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**“NEVER DRAW UNLESS YOU MEAN TO SHOOT”:
U.S. DEPARTMENT OF STATE’S RESPONSES TO PROPERTY
SEIZURES IN LATIN AMERICA**

by

NATHAN D. YOUNGE
B.A. June 1988, American University

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Joan E. Supplee (Director)

ABSTRACT

This thesis examines the U.S. Department of State's diplomatic handling of disputes over the seizure of U.S.-owned property in Latin America between 1937 and 1973. Seizures in Bolivia, Mexico, Guatemala, Cuba, Peru and Chile are used as case studies, and provide examples of successful and unsuccessful diplomatic outcomes.

Several key factors are analyzed in each dispute, including whether the Department took a conciliatory or confrontational approach toward each country, the kind of economic pressure applied, the situations under which the Department opted for official diplomatic involvement, and the types of informal facilitative assistance provided to U.S. claimants. The thesis then attempts to determine which measures helped to resolve outstanding disputes and which did not.

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LIST OF ABBREVIATIONS

AID	U.S. Agency for International Development
APRA	American Popular Revolutionary Alliance (Peru)
CHILTELCO	Compañía de Teléfonos de Chile
CIA	Central Intelligence Agency
EPF	Empresa Petrolera Fiscal (Peru)
FCSC	Foreign Claims Settlement Commission
IDB	Inter-American Development Bank
IMF	International Monetary Fund
INRA	National Institute of Agrarian Reform (Cuba)
IPC	International Petroleum Company
ITT	International Telephone and Telegraph Company
NSC	National Security Council
OAS	Organization of American States
OPIC	Overseas Private Investment Corporation
RG	Record Group (U.S. National Archives)
STPRM	Syndicate of Oil Workers of the Mexican Republic
UN	United Nations

SECTION I

OVERVIEW

CHAPTER I

INTRODUCTION

Latin American seizures of U.S.-owned property over the last six decades have totaled more than three billion dollars. Starting with the first major Bolivian seizure in 1937, the U.S. Department of State shouldered the responsibility of developing a response which balanced political, economic and security issues. In many cases, policies developed for Latin America shaped the U.S. response in other areas of the world. Although the trend in Latin America since the early 1980s has shifted toward privatization of state-owned enterprises, U.S. handling of property seizures in Latin America is vital for understanding the evolution of regional relations in this century. This study will focus on the development of State Department policy toward seizures in Bolivia (1937-42), Mexico (1938-42), Guatemala (1952-54), Cuba (1959-present), Peru (1969-73) and Chile (1970-73).

Throughout this period, the State Department faced three types of seizures: "nationalizations," "expropriations," and "confiscations." Each is unique and elicited different responses from the State Department. The term "nationalization" may be described as:

The transfer to the State, by a legislative act and in the public interest, of property or private rights of a designated character, with a view to their exploitation or control by the State, or to their direction to a new objective by the State.¹

¹Adeoye A. Akinsanya, The Expropriation of Multinational Property in the Third World, (New York: Praeger Publishers, 1980), 6.

Whereas a "nationalization" usually refers to the taking of all properties or investments within a particular field, "expropriation" most often connotes the seizure of a single property or investment.² A frequently used definition describes an "expropriation" as:

The procedure by which a state, in time of peace and for reasons of public utility, appropriates a private property right, with or without compensation, so as to place it at the disposal of its public services, or of the public generally.³

Finally, the term "confiscation" refers to the seizure of privately-owned property without compensation, and does not necessarily imply that the seized property will be made available for public use.⁴ Of these three, the State Department had to deal with nationalizations most frequently.

This study analyzes six major property seizures, and the State Department's response to each dispute. The case studies include: confiscation of a petroleum operation in Bolivia, nationalization of the petroleum industry in Mexico, expropriation of agricultural lands in Guatemala, and widespread nationalizations in Cuba, Peru, and Chile. This effort differs from other works on the afore-mentioned property seizures by focusing primarily on the State Department's response, and how the Department adapted to a variety of seizures over approximately four decades.

²Stefan H. Robock, "Political Risk: Identification and Assessment," Columbia Journal of World Business 6, no. 4 (July/August 1971): 13.

³Samy Friedman, Expropriation in International Law, (London: Stevens and Sons, 1953), 3.

⁴Akinsanya. 3-4.

In order to assess the State Department's performance, four factors in particular will be addressed throughout the case studies. As described in more detail below, these factors involve whether the Department was conciliatory or confrontational in its handling of each dispute, the type of economic pressure applied, the manner in which formal diplomatic involvement proceeded and the kinds of facilitative assistance provided to the affected U.S. companies. The themes vary in relevance from case to case, but are designed to assess the consistency of the Department's decision making process.

The largest issue addressed is whether the State Department adopted a conciliatory or confrontational approach toward Latin American nations that seized U.S. property, and how this posture affected the final outcome of each dispute. Cole Blasier's dichotomy of conciliation versus confrontation will be utilized, in which he focuses on several cases of revolutionary change in Latin America and the U.S. government's receptivity toward these new governments.⁵ Blasier contends that in cases where Washington has been more conciliatory, the outcome has been politically advantageous for the United States. In this study, the issue of conciliation versus confrontation will consider the kind of property seized, the dollar amount involved, the influence of the seized company in the United States, and the post-seizure attitudes of the Latin American governments involved. Finally, conciliation will be weighed against the economic costs of such a move.

⁵Cole Blasier, The Hovering Giant: U.S. Responses to Revolutionary Change in Latin America, 1910-1985, rev. ed. (Pittsburgh: University of Pittsburgh Press, 1985). 6-7.

The case studies also explore the forms of economic pressure the State Department had at its disposal during each controversy, the reasons why it decided to implement or withhold use of these retaliatory measures, and the way in which this decision affected the final outcome. The Department lost some of its flexibility in administering economic pressure when the U.S. Congress passed legislation requiring formal economic sanctions in the case of uncompensated seizures. Tracing the history of the U.S. economic response will explain why Congress believed formal sanctions were needed, and why the Department, at the same time, opposed the move.

Next, the study analyzes conditions under which the State Department opted for formal diplomatic involvement. In cases where the Department interposed diplomatically on behalf of U.S. foreign investors, did the Department follow its own policy of waiting until the U.S. claimant had first exhausted all local remedies afforded by the host government before interposing, or did it get involved prematurely? ⁶

Before the emergence of President Franklin Roosevelt's Good Neighbor Policy, the State Department had a reputation for being overly eager to interpose on behalf of U.S. citizens when involved in Latin American investment disputes. The Good Neighbor Policy changed this by putting the importance of long-term diplomatic relations first.

The final factor addressed is the level of State Department diplomatic assistance to U.S. firms that fell victim to property seizure. Included in this analysis is a review

⁶Many authors prefer to use the term "interpose" as opposed to "intervene" because the latter often connotes that military force might be used. See Edwin M. Borchard's The Diplomatic Protection of Citizens Abroad, (New York: Banks Law Publishing Co., 1915), 441-42.

of the measures taken by the Department to ensure that negotiations between private investors and the host nation progressed in a positive, constructive manner.

The thesis is organized into three sections. Section I provides an overview of the historically differing U.S. and Latin American viewpoints toward both property seizures and the rights of foreigners under international law. Section II presents six property seizure cases occurring under Presidents Franklin D. Roosevelt (Bolivia and Mexico), Dwight D. Eisenhower (Guatemala and Cuba), and Richard M. Nixon (Peru and Chile). The case studies are analyzed according to the above-mentioned criteria and include examples of both successful and failed diplomacy. The third and final section provides an overall look at the Department's actions, describes the impact that the Latin American experience has had on U.S. policy, and highlights the lessons learned.

Several secondary sources helped to build the foundation for this thesis.

Foremost is Cole Blasier's The Hovering Giant, which focuses on cases of revolutionary change in Mexico, Bolivia, Guatemala, Cuba and Chile, and the impact of conciliatory or confrontational U.S. policies on bilateral relations. Meanwhile, Expropriation of U.S. Property in South America: Nationalization of Oil and Copper Companies in Peru, Bolivia, and Chile by George Ingram and Expropriations of U.S. Investments in Cuba, Mexico, and Chile by Eric N. Baklanoff both study the origins of three major disputes, and post-seizure interaction between the U.S. government, each Latin American government and the affected investors. These two works inspired a concentration on property seizures as an outgrowth of revolutionary change. Finally, Jessica Pernitz-Einhorn's Expropriation Politics investigates the State Department's

decision making process toward one specific set of expropriations in Peru. This work sparked an interest in studying the State Department's response to property seizure disputes.

Background for each case study came from a variety of secondary sources. Bryce Wood provides a good account of the Roosevelt administration's actions toward Bolivia's Standard Oil seizure in The Making of the Good Neighbor Policy. For the Mexican dispute, Lorenzo Meyer's Mexico and the United States in the Oil Controversy, 1971-1942 gives a thorough description of the Mexican oil industry nationalizations. The Guatemalan United Fruit Company land seizures drew extensively from Stephen Rabe's Eisenhower and Latin America, Bitter Fruit: The Untold Story of the American Coup in Guatemala by Stephen C. Schlesinger and Stephen Kinzer and Richard H. Immerman's well-researched The CIA in Guatemala: The Foreign Policy of Intervention. Two of the best works found on the Cuban nationalizations are Response to Revolution: The United States and the Cuban Revolution, 1959-1961 by Richard E. Welch, Jr. and The Cuban Nationalization: The Demise of Foreign Private Property by Michael W. Gordon. The Peruvian International Petroleum Company controversy relied extensively on Jessica Pernitz-Einhorn's Expropriation Politics, which used personal interviews with State Department officials to obtain insight into the Department's decision making process during the course of the dispute. The Chilean nationalizations drew from such sources as Modern Chile, 1970-1989: A Critical History by Mark Falcoff and former Ambassador Nathaniel Davis' first-hand account in The Last Two Years of Salvador Allende.

Numerous other U.S. and foreign publications were used in this thesis.

However, such accounts were frequently overly critical of either U.S. foreign policy or Latin American attempts at political and economic reform. Examples include Standard Oil's Bolivia Takes What It Wants, Donald R. Richberg's The Mexican Oil Seizure, and Communism in Guatemala 1944-54 by Ronald Schneider. It was therefore often difficult to strike a balance between extreme positions.

Assessment of the day-to-day mechanics of the State Department's handling of individual property seizure disputes came from several key primary sources. Research material for the Mexican, Bolivian, Guatemalan and Cuban disputes was obtained from the State Department's Foreign Relations of the United States and declassified State Department political and commercial documents at the National Archives. Useful information regarding the Mexican oil seizures was also found in the Library of Congress' Manuscript Reading Room collection of the Josephus Daniels Papers. Since most of the internal State Department documents have not been declassified for the more recent Cuban, Peruvian and Chilean controversies, transcripts from Congressional testimony were used extensively.

CHAPTER II

LATIN AMERICAN AND U.S. PERSPECTIVES ON PROPERTY SEIZURES

Divergent U.S. and Latin American viewpoints toward the role and utility of foreign investment have developed over nearly a century. In the wake of the independence movements beginning in the early 1800s, Latin American nations actively solicited U.S. capital by offering tax breaks and special investment incentives. In the early twentieth century, many of those nations reassessed earlier economic programs and, subsequently, opted for greater self-sufficiency and national control of domestic resources. As these nations attempted to break free from what they now viewed as extensive foreign dependence, characterized by capital flight and exploitation by multinational firms, U.S. investors became primary targets of nationalistic economic reform. Meanwhile, both U.S. proponents and Latin American opponents of liberalized investment policies developed convincing arguments for their positions.

The Latin American Perspective

Although motives for seizure of U.S.-owned property varied from country to country in Latin America, some broad generalizations can be made. As many observers were quick to point out, not all instances of U.S. property seizure resulted from a desire to single-out U.S. investors as targets. Instead, Latin American nations targeted U.S. private investment because it was so pervasive and because it impeded nationalistic reforms. Also, whereas the United States has long viewed private foreign investment as instrumental in boosting Latin American development, some Latin American leaders were ambivalent toward such investment, which they believed

hindered economic progress. They argued that the "trickle down" approach often touted by Washington was an illusion. More specifically, many Latin American leaders asserted that private foreign investment actually created a monetary drain by removing repatriated profits, rather than reinvesting earnings in the domestic economy. Foreign enterprises also created few new job opportunities for nationals because they squeezed out domestic entrepreneurship. External control of vital industries such as mining, petroleum, or public utilities caused even greater concern because they often left host nations powerless to determine management of those resources. Finally, critics opined that foreign investment inevitably introduced new cultural influences, generally viewed as undesirable.¹

The official explanations for seizures of foreign-owned property fell into at least one of three categories. First, if the property was needed for public use, such as agrarian reform or the construction of roads, then the host government had the right to seize property. Guatemala used agrarian reform as its justification for expropriating United Fruit Company property in 1953 and 1954, as did Cuba in seizing U.S.-owned lands beginning in 1959. Second, the property in question may have been part of an industry considered vital to a nation's economic well-being and hence subject to seizure, as was the case in Chile's 1971-1973 nationalization of U.S.-owned copper

¹William D. Rogers, "U.S. Investment in Latin America: A Critical Appraisal." Virginia Journal of International Law 11, no. 2 (March 1971): 149-50. Also, there is a substantial amount of literature further explaining the dependency school theories. See, for example, Eduardo Galeano, Las venas abiertas de América latina, (Mexico City: Siglo Veintiuno Editores, 1970), 394-404, 431-36; and Fernando Henrique Cardoso and Enzo Faletto, Dependency and Development in Latin America, (Berkeley: University of California Press, 1979), 159-171.

mines. Lastly, irresponsible behavior by the foreign investor could also justify seizure, as illustrated by Bolivia's confiscation of Standard Oil properties in 1937.² The motivations for seizure frequently overlapped, such as in Mexico's 1938 nationalization of the petroleum industry, Peru's 1968 expropriation of the International Petroleum Company, and Cuba's 1960 nationalization of two U.S.-owned oil refineries. In these last three cases, the affected companies were accused of behaving irresponsibly in industries considered of great national economic importance.

