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Paper Prepared by the Ad Hoc Interagency Working Group on Chile

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Nota de Archivo: *Summary: This paper reviewed some possible policy options for the United States regarding its reaction to Chile's expropriation policies. The alternatives ranged from a passive stance to different variations of a more active, interventionist stance. Source: National Archives, RG 59, Central Files 1970–73, INCO-COPPER CHILE. Secret; Nodis. Drafted by Fisher. Crimmins forwarded this paper to Selden, Leddy, McAlister, Shaefer, Nachmanoff, Broe, Amerson, and Eaton under cover of a February 13 memorandum. (Ibid.) The paper was prepared for the upcoming Senor Review Group meeting on February 17. The minutes of that meeting are printed in Foreign Relations, 1969–1976, vol. XXI, Chile, 1969–1973, Document 206.*

OPTIONS PAPER ON COPPER NEGOTIATIONS WITH CHILE

I. The Issue: What tactics should the USG adopt in trying to influence the terms which the GOC will apply in the expropriation of U.S. copper companies?

II. Background:

A. (Please refer to the paper entitled "Options for the United States in the Event of Expropriation of U.S. Business Interests by Chile" submitted for the SRG meeting of December 23, for previous discussion.)

B. Recent Developments:

The SRG agreed on December 23 that in the event of expropriation the United States would use the six-month waiting period provided by the Hickenlooper Amendment to explore the possibilities for working out settlements. The negotiations would be left primarily to the affected companies, though the U.S. Government might provide assistance if appropriate opportunities arise. The Chilean Government would be advised of our position on expropriation and compensation. We would continue to apply present economic restrictions, but would be prepared to relax or intensify them depending on Chilean responses and the outlook for obtaining favorable results. If satisfactory progress on expropriation settlements were not achieved at the end of the six-month period, the question of application of the Hickenlooper Amendment would be taken to the National Security Council for its consideration.

The Department of State prepared, cleared with SRG principals and transmitted to the GOC on February 1 via Ambassador Korry a démarche informing it of the position of the United States on expropriation and compensation.

Our February 1 démarche registered our concern over the proposed amendments to the Chilean constitution on expropriation of major copper enterprises in Chile. These amendments hold little or no promise for just compensation for the U.S. properties covered. Ambassador Korry has taken opportunities before and after the major presentation of our position to impress on both opposition and government leaders the desirability of flexibility over rigid statutory requirements in dealing with the U.S. interests affected. An accurate public criticism of the proposed constitutional

amendments by Senator Javits, also on February 1, received much attention in Chile. Pro-government media were quick to vilify it, but it may have caused some Chileans to have second thoughts on the copper amendment.

The proposed amendments are still under consideration in the Congress. On February 10 the Senate approved and sent to the Chamber a modified version of the original draft bill which leaves most of the provisions as harsh as in the original, preserves or adds confusing ambiguities, but in a few significant respects offers new possibilities of flexibility.

In recent conversations with influential cabinet ministers, Ambassador Korry has encountered a show of interest in dealing with us “pragmatically” on copper. The Foreign Minister offered his help to this end, stating that he opposed certain of his colleagues in the coalition who favored pushing forward with programs regardless of consequences. The Minister of Interior said that Allende wanted the Ambassador to understand the GOC’s disposition to seek to avoid dispute over copper and that he had been charged by Allende with sounding out the Ambassador. In this respect, therefore, conditions are as propitious as they are likely to get to seek to bring our influence to bear on the GOC’s handling of copper expropriations in advance of final decisions. Ambassador Korry recommended that we avoid a confrontation with Chile over copper if it is avoidable, that we make the effort to do so, and that we make it now.

In a case which can have an important bearing on the fate of the copper companies, representatives of Bethlehem Steel have been discussing with GOC officials since mid-January the terms of a take-over by the GOC of the Bethlehem iron mine properties in Chile. Bethlehem has requested and received counsel from OPIC and the Embassy. We are trying to avert the imposition by the GOC on Bethlehem of terms which could prejudice the coming dispositions on the copper companies. The copper companies are ready and willing to enter negotiations with the GOC, but have found no interest on the GOC side thus far.

