questions touch upon the privacy of communication between the President (and the Department) and his Ambassador, and the internal deliberations of the USG, including meetings of the 40 Committee. Senator Church has formally requested access to the file of communications between the Department and Embassy Santiago for the period August 1, 1970–January 31, 1971, and it appears highly likely the Subcommittee will ask Ambassador Korry and the Department specific questions based on the ITT memoranda in its possession, e.g.: Did Ambassador Korry receive instructions from the President or the Department to take actions to keep Allende from taking power? Did Ambassador Korry recommend a program of economic pressure on Chile in an effort to block Allende's election? The Subcommittee may also pursue questions as to the consistency of the alleged CIA activity reported in the ITT memoranda with stated U.S. policy; whether the State Department was informed

of the Agency's discussions with ITT; and by what authority, and at whose specific direction, Agency representatives undertook those talks. In keeping with Presidential directives, the Department will attempt to comply to the fullest extent possible with Congressional requests for information. We will make every effort to satisfy the needs of the Subcommittee without asking the President to invoke Executive privilege. However, consistent with the policy established by the President, we will not disclose information which would be incompatible with the public interest or would impair the operation of the Executive Branch, but in those cases intend to request the invocation of Executive privilege.

In this regard, we believe that disclosure of the instructions sent to Ambassador Korry and of his recommendations to the President and the Department during the period in question would seriously prejudice the foreign relations interests of the United States. Moreover, the disclosure of these communications would compromise the privacy of deliberation within the Executive Branch which is essential to the effective conduct of Government. In addition, disclosure of the cable traffic requested by the Subcommittee would embarrass Chilean friends of the United States, and U.S. citizens as well, who provided information and advice to the Government in good faith reliance on the confidentiality of their reports. For all these reasons we believe that Executive privilege should be invoked if necessary to avoid such disclosures. Many of the same considerations apply with even greater force to the records of discussions within the National Security Council system which contributed to the formulation of Presidential policy.

These issues are likely to come to a head first when Ambassador Korry testifies on March 27. We have advised him that the President must make the final decision on the question of Executive privilege but that in our opinion the privilege applies with equal force to testimony of former Ambassadors as to present officers of the Government. Ambassador Korry will endeavor to respond to the Committee's questions as fully as possible without provoking a question of Executive privilege but within the limitations described above. In the event the Committee insists on an answer to a direct question on his instructions or recommendations he will ask to be excused from responding pending determination by the President whether he wishes to invoke Executive privilege in that regard. In view of the special circumstances of this case we believe it appropriate to request guidance from the President on these matters at this time.

The Department of State has consulted with the Office of Legal Counsel, Department of Justice; the Office of Legal Counsel has concluded that as a general matter instructions to and recommendations from an Ambassador and other internal Executive Branch communications fall within the scope of Executive privilege and that its exercise in that respect would be consistent with the President's statement of March 12, 1973, and his memorandum to Cabinet officers of March 24, 1969. Therefore, we are requesting authority to invoke Executive privilege, if necessary, to prevent disclosure of these matters.