Additionally, all Latin American nations supported the Calvo Clause, that for decades represented one of the most contentious legal issues in U.S.-Latin American diplomatic relations. Named after an Argentine diplomat and publicist of the mid-nineteenth century, the Clause declares that resident aliens are subject to the same laws as country nationals and have no right to request diplomatic intercession from their home government. The Calvo Clause's justification, according to one renown supporter, is that it "seeks to serve a legitimate function by attempting to curb the many flagrant abuses inherent in this process of diplomatic intervention, and hence is morally sound."³ Several Latin American nations have insisted that the Calvo Clause be written into contractual agreements signed by foreign investors. The procedure ensures that

²George M. Ingram, Expropriation of U.S. Property in South America: Nationalization of Oil and Copper Companies in Peru, Bolivia, and Chile, (New York: Praeger, 1974), 6-13 passim.

³Donald R. Shea, The Calvo Clause: A Problem of Inter-American and International Law and Diplomacy, (Minneapolis: University of Minnesota Press, 1955), 34. For an explanation of the Latin American view toward the Calvo Clause, see, Ramón Betata and Ernesto Henríquez. "La protección diplomática de los intereses pecuniarios extranjeros en los estados de América." Proceedings of the Eighth American Scientific Congress, vol. X (Washington, D.C.: 1940): 27-48.

foreign investors are cognizant of the host nation's rights and authority over properties within its boundaries. Proponents of the Clause argue that entrepreneurs are not obligated to invest abroad and are aware of the inherent risks before entering contractual agreements. Moreover, these advocates contend that profits made by U.S. private investors in Latin America historically have greatly outweighed any loss incurred from acts of expropriation or nationalization.⁴ Disagreement between U.S. investors and Latin American supporters of the Clause has yet to be resolved.

The U.S. Perspective

The U.S. government historically has tried to discourage nations from expropriating or nationalizing foreign-owned property, since it believes foreign investment enhances, rather than hinders, economic progress. Eric N. Baklanoff describes the U.S. position as follows:

(1) that payment of the required compensation diverts resources needed for economic development and depletes supplies of foreign exchange (2) property is often transferred from competent private hands to governments that lack the requisite managerial skills; and (3) such actions tend to worsen the climate for private investment.⁵

While the U.S. government wants to dissuade expropriations or nationalizations, it nonetheless will respect a nation's right to do so, provided the foreign government

⁴Shea, 35.

⁵Eric N. Baklanoff, Expropriations of U.S. Investments in Cuba, Mexico, and Chile, (New York: Praeger, 1975), 5.

presents U.S. investors with "just" (i.e., prompt, adequate, and effective) compensation.

Where U.S. policy makers have parted company with foreign governments has been over the issue of compensation. Compensation was at some point offered during all of the cases under study, but differences remained as to whether proposed compensation was both prompt and adequate. Over time, the State Department moved away from insisting upon a "just" compensation in favor of "prompt" compensation. Foreign nations often have been unable fully to recompense U.S. investors for their losses. Thus, the Department has, albeit unofficially, adopted the pragmatic view that it is better to receive at least some compensation for monetary losses rather than none at all.⁶ The Department's demand for just compensation must therefore be weighed against its desire for continued cordial diplomatic relations.

The issue of the Calvo Clause has created a legal dilemma for the United States. While Washington no longer demands annulment of this provision, or attempts to deter U.S. investors from entering contractual agreements containing the Clause, it does maintain that the Clause cannot serve to prevent diplomatic interposition on behalf of U.S. nationals. The U.S. justifies its position based on the Vattelien formula, which contends:

⁶Ibid., 2.

an injury to a national is an injury to the state of that national, thus giving the state rights of recovery independent of the rights of the individual and not affected by the individual's contractual waiver.⁷

Although the U.S. government does not consider itself legally barred from interposing in Calvo Clause cases, the Clause can, under certain conditions, be a determinant in deciding whether or not the U.S. government will sponsor a claim.⁸

The timing of U.S. diplomatic involvement is another important consideration. The U.S. interpretation of international law prohibits the State Department from interposing until an actual seizure of U.S.-owned property has taken place. If a claimant acknowledges receipt of compensation, the Department does not need to become involved. If, however, a claimant has not received just compensation and has met the Department's requirement for exhausting (or attempting to exhaust) all local remedies, the Department then can officially present this claim before a foreign government.⁹

Once the Department becomes involved in assessing the value of seized property, innumerable problems can arise. Optimally, both the U.S. government and private investors prefer that the host nation pay a fair market value for seized properties, a value calculated as though the seizure had not taken place or as though the

⁷For further information regarding Emmeric de Vattel and the Vattelien formula see, Shea, 45.

⁸Ibid., 42-45.

⁹Ibid., 96-98. For a thorough discussion on the origin of the U.S. position toward the exhaustion of local remedies. see, Green Haywood Hackworth, Digest of International Law, (Washington. D.C.: GPO, 1943), 5:501-26.

threat of seizure had not arisen.¹⁰ It is frequently impossible, however, for either the investor or the U.S. government to ascertain realistically these figures.

Three alternative methods exist for determining property valuation. The first, called a going-concern approach, analyzes an enterprise's past performance to determine projections of future profitability and earnings of the seized property. From the investor's perspective, this method is preferred, particularly in cases involving abundant mineral or petroleum resources. A second approach looks at the "replacement cost" of the property at the time of seizure, minus the property's depreciation. This method does not count projected future earnings, and thus produces a lower valuation figure than either a fair market value or going-concern approach. The third method assesses the "book value" of the seized property by subtracting the property's depreciation from the original purchase price. Of the three procedures, the latter is considered least representative of the investor's property value unless the property was purchased recently with few or no new capital improvements. Compounding the assessment problem are drastically fluctuating inflation and exchange rates, or significant lapses between the settlement date and the date at which compensation is actually awarded. Furthermore, the market value of service-oriented enterprises is often difficult to assess. In comparison with manufacturing and agricultural properties, their value is based more on continuous business and

¹⁰Richard J. Smith provides a concise explanation of all of these methods of valuation in "The United States Government Perspective on Expropriation and Investment in Developing Countries," Vanderbilt Journal of Transnational Law 9, no. 3 (Summer 1976): 519-20.

prospective profits than fixed assets.¹¹ These issues will be further analyzed in Section II.

U.S. policy also dictates that property seizures by foreign governments cannot be levied discriminately against U.S. investors. Laws promoting property seizure must apply equally to all foreign or domestically-owned properties residing in the host nation.¹² However, claims of discrimination are often difficult to substantiate.

The 1963 Congressional Committee on Foreign Affairs publication, Expropriation of American-owned Property by Foreign Governments in the Twentieth Century, accurately summarizes the U.S. government's view toward property seizures:

First, the United States has a responsibility in protecting the property of its citizens abroad. Second, such actions may impair good international relations and cause strained relations to deteriorate further. Third, they inhibit the private investment in underdeveloped countries which the United States has sought as one method of promoting economic development.¹³

Regarding the third tenet of the above quote, abrupt termination of foreign private investment is deemed detrimental to the host nation because it may hamper the

¹¹Congress, House, Committee on Foreign Affairs, Legislation on Foreign Claims: Hearing before the Committee on Foreign Affairs 99th Cong., 2d sess., 11 and 16 September 1986, 25-26.

¹²Baklanoff, 5.

¹³Congress, House, Committee on Foreign Affairs, Expropriation of American-owned Property by Foreign Governments in the Twentieth Century, report prepared by Ellen C. Collier, 88th Cong., 1st sess., 1963, Committee Print, vii.

performance of the affected enterprises, interrupt production, or cancel essential expertise needed to operate such investments.

Conclusion

The ideological differences toward the role of foreign investment were well known both to U.S. and Latin American political leaders, and neither side expended much effort debating these issues. Rather, as the following case studies reveal, the State Department's decision to develop a conciliatory or confrontational posture depended more upon extra-regional threats, such as communist expansion or impending world war, or the perceived treatment of the affected investors. These factors determined the U.S. desire to use confrontational measures, such as strong economic pressure, or a conciliatory, protracted process of negotiation.

Differing views concerning the actual mechanics of State Department post-seizure involvement were more open to debate, and it was here that both the U.S. and Latin American governments found room to maneuver. For example, the Department was immediately confronted in each case with the question of the appropriateness of diplomatic involvement. While cognizant that each Latin American government involved either explicitly or implicitly subscribed to the Calvo Clause, the Department had to weigh diplomatic involvement against the possible long-term impact such a move could have on bilateral and hemispheric relations and the potential for further retaliation against other foreign-owned properties in the host nation. In cases where the State Department passed the initial hurdles and negotiated settlements, the question of just compensation proved most difficult to resolve. Although compensation would at some point be offered during each of the disputes presented in Section II, none of the

seized companies were ever offered what they considered fair market value as compensation for their seized properties. Instead, compensation offers were based on book value, extracted from the affected investor's most recent valuation for tax purposes, or some lower figure. While this is certainly an issue the Department preferred to watch from the sidelines, providing informal assistance, it inevitably handled compensation through formal diplomatic involvement.

SECTION II

CASE STUDIES

CHAPTER III

THE ERA OF THE GOOD NEIGHBOR POLICY: BOLIVIA AND MEXICO

The State Department's commitment to President Franklin Delano Roosevelt's Good Neighbor Policy received two of its strongest tests in Bolivia and Mexico in the late 1930s. In 1937 Bolivia confiscated property owned by Standard Oil Company of New Jersey. The following year, the government of Mexico nationalized its petroleum industry. Both events provided the Department of State with its first large-scale exposure to property seizures in Latin America and challenged President Roosevelt's promise of non-intervention in the affairs of our southern neighbors. The State Department attempted to balance the risk of economic loss and concern over setting a detrimental precedent against the long-range concerns of maintaining the spirit of the Good Neighbor Policy and the need for securing allies during a tumultuous pre-war period. This balancing act yielded similar results in both countries, as the State Department came to agreement with Bolivia and Mexico after a prolonged period of negotiation.

Bolivia

Although the dollar amount of the property taken in Bolivia was meager compared to later seizures, it gave the State Department a formal introduction to the problems it would face in the coming decades. The Bolivian action forced the Department to confront for the first time the questions of appropriate representation that should be made on behalf of U.S. investors and the proper degree of economic

pressure to be levied against nations that seized U.S. property. The dispute proved to be easier than others the Department would have to resolve.

Background

Standard Oil began its Bolivian operations in 1922 under a fifty-year government concession. In March 1937 Bolivian President David Toro, without warning, announced the confiscation of the company's Bolivian subsidiary for violating its concession. The Toro government claimed the company had violated its original concession agreement in three ways. First, it maintained that the company had illegally exported petroleum to Argentina between 1925 and 1926 through a "clandestine" pipeline under the Bermejo River without prior government knowledge or consent. Second, the government accused Standard Oil of being remiss in its payment of back taxes. Third, it alleged that the company had failed to cooperate with Bolivia during the Chaco War both by refusing to supply aviation fuel when requested and by refusing to furnish the government with a \$5 million loan solicited for the war effort.¹ With these accusations, the battle lines between the two sides had been drawn.

In addition to these three official charges, the government had other reasons to confiscate. First, widespread international criticism of Standard Oil's activities, including suspicions that it had incited the Chaco War (in which Bolivia was defeated), had significant impact on Bolivia's decision. For example, well-publicized declarations by Senator Huey Long on the floor of the U.S. Congress accusing Standard Oil of

¹Memorandum from Grumman to Hull, 2 August 1934, 824.6363 St 2/34, Record Group 59 (hereafter, RG 59), National Archives. Washington, D.C.: Ingram. 111-17.

instigating the war convinced Bolivian leaders that the company was unpopular in Washington and, therefore, would not receive diplomatic assistance if the subsidiary's holdings were confiscated. Second, Bolivia claimed that the subsidiary had not produced oil in sufficient quantities to meet domestic needs, causing the country to import larger amounts of oil than it considered necessary. In other words, Bolivia had to purchase high-priced foreign oil while its domestic resources remained largely untapped and in the hands of a foreign company. Third, observers noted that Bolivia's demoralizing military defeat at the hands of the Paraguayans had caused public support to wane for the year-old government of President Toro.² Toro seized Standard Oil's property in part to boost national morale and restore public confidence in the presidency.

Standard Oil officials moved quickly to defend their position by addressing Toro's charges. They admitted having exported oil to Argentina, but stated that the action had occurred with full knowledge of the Bolivian government. Furthermore, they claimed that such activity by the subsidiary was fully permitted under the concession agreement.³ As to the second point, Standard Oil executives, while acknowledging that the company had failed to pay the necessary taxes, claimed their action was justified. Shortly after signing the concession in 1922, the company and the

²Congress, Senate, Senator Huey P. Long of Louisiana speaking on a reservation to a World Court resolution, 74th Cong., 1st sess., Congressional Record (28 January 1935), vol. 79, pt. 1, 1046-47; Bryce Wood, The Making of the Good Neighbor Policy (New York: Columbia University Press, 1961), 162; and Telegram from Norweb to Hull, 18 March 1937, 824.6363 St 2/81, RG 59.

