

## **UNITED STATES RELATIONS WITH CHILE UNDER THE GOVERNMENT OF SALVADOR ALLENDE (NOVEMBER 1970-SEPTEMBER 1973) BACKGROUND AND CURRENT DEVELOPMENTS<sup>1</sup>**

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### **PREFACE**

On November 3, 1970, Dr. Salvador Allende Gossens was inaugurated as President of the Republic of Chile, opening a new chapter in Latin American politics and United States-Latin American relations. The question of how the United States would approach its relations with the Allende Administration, the first Marxist-Socialist Government to be democratically elected in the Western Hemisphere and a government which derived its basic support from the Chilean Socialist and Communist parties, became an issue of considerable import in United States foreign policy.

The Chilean election reflected powerful trends in evidence throughout Latin America, and other Latin American nations were encountering many of the political, economic, and social problems which President Allende's government has committed itself to solve. For these reasons, and the fact that Chile has traditionally occupied an influential place in Latin America, the nations of the region are watching developments in Chile, in both their internal and foreign relations aspects, with great interest. In this context, the United States response to the Allende regime in Chile could have a great impact on future U.S. relations with Latin America as a whole.

The United States and Chile have had a tradition of close and amicable relations since Chilean independence. In like manner, few nations in the hemisphere have so fully shared with the United States a common commitment to the democratic process and a common heritage of political liberty. In economic terms, with respect to United States development aid and military assistance over the period 1946-1970 Chile ranked as the second highest recipient among the Latin American nations. In the area of bilateral trade, the United States has been consistently Chile's principal supplier of goods, ranking several times higher in dollar value of Chilean imports than other foreign suppliers, and Chile's largest customer for its exports. United States interests have made significant investments in Chile. When President Allende came to office, the book value of U.S. investment in Chile was estimated at a substantial \$800 million.<sup>2</sup>

In light of such historical, political and economic considerations, many U.S. analysts saw strong reason for maintaining friendly relations with the new government of Chile, regardless of its political character.

Considering all the implications for U.S. foreign policy, the Government endeavored to work out a modus vivendi with President Salvador Allende's Socialist government in Chile. The path was made more difficult by the 1971 Chilean expropriation of major U.S. private copper interests and the subsequent ruling against compensation for the major mines owned by the two largest firms. Another complex issue arose from the Chilean Government's request for a re-scheduling of its foreign debt, the majority of which is held by U.S. Govern-

<sup>1</sup> On September 11, 1973, after the completion of this paper, the Chilean Armed Forces overthrew the Allende government. Leaders of the three armed forces and the national police, headed by Army Chief Augusto Pinochet Ugarte, formed themselves into a junta termed the "government of national liberation" and vowed to free Chile from "the Marxist yoke." According to the ruling four-man junta, President Allende committed suicide rather than surrender to the military. The United States recognized the military government on September 24, 1973.

<sup>2</sup> Rogers, William P. *United States Foreign Policy, 1969-1970: A Report by the Secretary of State*. Washington, U.S. Govt. Print. Off. March 1971. p. 126.

ment agencies. Widespread Chilean nationalization of the extensive U.S. private investment and the revelations in the United States press concerning the International Telephone and Telegraph Corporation's (ITT) attempted intervention in Chilean political affairs, and its attempts to involve the U.S. Government in its actions, contributed to uneasy relations between the two nations .

Although important issues remain unresolved between the two nations, for the most part, the United States and the Chilean Government in their official public positions have approached relations with each other in an attitude of restraint, with an apparent determination to maintain an open, constructive, and rational dialog and to seek pragmatic solutions to their differences.

## I. INTRODUCTION

President Salvador Allende came to office on November 3, 1970, after receiving a plurality of the popular vote [36.3 percent] in the September 4th election and having been elected by the Chilean Congress on October 24, 1970. Dr. Allende's assumption of office, as the head of the Popular Unity coalition of the Socialist, Communist, and other leftist parties, was viewed in the United States with some degree of apprehension and concern.

During the presidential campaign, Allende had been sharply critical of United States policies, denouncing U.S. "imperialism," speaking out against the "monopolistic practices" of U.S.-backed private business, and pledging to nationalize U.S.-owned interests in Chile. Further, his foreign policy goals indicated that his government would pursue a more independent course, oriented more toward Latin America and the Third World than the United States, and including recognition of nations considered unfriendly to the United States and aligned with the Soviet Union: Cuba, the People's Republic of China, North Vietnam, North Korea, and East Germany.

Moreover, the more radical elements within Allende's Popular Unity coalition, which the United States believed to be highly influential in the political alliance, were pressing for total expropriation without compensation of U.S. private business interests, repudiation of Chile's \$800 million debt to the United States, and an outright break with the United States in favor of alliance with the Soviet Union.

A cause of substantial U.S. concern was President Allende's commitment to Marxist-Socialist philosophy and practices, which were translated in his platform into sweeping changes in Chile's traditionally pluralistic system of government and its capitalistic economic structure. Of no less concern to the United States was the fact that an alien philosophy, and one closely tied with the Soviet Union, had gained an inroad in a strong and influential Western Hemisphere nation. Chile was viewed by some as another Cuba, but more threatening because its stature in the Latin American community placed Chile in a much different position than Cuba, a small, isolated Caribbean island. At the same time, many observers in the United States saw the Allende election in Chile as part of a growing leftist, nationalist, anti-U.S. trend in Latin America.

Within U.S. governmental circles and in the press, fears were expressed that Chile would suffer a Communist takeover, had experienced its last free election, and would become a base for Soviet and Communist Chinese influence on the Latin American mainland. The extent of concern was mirrored in a statement made on September 16, 1970 by a White House official later identified by the press as then Presidential Counselor Henry Kissinger, who told a group of newspaper editors that an Allende takeover in Chile represented a threat to neighboring Argentina, Peru, and Bolivia, threatened the U.S. position in Latin America, and would pose "massive problems" for the United States and for democratic and pro-U.S. forces throughout the Western Hemisphere.<sup>1</sup>

The U.S. press generally reflected prevailing U.S. Government misgivings concerning the Allende government. Respected newspapers referred to President Allende's election as "a heavy blow to democracy," a "menacing takeover" in Chile; frequent derogatory references were made to the "left-wing regime" and "Marxist" or "Communist" President Allende.

The Chilean Government was extremely sensitive to foreign, especially U.S., reportage of the situation in Chile. The Chileans frequently criticized the foreign press for distorting the Allende government's political philosophy and ideology and attempting to create a climate of hostility toward the new Chilean Govern-

<sup>1</sup> Washington Post, Nov. 6, 1970: A-18.

ment. In the early months of the Allende government, officials in Santiago and in the Chilean Embassy in Washington held numerous meetings with newsmen to explain what they termed the "Chilean reality" and to correct what they considered to be erroneous and unfavorable impressions of Chile appearing in the press.

## II. MAJOR DEVELOPMENTS

### A. AN OVERVIEW

The United States received the election of President Salvador Allende with official silence, withholding the formal congratulatory message customarily extended by world leaders to the head of a new government. However, the United States sent a delegation to President Allende's November 3, 1970, inauguration in Santiago, headed by then Assistant Secretary of State for Inter-American Affairs Charles A. Meyer, who met with the new president and delivered a personal greeting from President Nixon.

During the early months of President Allende's administration, the United States adopted, for the most part, a cautious, "wait and see" approach to the new Chilean Government, leaving it to President Allende to make known his posture regarding the United States. President Nixon's first official statement on relations with Chile, set forth on February 25, 1971, in his Second Annual Foreign Policy Report to Congress, established the tone for U.S. relations with the Allende government:

The United States has a strong political interest in maintaining cooperation with our neighbors regardless of their domestic viewpoints. . . . We deal with governments as they are. Our relations depend not on their internal structures or social systems, but on actions which affect us and the inter-American system. The new Government in Chile is a clear case in point. . . . Our bilateral policy is to keep open lines of communications. We will not be the ones to upset traditional relations. . . . We are prepared to have the kind of relationship with the Chilean government that it is prepared to have with us."<sup>4</sup>

The Allende Government also stated a cautiously positive position on relations with the United States. In a press interview of November 22, 1970, Chilean Foreign Minister Clodomiro Almeyda stated:

Relations with the United States are important to Chile. . . . We believe that, despite the existence of present or potential areas of conflict with the Government of the United States . . . we will be able to approach and solve such problems without damaging the friendship between two people—as those of Chile and the United States, which, by force of reality, are determined to maintain peaceful, cordial and mutually respectful relations.<sup>5</sup>

In a press interview on March 23, 1971, President Allende stated that Chile desired "the best—the very best" relations with the United States, at the same time commenting on United States concern with Soviet influence in Chile:

We will never do anything against the United States or contribute to injuring its sovereignty. For example we will never provide a military base that might be used against the United States. Chile will never permit her territory to be used for a military base by any foreign power—by anybody.<sup>6</sup>

Although both the United States and Chile spoke of keeping their relations relaxed and free from confrontation, several incidents occurred in 1971 and early 1972, apart from the major issue of the copper expropriations, which provoked tension between them.

