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Memorandum of Conversation

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Nota de Archivo: *Summary: Officers of the Departments of State and Treasury, and the Kennecott Copper Corporation discussed how to obtain compensation for expropriated investments. Government officials noted that the different U.S. agencies were coordinating efforts to press for indemnification and that communication between the companies and the U.S. Government was critical to succeeding in this endeavor. Source: National Archives, RG 59, Central Files 1970–73, INCO–COPPER CHILE. Confidential. Drafted by Karkashian. A copy was sent to Meyer, Feldman, Winder (E/IFD/ODF), Hunt (OPIC), Van Batenburg (Treasury), and Santiago.*

Copper Negotiations

Kennecott Copper Corporation: Frank Milliken, Chairman of the Board C.D. Michaelson, President, Metals Mining Div. Pierce McCreary, General Counsel

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Pierce McCreary, General Counsel

Department of State: Charles A. Meyer, Assistant Secretary, ARA John E. Karkashian, Deputy Director, ARA/BC Mark Feldman, L/ARA

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Treasury Department: Scott Van Batenburg

Scott Van Batenburg

Mr. Karkashian reviewed USG’s efforts at the Paris Club and since to use the leverage available to us for achieving some sort of progress toward an acceptable solution of the copper dispute in conjunction with our bilateral discussions with Chile on debt rescheduling. He described the specific steps in a scenario which calls first for government-to-company negotiations, subsequently would advance the idea of government-to-government negotiations, and finally could progress to some form of international arbitration. It was pointed out that we had no illusions about the GOC’s willingness to enter into direct talks with the companies but we believed it possible that Chile might entertain government-to-government discussions, or failing that the Chileans themselves might offer to enter into some form of international adjudication, probably via the 1914 arbitration treaty. Note was also made of the importance of establishing for the record, to be used at

the next Paris Club round, the USG's good faith performance on the Paris Club agreement as contrasted with the GOC's performance, The Kennecott representatives were also brought up to date on the bilateral debt rescheduling talks which were resumed on October 2.

Mr. Milliken said the company has no desire to enter into direct discussions with the GOC, believing rather that its interests are better served by various legal actions it has undertaken and is contemplating. He doubted that the GOC itself would be interested in talking to the company, but subsequently acknowledged that the company would not be averse to such discussions if the Chileans have some specific proposal to offer.

On government-to-government negotiations, Mr. Milliken made clear that while he had no objection to USG efforts to this end, the company would not stay any of its current or contemplated legal actions to obtain such discussions nor could it indicate beforehand to the USG what measures it might consider as constituting progress toward a possible settlement. He would not wish such discussions to prejudice the company's efforts. Any substantive issues which might be involved in such discussions would have to be submitted, Mr. Milliken asserted, to his Board of Directors for approval. Mr. Milliken acknowledged that the company had requested the Secretary of State by letter in the early stages of the copper expropriation to take the company's problems up with the GOC at the diplomatic level.

Mr. Feldman noted the tactical problem that we would face at Paris if the Chileans should agree to negotiate. Our leverage with the other creditors depends on the US being able to document that Chile is not meeting its commitments. It would weaken our position if Chile could claim the US has not complied with the Paris agreement.

Mr. Milliken emphasized that the company's views of its problems in Chile had a wider focus and went beyond the bounds of what might be recovered in payment for its debt and equity interests. He said there were other and more important factors involved of a business nature and the company would bear these in mind as contrasted with a narrower objective of securing some minimal payment from the GOC for its expropriated properties. He also made clear that the company's determination to pursue legal and other remedies contemplated the possibility that the GOC might stop payment on the Braden debt. Mr. Milliken noted that the Chileans only decided to make the payments on the debt after the company took legal action.

Mr. McCreary made clear that Kennecott no longer has any legal action pending in Chile. He stated the company formally withdrew from the Copper Tribunal's proceedings. He acknowledged that the GOC might continue to press its own claims against the company before the Tribunal, possibly in an effort to increase the amount of negative compensation or conceivably to build a record of its own adherence to "judicial" proceedings.

Messrs. Milliken and McCreary stated they had not thought too much about the possibilities of international arbitration or adjudication and could not offer a company position on the subject. Mr. Millikin expressed doubt the GOC would in any case be willing to submit to any form of arbitration. Mr. Feldman reviewed the provisions of the 1914 Treaty which in its initial stage constitutes a conciliation procedure, and suggested that the GOC might possibly choose to pursue this course as part of its own image-building on the international scene and specifically before the Paris Club creditors. However, to do so Chile would have to risk review of its actions by a body not subject to its control.

Mr. Meyer summed up the discussions and pointed out that the coordinated efforts of the Departments of State, Treasury and other interested agencies were designed to explore all possible avenues of obtaining relief for the US companies involved and that while the USG acknowledges the right of all nations to expropriate, we continue to insist that they pay adequate compensation. He also observed that the possibility of some form of arbitration in this dispute, which went well beyond the interests of any one company, could have major impact on Latin America's traditional adherence to the Calvo doctrine whereby they have refused to acknowledge the right of other States to represent the economic interests of their nationals abroad. Mr. Meyer emphasized the importance of keeping in close contact with the companies in order to insure

that in our efforts on their behalf we in no way prejudice other courses of action which the companies themselves are pursuing. Mr. Milliken acknowledged the usefulness of maintaining such contacts and promised to keep in touch.