³Standard Oil Company of New Jersey, Bolivia Takes What It Wants (New York: Standard Oil Company, 1941), 12-13.

Bolivian government became embroiled in a tax dispute. The problem stemmed from differing interpretations as to what constituted "production." In exchange for a drilling concession, according to the contract, the subsidiary was required to pay a sliding surface rental tax to Bolivia over a seven-year period. The tax was to increase incrementally from 2.5 centavos per hectare at the start of production to an eventual rate of 50 centavos. The Bolivian government alleged that production had to begin two years after the contract was signed, as required by a 1921 national petroleum law. Company officials disagreed, arguing that the term production implied production on a commercial level, a stage which the company had not reached even four years after commencing operations. Not until 1928 did both parties reach a compromise, agreeing that the company would begin payment of the maximum surface rental tax (50 centavos per hectare) on 1 January 1930. This agreement was abruptly terminated in 1931 by Bolivia's new President, Daniel Salamanca, who demanded that the company pay the sliding rental tax back to 1924, thereby returning the government to its original position. Standard Oil appealed its case through Bolivian legal channels and eventually received a hearing before the Bolivian Supreme Court.⁴ The case still had not been decided when the Toro government seized the subsidiary's holdings in 1937.

Standard Oil defended itself against the third charge of noncompliance during the Chaco War by asserting that it simply could not meet the government's demands, including its request for a \$5 million war loan, because the subsidiary lacked sufficient capital. Moreover, since Standard Oil was a multinational corporation with extensive

⁴Letter from Palmer to Duggan, 18 March 1937. 824.6363 St 2/70. RG 59.

global investments, it did not want to endanger its operations elsewhere by taking sides in regional disputes.⁵

Lastly, Standard Oil countered Bolivia's complaint of low production by explaining that although the company had poured over \$17 million into projects in Bolivia by the early 1930s, it had become discouraged with the profitability of its Bolivian operations. The tremendous drop in world oil prices in the 1920s and the increased threat of war between Paraguay and Bolivia led Standard Oil to believe that further capital investment and increased production in Bolivia was unwise. By 1932 the subsidiary had ceased drilling new wells.⁶ After countering Toro's charges, Standard Oil executives concluded that its only recourse was to appeal directly to the State Department, since it expected little cooperation from the Bolivian government.

The State Department Response

Initial State Department response to Toro's confiscation was mild. From a policy standpoint, Department officials decided to uphold the stance of non-interference, reasoning that a simple expression of concern would suffice. Secretary of State Cordell Hull instructed his Minister to Bolivia, R. Henry Norweb, to express U.S. dissatisfaction to the Bolivian government and to acquire as much information as possible from all participants. The Secretary then ordered the U.S. Minister not to let himself or any other legation official become directly involved in the dispute. The only measure taken by Minister Norweb at this stage was to informally assist company executives by persuading the Bolivian government to grant Standard Oil representatives

⁵Ingram, 115.

⁶Ibid., 112-13.

access to documents still housed in its former La Paz headquarters, as they were vital to the company's defense.⁷ The Department's actions appeared commensurate with the perceived level of severity of the seizure.

Despite the Department's initial gestures, the U.S. private sector pressed for greater involvement. Standard Oil representatives in La Paz and Washington immediately pushed for official representation after the confiscation. Additionally, U.S. corporations with no direct interest in Bolivia expressed concern over the Standard Oil controversy to the State Department. An example of such domestic sentiment was iterated by James D. Mooney of General Motors in a letter to Secretary Hull:

As far as I know, this reported action on Bolivia's part is the first important rift that has appeared in [*sic*] the scene, and I am only fearful that it might, if tolerated, start the spread of a contagion capable of undoing much of the good you have so happily done.⁸

The Department could not ignore expressions of concern from such powerful business leaders.

Instead of directly interposing, the Department searched for alternative means to pressure the Bolivian government. Department officials urged the company to resolve

⁷Department of State, Foreign Relations of the United States: 1937, (Washington, D.C.: GPO, 1954), 5:28-29 [hereafter cited as ERUS with year and volume number]; Telegram from Hull to Norweb, 26 April 1937, 824.6363 St 2/90, RG 59; Memorandum from Duggan to Welles, 19 April 1937, 824.6363 St 2/108, RG 59; and Telegram from Norweb to Hull, 18 March 1937, 824.6363 St 2/70, RG 59.

⁸Letter from Mooney to Hull, 28 April 1937, 824.6363 St 2/117, RG 59.

its problems through Bolivia's legal system. Moreover, the Department applied indirect pressure by silently curtailing new bilateral economic and technical assistance with the expressed message that the Bolivian government had to reconcile its disagreement with Standard Oil before such assistance could be resumed.⁹

After transmitting its initial instructions to the U.S. Legation in La Paz, State Department officials delved into the thornier questions surrounding the Department's legal right to interpose in the dispute should the need arise. Of primary concern was the Calvo Clause in the concession contract signed by Standard Oil in 1922. To resolve this issue, officials from the Division of Latin American Affairs consulted the State Department's legal adviser, Green Hackworth. After researching earlier cases where U.S. investors had signed contractual agreements containing the Calvo Clause, Mr. Hackworth presented his colleagues with two legal precedences supporting the government's right to represent private investors officially: the North American Dredging Company case in 1926 and the International Fisheries Company case in 1931, both of which dealt with property disputes in Mexico. From these cases, Mr. Hackworth concluded that the U.S. government did have the right to interpose diplomatically in the Bolivian dispute, regardless of the Clause, so long as Standard Oil

⁹Irwin F. Gellman, Good Neighbor Diplomacy: United States Policies in Latin America, 1933-1945, (Baltimore: Johns Hopkins University Press, 1979), 50.

first exhausted, or demonstrated an effort to exhaust, all local remedies.¹⁰ For the moment, however, Under Secretary Sumner Welles rejected this option, stating that:

in view of the fact that the concession contained the Calvo Clause, diplomatic intervention on the part of the United States is unwarranted and, on the grounds of policy, unwise.¹¹

Welles recommended, instead, that Standard Oil present its case before the Bolivian Supreme Court. However, Standard Oil's attorneys, and even some Department officials, commented privately that the Bolivian justices were unquestionably biased against Standard Oil, subject to tremendous domestic pressure, and would probably rule against the company regardless of the merits of the case.¹² Nevertheless, to meet the Department's requirement for future assistance, the company filed suit in Bolivia in March 1938.

The Bolivian Supreme Court took an entire year to render a decision. Delay resulted from several interruptions, including the drafting of a new constitution in October 1938 by President Germán Busch (who had deposed Toro in July 1937), appointment of new justices, and a campaign of media harassment against the Court,

¹⁰Telegram from Division of Latin American Affairs to Welles, 25 March 1937, 824.6363 St 2/89, RG 59; Memorandum from Flournoy to Hackworth, 9 April 1937, 824.6363 St 2/106, RG 59. For details of both cases see Shea, 194-240; and Frederick Sherwood Dunn, The Diplomatic Protection of Americans in Mexico, (New York: Columbia University Press, 1933), 406-18.

¹¹Memorandum from Welles to Hackworth. 8 November 1937, 824.6363 St 2/189, RG 59.

¹²Telegram from Norweb to Hull, 18 March 1937, 824.6363 St 2/81, RG 59; and Memorandum from Hackworth to Welles, 26 March 1937, 824.6363 St 2/103, RG 59.

which caused one of the justices to resign. The Supreme Court finally ruled in March 1939 that Standard Oil could not file suit against the State.¹³ The company now maintained that it had exhausted all legal remedies afforded by Bolivia, refused to continue direct communication with the Bolivian government, and increased pressure on the State Department to act.

Following this effort, in the spring of 1939 the State Department commenced secret, but unofficial, discussions with the Bolivian Minister to Washington, Luis Fernando Guachalla, hoping to impress upon him the difficulty that this dispute might create for future bilateral economic and political relations. The Minister's involvement in these discussions was strictly on a "personal" level. No notice of these preliminary meetings was relayed back to La Paz, and with good reason.¹⁴ Foremost, there was strong Bolivian opposition to any compromise with Standard Oil, and discovery of such activities at too early a stage would prove disastrous for the Busch. Also, the Supreme Court decision had clearly nullified Standard Oil's legal right to receive compensation for its former properties. The parties involved believed, however, that a solution agreeable to all could, and should, be sought. Over the next six months, the Bolivian Minister, State Department officials, and Standard Oil executives drafted a series of proposals for establishing an arbitral board. Eventually, in early 1940, the participants agreed upon a proposal suggesting the creation of a tribunal to determine not only the

¹³Wood, 181.

¹⁴Memorandum from Butler to Welles, 11 April 1939. 824.6363 St 2/372. RG 59.

amount of compensation owed the company, but also the amount owed the Bolivian government by Standard Oil from the unresolved taxation dispute.

Two untimely events undermined these negotiations. The first arose with the suicide of President Busch in the summer of 1939. Carlos Quintanilla succeeded him as provisional president until April 1940, when General Enrique Peñaranda won election. Peñaranda, like his predecessors, desired bilateral assistance from the United States, but proved equally reluctant to alter his nation's position on the confiscation decision. The second event occurred in February 1940 when the Bolivian Minister sent a draft proposal to his superiors in La Paz for review. Before his government could analyze the document, it was leaked to the Bolivian press, giving Minister Guachalla no choice but to flatly deny that negotiations had taken place. After these setbacks, the State Department decided to reiterate to the new Bolivian President its determination to obtain compensation for Standard Oil, informing him that an equitable settlement was a prerequisite for further U.S. bilateral assistance.¹⁵ Negotiations remained at a standstill.

Heightened international tension soon altered the U.S. position. The threat of impending world war compelled Washington to establish cordial relations with its Latin American neighbors, for both reasons of hemispheric security and access to vital natural resources. The Roosevelt administration was determined to avoid a repeat of the disharmony in hemispheric relations which had existed throughout World War I.

¹⁵The provisional government of Carlos Quintanilla was also denied an extension of credit because of the oil controversy. FRUS 1937, 5:320-21; Wood, 183-85; and FRUS 1940, 5:516-17.

when seven Latin American nations opted for strict neutrality. The desired method of assurance was through military and economic assistance agreements across Latin America. Department officials expressed particular concern over the possibility of a Bolivian-German agreement, giving Germany access to Bolivia's petroleum resources.¹⁶ The State Department increased its involvement to ensure a favorable solution.

As the threat of war increased and negotiations once again stalled between the two parties, the State Department acted over company objections to keep Bolivia in the U.S. camp. Despite the unsettled \$3 million property dispute, the Department prepared to loan Bolivia \$25 million. In late 1941, the Department again informed Peñaranda of its desire that he reach an equitable settlement with Standard Oil but, also stated that it would follow through with the loan in the interest of hemispheric solidarity.¹⁷ The next move lay with Bolivia.

The U.S. concession, coupled with U.S. entry into the Second World War in December 1941 had a conciliatory effect on the Bolivian government. As its contribution to hemispheric unity, the Bolivian Foreign Minister arrived at the Rio de Janeiro Meeting of Foreign Ministers in late January of 1942 with President

¹⁶Gellman, 120-126; and Ingram, 118.

¹⁷Wood, 196.

Peñaranda's permission to seek a prompt solution to the Standard Oil dispute.¹⁸ U.S. and Bolivian officials commenced negotiations at once.

Standard Oil initially opposed the manner in which negotiations progressed. Company representatives protested Bolivia's low offers, reminding the State Department that they were demanding \$3 million in compensation. They eventually yielded to Under Secretary of State Sumner Welles' persuasion and agreed to leave all negotiations regarding the sum of compensation, and even the wording of the final agreement, to the discretion of Department officials. One can deduce from company dialogues, however, that Standard Oil was less concerned with the monetary settlement than it was with saving face and preventing a detrimental precedent. The final agreement required that Bolivia pay Standard Oil \$1.5 million plus three percent interest, which meant a total of \$1.7 million in compensation.¹⁹ This figure was just over one-half the compensation figure requested by Standard Oil.

At the end of negotiations, President Peñaranda approached the Bolivian Congress with a *fait accompli* of not just "a signed agreement, but [also] the irrevocable action of a cash settlement."²⁰ To pacify critics, President Peñaranda explained that the settlement opened the door for Bolivia to receive its \$25 million

¹⁸Telegram from Rio de Janeiro to the Department of State, 16 January 1942, 824.6363 St 2/558. RG 59. The two-week Rio meeting had been called to address the problems facing the hemisphere as a result of World War II. Arthur P. Whitaker, "The Inter-American System," in Inter-American Affairs: 1942, ed. Arthur P. Whitaker (New York, Columbia University Press: 1943), 11-15.

¹⁹State Department Press Release, 16 February 1942, 824.6363 St 2/606. RG 59; and Wood, 197, 199.

²⁰Wood, 199.

economic development loan from the United States. He further justified his actions by reminding the Bolivian Congress that the amount paid to Standard Oil was a mere ten percent of the \$17 million the company had invested. Moreover, he declared that the sum paid was not so much in compensation for the subsidiary's confiscation, as it was an exchange for maps and data possessed by the company which, he asserted, Bolivian technicians deemed invaluable for future petroleum exploration.²¹ The Bolivian Congress reluctantly complied, thus ending the oil controversy.

The Bolivian dispute revealed that the State Department could balance its involvement in Latin American investment disputes against the provisions set forth in the Good Neighbor Policy. The Department withstood pressure from the private sector, used moderate economic pressure, and interposed only when talks reached a standstill. Self-restraint was only breached once the threat of World War II made prompt resolution an imperative. The Department's approach would be repeated once again toward Mexico.