The Allende government's immediate [November 11, 1970] reestablishment of diplomatic and trade relations with Cuba, becoming the second member nation of the Organization of American States to break the 1964 OAS ban on Cuba,<sup>7</sup> evoked strong disapproval from the United States. The State Department "deplored" the fact that Chile had acted outside the consultative framework of the Organization of American States. Soon thereafter, [January 5, 1971], the Chilean Government became the first Latin American nation, with the excep-

<sup>4</sup> Nixon, Richard M. U.S. Foreign Policy for the 1970's—Building for Peace: A Report to the Congress. Washington, U.S. Govt. Print. Off., February 25, 1971, p. 53-54.

<sup>5</sup> Chilean Foreign Minister Clodomiro Almeyda, Nov. 22, 1970 press interview, quoted in the New York Times, Jan. 25, 1971: 73.

<sup>6</sup> Chilean President Salvador Allende, March 23, 1971 press interview quoted in New York Times, Mar. 28, 1971: p. 1.

<sup>7</sup> Mexico never complied with the 1964 OAS ban on Cuba.

tion of Cuba, to establish diplomatic relations with the People's Republic of China.

A continuing campaign of anti-United States statements by political parties and officials associated with the Government were considered provocative by the United States. For example, President Allende's own Socialist Party, the largest party in the Government coalition, repeatedly attacked "North American Imperialism" and accused the United States of "economic and diplomatic aggression against Chile."<sup>9</sup>

In late February 1971, the last minute cancellation, due to what the U.S. termed "operational difficulties" of a visit to Chile by the U.S. Navy Aircraft Carrier Enterprise, which had been especially invited by President Allende, was interpreted by the Chileans as a rebuff of friendly overtures of the Chilean Government.

In early October 1971, Ambassador Edwin Korry was replaced by then Ambassador to Guatemala Nathaniel Davis for the reason, according to many analysts, that Ambassador Korry's antagonism toward President Allende had contributed to strained relations.

A remark by White House Director of Communications Herbert G. Klein, during a goodwill mission to Latin America that he and Presidential Counselor Robert Finch had obtained the "feeling" that the Allende government "won't last long"<sup>10</sup> angered the Chileans and prompted an official protest from the Chilean Government.

In mid-1971, with the coming to the fore of the major problem between the United States and Chile, Chile's expropriation without compensation of the large, privately-owned U.S. copper interests, relations between the two countries began to deteriorate.

The Chilean Government maintained that its actions with regard to the expropriation without compensation were just and legal according to Chilean law. The United States acknowledged Chile's right to expropriate foreign interests but maintained that such action must conform to the principles of international law which provide for prompt, adequate, and effective compensation.

Tension over the copper compensation issue increased when the U.S. Export-Import Bank, on August 11, 1971, announced that it was postponing action on Chile's request for a \$21 million loan intended for the purchase of three Boeing jet airliners, for the Lan-Chile airline. The Chileans interpreted this act as an attempt by the U.S. Government to apply economic pressure on Chile in order to extract compensation for the expropriated copper firms. President Allende's statement with regard to the action, rejecting U.S. pressures on a "dignified" country, reflected a broad Chilean sentiment. Elsewhere in Latin America, the United States was criticized for taking an action against Chile reminiscent of "big-stick diplomacy."

However, the United States maintained that the decision was not motivated by the Chilean copper expropriation. Eximbank Vice Chairman and First Vice President Walter Sauer, in testimony before the House Subcommittee on Inter-American Affairs [House Foreign Affairs Committee] in October 1971, defended the United States position that the decision was not a political veto. He said that the Bank had asked the Chilean Government

for certain information on the ability of Chile and the willingness of Chile to pay the debt. . . . A part of that information was furnished by the Chilean Government, an essential part of it was not. We therefore told the Chilean Government . . . that we were not prepared to go further in our consideration of the request until the information was furnished. That has not been furnished.<sup>11</sup>

The Chilean Government subsequently announced that Lan-Chile's Vice President would travel to Moscow to arrange for purchase of Soviet Iluyshin jet airliners to replace Chile's fleet of Boeing aircraft.<sup>12</sup>

The issue of Chilean expropriation of U.S. interests without compensation continued to dominate United States-Chile relations in 1972. On January 19, 1972,

<sup>9</sup> Another example was the statement by Chilean Foreign Minister Anibal Palma before the Second Organization of American States General Assembly in April 1972 where he sounded a Chilean hemisphere policy which, in the U.S. view, appeared aimed at pitting a unified Latin America against the influence of the United States.

<sup>10</sup> New York Times, Dec. 1, 1971: 20.

<sup>11</sup> U.S. Congress, House, Committee on Foreign Affairs, Subcommittee on Inter-American Affairs, Recent Developments in Chile, October 1971, p. 5.

<sup>12</sup> In February 1972, the Chilean Government purchased from Boeing Aircraft a 727 jet airliner and contracted to purchase two additional Boeing 707 airliners with funds which, according to speculation, could have come out of a \$50 million credit from the Soviet Union.

President Nixon addressed the issue of expropriation of U.S. interests without reasonable compensation, stating that the United States would neither extend bilateral assistance nor support multilateral loans by international development banks to any country taking such action. [A complete discussion of the copper compensation issue appears in Section II of this report].

#### B. RESCHEDULING OF CHILE'S FOREIGN DEBT

Between February 2 and April 19, 1972, representatives of the Chilean Government met in several sessions with the country's major creditor nations, referred to as the "Paris Club,"<sup>12</sup> to negotiate terms for rescheduling Chilean payments on its external debt to those nations, estimated at approximately \$1.862 billion [as of December 1971].<sup>13</sup> In early November 1971, President Allende had announced a moratorium on Chile's debt repayments and a decision to seek rescheduling due to Chile's critical balance of payments situation, the low level of foreign exchange reserves, and current economic conditions in Chile.<sup>14</sup> As Chile's major foreign creditor, the United States Government, which held Chilean government debts of \$1.227 billion<sup>15</sup> out of the total \$1.862 billion owed creditors of the Paris Club, was among the 12 nations participating in the rescheduling talks in Paris.<sup>16</sup>

The copper compensation issue became an element in the talks as the United States delegation voiced concern over Chile's failure to provide reasonable indemnity and the Chilean government representative repeatedly accused the United States of attempting to frustrate Chile's efforts to reschedule its external debt by introducing what Chile considered an unrelated and bilateral issue.

The talks ended on April 19 with the signing of a Memorandum of Understanding establishing general rescheduling terms for Chilean debts falling due in the period from November 1971 through December 1972, with actual amounts of payments and interest to be determined through bilateral agreements between the Chilean Government and each of its creditor nations.<sup>17</sup>

In addition, the Memorandum contained a pledge by the Chilean Government "of recognition and of repayment of all foreign debt and its acceptance of the principle of payment of just compensation for all nationalization in accordance with Chilean and international law."<sup>18</sup>

Talks at the technical level between the Chilean and United States Governments concerning rescheduling Chile's debt began in June 1972.

#### C. THE ITT ISSUE

On March 21, 1972, syndicated columnist Jack Anderson began publishing a series of reports alleging involvement of the International Telephone and Telegraph Company (ITT) in efforts to block President Allende's 1970 election in Chile. Anderson revealed the contents of secret ITT memoranda which indicated

<sup>12</sup> The Paris Club is an informal group of creditor nations which convenes at the government level (excluding private creditors) at the request of a debtor nation to establish general terms of refinancing loan repayment on debts owed to each nation.

<sup>13</sup> Figure supplied by State Department, Bureau of Economic and Business Affairs, Office of Development Finance.

<sup>14</sup> At the time of President Allende's announcement, Chile's annual debt service to foreign creditors was more than 30 percent of its total foreign exchange earnings [Address by his Excellency Dr. Salvador Allende, President of the Republic of Chile, at the United Nations General Assembly, 27th Session, Provisional Verbatim Record of the Two Thousand and Ninety Sixth Meeting, December 4, 1972, U.N. Doc. A/PV 2096, 4 December 1972 English (Provisional), p. 6], while the generally considered "danger level" by the international financial community for annual debt servicing is placed at 25 percent of total export earnings.

<sup>15</sup> Figure as of December 1971, includes both public and publicly guaranteed debts. Chile's total public debt (all foreign governments and international financial institutions) as of December 1971 was \$2.135 billion, and total debt owed both public and private sources (private foreign creditors) was estimated at \$3.1 billion. [Source: State Department, Office of Development Finance.]

<sup>16</sup> Other members of Chile's Paris Club include Belgium, Canada, Denmark, France, Great Britain, Italy, Japan, Netherlands, Spain, Switzerland and West Germany.

