Chile Project (#S199900030)
U.S. Department of State
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national of the American states it would have been impossible to appoint Sulzer, Benes, Herriot, Lachs, Bastid or Freeland under the Gondra Treaty.

Gondra also provided that election of the Joint Commissioner would be made by the first five commissioners, with the governments retaining a veto power over the appointment of the joint Commissioner. After 1933, appointment of the Joint Commissioner would have been brought about through the Governing Board of the Pan American Union. No involvement of the Pan American Union or the other Commissioners was involved in the appointment any of the Joint Commissioner.

IV. Past Views on the Application of the 1914 Bryan Treaty

At the time the U.S.- Chile Bryan Treaty was under negotiation, the U.S. side urged the Chilean side to accept it by pointing out that if it had been in effect at that time, the treaty could have used to resolve the Alsop claim, a commericial dispute then pending between the two countries. However, after conclusion of the Treaty it was not invoked to resolve any dispute until 1989.

In 1973, Chile proposed use of the 1914 Treaty to resolve a dispute relating to compensation for the nationalization of U.S. copper companies in Chile. However, in 1987 even before Chile suggested use of the Treaty, the U.S. embassy in Santiage a sent a cable to the Department requesting information on a 1914 "arbitration treaty" between the United States and Chile. We do not have a copy of the cable and do not know what prompted the

Embassy's inquiry in 1971. However, it appears from the Department's reply that the U.S. had considered (and rejected) use of the 1914 Treaty to resolve this dispute.

~~However~~, by January 1973, it was apparent that the Chilean Foreign Ministry was considering recourse to the 1914 Treaty itself, if the bilateral talks failed to produce results. In a February 9 interview with a Washington Post reporter, Allende stated that "there is agreement between Chile and the U.S. to turn to a tribunal and [in] case of difficulties between the two countries." MCM check quotes

In its press guidance commenting on the reports of Chile's suggested use of the 1914 Treaty, the State Department acknowleged that "both governments are aware that they are party to a number of bilateral and multilateral conventions which provide mechanisms for third party dispute settlement, one of which is the 1914 bilateral Treaty between Chile and the United States." The press guidance added that "Although this treaty has never been invoked, it remains in force."

In an interview in the February 17, 1973 issue of Punto Final, a member of the Chilean delegation to the Washington Bilaterals stated that the 1914 Treaty "had only one characteristic that makes it interesting for consideration: it is the only bilateral instrument in force between the Chile and the U.S."

In a March 2 news conference President Allende again signaled that Chile was contemplating the invocation of the 1914 Treaty "if the time comes." On April 1, in a report of an interview appearing in El Merucrio and in El Signo, Allende

reaffirmed his interest in using the 1914 Treaty to resolve compensation issues. Allende was quoted as stating that the "special commission under the 1914 Treaty could resolve the conflict or could present it to the Hague Court".

The U.S. considered Chile's proposal to use the 1914 Treaty to resolve the differences. State Department cable ~~066107~~ of indicats indicated that the GOC had taken the position that "the 1914 Treaty procedure would not focus on copper compensation but would encompass a whole range of U.S.- Chile problems."

A U.S. cable reports that Chilean side had expressed its intention to present other issues other an copper to a 1914 Treaty commission, but had said that it might be useful for the two sides to explore the possibility of an agreed presentation. Chile urged the 1914 Treaty as something that could be done right away to make progress. Foreign Minister Almeyda reiterated that the Treaty was the only bilateral mechanism "in force" that could be used to attempt to resolve the dispute, and that Chile felt the Treaty was the only mechanism through which progress could be made. The U.S. expressed aprehension that false reports of its rejection of the treaty could lead to public denunciation of the U.S. for having refused to seek solutions through a valid and viable treaty mechanism. U.S. press guidance of April 3, 1973 ~~however~~ emphasizes that reports of U.S. rejection of the 1914 Treaty were untrue, and that the U.S was continuing to study Chile's proposal.

According to a U.S reporting cable, the Chilean position was that the U.S was rejecting the only practical means for

influencing Chilean public opinion and the congressional climate for solution. The U.S. emphasized that nothing had been rejected but did not view pursuit of the 1914 as a productive endeavor in view of the fact that Chile felt a Constitutional amendment would be necessary before if could enter into the commission process, and because there were no assurances that the results of this third party procedure would be implemented.

On April 18, 1973, Foreign Minister Almeyda stated publically that lacking an agreement on use of the Treaty either side could invoke it. In a magazine interview that same day, Allende was reported as saying that Chile was prepared to invoke the Treaty unilaterally.

In radio interview on May 6, 1973, Foreign Minister Almeda described commission envisioned in the 1914 Treaty as " . . .If not a guarantee of solution, at least the only mechanism to which both nations can turn, inasmuch as the bilateral conversations have produced no positive conclusion owing to the distance separating their positions". The Foreign Minister also recognized the need to "keep a dialog going which may prove more productive than the bilateral discussions to date."