Mexico

As in Bolivia, Mexico's outright nationalization of its oil industry in 1938 came as a surprise to the State Department and the sixteen affected Mexican and foreign firms. Although conflict had erupted frequently since commencement of the Mexican Revolution in 1911, as successive Mexican governments imposed greater demands on an increasingly hostile industry, few believed that the Lázaro Cárdenas government would attempt such a daring move. As Standard Oil of New Jersey, Cities Service

²¹Ibid.. 200; and Blasier. 87.

Group, the Sinclair Group, the Sabalo Group, and other U.S. companies turned to the State Department for assistance, the Department would once again have to weigh its involvement in this larger and more difficult dispute against its desire to adhere to the Good Neighbor Policy.

Background

U.S. involvement in Mexico's oil industry began under the dictatorship of Porfirio Díaz (1876-1880, 1884-1911). President Díaz sought to encourage increased foreign investment through tax incentives, exemption from constrictive legislation, and sundry privileges, which he hoped in turn would lead to infrastructure development and economic growth. To spur investment in the extractive industries, Díaz implemented measures to override the colonial-era Spanish principle declaring state ownership of subsoil resources.²² Since the domestic elite opted to concentrate on the traditional activities of ranching and agriculture, it was U.S., British, and Dutch venture capital that led Mexican oil exploration starting in the early 1900s.

The ouster of Díaz and beginning of the Mexican Revolution in 1911 led to the "golden era" of oil production, which lasted until 1921. This period coincided with World War I, the initial boom of the U.S. automobile industry, and the most turbulent years of the Mexican Revolution. However, a decade-long reversal began in 1921, attributable in large part to wasteful overproduction, an unstable political climate, taxes

²²Lorenzo Meyer, Mexico and the United States in the Oil Controversy, 1917-1942, (Austin: University of Texas Press, 1972), 31; Antonio J. Bermúdez, The Mexican National Petroleum Industry: A Case Study in Nationalization, (Stanford: Institute of Hispanic American and Luso-Brazilian Studies, 1963), 2; and George W. Grayson, The Politics of Mexican Oil, (Pittsburgh: University of Pittsburgh Press, 1980), 9.

imposed by the early Revolutionary governments of Francisco Madero and Victoriano Huerta, and more promising discoveries in Peru and Venezuela.²³ These trends are demonstrated graphically in Figure 1.

Promulgation of the 1917 Constitution under President Venustiano Carranza (1914, 1915-1920) further unsettled foreign oil interests. Article 27 of the Constitution, which affirmed national sovereignty over subsoil resources, led the oil companies (now 90 percent foreign owned) to question whether the provision was intended to apply retroactively to oil producing lands. Such a move would constitute a reversal of subsoil rights awarded years earlier by President Díaz. Mexican nationalists argued that the constitutional provision should apply retroactively, as it superseded all previous laws. So as not to provoke a crisis, Carranza repeatedly assured the oil companies and the State Department that the retroactivity of Article 27 was not directed at the petroleum industry, and settled instead for imposing new taxes on oil production.²⁴ Despite Carranza's overtures, uncertainty over Article 27 remained a point of contention between the United States and Mexico.

Failure to fully allay private sector concerns led the State Department to pressure the Mexican government for clarification. President Warren G. Harding's

²³Johnathan C. Brown, "Why Foreign Oil Companies Shifted Their Production from Mexico to Venezuela during the 1920s," The American Historical Review 90, no. 2 (April 1985): 383-85; Wendell Chaffee Gordon, The Expropriation of Foreign-Owned Property in Mexico, (Washington, D.C.: American Council on Public Affairs, 1941), 54 and 59; and Meyer, 31, 32, 87.

²⁴George Ward Stocking, "The Mexican Oil Problem," Arnold Foundation Studies in Public Affairs 6, no. 4 (Spring 1938): 2; Amos J. Peaslee, Constitutions of Nations, (Concord: The Rumford Press, 1950), 2:421-26; and Meyer, 57, 59-61.

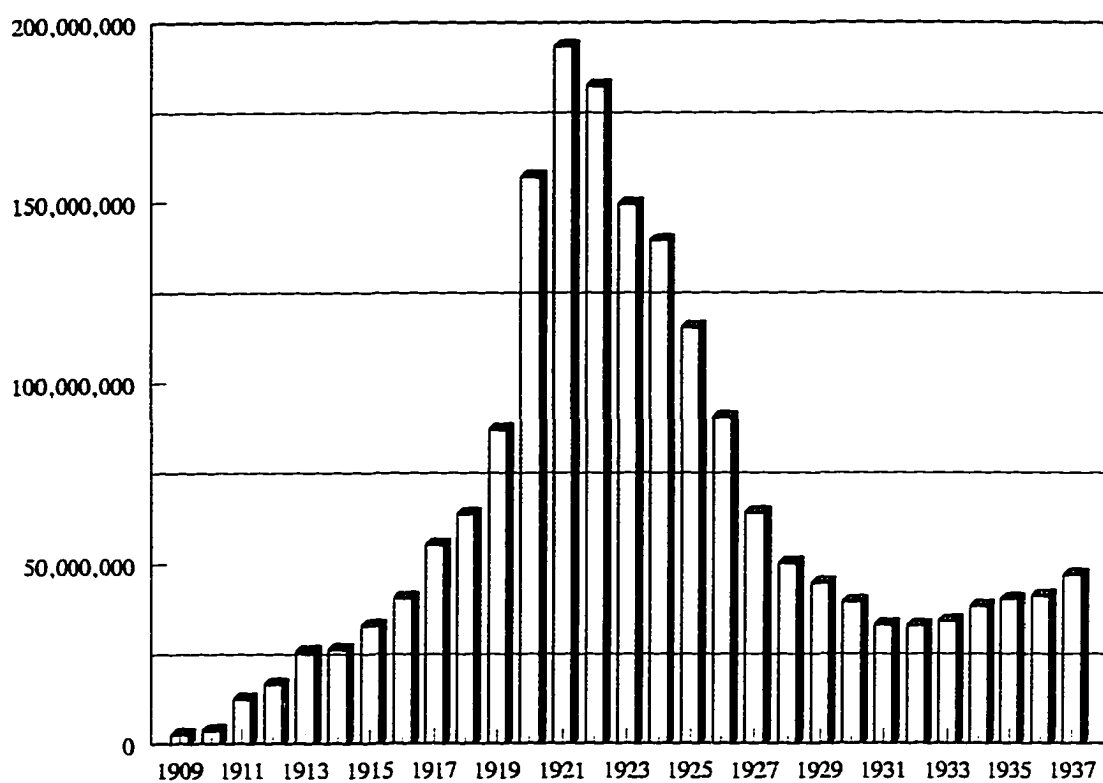


Figure 1 Oil Production in Mexico: 1909 - 1937. Source, Meyer, 8-9.

government withheld diplomatic recognition to President Alvaro Obregón in 1921 after Carranza's assassination. In exchange for recognition, the State Department demanded that the Mexican government first establish a formal agreement to safeguard private investment in Mexico and clarify the issue of retroactivity. Obregón held his ground, insisting that recognition precede such an agreement. Not until the end of Obregón's presidency were differences settled. Although no treaty was signed, the two governments reached an understanding in the summer of 1923 known as the Bucareli Agreement. Mexico offered the oil companies concessions of unlimited duration for those lands on which "positive acts" had been performed. Since the agreement established a broad definition of what constituted a "positive act," almost all petroleum properties fell within this category.²⁵ Despite these generous concessions on behalf of the petroleum industry, the agreement was a partial victory for Mexico because it forced the United States to tacitly acknowledge state ownership of subsoil resources.

The investment climate was again shaken in 1925 under Obregón's successor, Plutarco Elías Calles (1924-1928). Calles' 1925 Petroleum Law brought into question the status of the oil industry by requiring that the oil companies receive government confirmation of their holdings and by reducing the previously agreed-upon concessions of unlimited duration to a period of fifty years. After prolonged negotiations, U.S. Ambassador Dwight Morrow in 1928 managed to obtain favorable conditions for the oil companies by convincing President Calles to amend contentious segments of the

²⁵Meyer, 78-82, 102.

Petroleum Law.²⁶ Calles' successors, Portes Gil (1928-1930), Ortiz Rubio (1930-1932), and Abelardo Rodríguez (1932-1934), all adhered to the 1928 agreement, and the period of tranquility lasted until President Lázaro Cárdenas assumed office in 1934.

President Cárdenas (1934-1940) proved more determined than his predecessors to implement substantial socio-economic reforms. He wanted to nationalize the railroads and public utilities, reform agrarian holdings, and reduce foreign economic dependence.²⁷ Confronting the oil companies, however, would soon become his most difficult undertaking.

The passing of the 1936 Expropriation Law initiated Cárdenas' dispute with the oil companies. The law declared Mexico's right to expropriate any property needed for public use, specifying that compensation be paid within ten years. Under pressure from U.S. oil companies, the State Department sought Cárdenas' assurance that the law was not targeted at petroleum producers. Cárdenas replied that the law only applied to those suspended operations vital to the nation's well-being, and therefore did not affect petroleum interests. The first application of the law came against the railroad industry (which was largely U.S.-owned). The following year, despite Cárdenas' earlier promises, the law targeted the oil industry.²⁸ Although both industries were of

²⁶Claudia Anne Finney, "The Good Neighbor Policy and the Standard Oil Company of New Jersey: The Case of Oil Expropriation in Mexico," (M.A. thesis, University of Oregon, 1982), 36.; and Meyer, 148.

²⁷Sociedad Mexicana de Geografía y Estadística, Acción y Pensamiento Vivos de Lázaro Cardenas, (Mexico: Federación Editorial Mexicana, 1973), 15-49.

²⁸David E. Cronon, Josephus Daniels in Mexico, (Madison: University of Wisconsin Press, 1960), 127-28; FRUS 1937, 5:681-83; Meyer, 154; and Julio C. Treviño, "Mexico," in Expropriation in the Americas: A Comparative Law Study, ed.

comparable value, the greater strategic importance of the oil industry and its more powerful lobbying efforts in Washington caused the State Department to give greater attention to the petroleum dispute than the plight of railroad investors.

The 1936-1938 conflict between sixteen of Mexico's largest oil companies and the Syndicate of Oil Workers of the Mexican Republic (STPRM) became the primary catalyst for nationalization. The STPRM desired an industry-wide collective contract with the oil companies, which called for many well-deserved demands, and others that were blatantly exorbitant and undoubtedly included for bargaining leverage. The companies agreed in principle to the idea of a collective contract, but insisted that union demands far exceeded what the companies were capable of paying. Consequently, the STPRM struck. Over the next two years, neither management-labor conventions, arbitral reviews, nor appeals to Mexico's Supreme Court resolved the dispute. While each government review found unanimously in favor of the STPRM, the oil companies refused to compromise, believing that Mexico had neither the desire nor ability to run the industry. And, in mid-1937, the companies even threatened to halt production until it reached more agreeable terms.²⁹ To their surprise, however, a government takeover followed in short order.

The true crisis arrived when the oil companies appealed the STPRM's demands to Mexico's Supreme Court. On 1 March 1938 the Supreme Court upheld earlier findings by the Federal Board of Conciliation and Arbitration's Special Group Seven

Andreas F. Lowenfeld (New York: Dunellen, 1971), 128-30, 134.

²⁹The STPRM was a consolidation of twenty-one independent oil worker unions. Cronon, 161; Bermúdez, 12-13.; and Finney, 56.

that the companies were capable of meeting the STPRM's demands, and set a 7 March deadline for compliance. As last minute negotiations ensued, President Cárdenas twice extended the deadline. Meanwhile, the companies again threatened to halt production, and the Mexican government warned that it would seize their properties. When the companies once again refused to comply on 18 March, President Cárdenas announced his decision to nationalize the sixteen largest oil companies. The legal vehicle was the 1936 Expropriation Law, which guaranteed full compensation within ten years.³⁰ As expected, the U.S. oil companies immediately turned to the State Department for diplomatic assistance.

The State Department Response

The Mexican nationalizations highlighted numerous problems for the State Department. The Department had a long history of interposing to aid U.S. oil companies obtain favorable conditions and clarification of Mexican legislation. Also, since a large sum of money was in dispute, the U.S. companies would undoubtedly press hard for diplomatic representation. The nationalization therefore could not go uncontested, but the Department would have to weigh its response against the tenets of the Good Neighbor Policy.

Differing camps developed within the Roosevelt administration immediately after nationalization as to the appropriate U.S. response. On one side, Secretary of State Cordell Hull, Under Secretary Sumner Welles, and several career diplomats

³⁰Although sixteen companies were immediately seized, 40 others (27 of which were foreign-owned) were not affected because their employees were not unionized. Cronon, 166-67; Meyer, 158-59, 166-169; FRUS 1937, 5:661-64; FRUS 1938, 5:725-27; Bermúdez, 15; and W. Gordon, 95.

urged that a hard-line approach be used. On the other side, U.S. Ambassador to Mexico Josephus Daniels and Treasury Secretary Henry Morgenthau believed the U.S. government should remain completely outside the controversy and let the firms resolve their own difficulties.³¹ President Roosevelt would have to make the final decision.

Ambassador Daniels had a profound influence on this debate. The prestigious septuagenarian ambassador had served as Secretary of the Navy under President Woodrow Wilson from 1913-1920, with Franklin D. Roosevelt as his Assistant Secretary. Both Roosevelt and Daniels had maintained a close friendship since that time and, as ambassador to Mexico, Daniels had far more access to the President than his rank denoted. Consequently, Daniels appealed directly to Roosevelt when he deemed it necessary. At the height of the Mexican dispute, the Ambassador wrote President Roosevelt:

I read last night (I don't get much time for reading in these hectic days) a letter which Theodore Roosevelt wrote to Taft on December 22, 1910: "As I utterly disbelieve in the policy of bluff, in national and international affairs, or any violation of the old frontier maxim: 'Never draw unless you mean to shoot,' I do not believe in taking any position anywhere unless we can make good." That sound maxim has present-day application.³²

³¹Fredrick B. Pike, FDR's Good Neighbor Policy: Sixty Years of Generally Gentle Chaos, (Austin: University of Texas Press, 1995), 192-93; Meyer, 186-87.