<sup>17</sup> The Paris Club agreement provided for the rescheduling of 70 percent of Chile's external debts which matured during the period from November 1971 through 1972 over an 8-year period, including two years grace, with the remaining 30 percent payable as currently due. In addition, the Paris Club members expressed willingness to consider Chile's request for rescheduling its 1973 debt service at the end of 1972. [Press Release of Paris Club members, American Journal of International Law, v. 66, October 1972: 840]. A preliminary session of the Paris Club on Chile's 1973 debt was held in Paris on January 25-26, 1973, with a substantive meeting scheduled for May 1973.

<sup>18</sup> Text of Press Release of Paris Club members, American Journal of International Law, v. 66, October 1972: 840.

that the company had offered upwards of \$1 million to the Central Intelligence Agency and had otherwise sought U.S. Government and White House backing for a plan to keep Allende from office. A subsequent article by the New York Times reported an 18-point plan submitted by ITT to the White House in October 1971, designed to bring about the fall of the Allende government within its first six months.<sup>20</sup>

The Anderson reports evoked strong concern in Washington, while in Chile they unleashed a political storm. ITT denied the allegations and maintained that it had been "a good corporate citizen" in Chile. On March 23, State Department spokesman Charles W. Bray made a public announcement stating that "any ideas of thwarting the Chilean constitutional process following the election of 1970 were firmly rejected by this Administration,"<sup>21</sup> and Secretary of State William P. Rogers assured the Senate Foreign Relations Committee that "the U.S. Government did not engage in improper activities in Chile."<sup>22</sup> On March 24, the Senate Foreign Relations Committee announced it would conduct a full-scale investigation of the role of multi-national corporations in U.S. foreign policy, beginning with the role of ITT and any U.S. Government involvement in Chilean political affairs.

The Chilean Government immediately broke off its negotiations with ITT for the purchase of the company's 70 percent share of the Chilean Telephone Co. (Chiltelco). These negotiations, which began in March 1971<sup>23</sup> had, by this point, reached a stalemate over widely conflicting assessments by the company and the Chilean Government over ITT's net worth in Chiltelco. ITT had assessed its share at \$153 million,<sup>24</sup> while the Chilean Government placed book value of the U.S. firm's interest at approximately \$25 million.<sup>25</sup> On September 29, 1971, the Chilean Government had intervened (taken control of) the company, charging ITT with furnishing "deficient" service and profiteering.

The Chilean Government obtained copies of the ITT documents and accused the company of plotting "against the independence and democratic will" of the country. Prominent members of President Allende's Popular Unity coalition called for immediate confiscation of ITT's Chilean holdings. The Chilean Congress voted a special committee to investigate ITT and CIA activities in Chile and subsequently passed an act to cancel ITT's Chiltelco contract, submitted by President Allende to the Congress on May 5. On the same date President Allende submitted to congress a proposed constitutional amendment to nationalize ITT's remaining interest in Chiltelco. [The legislation was passed by the Chilean House of Deputies in early 1973 and, as of September 1973, is pending in the Chilean Senate] Chile filed a complaint regarding ITT with the United Nations Economic and Social Council, which in July 1972 unanimously adopted a resolution calling for a U.N. study group to examine the role and impact of transnational corporations in the development process of developing countries and their repercussions on international relations.

The Senate Foreign Relations Committee's Subcommittee on Multinational Corporations conducted its hearings on ITT involvement in Chilean politics from March 20 to April 2, 1973. The Subcommittee report, issued on June 21, 1973, stated the following conclusion:

. . . The highest officials of the ITT sought to engage the CIA in a plan covertly to manipulate the outcome of the Chilean presidential election. In so doing the company overstepped the line of acceptable corporate behavior. . . . The pressures which the company sought to bring to bear on the U.S. Government for CIA intervention are . . . incompatible with the long-term existence of multinational corporations; they are also incompatible with the formulation of U.S. foreign policy in accordance with U.S. national, rather than private interests.<sup>26</sup>

<sup>20</sup> New York Times, July 3, 1972: 3.

<sup>21</sup> New York Times, March 24, 1973: 1.

<sup>22</sup> Ibid.

<sup>23</sup> The foundation for total ownership of Chiltelco by the Chilean Government was established in 1967 through an agreement between ITT and the government contemplating the progressive sale of ITT's interest in Chiltelco to the government owned Chilean Development Bank.

<sup>24</sup> International Telephone and Telegraph Company, Public Relations Dept., ITT History in Chile, May 4, 1972, p. 2.

<sup>25</sup> Figure supplied by International Telephone and Telegraph Company.

<sup>26</sup> U.S. Congress, Senate, Committee on Foreign Relations, Subcommittee on Multinational Corporations, The International Telephone and Telegraph Company and Chile, 1970-71. Report to the Committee on Foreign Relations, United States Senate by the Subcommittee on Multinational Corporations, June 21, 1973. Washington, U.S. Govt. Print. Off., 1973. p. 18.

At the conclusion of the hearings, President Allende, in an April 10 address to an international labor congress meeting in Santiago, linked the U.S. Government with ITT action. Commenting on the Senate Subcommittee hearings, he said, "clearly there was collusion between this transnational corporation and the CIA, official organ of the U.S. Government. . . dependencies of the U.S. Government have attempted to twist the will of the Chilean people. . ."<sup>26</sup>

After negotiations with the Chilean government were broken off, ITT sought reimbursement for its Chiltelco holdings from the Overseas Private Investment Corporation (OPIC), which had insured the investment for \$92.5 million. On April 9, 1973, OPIC rendered a decision rejecting the ITT insurance claim on grounds that the company had not complied with provisions of its contracts, including the failure to: "disclose material information to OPIC," "preserve administrative remedies," and "protect OPIC's interest as a potential successor to ITT's rights."<sup>27</sup> ITT announced its intention to submit the matter to arbitration according to a recognized OPIC procedure.

The implication of the International Telephone and Telegraph actions as a calculated and planned intervention in Chilean internal affairs had a major impact throughout Latin America not only in terms of intensifying sympathy for Chile but also in adding to the already strong resentment against U.S. business activities and in fueling the cause of the pro-nationalist, anti-United States elements which were gaining impetus throughout Latin America.

#### D. FURTHER DEVELOPMENTS

During 1972, the Chilean Government placed its case against U.S. economic pressures and the activities of multinational corporations before several international forums. The issues involved were aired before the Third United Nations Conference on Trade and Development in Santiago in April, the OAS General Assembly session in Washington in April, the annual meeting of the World Bank in September, and the United Nations Economic and Social Council in October.

On December 4, 1972, in a major address to the United Nations General Assembly, President Allende presented his case against the United States and multinational corporations most completely, seeking at the same time to gain worldwide support for his peaceful revolution in Chile. Singling out the Kennecott and Anaconda copper companies and ITT as examples of the powerful and unrestrained multinational corporation, President Allende accused them of attempting to intervene in the affairs of his government and seeking to "strangle" the Chilean economy, "paralyze" its copper trade, and deprive Chile of access to sources of international financing. In a severe attack on the activities of multinational corporations, Allende said:

We are witnessing a pitched battle between the great transnational corporations and sovereign States, for the latter's fundamental political, economic and military decisions are being interfered with by world wide organizations which are not dependent on any single State and which . . . are not accountable to or regulated by any parliament or institution representing the collective interest. . . . The entire political structure of the world is being undermined.<sup>28</sup>

In his address, President Allende also alleged that the United States Government was attempting the imposition of financial sanctions against Chile as a means of applying pressure in defense of the interests of expropriated U.S. firms in Chile. President Allende insinuated direct U.S. involvement, through the suspension of credits, loans and assistance from U.S. Government agencies, and involvement indirectly in the exercise of influence upon international financial institutions such as the Inter-American Development Bank and the World Bank, foreign private banks, and private U.S. banks, to cut credit and loan resources to Chile. President Allende's charges against the United States were rebutted by the United States Ambassador to the United Nations, George Bush, in a press conference called the same day.

In December 1972, a Chilean delegation headed by then Ambassador to the United States Orlando Letelier and a U.S. delegation of officials from the State and Treasury Departments, headed by then Assistant Secretary of State for

<sup>26</sup> Washington Post, April 11, 1973.

<sup>27</sup> Overseas Private Investment Corporation Press Release, April 9, 1973, reprinted in the Congressional Record, April 9, 1973: E2241.

<sup>28</sup> Address by his Excellency Dr. Salvador Allende, President of the Republic of Chile at the United Nations General Assembly, 27th Session, Provisional Verbatim Record of the Two Thousand and Ninety-Sixth Meeting, December 4, 1972. U.N. Doc. A/PV. 2096, 4 December 1972 English (Provisional), pp. 28-30.

