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Telegram From the Embassy in Peru to the Department of State

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4355. Subj: Chile: Copper Disputes.

Summary: First secret meeting held with Almeyda, Cardemartori and Urrutia at Chilean Embassy residence Sunday morning June 24 consisted principally of detailed exposition by Kubisch and Hennessy of USG reponse to Chilean proposal of March and presentation of U.S. counterproposal. Almeyda acknowledged USG effort to take into account major Chilean concerns in advancing new formula and said Chilean side would ask questions and seek clarification in subsequent meeting after having had chance study U.S. proposal. Chilean acceptance or suggestions for “additions” to proposal would be made at highest GOC level and no definitive response would be possible for the moment. End summary.

1. Asst. Secretary Kubisch and Asst. Secretary Hennessy, accompanied by Raymond Gonzalez (Embassy) met at Chilean residence, Lima, morning June 24 with Clodomiro Almeyda, PC Deputy Cardemartori, and CODELCO New York Rep Javier Urrutia. After brief welcoming and introductory remarks, Almeyda asked Kubisch for USG response to Chilean procedural proposal of using the 1914 Treaty made during bilateral talks this subject last March.

2. Kubisch stressed that his presence in Lima and at meeting reflected strong USG desire reach settlement this problem. He referred to Secretary’s meeting in Buenos Aires with President Allende and joint conclusion from that meeting that long tradition of friendship between two countries should not be further damaged by copper problems. Secretary had made clear USG prepared meet with GOC, on basis full equality and mutual respect, in joint effort to attain common objectives. USG prepared to accept whatever internal political, economic and social policies Chilean people want for themselves and there should be no misunderstanding of USG attitude in this regard.

3. Hennessy then summarized history of previous negotiations which he separated into two stages. First or multilateral phase stemmed from Paris Club meeting in February shortly after Chilean action against companies. Four intensive meetings in which Ambassador Letelier took part led to April 19, 1972 agreement. Hennessy stated USG decision to sign agreement represented major demonstration our good will and concrete proof our willingness accept multilateral framework for solution financial and copper questions. He highlighted importance of Art 4 which provided mechanism for carrying out direct bilateral settlement with companies or USG, although he acknowledged there were some differences in interpretation by Chileans on this article. Paris Club agreement was at the time seen by Chileans and urged on US as important because (A) it would provide Chile with time it needed to prepare way for bilateral solution (B) USG signature was positive act which would improve domestic political climate. Hennessy then recounted effects of copper tribunal ruling in September, which after assurances at time of Paris Club signing was a great disappointment as it seemed to close

door.

4. Hennessy then described second or bilateral phase of previous negotiations recounting December 1972 meeting with GOC, alluded briefly to 1914 Treaty as one of several procedures which perhaps might be followed, while USG indicated we had perfectly suitable mechanism in Paris Club agreement. At second formal meeting in March while Chilean side showed disappointment USG not prepared give definitive reply to 1914 Treaty, this was unfounded since GOC had not made any formal presentation of this as a firm offer, but merely a passing reference. Subsequent conversations between Crimmins, Hennessy, Almeyda–Letelier had suggested advantage of moving away from large, formal bilateral meeting to smaller more practical meeting such as today's in which we could test good will to reach solution.

5. Kubisch then outlined preferred U.S. solutions to copper problems with American companies: (A) GOC settle directly with companies; (B) if this not possible, GOC negotiate bilaterally matter of compensation; (C) if latter not possible, GOC enter into arbitration procedure with companies; e.g. such as provided for in IBRD. GOC has said none of these acceptable and stated it cannot compensate companies now. GOC has manifested more time necessary to work out solution and suggested some third party proceeding might be helpful, proposing 1914 Treaty.

6. Kubisch underscored great importance which USG attaches to GOC undertakings in Paris Club and declared US most reluctant to turn attention away from these commitments for uncertainties of third party procedure. He expressed belief Paris Club members would be surprised at GOC interpretation to effect its obligation to honor debts and make just compensation not applicable to copper problem, which was major issue at Paris. Nevertheless, because of importance we attach to resolution of problem we prepared explore some procedure other than Art 4 that meets our mutual concerns.

7. As we understand it, Kubisch continued, two principal Chilean concerns include (A) need for time to prepare ground for settlement and (B) objective finding by impartial third party. President Allende has also said GOC neither simply trying to delay settlement nor gain time but is prepared seek a true solution. USG willing attempt to use essential elements of Chilean proposal as basis for moving forward. However USG asking for one thing more: that procedure we agree upon resolves problem one way or other and within reasonable time. USG had carefully considered not only GOC proposal use 1914 Treaty but also provisions of 1929 Inter-American Arbitration Treaty and 1899 Hague Convention. Kubisch said USG has prepared proposal which carries out objectives these instruments and also meets major concerns of both sides.

8. Kubisch read proposed procedure for settlement of copper disputes as follows: Begin text: It is proposed that the United States and Chile submit the question of the compensation to which the U.S. copper companies may be entitled under international law to the decision of an impartial third party. Both governments would agree to accept and carry out the result of that proceeding. The two parties would establish the impartial tribunal by mutual agreement and stipulate appropriate terms of reference and rules of procedure. These rules should include a time limit for the completion of procedures and the rendering of the decision. The panel should have the authority to consider all of the issues necessary to determine whether the copper companies are entitled to payment of compensation and, if so, to establish the amount. It is further proposed that the two governments constitute a panel that would be mutually acceptable and draft the necessary terms of reference and rules of procedure. End text.

9. Kubisch then gave copy of text to Almeyda. He stated proposal represents a major concession and sustantial risk for U.S. It is concession because it sets aside for present time commitment Chile undertook at Paris and great risk because it makes settlement contingent on judgment of third party, as Chile had suggested. That decision and settlement could have great effect not only on copper companies but on the American companies and on more than $80 billion of foreign private investment throughout world. He repeated this represents substantial risk but USG makes proposal in good faith and after consideration of all possible solutions. Kubisch offered clarify proposal or answer any questions Chileans might have.

10. Almeyda expressed appreciation for efforts of U.S. reps in proposing procedural formula for solution of problem worrying both sides and one, as stated by Asst. Secretary Kubisch, which takes into account major Chilean concerns. Said they would consider U.S. proposal with greatest attention but naturally decision to accept, or possibly to suggest additions, would have to be taken at highest GOC level. Chilean side would not be in position to give definitive reply at this time. Nevertheless, Chilean side wished to take advantage of presence in Lima of U.S. reps to ask for clarification, explore sense of proposal and its compatibility with political and legal framework. He proposed reconvening meeting after Chilean side had few hours to study proposal. We meeting again at 6:30 p.m. Sunday evening.

11. In slightly polemical terms Almeyda referred to Hennessy's points on Paris Club agreement and reiterated Chilean contention GOC not obligated by Art 4 to negotiate directly a settlement of copper compensation dispute because that would have been legally impossible for negotiators to agree to since it would be contrary to Chilean constitution. Hennessy replied to these points and raised fact that irrespective of GOC interpretations, the other creditors had a clear concept of the meaning of Art 4 and the GOC compliance would be reviewed as first order of business. Mutual benefit of having reached a satisfactory agreement beforehand was clearly evident.

12. Comment: While opening session devoted mostly to presenting our proposal and no immediate reaction forthcoming, Chilean attitude appeared relatively open. Believe our detailed review of background and exposition of our preferred positions and willingness accept essentials of earlier Chilean proposal was useful setting of stage for subsequent sessions.