³²Josephus Daniels letter to Franklin D. Roosevelt, 6 April 1938. Josephus Daniels Papers. Library of Congress. Manuscript Reading Room. Washington, D.C.

As the correspondence implies, the Ambassador recommended that his superiors exercise patience and flexibility in dealing with Mexico. Meanwhile, he expressed little sympathy for the oil companies, which he felt were quite deserving of Mexico's actions. While Ambassador Daniels endured a great deal of criticism for his position, others later credited him with having preserved U.S.-Mexican relations during this troubled period of international politics by superseding the wishes of the oil companies for the sake of longer-range political objectives.³³ The road to a solution, however, was not without obstacles.

Despite the Administration's framework of non-interference, the State Department took several initial steps to pressure Mexico into negotiating. The first occurred eight days after nationalization, when Department economic adviser Herbert Feis recommended that Treasury Secretary Morgenthau suspend the 1936 U.S. silver purchasing agreement with Mexico. Feis knew that the sanction would serve mainly as a psychological scare, but believed that it could prove effective if the Treasury were to lower simultaneously its global purchase price of silver, thereby preventing Mexican circumvention by selling silver to the United States on the open market. And, in order to protect other friendly silver producing countries from the global price reduction, Feis suggested that the United States immediately establish purchasing arrangements with those nations.³⁴

³³Cronon, 272-89.

³⁴Wood, 223.

Morgenthau and Daniels both opposed the proposed sanction. While they agreed the measure would both weaken the peso and disrupt Mexican mine production, they did not believe it would be sufficient to cause the Cárdenas administration to change direction, nor, in their opinion, was it in the best interest of long-term U.S.-Mexican relations. Moreover, Morgenthau apparently disliked this State Department encroachment on Treasury Department domain. The Treasury Secretary insisted he would comply with Feis' plan only if the State Department made a formal request. It came the following day. Morgenthau announced cessation of silver purchases from Mexico on 27 March, and lowered the Treasury purchasing price for silver over the next two days.³⁵

The sanction failed for several reasons. First, even though canceling Mexican silver purchases did create economic hardship, Mexico's determination to withstand such pressure rendered Washington's action pointless. Second, despite the global price decrease, Mexico still managed to sell some silver to the United States on the open market, where the country of origin is unknown. Third, the sanction caused weakening of the peso, which reduced Mexican purchases of U.S. goods, thereby harming the U.S. economy as well. Finally, the Mexican silver industry was between 70 and 80 percent U.S.-owned. As potential hostage companies, U.S.-owned mining companies feared that they too might face nationalization if such policies continued. Through their powerful Washington lobby, the silver producers made it clear that they did not

³⁵Cronon, 190-93; Letter from Daniels to Roosevelt, 29 March 1938, Josephus Daniels Papers; and John Morton Blum, From the Morgenthau Diaries: Years of Crisis, 1928-1938, (Boston: Houghton Mifflin Company, 1959), 1:495-96.

want to suffer because of oil industry problems. As a result, the Treasury Department unofficially rescinded the sanction in the summer of 1938, with President Roosevelt's approval.³⁶

While the silver sanctions were in progress, Secretary Hull prepared a second State Department response, an official communique protesting the nationalizations. In reviewing the letter, Ambassador Daniels expressed concern to the Secretary that the document was too strongly worded, and persuaded the Secretary to modify the tone. Then, reluctantly, Daniels delivered the letter on 28 March. President Cárdenas' reply came two days later, when he informed Daniels that the protest was unacceptable, since his government had already expressed, on numerous occasions, its intention to provide compensation. Daniels understood that official delivery of this letter would result in a break in diplomatic relations, and, without consulting Department superiors, agreed privately with President Cárdenas to view the letter as not having been officially delivered. The Ambassador then delayed his requested return to Washington for consultation until the last possible moment in order to minimize the potential importance of the trip. He believed that he could accomplish more by remaining in Mexico.³⁷ Few besides Ambassador Daniels could have undertaken such an insubordinate course without serious reprimand.

³⁶The silver industry employed over 100,000 Mexicans (versus 16,000 in the oil industry) and provided the Mexican government with 10 percent of its revenue. Josephus Daniels, *Shirt Sleeve Diplomat*, (Chapel Hill: University of North Carolina Press, 1947), 249-50; Grayson, 17-18; and Blum, 497.

³⁷ERUS 1938, 5:756-57; and Cronon, 197.

Two other forms of economic pressure supplemented these initial measures. Indirectly, the State Department gave tacit approval to the efforts of U.S. oil companies to discourage Latin American and European nations from purchasing Mexican petroleum products. More directly, the Department ceased to issue new loans or renew current loans to Mexico.³⁸ The declining customer base for petroleum products and dwindling bilateral assistance caused considerable economic hardship in Mexico, but failed to force the nation into a settlement.

These measures created economic hardship in Mexico. The problems caused by the oil boycott, finding new markets, and maintaining production weighed heavily on the Cárdenas administration. Shortly after nationalization, a power struggle exacerbated the crisis. Cárdenas had to impress upon the workers the impossibility of granting union demands under strained economic conditions.³⁹ If anything, economic pressure probably served to further delay Mexico's ability to compensate the companies.

Meanwhile, the plight of British and Dutch investors, whose collective petroleum investments were much larger than those of the United States, demonstrated the perils of pursuing a hard-line policy. Great Britain delivered a note of similar tone to the one "unofficially" delivered by Daniels, thereby causing a break in relations in May 1938, while the Dutch government showed more patience and managed to

³⁸Peter H. Smith, Talons of the Eagle: Dynamics of U.S.-Latin American Relations, (New York: Oxford University Press, 1996), 79. Wood, 228-33.

³⁹Meyer, 181-82.

maintain diplomatic ties.⁴⁰ Mexico realized, however, that U.S. strategic concerns outweighed Anglo-Dutch commercial interests, and therefore managed to defer settlement with the European nations until it first came to terms with the United States.

Between mid-1938 and late 1941, despite frequent consultation with Mexican officials in both Mexico City and Washington, the State Department chose not to interpose officially in the controversy. The Department hoped that a series of negotiations between Donald R. Richberg (an attorney representing the U.S. oil companies) and the Mexican government could produce a settlement. These talks collapsed in November 1939. At the same time, the Department submitted several suggestions for compromise and arbitration. Most of its proposals called for some form of limited partnership between the oil companies and the Mexican government, allowing the companies regularly to extract a percentage of revenue until compensation was fully paid. Both parties dismissed all proposals for joint ventures and arbitration. The Mexican government rejected the concept of a joint venture because it refused, under any condition, to allow the oil companies to return to Mexico. Then, in early 1940, Mexico asserted that it would not even discuss arbitration because it felt that no outside body had authority to adjudicate national policy. The oil companies also rejected arbitration or joint ventures, stating they would settle for nothing less than the full return of their properties.⁴¹ The dispute had reached an impasse.

⁴⁰Ibid., 183-84.

⁴¹FRUS 1940, 5:1001-03; Donald R. Richberg, *The Mexican Oil Seizure*, (New York: Arrow Press, 1940), 36-47 passim; and Wood, 239-46.

The oil companies opted to wait for a better settlement. With the upcoming 1940 presidential elections in both the United States and Mexico, they predicted that new, more sympathetic governments would come to power. The companies were disappointed, however, when the election results in both countries went contrary to their desires.⁴² They now realized that a favorable solution was unlikely.

Between the collapse of the Richberg talks in November 1939, and the fall of 1941, several factors caused Washington to shift its stance toward the Mexican nationalization. First, the U.S.-owned Sinclair group broke away from the other oil companies and reached a separate settlement with the Mexican government in May 1940. Second, the threat of world war, which would also prompt a Bolivian settlement, made U.S. cooperation with its closest Latin American neighbor imperative. In order to protect the strategically vital Panama Canal, the United States wished to obtain military cooperation and establish air bases on Mexican soil. Third, Mexico had managed to find new markets for its petroleum in Germany, Italy, Japan, and six Latin American nations despite the propaganda campaign and boycott. Finally, the United States had made headway in negotiations with Mexico on a number of outstanding agrarian claims that had accumulated over the years.⁴³ While the agrarian seizures were not considered of vital importance, and received little diplomatic

⁴²Cárdenas-backed Avila Camacho won the presidential race in Mexico, while Roosevelt was elected to a third term. Daniels, *Shirt Sleeve Diplomat*, 260-61.

⁴³J. Richard Powell, *The Mexican Petroleum Industry: 1938-1950*, (New York: Russell & Russell, 1972), 113; *FRUS 1940* 5:1056-62; and Lipson, 77.

attention compared to the oil dispute, progress on these negotiations showed that the Mexican government could be reasoned with on the oil issue.

While Mexico rejected the idea of arbitration, it did propose in March 1940 that a U.S.-Mexican commission be established to assess the value of the oil companies' properties. The Mexican government maintained that such a valuation had to take place before it would even consider discussing compensation. The State Department mulled over this proposal for more than a year, hoping either that Mexico would agree to third-party arbitration, or that the oil companies would somehow manage to resolve their problems independently. The U.S. companies, however, continued with their unrealistic demand for restitution of the seized properties. Finally, through an exchange of notes in November 1941, the Department superseded the companies' demands and formally agreed to participate in assessing the value of the seized properties. This step opened the way for a final settlement by a two-person commission. In order to expedite the work of the commission and prevent further complications, both governments decided, in advance, to agree upon a general figure for compensation.⁴⁴ The valuation and behind-the-scenes bargaining ran from July through November 1941.

From January through mid-April 1942, a commission headed by Manuel J. Zevada from Mexico and Morris L. Cooke from the United States, worked out a joint report announcing the final compensation figure, as described in Table 1. The sum of \$23,995,991 would be owed the oil companies, payable in large part from oil profits

⁴⁴Meyer, 222-24.

Cooke Zevada Agreement, 17 April 1942	
Standard Oil Co. of New Jersey group	\$18,391,641
Standard Oil Co. of California group	\$3,159,158
Sabalo group	\$897,671
Consolidated Oil Co. group	\$630,151
Seaboard Oil Co. group	\$487,370
Total	\$23,995,991
Plus interest to date of final payment (1947)	\$3,985,964
Grand total	\$27,981,955
Independent Settlements	
Sinclair group	\$8,500,000
Cities Service group	\$1,100,000
Mexican Eagle (Royal Dutch-Shell) group	\$81,250,000
Plus interest to date of final payment (1962)	\$49,088,868
Grand total	\$130,338,868

Table 1 Mexican Oil Settlements. Source, Bermúdez, 24-26.

over a five year period, following a \$9 million initial cash payment by Mexico. In exchange, Washington agreed to a new silver purchasing agreement with Mexico, coupled with Export-Import Bank financing, and currency stabilization measures.⁴⁵

After reaching this settlement, Secretary of State Cordell Hull pressured the oil companies to accept. He informed them that it was the best solution the Department could offer and he invited the oil companies to either accept this solution or continue on their own. The Secretary made it clear that by declining the Cooke-Zevada Agreement, they should no longer expect support from the Department.⁴⁶ The companies deliberated for almost a year before accepting Mexico's offer, thus ending the Mexican controversy eighteen months after the Bolivian settlement.

Conclusion

The most striking policy decision to evolve from the Bolivian and Mexican disputes was the U.S. retreat from prompt diplomatic intervention. Under President Roosevelt's Good Neighbor Policy, private U.S. companies found they no longer could expect unconditional support from the Department of State to protect their properties abroad. This was a clear shift in policy from the Republican administrations that preceded Roosevelt.

⁴⁵Mr. Cooke was an engineer and technical consultant for the Office of Production Management. Department of State, Department of State Bulletin, vol. V, no. 130 (20 December 1941): 563; Idem, "Payment for Expropriated Petroleum Properties." 25 and 29 September 1943. Treaties and Other International Agreements of the United States of America, 1776-1949, (Washington, D.C.: GPO, 1972), 9:1150-54.

⁴⁶Meyer, 224.

In addition to this new U.S. position, the State Department set several specific policy precedents with respect to future conflicts. First, although the Department could have intervened more, it decided to remain on the sidelines as long as negotiations were taking place and to facilitate communication between both groups. Only after the threat of hemispheric involvement in World War II became overwhelming did the Department interpose to break the stalemate in both cases.

Second, even though no official policy or legislation existed concerning uncompensated property seizures, the State Department experimented with the suspension of bilateral assistance in both disputes. Curtailment of new bilateral assistance proved useful, and the State Department would use this policy during every dispute that followed. The Department went even further in the Mexican controversy by recommending cessation of silver purchases and by aiding U.S. oil companies in their boycott of Mexican petroleum products. These tactics failed because Mexico managed to circumvent the petroleum boycott and the Department soon realized that halting silver purchases hurt not only Mexico, but the U.S. economy as well.

Third, the State Department revised U.S. policy toward compensation. In order to secure any compensation whatsoever without military intervention, the State Department worked out compromises. Since the Bolivian seizure was a confiscation, which did not require compensation, the Peñaranda government had to develop a justification for paying Standard Oil which would be palatable to domestic critics. The Mexican dispute caused Washington to relax its demand that compensation precede nationalization by a host government. Instead, the State Department accepted a smaller payment spread out over five years.