Inter-American Affairs Charles A. Meyer, took part in three-day exploratory talks in Washington to discuss major problems at issue between the two nations. The subject of the talks remained confidential, but discussions were said to center on Chilean compensation and debt repayment to expropriated U.S. interests, rescheduling of Chile's debt to the United States, and Chile's inability to obtain U.S. credits for foreign trade.

A second round of talks was held in Washington on March 22-23, 1973. At that time the two nations reviewed their positions and agreed to continue contacts although no firm date for a future meeting was set. While the talks are in recess, high-level contacts between the two nations continue. In April, Chilean Foreign Minister Clodomiro Almeyda, while attending the 1973 OAS General Assembly meeting in Washington, met briefly with Secretary of State William P. Rogers, and subsequently in a longer session with Assistant Secretary of the Treasury for International Affairs John M. Hennessy, and Acting Assistant Secretary of State for Inter-American Affairs John H. Crimmins. Some analysts saw in Foreign Minister Almeyda's approach to the United States an indication of Chilean willingness to ease tensions. These observers cited the "comparatively mild tone" of his reference to ITT/U.S. involvement in Chilean political affairs in his General Assembly address, despite developments publicized in the just completed Senate ITT hearings and a Washington Post report which appeared on the day of his address alleging covert efforts by the CIA and other U.S. agencies to defeat President Allende in the 1964 presidential election won by Eduardo Frei.<sup>20</sup> In an interview while visiting Washington Almeyda expressed confidence in the goodwill of U.S. negotiators in the bilateral talks and told reporters that he believed both nations wanted to continue the dialog begun in the two rounds of talks.<sup>21</sup>

On May 25, 1973, Secretary of State William P. Rogers and President Allende held talks in Argentina while attending the inauguration of President Hector Campora. The session, the first such meeting between President Allende and a high-ranking U.S. official since his inauguration, dealt with the principal differences between the two countries and were described as "cordial and substantial."

Chile was among five Latin American nations [Argentina, Brazil, Colombia, Venezuela] included in a Presidential Determination of May 21, 1973, authorizing the extension of credit for purchase of U.S. F-5 supersonic military aircraft. [The action was taken by President Nixon pursuant to Section 4 of the Foreign Military Sales Act providing such authority upon a Presidential determination of importance to the national security of the United States.]<sup>22</sup> The Washington Post reported on June 10, 1973 that the Chilean Air Force had made plans to purchase 16 F-5 International jet interceptors from the U.S. Northrop Corporation with a \$16 million U.S. credit.<sup>23</sup>

Tensions between the two nations were exacerbated in August 1973 by an intensive anti-U.S. campaign, mounted in the pro-Government press, radio and television media, which sought to link U.S. Ambassador Nathaniel Davis, the U.S. Embassy in Chile, and the CIA to the serious internal difficulties which the Allende Government was experiencing. The Chilean media charged U.S. influence in the nationwide truckers strike, which, together with sympathy strikes by other labor, professional, and business groups, and mounting opposition to Allende Government policies, were bringing the nation to a state of near economic and political paralysis.

<sup>20</sup> The Washington Post report cited former government official sources who had been involved in U.S. activities in Chile at the time stating that the U.S. Government had engaged in various activities, including the providing of \$10 million to assist President Frei's 1964 election. The report made headlines in Chile where supporters of President Allende attacked the U.S. Government. Frei's Christian Democratic Party denied the charges. [Washington Post, April 6, 1973 : A12 ; Washington Post, April 14, 1973 : A2.]

<sup>21</sup> Shaw, Terri. U.S., Chile Continue Talks Despite ITT Issue. Washington Post, April 11, 1973.

<sup>22</sup> United States military assistance to Chile during the Allende administration : In FY 1971, the United States extended to the Allende government \$5 million in foreign military sales credits and \$0.7 million in grant military assistance for training; in FY 1972, foreign military sales credits totaled \$10 million, with \$0.9 million for grant assistance (training). The FY 1973 program is set for \$12.4 million for foreign military sales credits and \$0.95 million grant assistance. Projected FY 1974 figures show \$10 million for foreign military sales credits and \$1 million for grant training assistance. [Source : State Department/Chile Desk, and U.S. Agency for International Development. Office of Finance Management. Statistics and Reports Division. U.S. Overseas Loans and Grants : Obligations and Loan Authorizations, July 1, 1945-June 30, 1972, Chile : p. 42].

<sup>23</sup> Washington Post, June 10, 1973 : A22.



### III. THE COPPER NATIONALIZATION ISSUE

#### A. BACKGROUND AND GENERAL DEVELOPMENTS

Copper is the single dominant element in Chilean economic life, supplying approximately 75-80 percent of Chile's foreign exchange receipts from exports and 20 percent of annual government revenues.<sup>33</sup> Because of copper's vital importance to the Chilean economy, the control and exploitation of this resource has been for some time a highly emotional issue and a focus of nationalist feeling, as a symbol of Chilean economic as well as political independence. In recent years, nationalist feeling has centered around Chile's assertion of its sovereign right to recover control of this basic resource from the U.S.-based firms, Anaconda, Kennecott and Cerro Corporations, which annually account for about 73-80 percent of Chile's total copper production.<sup>34</sup>

The process of nationalization of Chilean copper operations began during the Administration of President Eduardo Frei, immediately prior to President Allende, as part of a wide-ranging program of social and economic reforms. President Frei instituted the process of "Chileanization," embodied in laws of 1966 and 1967, whereby the Government acquired the right to participate in the ownership and control of various business operations judged as critical sectors of the Chilean economy through the purchase of minority or controlling interests. Eventual total nationalization was foreseen in some cases, including that of the copper industry. A new government agency, the Corporacion del Cobre (CODELCO) was created to manage Chile's copper resource.

In December 1966, CODELCO entered a joint venture with the Cerro Corporation, purchasing a 25 percent interest in a new copper corporation then being set up, the Compania Minera Andina, which would operate the new Rio Blanco mine. In 1971, CODELCO's participation in the company was increased to 30 percent.

In March 1967, CODELCO purchased 51 percent of the major El Teniente mine from the Braden Company, a subsidiary of Kennecott Copper Corporation, for approximately \$92.9 million. The mixed company which was created, Compania Minera El Teniente, S.A., contracted a loan for that amount, guaranteed by the Government of Chile.

In the case of the Anaconda Company, at the time the major Chileanization agreements were being drafted, Anaconda accepted CODELCO participation only in its new mine, La Exotica, on a 25 percent basis, retaining control of the major Chuquicamata and El Salvador mines. In 1969, after protracted negotiations and, according to some reports, a threat of expropriation, Anaconda sold 51 percent of its shares in its two major mines to CODELCO in exchange for promissory notes in the amount of \$175 million. All of the Chileanization agreements provided for extensive management by the U.S. companies in the operations of the mining enterprises.<sup>35</sup>

Chilean reclamation of the nation's important natural resources, especially copper, was a major issue in the 1970 presidential campaign and was favored by the Christian Democratic Party candidate, Radomiro Tomić, as well as by candidate Allende and his Unidad Popular coalition. The results of the presidential election were broadly regarded as reflecting the desires of a majority of the Chilean electorate for copper nationalization [President Allende's Unidad Popular and the Christian Democrats together received 65.1 percent of the total electorate vote].

Consequently, soon after his inauguration, on December 21, 1970, President Allende submitted to the Chilean Congress a draft amendment to the constitution establishing "absolute, exclusive, inalienable, and imprescriptive ownership" of the Chilean state over all Chile's mineral resources, and determining conditions for nationalization. These included: the determination of appropriate compensation by Chile's Comptroller General [a congressionally appointed fiscal officer], based on his accounting of the companies' book value; provision for the deduction from compensation payment of any "excess profits" which the companies may

<sup>33</sup> Lindow, Herbert (Chile Desk Officer). *The Chilean Copper Mining Industry*, in: U.S. Department of Commerce, Bureau of Domestic Commerce. *Copper: Quarterly Industry Report* (October 1972). Washington, U.S. Govt. Print. Off., October 1972, p. 5.

<sup>34</sup> *Ibid.*, p. 6, and Embassy of Chile, Washington, D.C.

<sup>35</sup> Statistics on Anaconda and Kennecott supplied by John H. Crimmins, Acting Assistant Secretary of State for Inter-American Affairs, in: U.S. Congress, House, Committee on Foreign Affairs Subcommittee on Inter-American Affairs, *United States-Chile Relations*, March 6, 1973, p. 8.

have earned in Chile since 1955, with the discretionary power of determining these profits vested in the president; <sup>28</sup> an appeal process before a special tribunal in case of disputed indemnification; and assumption of the debts of the companies concerned [unless in the opinion of the president, the amounts involved were not "usefully invested"].