III. Options:

A. Option A—Continue relatively passive stance. Limit actions intended to influence GOC copper policy to measures currently being followed, including: (1) counsel to U.S. investors seeking advice from OPIC and the Embassy; (2) continued encouragement of both the GOC and the copper companies to negotiate a settlement while avoiding any involvement in detail; (3) such further démarches to Chilean officials, possibly including President Allende, as necessary to insure that the GOC is fully aware of our position on expropriation and compensation, the seriousness of our concern over expropriation developments in Chile, and the likely consequences; (4) continued efforts to influence the Chilean political opposition to work for moderate copper expropriation policy; and (5) further efforts as feasible to obtain greater public awareness and acceptance, in the United States, Latin America and elsewhere, of our position on copper expropriation.

Advantages:

—It would be consistent with a correct but cool posture with the GOC, minimize the chances of our appearing to seek either to obtain favors from the GOC or to put pressure on it, and avoid engaging USG prestige in what may well be a lost cause in any circumstances.

—It would avoid any risk of the United States being drawn into a commitment, express or implied, to maintain “normal” relations with the Allende regime.

Disadvantages:

—It would limit U.S. opportunity to influence events in Chile, leaving the initiative to those elements in the UP favoring confrontation with the U.S., thus increasing the likelihood of (a) confiscation of U.S. copper companies without any meaningful compensation; (b) heavy USG liability under insurance contracts with consequent need to seek Congressional

appropriation and attendant damage to worldwide investment guarantee programs; and (c) a confrontation with Chile on the terms most favorable to it, i.e. over an investment issue in which it could expect support from most Latin American and many third world countries.

—The provisions for compensation unilaterally imposed by the GOC, which are likely to be highly prejudicial to U.S. investors, could influence terms of settlement in future expropriation cases arising in other countries to the serious detriment of U.S. investment in the LDCs.

B. Option B—Provide informal but active good offices, as in 1969, in support of direct negotiations between the GOC and the copper companies. The Ambassador would consult with the GOC, starting preferably with Allende, and with the companies to seek to define with both sides the possible parameters of a settlement. If the parameters existed, he would encourage the parties to move toward an equilibrium which would be acceptable. This encouragement, in the 1969 pattern, would include unofficial mediation as necessary.

Advantages:

—It would provide the United States full opportunity to bring influence to bear in favor of a settlement which would minimize injury to U.S. investors and the U.S. Treasury and avoid the political costs of a confrontation with the GOC on an investment issue.

—It would maintain tactical advantages for the United States of direct negotiation between the companies and the GOC, affording an important measure of flexibility for the United States vis-à-vis both the GOC and the companies.

—It could demonstrate U.S. good faith desire to avoid unnecessary confrontation with the GOC and strengthen the hand of those in the UP who may caution restraint in GOC actions threatening U.S. interests in the foreign affairs field.

—It would establish a record, against failure, of having tried actively to avoid a confrontation.

Disadvantages:

—By involving the United States in the substance of the talks, even indirectly, it would permit the GOC to attribute responsibility for the outcome to the USG. In the event of failure, it would expose us, along with the companies, to GOC propaganda charges of unreasonableness.

—If talks were successful, the GOC might expect the USG to permit normal financial cooperation through bilateral and multilateral instrumentalities.

—It would require the USG to analyze on short notice complex and contentious questions concerning the companies' investment, and to make difficult and far-reaching decisions on the adequacy of GOC compensation offers.

C. Option C.—If direct negotiations between the GOC and the copper companies do not develop, attempt to influence unilateral GOC determination of terms of copper expropriation through direct Embassy–GOC talks at the level necessary to influence GOC policy. This would be a government-to-government contact, probably at some point involving Allende, with the companies excluded. It would go beyond the presenting to the GOC of démarches on our general position on expropriation and enter into specific exploratory discussions of possible measures by Chile and their possible consequences.

Advantages:

—If the GOC refuses to negotiate directly with the companies, this course could enable the USG to achieve the advantages set forth in Option B above with the exception of the tactical advantage provided by direct GOC negotiation with the

companies.

—Once the expropriations take place, and the companies draw upon their insurance contracts with OPIC, the USG will be in direct contact with the GOC as claimant on its own account. USG leverage would be greater before expropriations take place.

Disadvantages:

—It would expose the USG directly to any demands the GOC may choose to make as the price of its cooperation.

—It would put the USG in a difficult position vis-à-vis the companies who would be able to avoid direct responsibility for the settlement. It would expose us to recrimination and complicate the adjudication of disputes under investment guarantee contracts.