Fourth, the Bolivian and Mexican settlements were accompanied by substantial economic and military assistance from the United States. While World War II clearly played a role, the offer of renewed aid undoubtedly prompted both nations to resolve these controversies.

In the end, the U.S. policy of patience and flexibility during a period when hemispheric solidarity was crucial, rather than strong-arm tactics (such as economic sanctions), encouraged both sides to negotiate settlements. The following cases of Guatemala and Cuba, however, illustrate the failure of diplomacy to resolve similar dilemmas during a dramatically different Cold War environment under the Eisenhower administration.

CHAPTER IV

COLD WAR SEIZURES: GUATEMALA AND CUBA

Fifteen years after the Roosevelt administration confronted the first major property seizures in Latin America, the Eisenhower administration encountered new seizures in Guatemala in 1953, and later in Cuba in 1959. Whereas Roosevelt had to balance his Latin American dealings against the threat of a forth-coming global conflict, the new bipolar world that emerged from World War II shaped Eisenhower's response. Key Latin American policy decisions had to be weighed against possible Soviet penetration of the hemisphere. To ward off communism and enhance economic stability in the tumultuous days of the Cold War, the White House strongly promoted liberalized trade and investment policies throughout the Third World. Developing nations were advised to generate growth by offering lucrative climates for foreign investors, with "trade not aid" as the motto.¹ Such policies clashed with the rising tide of nationalism in the post-war period, particularly in Guatemala and Cuba. Under the Eisenhower administration's Cold War policies, the State Department turned away from the Good Neighbor Policy, and maintained a hard line stance toward property seizures in Latin America.

Guatemala

Guatemala was the first country in the hemisphere to seize U.S. property in the post-war era. In 1953 and 1954, the Guatemalan government of Jacobo Arbenz Guzmán expropriated land owned by the United Fruit Company. The dollar amount in

¹Stephen Rabe, Eisenhower and Latin America, (Chapel Hill: University of North Carolina Press. 1988), 64-65.

dispute was minor, yet the State Department became heavily involved. The Department's actions reveal that it was more greatly influenced by the association made between the Arbenz government and international communism than the seizure of U.S.-owned property.

Background

The origin of the United Fruit Company's interests in Guatemala began with Captain Lorenzo Dow Baker, a U.S. merchant, who in 1870 was one of the first entrepreneurs to venture into the Caribbean banana trade. In succeeding years, he established the Boston Fruit Company, bought out competitors, and came to dominate the banana trade in Central America. Under the new name of the United Fruit Company, Baker's enterprise established a subsidiary in Guatemala in the early 1900s, known as the Compañía Agrícola. Over the next four decades, the subsidiary purchased large tracts of land, constructed a railroad, and acquired the port facilities of Puerto Barrios on the nation's east coast.² The Guatemalan government approved the subsidiary's expansion. Ties between the government and the company were particularly close during the administration of dictator Jorge Ubico Castañeda (1930-1944).

The development of a strong nationalist movement eroded public support for the Ubico dictatorship in the early 1940s. A revolt led by Guatemala's small middle class, comprised of junior officers, middle-level government employees, teachers, and

²Thomas P. McCann, An American Company: The Tragedy of United Fruit, (New York: Crown Publishers, 1976), 15; and Guillermo Toriello, La batalla de Guatemala, (Santiago: Editorial Universitaria, 1955), 33-40.

students, culminated in President Ubico's ouster in the summer of 1944. Organizers of the movement drafted Dr. Juan José Arévalo Bermejo, a Guatemalan teacher living in exile in Argentina, to run as their presidential candidate. Although he had no previous political experience, Dr. Arévalo became the nation's first democratically elected president in March 1945. He initiated the Guatemalan Revolution with a promise of "agrarian reform, protection of labor, a better educational system and consolidation of political democracy."³

Arévalo's government began a program of agrarian reform which met resistance at home and abroad. In addition to sponsoring programs to educate farmers on increasing productivity, promote scientific experimentation with new farming techniques, and control land rent, his Administration implemented the Law of Forced Rental, which enabled peasants to apply for access to unused lands owned by large estates.⁴ These moves nevertheless were quite modest, and only touched the surface of the nation's agrarian reform problems.

Arévalo's nationalistic goals faced many obstacles. Although he served out his term, he had to devote much of his time to maintaining political stability and suppressing coup attempts. President Harry Truman compounded these problems in 1948 by embargoing arms transfers to Guatemala to show disapproval of Guatemala's

³Stephen C. Schlesinger and Stephen Kinzer, Bitter Fruit: The Untold Story of the American Coup in Guatemala, (New York: Anchor Press, 1983), 28, 30-31, 37.

⁴Schlesinger and Kinzer, 41; and Richard H. Immerman, The CIA in Guatemala: The Foreign Policy of Intervention, (Austin: University of Texas Press, 1982), 52-53.

political reform measures and its reluctance to take a decidedly pro-Western stance.⁵

Thus, Arévalo had little opportunity to fully implement his slated programs.

President Arévalo's moderate reform program was followed by the more vigorous social and agrarian reform policies of his successor, Jacobo Arbenz Guzmán. The Arbenz administration sponsored the Agrarian Reform Law (Congressional Decree 900), passed in June 1952, which put him in direct conflict with the United Fruit Company. The law asserted the state's right to expropriate large tracts of dormant, uncultivated land for redistribution to the peasants.⁶ Initially, the Agrarian Reform Law was used against elite landowners, but in 1953 Arbenz switched his attention to the United Fruit Company, the nation's largest single landowner. In March 1953, the government announced the expropriation of 233,973 acres of company-owned land on Guatemala's Pacific coast at Tiquisate, explaining that the property consisted of "unproductive and vacant lands that were of no real benefit to the company or its stockholders."⁷ It offered as compensation three percent agrarian bonds of twenty-five year maturity. Using the company's tax figures from May 1952 to determine monetary

⁵Guatemala's refusal to sign the 1947 Treaty of Reciprocal Assistance, which sought to ensure the signatories protection from armed aggression and its alleged support for the anti-dictatorial Caribbean Legion, combined with the perceived potential for Soviet penetration, were factors influencing Truman's arms embargo decision. For further analysis, see, Immerman, 109-110; Ronald Schneider, Communism in Guatemala 1944-54, (New York: Praeger, 1959), 25-31; and Schlesinger and Kinzer, 42-45, 104.

⁶Toriello, 172-73.

⁷Department of State, "Expropriation of United Fruit Company Property by Government of Guatemala," Department of State Bulletin 29, no. 742, (14 September 1953): 358.

compensation, the government offered \$627,572 in bonds. Arbenz argued the offer was fair since the firm had purchased the land at an exceptionally low price and had paid very low taxes on it. Moreover, the government considered its agrarian reform measures equitable because they affected the properties of nationals and foreigners equally.⁸ To grant U.S. investors immunity was inadmissible.

The United Fruit Company immediately took issue with the expropriation. It appealed directly to the Guatemalan Supreme Court to overturn the measure. The company claimed that it had been severely discriminated against, and that compensation offered was far below the land's fair market value, which it estimated at nearly \$16 million. One month after the seizure, the Guatemalan Supreme Court decided in favor of the government, thus rejecting United Fruit's appeal to rescind the expropriation. Seeing no further hope for legal recourse through Guatemalan courts, the company commenced heavy lobbying through its powerful connections in Washington for U.S. government assistance.

The State Department Response

The March 1953 seizure added to the Department of State's growing list of concerns over events in Guatemala. Foremost was Arbenz's left-leaning ideology and courtship with domestic communist factions -- a trend which it had monitored intensively since 1952. Both the State Department and the Central Intelligence Agency (CIA) recognized that the Soviet Union had, until this point, only served as an

⁸Ibid., 357; McCann, 49. Guatemala's policy on discrimination stems from Article 21 of the Republic's constitution which prohibits "all discrimination for reason of race, sex, nationality, or political beliefs." See. Toriello, 176.

ideological framework for home-grown Guatemalan communism, but feared even the mere existence of communist parties as a precursor to formal ties with the Soviet bloc, giving communism a strong foothold in the Americas.⁹ These concerns increased U.S. antagonism toward Arbenz in 1953 and 1954.

With a clear understanding of the Eisenhower administration's perspective, United Fruit appealed to Washington for assistance, hoping that direct diplomatic pressure would lead either to substantial compensation for, or restitution of, the seized property. Its strategy was to exploit Washington's communist fears, which it did through a strong media campaign, direct consultation with high-level officials through personal contacts, and distribution of a periodic newsletter to State Department personnel on Guatemalan political events.¹⁰ The company reasoned that concentrating on the issue of communism rather than the protection of a multinational corporation would accomplish the goal of restoring favorable business conditions to Guatemala, without further tarnishing the company's corporate image in Latin America.

⁹The Soviet Union had only established formal diplomatic relations with Argentina, Mexico, and Uruguay by 1953. Rabe, Eisenhower in Latin America, 91-92.

¹⁰There were several close ties between the administration and United Fruit. Allen and John Foster Dulles, for example, had previously represented the company as members of Sullivan & Cromwell, a Wall Street law firm. Special Assistant to the President for national security affairs Robert Cutler and U.S. Ambassador Robert Hill were among the other government officials with ties to United Fruit. Ed Whitman, the husband of President Eisenhower's personal secretary, Ann Whitman, worked as United Fruit's public relations chief during the 1950s, as did former Senator Robert LaFollette and former Under Secretary of State Spruille Braden. Also, United Nations Ambassador Henry Cabot Lodge had previously represented United Fruit's home state of Massachusetts as a U.S. senator, and continued to be a company stockholder. See McCann, 55-58; Immerman, 115, 124-25.

The Guatemalan President did little to dispel these fears. Arbenz undeniably afforded the communists significant attention, in part as a means of repayment for their political and campaign support. He allowed the communists to form official parties, and appointed several acknowledged communists to political positions, but there is little indication that Arbenz was, himself, a communist.¹¹ He did, however, seriously misjudge the political climate in Washington, and his failure to allay U.S. concerns in the midst of the Cold War proved fatal to the Guatemalan Revolution.

The State Department soon responded to United Fruit's complaints. When the company submitted a detailed explanation of its position to the Department in mid-1953, the Department in turn, officially presented these points to the Guatemalan Ambassador in Washington on 28 August 1953.¹² The aide-memoire was the most significant formal correspondence to exchange hands over the seizure dispute.

As outlined in this communication, the Department upheld several of United Fruit's points of contention. First, it asserted that the bonds constituted neither adequate nor prompt compensation. Due to the low annual interest rate of only three percent, and the uncertainty of their market value upon maturation, the bonds offered were inadequate. Furthermore, the compensation offer was by no means prompt, since the twenty-five year maturation period would expire in 1978, by which time few of the company's current shareholders would realize direct benefit. Second, the company

¹¹Despite Arbenz's ties to the left, he appointed no known communists to cabinet or sub-cabinet level posts. Schneider, 22-25.

¹²For full text of the aide-memoir, see Department of State, "Expropriation of United Fruit Company Property by Government of Guatemala." 358-60.

disagreed with using the land's assessed tax value in determining appropriate compensation. United Fruit claimed that the disputed land, purchased between 1928 and 1930, had been undeveloped and properly assessed for taxation purposes. Although Guatemalan law required a reassessment of land taxes every five years, from 1930 to 1950, no appraisals were made. United Fruit finally hired its own appraisers in 1951. The government, however, failed to enter the results into the nation's official tax register, or explain why. Moreover, the government did not permit the company to analyze the appraisal documents prior to expropriation, as required under Guatemalan law. Thus, when expropriation occurred in 1953, the tax value utilized was based on the land's assessed value from over twenty years prior. Third, the company claimed that the land taken could not be justly classified as "uncultivated land" because it had provided both pasture and forestry uses. The company maintained that it annually extracted from the region large quantities of lumber and materials used to further banana production. It also leased portions of this land to its employees who produced fruits, vegetables, and raised cattle for private consumption. Fourth, the expropriated land was vital to the Compañía Agrícola as an alternative resource to ensure against the Panama disease, which had, in the past, destroyed 7,000 acres of company land, forcing abandonment of the infected property.¹³ Consequently, the company held that retention of vast acreage was economically necessary and justifiable.

The State Department added a few points of its own to United Fruit's claims. Although it acknowledged the legality of expropriations that affected both foreign and

¹³Ibid., 358-59. See also, Cable from Leddy to Cabot and Mann, 26 February 1953, 714.00/2-2653, RG 59.

domestic property owners equally, it questioned the accuracy of Arbenz's assertion that the expropriation was non-discriminatory in nature. At the time of the Tiquisate expropriation, the Department noted, approximately two-thirds of the total amount of land expropriated had belonged to United Fruit. Moreover, ratification of a new plan would result in expropriation of an additional 172,532 acres of company land on the Atlantic coast. This action would weaken Guatemalan claims of non-discrimination. The Department emphasized that such discriminatory actions toward foreigners or their property violated international law.¹⁴

Over the next several months, the State Department suggested to the Guatemalan government several means of settlement, including direct negotiation and arbitration. Arbenz initially rejected these proposals, but changed his mind after six months of increased political and economic pressure from Washington. On 9 February 1954 (three weeks before the Tenth Inter-American Conference) Guatemalan Foreign Minister Guillermo Toriello proposed that the dispute be referred to a neutral commission for settlement. In response, U.S. Ambassador John E. Peurifoy, following instructions from the State Department, relayed several points to Minister Toriello. First, the Ambassador expressed the Department's preference that the issue be resolved through direct negotiation between the company and the Guatemalan government. Second, Ambassador Peurifoy lectured the Foreign Minister on the ease with which U.S. companies had resolved past disputes through direct discussion with other Latin American governments. Third, he informed the Foreign Minister that the need for

¹⁴Ibid.

resolving the dispute was a factor of "high, but not primary importance" in U.S.-Guatemalan relations.¹⁵ This final point seems to indicate that communism was now of greater concern to Washington than the United Fruit dispute. Diplomatic relations had deteriorated to the point where settlement of the United Fruit dispute would no longer suffice to change the Eisenhower administration's impression of Guatemala. The situation remained deadlocked until mid-1954.