Before the Chilean Congress had taken action on the nationalization amendment, the Allende government intervened [took managerial control] in the Kennecott and Anaconda operations, justifying the legality of the actions by interpretation of a 1945 Chilean labor law which permitted such government intervention in any private company to protect the interests of Chilean workers. The action was taken against Anaconda's Chuquicamata and El Salvador mines on March 16, 1971, on the basis of "certain irregularities in production": and against Kennecott's El Teniente mine on May 23, 1971, based on Chilean Government accusations that the U.S. management of the mine was deliberately sabotaging mine production to create lagging production. In accordance with Chilean law, a federal intervenor was appointed administrator and a Government-appointed commission was assigned to investigate the charges before their submission to legal processes.

The constitutional amendment was passed unanimously by both houses of the Chilean Congress on July 11, 1971, a day proclaimed by President Allende as Chile's "Day of National Dignity." The amendment became law on July 16, 1971.

On September 23, 1971, President Allende issued a decree determining that Anaconda and Kennecott copper companies had earned \$774 million in excess profits for their operations in Chile between 1955 and 1970 [(Anaconda): Chuquicamata—\$300 million; El Salvador—\$64 million; (Kennecott): El Teniente—\$410 million].<sup>29</sup> This cleared the way for the deduction of these amounts from the book values of these firms. The Cerro Corporation was not included since its Rio Blanco mine had only begun production in 1970 and had not produced excess profits.

On October 11, 1971, the Chilean Comptroller General issued his report establishing the December 31, 1970, book value of the three mines at a total of \$629 million [Anaconda: Chuquicamata—\$242 million, El Salvador—\$68 million; Kennecott: El Teniente—\$319 million] and decreed that the presidential determination of \$774 million in excess profits was to be deducted from the companies' value, thereby nullifying any indemnity payment to the two U.S. copper companies for the three major mines. At the same time a determination was made that additional deductions totaling \$250 million for technical deficiencies and other expenses would be made from any compensation allowance [Anaconda's three mines—\$29 million; Kennecott—\$219 million; Cerro—\$2 million]. Finally, Anaconda was slated to receive for its La Exotica mine, valued by the Comptroller General at \$14.8 million, \$10,010,455 and the Cerro Corporation was to receive \$18,269,000, for its Rio Blanco mine, assessed at \$20 million book value.<sup>30</sup>

Prior to their nationalization, the value of the three U.S. copper firms operating in Chile was estimated by the companies at a upwards of \$600 million.<sup>31</sup> The claims of the U.S. copper companies against the Chilean Government include, in the case of Anaconda and Kennecott, their 49 percent equity investment as the remaining ownership shares of the mines [except for Anaconda's La Exotica mine where ownership was 75 percent] and, in the case of Cerro, a 70 percent equity investment, together with the debts incurred by CODELCO at the time of the Frei Chileanization agreements—Anaconda—\$175 million and Kennecott—\$92.9 million. The Chilean Government has refused to recognize the validity of its \$175 million debt to Anaconda [of which \$150 million remains outstanding] on grounds that the nationalization law nullifies the debt, but has recognized an obligation to Kennecott for \$92.9 million, subtracting \$8.1 million, in accordance with the nationalization law, through executive determination that the amount

<sup>28</sup> In 1955, an official public agency, the Departamento del Cobre was first established to maintain and coordinate financial statistics and information on Chile's copper industry. Detailed financial records enabling Chilean government determination of "excess profits" originated in that year.

According to the nationalization amendment, the excess profits determination was to be based on a formula which included a comparison of the companies' annual earnings from their Chilean operations with profits obtained from operations in other countries, worldwide. Twelve percent was established as maximum annual profit allowable.

<sup>29</sup> Foreign Broadcast Information Service, Daily Report: Latin America and Western Europe, v. VI, no. 189, September 29, 1971: El.

<sup>30</sup> Chilean Comptroller General's Report of October 11, 1971, supplied by State Department, Chile Desk.

<sup>31</sup> Commerce Department, Copper Desk.

was not legitimately used in the mines.<sup>40</sup> Still in question and subject to Chilean Government ruling is an estimated \$736 million, some of which is owed to the U.S. firms themselves, incurred by the mixed companies as a result of expansion programs undertaken after the Chileanization agreements.

The Kennecott and Anaconda companies immediately began appeal proceedings, based principally on the alleged illegality of the excess profits determination, before a five-member copper tribunal which opened sessions in Santiago on October 28, 1971. The tribunal announced its ruling on August 11, 1972, allowing the determination to stand on grounds that it could not review President Allende's determination of excess profits. On December 5, 1972, the special tribunal awarded the Cerro Corporation compensation of approximately \$19 million for its nationalized Rio Blanco mine.

In a February 8, 1973, interview with President Allende reported in the Washington Post, the Chilean president indicated that the copper compensation issue was not closed. According to the report, President Allende said that if talks between the United States and Chile failed to bring agreement on the copper issue, the case could possibly be submitted for examination to a special tribunal provided for in a U.S.-Chile treaty of 1914.<sup>41</sup>

#### B. ACTIONS TAKEN BY THE U.S. COPPER COMPANIES

When the Chilean Government failed to meet the first payment on its \$92.9 million debt to Kennecott contracted under the Chileanization agreement of President Frei and due on December 31, 1971, the Kennecott Copper Corporation obtained a U.S. court order [issued February 22, 1972] freezing accounts of Chilean Government agencies in U.S. banks. Chilean failure to pay debts due also prompted the Anaconda Company to enjoin Chilean Government bank accounts. On February 24, the Chilean Government announced that it would pay the first installment due Kennecott, deducting \$8.1 million as a "non-profit investment" as had been previously determined by President Allende.<sup>42</sup> Kennecott subsequently, on December 20, 1972, obtained an investment guarantee settlement from the U.S. Overseas Private Investment Corporation [OPIC] of \$66.9 million, the total amount insured by Kennecott. [Kennecott's equity investment in the mine was not insured.] Under terms of the settlement agreement, Kennecott assigned \$74.7 million [the balance of the debt] in promissory notes guaranteed by the Chilean Government to OPIC with the provision that if the Chilean Government defaulted on installment payments, OPIC would assume the payments to Kennecott as they fell due.<sup>43</sup> Two installments, the second and third, were subsequently paid by the Chilean Government.

On March 9, 1972, the Chilean Government placed an embargo on the remaining Chilean bank accounts and real estate holdings of Anaconda and Kennecott in Chile.

When the Chilean special appeals tribunal refused to review President Allende's excess profits determination in September 1972, Kennecott withdrew from further legal proceedings in Chile (September 7, 1972), asserting its rights of ownership over the copper produced by its former holdings and the proceeds from sales of that copper, and stating that it would seek remedies outside of Chile.

On September 30, 1972, the corporation obtained a Superior Court decision in Paris enjoining the payment of \$1.33 million by French purchasers for a copper cargo shipment bound by freighter to Le Havre. The freighter was diverted to Rotterdam, where Kennecott obtained a Dutch court order to seize the cargo and arrest the ship. However, since all the copper cargo abroad was destined for French purchasers, thereby falling within the jurisdiction of French courts, the case was dropped and the freighter returned to Le Havre, where the copper was unloaded. On November 29, 1972, a Paris civil court released the embargoed

<sup>40</sup> Crimmins, op. cit., p. 8.

<sup>41</sup> Washington Post, Feb. 10, 1973. As explained by Acting Assistant Secretary of State for Inter-American Affairs John H. Crimmins at the House Inter-American Affairs Subcommittee hearing on March 6, 1973. "The 1914 treaty is a treaty of conciliation, not of arbitration; it provides for an examination by an internationally established group of experts to look into the questions in issue and to render a report which is not binding on either party." Crimmins, op. cit., p. 10.

<sup>42</sup> Foreign Broadcast Information Service. Daily Report: Latin America and Western Europe, v. VI, no. 40, Feb. 28, 1972: E7-8.

<sup>43</sup> Overseas Private Investment Corporation. Topics, v. 2, no. 1, January 1973 reprinted in Kennecott Copper Corporation. Confiscation of El Teniente, Supplement no. 4; Kennecott Continues Its Pursuit of Remedies Outside of Chile, May 1973: 4; also p. 8.

\$1.33 million payment for the shipment while ordering the Chilean Government to deposit an equal amount in escrow pending the results of a study of the dispute ordered by the court. Kennecott subsequently initiated similar action in Stockholm, Hamburg, Milan, Rome and Brescia, Italy, concerning copper shipments to purchasers in those nations.<sup>44</sup>

At the outset of Kennecott's action in Paris, the Chilean Government denounced the act as "economic aggression" contrary to the principles of international law, and sought to take counteraction in the Paris court and subsequently in the courts of other nations involved in order to obtain payment for its copper shipments. President Allende called an emergency meeting in Paris of the Intergovernmental Council of Copper Exporting Countries (CIPEC),<sup>45</sup> which held its first session on October 16, 1972. CIPEC met again in Santiago in late November, at which time the membership adopted resolutions which accused Kennecott of economic and trade aggression against Chile and stated the nations' intention to place an embargo on sales of copper in any market where Kennecott suits were successful.