Representative of the two governments apparently met in Lima in June. In response to what was apparently a U.S. arbitration proposal, the Chilean side read a list of 13 questions, nine of which specifically addressed the U.S. proposal. The Chilean side noted that the U.S. proposal took into account two elements that the GOC considered necessary: a) adoption of a procedure that would allow for more time during

which climate conducive to settlement would improve and b) intervention of a neutral third party. However, U.S. proposal did not address the politico-juridical limits within which the solution had to be found. The U.S. added that one of its essential requirements was that the mechanism used had to lead to a conclusive solution of the matter.

Both sides emphasized that they were not rejecting the proposal of the other. Chilean pointed out that the 1914 Treaty provided for three successive stages: A) report and investigation (B) conciliation and (C) arbitration. The FOreign Minister emphasized that use of the Treaty ~~would~~ would, if not positively guarantee settlement, at least make final solution possible. The procedure would allow the parties to continue talking, and would as well eventually bring it to the arbitration stage.

In July ~~U.S. representative~~ 7. negotiation met with Letelier against to discuss advantages and disadvantages of 1914 Treaty. Letelier asked that the U.S side think through the possibility of using the 1914 Treaty to reach mutual goals, and acommodate the real needs. He stated that his goal was not to get bogged down in the procedural postures of who was waiting for an answer from whom as to the various proposals, but to try to move forward. The 1914 Treaty had the advantage of being a mechanism already in place and one that avoided some of the constitutional obstacle to a agreement for binding arbitration. The U.S. responded that the central problem was whether a third party mechanism would carry with it some clear commitment that the

results, whatever they might be, would be upheld and implemented. The US. also mentioned as a disadvantage that the full weigh of the decision would fall on one person, in this case Madame Bastid, as the other members could be expected to represent the views of the country appointing them. Letelier responded that he saw no reason why thereof the five could not be appointed by mutual consent.

The U.S. drafted questions for proposal to the Chilean side before the end of the end of the August 1973 talks, which might help the Chilean side prepare for it next round of negotiations.

After August of 1973, there were no further substantial discussions of use of the 1914 Treaty.

VI. Why United States Government thinks the 1914 Treaty is Appropriate Mechanism for Resolution of the Letelier Case

There are three problems which from the U.S. point of view must be resolved before the relations between the two countries can be normalized. One, as you know, is the civil judgments obtained by the victims' families. The families will not let have been presented the State Department or the Congress forget that they have not been compensated for their losses. They continue to push for a both the State Department mechanism through which they can obtain compensation. Congress to provide

This brings us to the second issue. The Congress has

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introduced legislation which would amend the foreign sovereign Immunities Act to allow the victims families to attach Chilean GOvernment assets and to execute upon them in order to satisfy the judgments. The State Department opposes such legislation and has urged the proponents of the bill to give the 1914 Treaty process a chance. ~~For this reason~~ it is important to have some progress toward the resolution of the issue.

Finally, Section of the Foreign Assistance Act of prohibits certain assistance to the Government of Chile until the President can certify to the Congress three things, one of which is that the Government of Chile has taken all available measure to bring those indicted in connection with the Letelier and Moffit murders to justice.

The 1914 Treaty affords a vehicle for the parties to reexamine the facts and their past positions with respect to the issues, now with the perspective of time. It provided for the interposition of a neutral and unbiased body to ~~look into~~ the facts and to prepare a report. It then gives the parties an opportunity to discuss the report and to attempt to reach a mutually agreeable solution. The Commission of Inquiry may find that the deaths of Letelier and Moffit were attributable, at least in part, to actions of officials of the Chilean government. But by the same token, it may find that the government of Chile did all it could do to assist in the criminal prosecution of the those indicted in connection with the deaths. Although these may not be the current feelings of the two sides, an objective observer may help each side to see

the issues in a different light.

~~Although~~ In connection with the copper dispute, the United States was looking for a binding vehicle for resolution of the issues; ~~that~~ that is not ~~so here~~ the case. What we feel is needed in ~~the instant~~ this case is a vehicle through which the parties can resolve the issues amicably. We do not intend to force ~~The 1914 Treaty also provided a vehicle~~ the GOC to arbitrate the issue if a mutually acceptable settlement can not be reached based on the fact finders report. However, ~~arbitrate~~ if the parties are unable to resolve the dispute based on the report, we may both wish to proceed to binding arbitration in order to obtain a final resolution of the issue. The 1914 Treaty gives us that option.

~~It~~ Although the U.S. believes that the 1914 ~~It~~ Treaty is a good vehicle to use to resolve the issues, we realize that other bilateral and multilat mechanisms exist. We are open to the possibility that ~~not~~ another could be used, and is prepared to discuss modalities, proposals for resolution of