Less than a week after Guatemala City and Washington had failed to reach a compromise, the Arbenz government announced its second expropriation decision affecting United Fruit land. The new announcement called for expropriation of 173,790 acres of Compañía Agrícola's land on the Atlantic coast, in Bananera. In compensation Guatemala offered \$557,542, also in the form of long-term low interest bonds.¹⁶ A strong diplomatic response from Washington was inevitable.

One month later, the State Department filed a formal claim against Guatemala on behalf of United Fruit. The 20 April 1954 communique announced that Guatemala owed \$6,984,223 plus \$8,737,600 in severance damages for the Tiquisate seizure.¹⁷ The fact that only one year had passed before official Department espousal of a claim illustrates the Eisenhower administration's greater willingness to interpose in the Guatemalan case.

¹⁵Cable from Dulles to Peurifoy, 20 February 1954, 714.00/2-954, RG 59.

¹⁶Toriello, 40.

¹⁷Department of State. "Formal Claim Filed Against the Guatemalan Government," Department of State Bulletin 30, no. 775 (3 May 1954): 678-79.

The State Department implemented no formal sanctions against Guatemala in response to the United Fruit dispute, but it did display its dissatisfaction with Arbenz's policies by bringing economic and political pressures to bear on the country. President Eisenhower continued the embargo on military aid begun by the Truman administration.¹⁸ The United States subsequently curtailed bilateral economic assistance to Guatemala between 1952 (after enactment of the Agrarian Reform Law) and 1954, as shown in Figure 2. Seizure of U.S.-owned property solidified support for these policies. Additionally, as a natural response to the Agrarian Reform Law, and requiring little encouragement from Washington, private investors promptly withdrew over \$12 million from Guatemala in 1952 and 1953.¹⁹ The seizure of U.S.-owned property solidified support for the Administration's actions, while capital flight placed increased pressure on Guatemala's economy.

With differences between the two nations growing increasingly acute in 1954, the State Department used the Tenth Inter-American Conference in Caracas to exert further political pressure on the left-leaning Arbenz government. Although the March 1954 Conference was intended as an economic summit, the State Department successfully lobbied to alter the agenda, adding a proposed declaration denouncing communism in the Americas, with Guatemala as the implied target. In preparing for the Conference, Secretary Dulles reminded his staff to avoid discussion of United Fruit's difficulties, because he feared the Guatemalan delegates would attempt to defeat

¹⁸Cable from Clark to Mann, 4 December 1952, 714.00/11-2252, RG 59.

¹⁹Department of Commerce "Guatemalan Economic Trend Downward." Foreign Commerce Weekly 50, no. 26 (28 December 1953): 4.

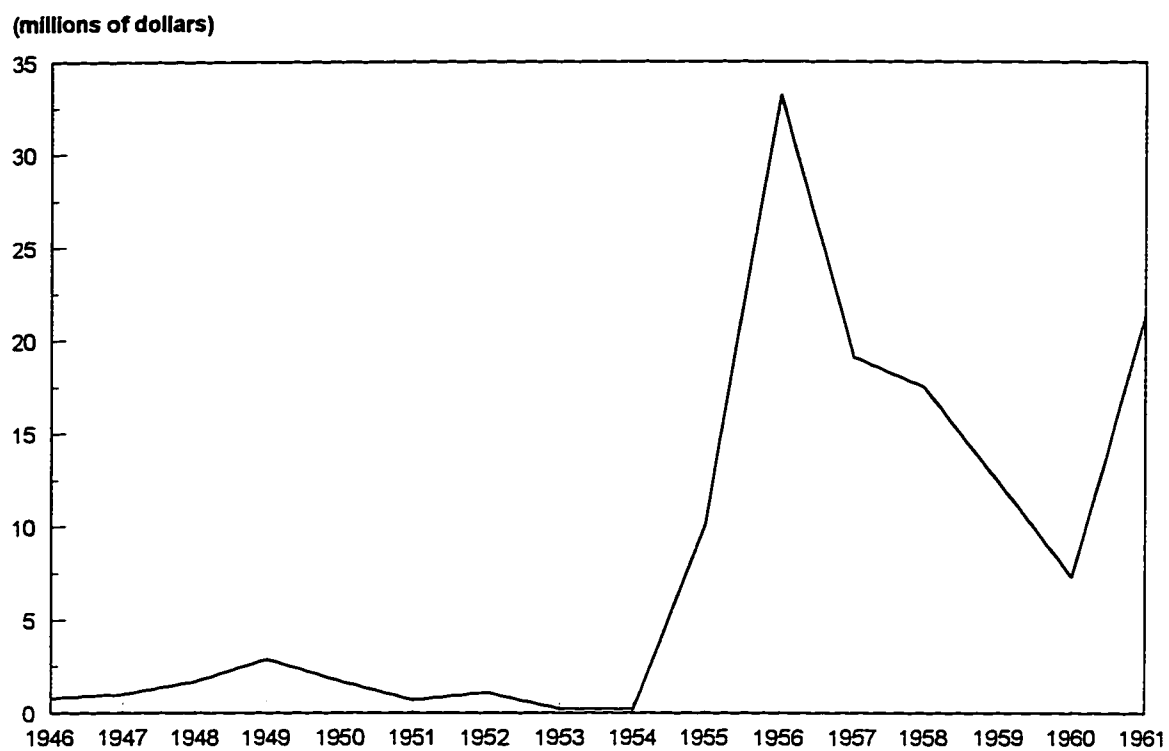


Figure 2 U.S. Bilateral Economic Assistance to Guatemala, 1946-1961. Source: AID, U.S. Overseas Loans and Grants: Series of Yearly Data, (Washington, D.C.: GPO, 1991).

the anti-communist measure by linking U.S. actions to the fruit company's interests. The Secretary correctly anticipated the Guatemalan response, but the conferees nevertheless overwhelmingly approved his anti-communist declaration.²⁰ The Caracas Declaration gave Washington a license to exert greater pressure on the Arbenz government.

Arbenz could not reverse the tide. His prediction two years earlier that Guatemala would be subjected to "terrific pressure [to] readjust the government's policy toward communism" exceeded his expectations, as it ultimately led to his overthrow in June 1954.²¹ Arbenz had neither the military support or popular backing needed to save his presidency.

The full extent of U.S. involvement in the Arbenz overthrow is still under debate. What is known for certain is that an exiled Guatemalan army colonel, Carlos Enrique Castillo Armas, with a small group of armed rebels known as the Liberation Army, managed successfully to enter Guatemala and execute a virtually bloodless coup. Arbenz opted to cede his position peacefully rather than risk confrontation with forces of unknown size and strength, especially given that his own army declined to come to his defense. It is also known that the State Department had been approached on several occasions with proposals designed to topple the Arbenz government, and that it did wish to see Arbenz replaced. The most likely scenario is that the U.S. government and

²⁰The U.S. declaration passed by a vote of seventeen to one. Guatemala cast the only negative vote, Argentina and Mexico abstained, and Costa Rica gave a supporting vote *in absentia*. For text of the declaration, see, Department of State, Intervention of International Communism in Guatemala, (Washington, D.C.: GPO, 1954), 8-9.

²¹Cable from Clark to Mann, 4 December 1952, 714.00/11-2252, RG 59.

anti-Arbenz neighboring nations at a minimum provided logistical support for the Liberation Army to commence operations, and that inaction by Guatemala's regular army during the assault sealed Arbenz's fate.²²

The United States and Guatemala moved quickly to re-establish friendly relations following the coup. Among President Castillo Armas' first acts were annulment of Arévalo's 1945 Constitution, abrogation of Arbenz's Agrarian Reform Law, and restitution of United Fruit's expropriated lands. Armas then moved to eradicate communism from Guatemala by establishing the National Committee for Defense Against Communism, and by dismantling trade unions and peasant movements.²³ In exchange, Washington dramatically altered its policies toward Guatemala. The United States lifted its embargo on military assistance following the coup, and military aid to Guatemala rose to \$3.7 million by 1963.²⁴ Concurrently,

²²For coup proposals see, Meeting between Corcoran and Mann, 15 May 1950, 714.00/5-1550; Cable from Siracusa to Mann, 4 September 1952, 714.00/8-2952, RG 59; Cable from Mann to Secretary Dulles, 3 October 1952, 714.00/10-352, RG 59; and Cable from Mann to Whelan, 13 October 1952, 714.00/10-1352, RG 59. Also, there are varying interpretations as to the factors that led to Arbenz's overthrow. See. Immerman, 133-86; Frederick W. Marks III, "The CIA and Castillo Armas in Guatemala, 1954: New Clues to an Old Puzzle," Diplomatic History, 14, no. 1 (Winter 1990): 67-86; and Stephen G. Rabe, "The Clues Didn't Check Out: Commentary on 'The CIA and Castillo Armas,'" Diplomatic History, 14, no. 1 (Winter 1990): 87-95; Paul C. Clark, Jr., The United States and Somoza, 1933-1956: A Revisionist Look, (Westport: Praeger Publishers, 1992), 182-84; and Schlesinger and Kinzer, 159-204.

²³Johnathan Fried et. al., Guatemala in Rebellion: Unfinished History, (New York: Grove Press, 1983), 62.

²⁴Guatemala: A Country Study, ed. Richard F. Nyrop, 2d ed. (Washington, D.C.: GPO, 1983), 132.

U.S. bilateral economic and social aid rose to the highest level ever, with Washington contributing \$110 million between 1955 and 1960 (see Figure 2 above).

Both the State Department and the United Fruit Company achieved their short-term objectives. Whereas the Department witnessed the successful ouster of an unwelcome leftist-oriented Central American government, United Fruit realized its goal of restitution of its former property. Relief was, however, only temporary. Successive governments in Guatemala failed to prosper despite the massive infusion of bilateral assistance, accentuated by increased maldistribution of income during the 1960s and severe political disorder through the early 1970s. The failures of this hard-line State Department policy were not yet apparent when the next crisis emerged in Fidel Castro's Cuba.

Cuba

Five years after the Guatemalan coup, the State Department encountered its biggest Cold War challenge in Latin America. The 1959 victory of Fidel Castro ultimately resulted in the loss of nearly \$2 billion by private U.S. investors. Unlike the previous case studies, the Cuban seizures did not all occur simultaneously, nor did they affect just a handful of large companies within a particular industry. Instead, the Cuban example reveals gradual nationalization of an entire economy.

Background

Foreign investors had prospered in pre-Castro Cuba, particularly under the dictatorship of Fulgencio Batista Zaldívar (1952-1959), who in many ways mirrored the earlier Diaz government in Mexico and the Ubico government in Guatemala. While Batista welcomed foreign investment, his policies exacerbated the massive disparity

between wealthy and poor Cubans and his administration also showed signs of mismanagement and corruption. By 1958 U.S. investors controlled much of the nation's arable land, and several key industries and public utilities, totaling \$861 million. The United States was also Cuba's chief trading partner, purchasing \$484 million of its exports and providing \$546 million in imports.²⁵

Although the United States benefitted from Cuba's inviting investment climate and supported Batista in his earlier years, the State Department grew increasingly antagonistic toward the dictator by late 1958. Both Batista's use of increasingly harsh measures to quell domestic opposition and his clear involvement in the fraudulent national elections of November 1958 contributed to the shift in Department policy. Thus, less than one month after the elections, U.S. Ambassador Earl E. T. Smith announced Washington's complete withdrawal of support for the Batista regime.²⁶ The Department hoped that a reform-minded, yet moderate government would come to power.

The government that supplanted Batista on 1 January 1959 proved far from moderate. A long history of U.S. dominance over Cuba's internal affairs since its independence from Spain in 1899, and Washington's support for consecutive corrupt

²⁵In comparison, the United States had an estimated \$781 million of direct investment in Mexico and \$517 million in Argentina in 1958. Department of Commerce, "Capital Flow to Foreign Countries Slackens," Survey of Current Business, 39, no. 8 (August 1959): 30; idem, Survey of Current Business 38, no. 12 (December 1958): S21-S22; idem, Survey of Current Business 39, no. 12 (December 1959): S21-S22.

²⁶Rabe, Eisenhower in Latin America, 121.

and inept Cuban governments contributed, in part, to the hostile environment between the United States and Cuba that began in 1959 and continues today.

Fidel Alejandro Castro Ruz spearheaded the victorious 26th of July Movement, which for over six years had struggled to oust the Batista regime. The Revolution's agenda called for attacking Western capitalism head-on. Purging the Batista military and bureaucratic structure were immediate priorities, and both bodies were replaced with loyal revolutionary followers. Then came more difficult economic and political tasks. The Revolution's economic program called for radical agrarian reform and nationalization, both of which initially targeted public utilities, but soon expanded to include every sector. Finally, freeing Cuba from U.S. dependence was viewed as a prerequisite for these reforms. The Castro government had no preconceived plan for offsetting U.S. economic and political dominance (a Cuban-Soviet alliance was still over one year away), but it nevertheless forged ahead with its agenda.²⁷ In the meantime, the unwavering loyalty of the Cuban masses enabled the new government to withstand intense economic and political pressure from abroad.