Also on October 16, in Geneva, eight Latin American nations [Argentina, Columbia, Ecuador, Guatemala, Mexico, Peru, Uruguay and Venezuela] joined Chile in a declaration presented to the Executive Board of the United Nations Conference on Trade and Development [UNCTAD] denouncing the French court action and affirming a nation's right freely to dispose of its natural resources. The UNCTAD Board, in late October, voted a resolution affirming the sovereign right of all nations to dispose freely of their natural resources and asserting that any disputes arising out of nationalization by any nation of its natural resources falls with the sole jurisdiction of that nation unless both parties agree to international arbitration.

President Allende took his battle with Kennecott a step further when in December 1972, speaking at the United Nations General Assembly, he placed his charges against Kennecott before that international forum. He accused Kennecott of attempting to "rob" Chile of its copper export earnings through its efforts at creating "a climate of uncertainty" among Chile's European copper purchasers, to block the marketing of Chilean copper, and to "pressure" his government through its embargo suits in European courts.

### C. THE ALLENDE GOVERNMENT'S CASE AGAINST THE U.S. COPPER COMPANIES

Chile's case against the copper companies is essentially twofold: Chilean sovereignty and U.S. exploitation. Chile has strongly adhered to the principle that it is the sovereign and inalienable right of any state to control its wealth and basic natural resources. In support of its stand, Chilean officials often cite United Nations General Assembly Resolution 1803 [December 14, 1962], which in eight principles affirms the right of nations and peoples to exercise permanent sovereignty over their natural wealth and resources, including the exploration, development, and disposition of these resources and the right to nationalize, expropriate, or requisition such resources in the national interest.<sup>46</sup>

The Chilean Government maintains that prior to nationalization, Chile had no effective power over any aspect of the all important copper industry—exploitation, sale or financial management. Repossession of the copper industry thus became synonymous, in President Allende's words, with "controlling our economic destiny. . . . winning our second independence." The Chilean Government maintains that its action was non-discriminatory, i.e., not aimed at any particular foreign interests but simply to gain control over the five largest copper producing mining operations, representing between 73 and 80 percent of total Chilean copper exports annually. It so happened that these were owned by U.S. firms, no other foreign countries or nationalities being involved in copper mining operations of greater or similar production. The Chilean Government points out that it has also nationalized, through expropriation, purchase or intervention, foreign firms operating in other industries considered vital to the economy, involving interests owned entirely or in part by German, French, Belgian and other foreign

<sup>44</sup> Kennecott Copper Corporation, *op. cit.*, pp. 1-iv.

<sup>45</sup> CIPEC membership is composed of several of the world's principal copper producing countries—Chile, Peru, Zambia and Zaire.

<sup>46</sup> United Nations, *Yearbook of the United Nations*, 1962, New York, Columbia University Press in cooperation with the United Nations [1964] p. 499. Text of resolution appears on pp. 503-504.

investors. In explanation of the copper nationalization, President Allende, in his first message to the Chilean Congress [May 1971] stated:

"Chile has begun the definitive recovery of our most fundamental source of wealth: copper. The nationalization of our copper is not an act of vengeance or hatred directed towards any group, government or nation. We are, on the contrary, positively exercising an inalienable right on behalf of a sovereign people: that of the full enjoyment of our national resources exploited by our national labour and effort."<sup>47</sup>

The second aspect of Chile's case against the copper companies is based on Chile's finding that the U.S.-owned copper companies have, during the period of their operations in Chile, continually exploited Chilean copper to further their own narrow interests, focusing on what the Allende Government believes to be the quick obtainment of exorbitant profits. This aspect of their case rests upon charges that the copper companies: (1) took out billions of dollars in profits with minimal reinvestment of earnings for the benefit of the Chilean economy; (2) exported copper ore to U.S. and European markets, making no attempt to develop refining or manufacturing facilities in Chile; (3) controlled and manipulated the price of copper to the detriment of Chile; (4) subverted every effort of succeeding Chilean governments to gain reasonable advantages from the foreign exploitation of national resources.<sup>48</sup>

With regard to the excess profits determinations to be deducted from compensation amounts, Secretary of State William Rogers' statement of October 13, 1971, protesting the Chilean compensation findings produced a widespread reaction in Chile, with members of Congress of all political affiliations, the press, labour, and social and community organizations all supporting the Chilean Government's position and repudiating U.S. threats of reprisal. The Chilean Government, countered the same day with a statement by Foreign Minister Clodomiro Almeyda:

These remarks ignore the nation's sovereign right to determine, in accordance with the Chilean Constitution and law the maximum limit of profits to establish the amount [of indemnity]. The ministry also expresses its concern over the reference to possible financial consequences for Chile and possible negative effects upon foreign aid. This amounts to veiled pressure against our nation, which we can only reject.<sup>49</sup>

In an interview with Louis Witztzer, which appeared in the Christian Science Monitor on February 11, 1972, President Allende summed up his nation's position regarding Chilean nationalization of copper and the compensation issue:

"The Chilean Government has acted, when it expropriated American copper interests, within the law and the Constitution. We are a small country, but a proud one and a sovereign one. Our decision in this matter was approved, from a legal point of view, by the Controller-General of the Republic, an official appointed for lifetime whose business it is to judge whether Congress and the government act within the Constitution. Furthermore it was approved by the church, the Army, and even the most conservative congressmen . . .

"Need I remind you that a well-known American columnist wrote in the New York Times that 'if all the oil in Texas were owned by foreigners, the Texans, including Mr. Connally, would feel the way the Chileans do about copper . . .'

"In 60 years the copper companies drew \$10 billion profit from Chile. In 400 years accumulated national wealth amounts to \$9.5 billion which means they have taken a whole Chile home. . . .

"The United Nations has clearly proclaimed that every nation has the right to own its natural resources, and if the United States used its influence within the international credit organizations to turn our pledge down it would be doing it for its own foreign-policy purposes. And we would have to lodge our protests within the United Nations, reminding its members that such actions by the United States constitute a threat to all of them. However, . . . we are not afraid of threats because we have reason and right on our side."<sup>50</sup>

<sup>47</sup> Chilean President Salvador Allende, quoted in: Debray, Regis. *Conversations with Allende: Socialism in Chile*. London, N.L.B. [1971] p. 185.

<sup>48</sup> In 1971, the Chilean Government employed investigatory missions of Soviet and French mining experts to determine the conditions of the mines slated for expropriation. Their final reports charged U.S. mismanagement of the mines and exploitation of Chile's copper resources with the objective of gaining the quickest possible short-term profits.

<sup>49</sup> Foreign Broadcast Information Service. *Daily Report: Latin America and Western Europe*, v. VI, no. 199, Oct. 14, 1971: E1.

<sup>50</sup> Christian Science Monitor, Feb. 11, 1972: 7.

#### D. THE UNITED STATES POSITION

##### 1. Position of the Executive Branch

The United States Government accepts in principle the sovereign right of any nation to nationalize property within its territory on a non-discriminatory basis, but it also recognizes as part of that precept that prompt, adequate, and effective compensation is to be afforded the owner of such property according to the requirements of international law. Concerning Chile's reliance on U.N. General Assembly Resolution 1803, the United States accepts the principles set forth in the resolution but points to the part of the resolution which states, "the owner shall be paid appropriate compensation . . . in accordance with international law" and to the text of the resolution which states that "foreign investment agreements freely entered into by or between sovereign States shall be observed in good faith."<sup>21</sup>

The U.S. reaction to the findings of the Chilean Comptroller General was set forth in the statement by Secretary of State William P. Rogers on October 18, 1971:

"It appears that the major factor in the Comptroller General's decision with respect to the larger producers was the determination on September 28 of alleged 'excess profits.' The unprecedented retroactive application of the excess profits concept, which was not obligatory under the expropriation legislation adopted by the Chilean Congress, is particularly disquieting. The U.S. companies which are affected by this determination of the Chilean Government earned their profits in Chile in accordance with Chilean law and under specific contractual agreements made directly with the Government of Chile. The excess profits deductions punish the companies today for acts that were legal and approved by the Government of Chile at the time. No claim is being made that these excess profits deductions are based on violations of Chilean law. This retroactive determination has serious implications for the rule of law.

"Should Chile fail to meet its international obligations, it could jeopardize flows of private funds and erode the base of support for foreign assistance, with possible adverse effects on other developing countries. The course of action which the Chilean Government appears to have chosen, therefore, could have an adverse effect on the international development process.

"The United States hopes that the Government of Chile, in accordance with its obligations under international law, will give further careful consideration to this matter."<sup>22</sup>

The basic position of the United States Government regarding the excess profits determination is that the Chilean Government does not have the right to deduct excess profits, computed arbitrarily and applied retroactively to company profits earned in accordance with Chilean laws on corporations' profits in effect at the time.

On January 19, 1972, President Nixon set forth specifically U.S. policy on foreign expropriation of U.S. private investment:

" . . . Under international law, the United States has a right to expect . . . that its citizens will receive prompt, adequate, and effective compensation from the expropriating country. Thus, when a country expropriates a significant U.S. interest without making reasonable provision for such compensation to U.S. citizens, we will presume that the U.S. will not extend new bilateral economic benefits to the expropriating country unless and until it is determined that the country is taking reasonable steps to provide adequate compensation or that there are major factors affecting U.S. interests which require continuance of all or part of these benefits . . . In the face of the expropriatory circumstances just described, we will presume that the United States Government will withhold its support from loans under consideration in multilateral development banks."<sup>23</sup>

Thus far, however, in response to Chilean Government charges that, as a result of the copper compensation controversy, the United States has denied loans and blocked aid to Chile and pressured international financial institutions against loans to Chile, the U.S. Government has repeatedly stated that its criteria for judging financial assistance to Chile are based principally on consideration of the Chilean Government's credit worthiness and other considerations relating to Chile's current financial state. Concerning U.S. pressure on international finan-

<sup>21</sup> Yearbook of the United Nations, 1962, op. cit., p. 504.

<sup>22</sup> U.S. Congress. House. Committee on Foreign Affairs. Subcommittee on Inter-American Affairs. Recent Developments in Chile, October 1971, p. 2.

<sup>23</sup> Nixon, Richard M. Weekly Compilation of Presidential Documents, v. 8, no. 4, Jan. 24, 1972: 65.

cial institutions the United States has said that the loan decisions by these organizations are made independent and are based on questions of credit worthiness.<sup>64</sup>

With respect to the U.S. economic aid program for Chile, aside from funding arranged prior to the Allende government and already in the pipeline, no significant new aid grants or loans have been extended, but the United States maintains that the Allende government has not sought any U.S. assistance.<sup>65</sup>

Aside from the issue of compensation for expropriated U.S. interests and several other issues which are recognized as serious problems, the U.S. Government stresses that it maintains normal diplomatic relations with Chile, and that U.S. policy is aimed at keeping open the lines of communication with the Allende government and pursuing, through continuing dialog, every reasonable opportunity to enhance the possibility of a mutually acceptable settlement of differences.<sup>66</sup>

## **2. The Congressional View**

While some members of Congress are concerned about many aspects of the Chilean situation such as the nature of the leftist government and its attitude toward the United States, the issue apparently of the most concern to members of the United States Congress is that of Chilean compensation for expropriated U.S. business interests, especially the copper companies. The problem with Chile actually becomes part of the larger question of whether official U.S. policy should protect the interests of American citizens who have invested many billions in foreign countries, or whether such interests should be allowed to crucially influence U.S. public policy, which, arguably, should be based on broader national interests. The issue bears, in the view of many, upon the structure of future international investment generally.

In the case of Chile, a nation with which the United States has maintained a long friendship and traditionally close ties, the issue is a very difficult one, and congressional attitudes cover a diverse range of views as to the proper response of the United States. At one end of the spectrum are those members who urge patient diplomacy and restraint, who feel that the United States should maintain a sensitive and positive approach and refrain from heavy-handedness or from taking any action which would further aggravate the already sensitive U.S.-Chilean relationship under the Allende government. Advocates of this policy line believe that Chilean expropriation of copper and other U.S. private interests is a separate matter not related to overall U.S. policy concerns in Chile and should, therefore, be a matter for resolution between the U.S. firms involved and the Chilean Government, free of official U.S. Government intervention.

The opposite view is that the United States Government has the responsibility to protect legitimate interests of its citizens wherever involved, and, if necessary, to employ stern measures to insure fair treatment not only as it affects the current Chilean situation but in the overall interest of protecting U.S. private investments throughout the world. Advocates of this view see the Chilean expropriation situation as a precedent which directly threatens U.S. national interests.

The Chilean expropriation issue has been a source of much congressional discussion, especially in foreign aid debates where some members feel that they cannot vote for aid to recipient countries which expropriate U.S. investment without offering adequate compensation. Congressional interest also is expressed in debates on the funding of international lending institutions, with some members feeling that U.S. contributions to these agencies should be conditioned by the understanding that the United States will vote against loans and otherwise use its influence to prevent funding to any country which expropriates U.S. property without just compensation.

<sup>64</sup> World Bank President Robert McNamara addressed the question in October 1972 while presenting the annual report of the Bank to the United Nations. Mr. McNamara stated with regard to Chile, "The primary condition for bank-lending—a soundly managed economy with a clear potential for utilizing additional funds officially—has not been met." (New York Times, Oct. 19, 1972).

<sup>65</sup> U.S. economic assistance to Chile has steadily declined since the peak year of \$111.3 million (1966) under President Frei, and \$51.6 million in the final year of the Frei administration (1969). In 1970, Chile's presidential election year, U.S. economic assistance totalled \$26.3 million, dropping to \$8.6 million and \$7.4 million in 1971 and 1972, respectively. FY 1973 U.S. economic assistance to Chile is set for \$4.8 million, and the proposed FY 1974 program totals \$3.6 million. (Figures compiled from: U.S. Agency for International Development, Office of Finance Management, Statistics and Reports Division, U.S. Overseas Loans and Grants: Obligations and Loan Authorizations, July 1, 1945—June 30, 1972, Chile: p. 42; State Department, Chile Desk; AID/Food for Peace Program; Peace Corps, Chile Desk.)

<sup>66</sup> Crimmins, op. cit., pp. 3, 18.

Secretary of State Rogers, in his statement of October 13, 1971, alluded to possible repercussions of this type within Congress. Two days later Assistant Secretary of State for Inter-American Affairs Charles A. Meyer spoke to this same point at a hearing of the House Inter-American Affairs Subcommittee called to examine the Chilean copper compensation issue. Meyer referred to a "ripple effect," which he defined as "the growth of public and congressional opinion adverse to authorizing or appropriating or allocating sufficient funds, public and private, for development assistance because of negation of generally accepted rules of international law and equity."<sup>87</sup>

Congressional concern to protect U.S. private investment from expropriation by foreign governments without adequate compensation prompted the passage in 1972 of amendments to the Inter-American Development Bank Act [IDA is a lending agency of the International Bank for Reconstruction and Development/World Bank] which inserted the following conditional language:

*Sec. 21.* The President shall instruct the United States Executive Director of the Bank to vote against any loan or other utilization of the funds of the Bank for the benefit of any country which has—

(1) nationalized or expropriated or seized ownership or control of property owned by any United States citizen or by any corporation, partnership, or association not less than 50 per centum of which is beneficially owned by United States citizens;

(2) taken steps to repudiate or nullify existing contracts or agreements with any United States citizens or any corporation, partnership, or association not less than 50 per centum of which is beneficially owned by United States citizens; or

(3) imposed or enforced discriminatory taxes or other exactions, or restrictive maintenance or operational conditions, or has taken other actions which have the effect of nationalizing, expropriating, or otherwise seizing ownership or control of property so owned; unless the President determines that (A) an arrangement for prompt, adequate, and effective compensation has been made, (B) the parties have submitted the dispute to arbitration under the rules of the Convention for the Settlement of Investment Disputes, or (C) good faith negotiations are in progress aimed at providing prompt, adequate, and effective compensation under the applicable principles of international law.<sup>88</sup>

Another legislative provision which could be applied in the Chilean case in Sec. 620(e) (1) of the Foreign Assistance Act of 1961, as amended [Hickenlooper amendment], which was enacted in 1962. It calls for the suspension of all U.S. assistance to any nation which nationalizes, expropriates, or seizes ownership, or otherwise acts to effect the seizure of ownership or control of any property of which 50 percent or more is owned by U.S. citizens or corporations, if such a nation has failed to take appropriate steps to provide adequate compensation.<sup>89</sup>

#### IV. THE UNITED STATES AND CHILE: POLICY CONSIDERATIONS IN THE CONTEXT OF THE 1970'S

Analysts have said that President Salvador Allende's victory in Chile has introduced a wholly new element into Inter-American relations and that Allende's Chile is a manifestation of a growing trend among Latin American nations to pursue a course independent of the United States in both internal and foreign affairs. This is consistent with a broader trend which is steadily gaining momentum among the Latin American nations—that of political and economic nationalism. On the political front this has come to mean a divergence in systems of governments—left, right, and center—all determined to pursue policy goals unique to their particular national characteristics. That this phenomenon is indeed a reality in Latin America is supported by the fact that the Organization of American States, at its General Assembly session in April 1973, adopted as principles of the Inter-American system the acceptance of a "plurality of ideologies" within the system and the precept that every state has the right to adopt its own system of government and economic and social organization.

<sup>87</sup> U.S. Congress. House. Committee on Foreign Affairs. Subcommittee on Inter-American Affairs. Recent Developments in Chile, October 1971, p. 3.

<sup>88</sup> Inter-American Development Bank Act, P.L. 86-147, as amended, Sec. 21 [added by P.L. 92-246, March 10, 1972]. Text appears in U.S. Congress. House. Committee on Foreign Affairs. Inter-American Relations, a Collection of Documents, Legislation, Descriptions of Inter-American Organizations, and Other Material Pertaining to Inter-American Affairs. (Committee print) Washington, U.S. Govt. Print. Off., 1972. pp. 106-107. (Hereafter cited as Inter-American Relations . . .).

<sup>89</sup> Text of Sec. 620(e) (1) of the Foreign Assistance Act of 1961, as amended, appears in: Inter-American Relations . . . p. 436-437.



On the economic front, this trend in Latin America is manifested in the strongly felt need to assert control over the national resources and over vital sectors of the economy heretofore dominated by foreign, mainly U.S. interests.

In terms of foreign policy, Chile reflects this growing movement of the Latin American nations away from dependency upon any one world power and toward a closer identity with Latin American and Third World interests. President Allende has described Chile as a "non-aligned" country. Chilean Foreign Minister Clodomiro Almeyda defined the Allende Administration's foreign policy as follows:

"Chile's international policy is not aimed against any people of the world. Consequently, neither is it against the people of the United States. It is a policy designed to break the dependent relations of Chile's economy with respect to interests which are not ours. We aim to achieve this break-away from relationships of dependency through nationalization of our national resources which are the property of foreign countries; by complete recovery of the autonomy of our interior and foreign policies, and by identification with the interests of those countries such as those of Latin America and the Third World—countries whose situation is similar to ours . . . This policy of ours—designed to win our economic independence, to regain our political sovereignty, to act before other countries and in the United Nations in accordance with Chile's interest . . . is an anti-imperialistic policy. It is not an anti-American policy."<sup>9</sup>

President Allende's speeches before international forums, notably the United Nations General Assembly and the Third United Nations Conference on Trade and Development, have centered around the issue of the gap between the technologically developed and less developed, the rich and poor nations, allegedly perpetuated by the practices of the developed world, and the consequent need of the less developed countries to act in concert to defend their economic interests. Mexican President Luis Echeverria sounded a similar theme in his address to the United States Congress in June 1972.

The Allende government's determination to pursue a foreign policy line less dependent on the United States has been demonstrated in the Chilean Government's efforts to extend trade and economic ties with the Socialist nations. In 1971-1972, Chile and the U.S.S.R. exchanged economic missions for the purpose of considering possible Soviet economic assistance to Chile. The Chilean mission also visited other Eastern European nations. During 1971, Chile signed commercial and trade agreements and scientific, cultural, and technical cooperation agreements with the Soviet Union and a commercial agreement with Cuba. In December 1972, President Allende visited Moscow (as well as Algeria, Cuba, and Mexico), where he was warmly welcomed by Soviet leaders. Chile established diplomatic relations with the People's Republic of China in 1971 and signed agreements on technical, economic, and commercial cooperation and trade with that nation in the same year. Of the approximately \$950 million in credits opened by Chile with foreign nations in 1972, roughly \$450 million came from the Socialist countries.<sup>10</sup>

Viewed in this context, it could be said that Chile represents a testing ground for the formulation of a new U.S. policy structured to accommodate the changing character of the Latin American region. The development of the U.S.-Chile relationship since the Allende government came to power is being watched closely by the other nations of the region; thus, the United States Government's response to Chile becomes highly significant in terms of future U.S. relations with all of Latin America.

There are many voices, both within and without the U.S. Government, contending that the United States should maintain its support of the Chilean government as a safeguard against attempted domination by foreign powers hostile to U.S. interests. Basically, the argument is that the United States should not pull back from Chile during this critical period in Chile's internal political and economic life, leaving a void which the U.S.S.R. or another major power might fill. Thus, the U.S. response to the issue of Chilean expropriation of U.S. private interests and the immediate problem of the Chilean Government's refusal to compensate the large U.S. copper interests is to be viewed in a political, rather than a strictly legal or economic context. For instance, former U.S. Ambassador to the OAS, John Dreier, has said:

<sup>9</sup> Chilean Foreign Minister Clodomiro Almeyda, November 22, 1970, press interview, quoted in *New York Times*, Jan. 25, 1971: 73.

<sup>10</sup> Testimony of John H. Crimmins, Acting Assistant Secretary of State for Inter-American Affairs, in U.S. Congress, House, Committee on Foreign Affairs, Subcommittee on Inter-American Affairs, *United States-Chilean Relations*, p. 8.

"The issue arises over what is 'fair' compensation, and since there is no international code of either law or accounting that authoritatively determines equity in such matters, it is in the last analysis a subject for political negotiation . . . The simple question of compensation for expropriated properties is complicated by deeply divergent concepts of law, equity, social justice and sovereignty, which arouse passionate feelings."<sup>2</sup>

Those holding this view maintain that the U.S. response must be based on an assessment of the broader national interest rather than the narrow requirements under international law to provide prompt, adequate, and effective compensation for expropriated assets.

Another factor to consider, some contend, is the strength of the nationalist influence in Chile and in Latin America as a whole. Those who argue against U. . . application of stern measures in the Chilean situation point out that experience indicates that such an approach on the part of the United States Government is likely to produce an effect opposite to the desired result and counter to U.S. policy interests. They believe it will fan nationalist flames in Chile, increase internal support for the Allende government, and encourage additional defiance and intransigence on its part. It is argued further that strong political or economic pressure by the United States against Chile could evoke great sympathy in other Latin American countries for the threatened sister republic and hostility toward the United States.

Another consideration regarding U.S. policy toward Chile is that the current dispute over the payment of compensation to the copper companies and other multinational firms has taken on wider international implications. The Chilean Government has cast the dispute within the framework of the larger issue of the economic domination of the poor nations by the rich, and President Allende has sought the sympathy and support of the Third World for his cause. In defying the rich and economically powerful, Allende has said and done what many Third World nations, facing the same problems of development and control of resources, would like to accomplish themselves. This could have some effect on the character of United States assertions of its claims in the compensation controversy. This consideration gains in significance when taken in the light of the diminished political influence of the United States in the world at large, demonstrated in the United Nations. Yet the United States must consider the precedent here created in terms of its effects upon the structure of international investment generally, and the vast body of U.S. holdings abroad in particular.

Policy considerations for Chile are equally complex and difficult, and some analysts feel, as in the situation faced by the United States, that the Allende government should take a broad view, going beyond the narrow limits dictated by the desire to react against what might be considered an adversary relationship. The Allende government is aware of the vital role played by foreign private investment in providing capital and the technological, managerial, and marketing skills necessary for the successful exploitation of Chile's natural resources and the progressive development of its industrial capacity. This factor would indicate the necessity for the Chilean Government to strike a balance between its nationalistic economic philosophy and its critical need for foreign assistance. Chile desperately needs the external financing provided through the cooperation of the United States and the world's other major commercial nations, foreign private loan sources, and international financial institutions in coping with problems of runaway inflation, stagnation of the economy, and Chile's enormous foreign debt.<sup>3</sup> Trade ties with the United States continue, and despite the current uneasiness in relations between the two nations, there is reason to believe that the Allende government desires U.S. economic assistance and additional trade.

At issue is the importance of creating a climate of confidence regarding the Chilean economy and government policies, not only as concerns current and potential foreign private investment but also to give support to Chile's international credit worthiness and its ability to obtain other means of international financing, both public and private. These are factors which must be considered by the Chilean Government in formulation of its international economic policies. They

<sup>2</sup> For further commentary on this issue, see John C. Dreier, "Chile, Copper and the United States Interest," SAIS Review, Winter 1972, pp. 5, 7.

<sup>3</sup> "According to the newsletter *Latin America* (December 1), in August 1970, Chile could call on lines of credit totaling \$219 million. In the seven years before copper nationalization in 1971, Chile obtained more than \$1 billion in loans from such agencies as the World Bank—an average of more than \$140 million a year. By August 1972 its total credit resources had dropped to about \$32 million." [The Nation, v. 215, no. 20, Dec. 18, 1972: 613.]

ought to exert a leavening influence on economic decisions affecting U.S. and other foreign interests.

President Allende, in a tone similar to U.S. officials, has stated that he is prepared to conduct relations with the United States on whatever level of cordiality the United States wishes. The Allende government seems to realize that by force of reality it is in Chile's national interest to maintain a working relationship with the United States, Chile shares with the United States strong political, economic, historical, and cultural ties. The two nations are members of the hemisphere community and have shared common philosophies and precepts embodied in the framework of the Inter-American system. Considering the broad spectrum and special significance of U.S.-Chile relations, it would appear that it would be in the best interest of both nations to maintain their traditional, constructive, cordial, and mutually beneficial ties. However, under the present circumstances the relationship is affected by a myriad of factors, some of which may be beyond the control of either government.

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