To Washington's dismay, over the succeeding three years Castro adopted a reform policy unprecedented in Latin America. National control over public utilities ranked high on the new government's agenda. Castro first intervened in the operations of an International Telephone and Telegraph (ITT) subsidiary, the Cuban Telephone Company, in March 1959. Both Washington and ITT reacted mildly to the intervention, believing it was only temporary, and that official diplomatic response

²⁷Louis A. Pérez, Jr., Cuba and the United States: Ties of Singular Intimacy, (Athens: University of Athens Press, 1990), 23 and 245.

would have been premature.²⁸ The ITT seizure, however, proved only a sample of things to come.

Castro next moved to equalize land distribution through the Agrarian Reform Law, promulgated in May 1959. It limited the size of all landholdings and provided twenty-year 4.5 percent bonds as compensation, payable in nonconvertible exchange. Under the act, hundreds of agrarian seizures took place over the following eighteen months, few of which complied with established policy. The National Institute of Agrarian Reform (INRA), the organization responsible for carrying out the expropriations, "arbitrarily" enacted the law and designed each decision to meet the government's current desires.²⁹ The affected U.S. property owners promptly expressed their difficulties to the State Department.

As external political and economic pressure mounted against revolutionary measures in early 1960, the Castro government located an alternate market for exports, and a new source of machinery, basic goods, and military hardware in the Soviet Union. Nikita Khrushchev's government had, since the beginning of the Cuban Revolution, watched Castro's anti-capitalist and anti-U.S. gestures with great interest. Although another year would pass before Castro publicly announced his allegiance to Marxism, the Soviet government felt confident enough in the survivability and

²⁸Michael W. Gordon, The Cuban Nationalization: The Demise of Foreign Private Property, (Buffalo: William S. Hein & Co., 1976), 73-74.

²⁹For a detailed analysis of the Agrarian Reform Law, see, cable from Bash to Secretary Dillon, 9 October 1959, 837.16/10-959, RG 59; and M. Gordon, 75-76.

ideological commitment of the Revolutionary government to re-establish diplomatic relations in May 1960.³⁰ The move came not a moment too soon for Cuba.

Two weeks after rapprochement with the Soviet Union, Castro initiated a chain of events which permanently damaged U.S.-Cuban diplomatic relations. On 23 May Castro ordered Cuba's foreign-owned oil refineries to refine Soviet crude oil. The U.S. and British-owned companies refused, with the approval of their respective governments.³¹ Castro responded by seizing the refineries, thereby sparking increasingly severe reactions, making severance of diplomatic ties inevitable.

Cuba's intervention in the operations of the foreign-owned oil refineries marked the high point of the property seizures. The nationalizations had, by mid-1960, covered the entire spectrum of the Cuban economy, ranging from land seizures to manufacturing enterprises and public utilities. Castro's actions put State Department decision-makers to the greatest test thus-far.

The State Department Response

The State Department reacted to the Batista overthrow with guarded optimism. It granted official recognition to the Castro government on 6 January 1959, and promptly sought recommendations from its embassy in Havana as to the outlook for

³⁰Richard E. Welch, Jr. Response to Revolution: The United States and the Cuban Revolution, 1959-1961, (Chapel Hill: University of North Carolina Press, 1985), 10-15; and Memorandum from Braddock to State Department, 18 February 1959, 611.37/2-1859, RG 59. Batista had severed diplomatic ties soon after taking over in 1952. For more information, see, Peter G. Bourne, Fidel: A Biography of Fidel Castro, (New York: Dodd, Mead & Company, 1986), 198-99.

³¹Pamela S. Falk, Cuban Foreign Policy, (Lexington: Lexington Books, 1986), 41-42; and Philip W. Bonsal, Cuba, Castro, and the United States, (Pittsburgh: University of Pittsburgh Press, 1971), 151-53.

U.S.-Cuban relations. Embassy Chargé d'Affairs Daniel M. Braddock responded in mid-February with a positive analysis. He predicted that Castro's criticism of the United States and foreign investment would eventually subside. After a period of adjustment, Braddock believed that Castro would prove a refreshing and welcomed change from the Batista government. Two days later, the State Department gave its initial endorsement to an International Monetary Fund (IMF) proposal for economic assistance to Cuba.³² Clearly, Braddock underestimated Castro's commitment to change.

In early March, the State Department replaced Ambassador Smith with the more progressive Philip Bonsal, who appeared to be a good choice for the job. His successful tour as Ambassador to Bolivia had familiarized him with the dilemmas facing leftist governments. Bonsal recognized that the traditional view of Cuba as a U.S. dependency had to be revised, and he urged the State Department to exercise patience and flexibility in dealing with the new government. The Department followed these recommendations during the first year of the Castro government, and took a conciliatory posture toward Cuba.³³ Unfortunately, as later events revealed, Bonsal's new outlook could do little to alleviate deep-seated Cuban bitterness over decades of U.S. interference in its political and economic affairs.

³²Memorandum from Braddock to Department of State, 18 February 1959, 611.37/2-1859; and Memorandum from Snow to Dillon, 20 February 1959, 837.13/2-2059, RG 59.

³³Welch, 29; and Bonsal, 25-30.

When Castro made his first move against U.S.-owned property by seizing the Cuban Telephone Company in March 1959, Ambassador Bonsal recommended that the Department not file an official protest. Instead, he assisted company officials by expressing their grievances, informally, to the Cuban government.³⁴ This effort had little impact on the seizure.

When Cuba enacted the Agrarian Reform Law two months later, the Ambassador sent his first official note to the Cuban Foreign Minister voicing concern over the potential impact of the government's reforms on foreign-owned property. His 11 June note expressed support for the nation's agrarian reform measures, but reminded the government of the need for just compensation and non-discrimination toward U.S.-owned properties. As the year progressed, the State Department witnessed the apparent arbitrary nature of the agrarian seizures, few of which complied with the Agrarian Reform Law. As a result, Bonsal delivered another note to President Osvaldo Dorticós Torrado on 12 October, followed by a summary note on 27 October, protesting the manner in which the seizures were being handled.³⁵ These protests had no deterrent effect on the Cuban government, and the pace of nationalization continued to increase.

The true turning point in U.S.-Cuban relations occurred late in early 1960. On 4 March, the French freighter *La Coubre*, loaded with a shipment of Belgian arms, exploded suddenly inside a busy Cuban harbor. Castro promptly accused the United States of sabotage, a charge which the State Department emphatically denied. The

³⁴Blasier, 90.

³⁵Blasier, 90-91. For text of the June 11th note, see, Note from Bonsal to Minister of State Agramonte, 11 June 1959, 837.16/6-1159, RG 59.

Castro accusation, combined with the foreign property seizures, and the growing consensus in Washington that Cuba was indeed turning communist, contributed to the shift in Department policy. Even Ambassador Bonsal gave up hope for continued cordial diplomatic relations. Moreover, 1960 was an election year in the United States, and Vice President Richard Nixon, running for the Presidency, had increased anti-Castro rhetoric during the course of the campaign.³⁶ Since the Eisenhower administration no longer saw any benefit from trying to cooperate with the Cuban government, it shifted its attention to removing Castro by force.

While United States developed paramilitary plans, Castro's assault on foreign-owned property continued. The on-going agrarian seizures and sporadic industrial seizures were promptly overshadowed by the dispute over foreign-owned oil refineries in the summer of 1960. Washington considered Castro's demand that private petroleum refineries process Soviet crude oil intolerable, and advised the companies to refuse his request. When Cuba retaliated by seizing the foreign companies between 29 June and 2 July, the White House responded by striking Cuba at its weakest point -- sugar exportation. After the U.S. Congress quickly transferred authority over the sugar quota to the Executive branch on 6 July, President Eisenhower announced the following day a nearly total reduction in Cuba's sugar quota for the remainder of 1960.³⁷

³⁶Tad Szulc, Fidel: A Critical Portrait, (New York: Avon Books, 1986), 568-71.

³⁷The potential impact of the sugar sanction was tremendous. Approximately 700,000 tons of Cuban sugar (almost one-quarter of the year's harvest) was no longer bound for the United States, leaving only 39,752 tons for the rest of 1960. At this stage, the Eisenhower administration gave no indication as to what it would do to the 1961 quota. M. Gordon, 98-99.

Renewed Cuban-Soviet economic relations saved Cuba, and allowed Castro to increase pressure on the United States. The U.S.S.R. announced immediately that it would exchange equipment, technical assistance, and military aid for Cuban sugar. The new market for Cuban goods enabled Castro to strike back at the United States by implementing the Law of Nationalization. The law authorized expropriation of U.S.-owned property at Castro's discretion, providing compensation through "proceeds" from sugar sales to the United States. However, to be eligible for compensation, sales had to exceed 1.5 million Spanish long tons annually at more than 5.75¢ per pound. Upon meeting these criteria, twenty-year, two percent bonds would be issued. The Law of Nationalization clearly was designed to bring about a reversal of the sugar sanction. If this failed, Castro implied that U.S. investors should not expect compensation for seized properties.³⁸ At this point, the two nations were not willing to resolve their differences. The State Department could only watch and keep records of the remaining seizures.

The new year brought an end to U.S.-Cuban diplomatic relations. On 2 January 1961 Castro demanded that the U.S. Embassy in Havana be reduced from eighty-seven to eleven officials within forty-eight hours. In response, Eisenhower announced on 3 January, with incoming President John F. Kennedy's approval, a break in diplomatic and consular relations with Cuba, accompanied by a revised sugar quota of zero for

³⁸Cuba's quantity and price demands for sugar exportation to the United States were at inflated World War II levels, and hence unacceptable to the White House. Bonsal, 151-52.

1961. By the end of 1961, the Kennedy administration had imposed a total embargo on trade with Cuba.³⁹ Neither diplomatic nor trade relations have since been resumed.

Although there was no longer hope of a diplomatic solution to U.S.-Cuban difficulties, the Kennedy administration continued with plans created under President Eisenhower to settle differences militarily. Kennedy and his advisors had hoped to conduct an amphibious assault, using more than 1400 U.S.-trained Cuban exiles, which would be followed by a mass uprising of the Cuban people against Castro. The April 1961 assault, known as the Bay of Pigs invasion, was plagued with tactical and logistical errors, as the United States grossly underestimated the determination and preparedness of the Cuban people.⁴⁰ The Castro government successfully resisted the invasion, and solidified domestic support.

Washington's problems over the Cuban nationalizations did not end with the severance of diplomatic relations and Bay of Pigs fiasco because the U.S. government had to contend with several thousand outstanding claims. To help resolve these claims, the 1964 Congress empowered the Foreign Claims Settlement Commission (FCSC) with authority to assess the legitimacy and exact dollar amount owed U.S. private investors. The FCSC had been established in 1954 as a "quasi-judicial" independent U.S. government agency that combined both the State Department's War Claims Settlement Commission and the International Claims Settlement Commission under one institution. The Commission had previously determined compensation due victims of

³⁹Welch, 8, 59.

⁴⁰Welch, 64-86. For more detailed coverage, see, Peter Wyden, Bay of Pigs: The Untold Story, (New York: Simon & Schuster, 1979).

	TYPE		
	Corporate	Individual	Totals
Number Filed	1146	7670	8816
Amount Claimed	\$2,855,993,212	\$490,413,058	\$3,346,406,271
Dismissed/	-----1710-----		
Number Denied	248	947	1195
Amount Denied	\$1,277,494,373	\$269,363,329	\$1,546,857,702
Number Awarded	898	5013	5911
Amount Awarded	\$1,578,498,839	\$221,049,729	\$1,799,548,568

Table 2 Final Statistical Report on Cuban Claims Program. Source, Foreign Claims Settlement Commission, Foreign Claims Settlement Commission 1972 Annual Report, (Washington, D.C.: GPO, 1973), 412.

nationalization in several countries, including Czechoslovakia, the Soviet Union, and Poland. The Commission's task in the Cuban case was to ascertain the amount of each claim and deliver to the Executive branch a report on compensation owed by the Cuban government, as illustrated in Table 2.⁴¹ The FCSC review did not result in an actual transfer of U.S. government funds to private investors as compensation, but rather, provided the State Department with an official lump sum which it could in turn present to the Cuban government at a future date if the two governments were ever to resume official communication.

More recently, the United States moved again to pressure the Castro government. After a February 1996 incident in which the Cuban military shot down two civilian planes belonging to the anti-Castro Brothers to the Rescue movement, Congress responded in early March by passing the Helms-Burton Act, which enables U.S. claimants to sue foreign companies to obtain compensation for their seized assets.⁴² It remains to be seen whether any U.S. claimants will actually be

⁴¹The FCSC tallied 5,911 outstanding claims totaling \$1,799,548, 568, not including interest. While a few of the larger corporations have since recouped their losses through tax write-offs, several thousand claims remain uncompensated. For more information, see, Congress, House, Committee on Foreign Affairs, Subcommittee on Inter-American Affairs, Claims of U.S. Nationals Against the Government of Cuba, 88th Cong., 2d sess., 28, 29 July and 4 August 1964, 1-14, 121; and Kirby Jones, "The Issue of Claims as Seen by the United States," in Subject to Solution: Problems in Cuban-U.S. Relations, ed. Wayne S. Smith and Esteban Morales Domínguez (Boulder: Lynne Rienner Publishers, 1988), 70.

⁴²Carla Anne Robbins and Jose de Cordoba, "Clinton backs Bill to Tighten Cuba Embargo," Wall Street Journal, 29 February 1996, p. A3; Anthony DePalma, "New U.S. Curbs Sound Alarm for Cuba Investors," New York Times, 6 April 1996, p. A3; and Anne Swardson, "Allies Irked by Bill to Deter their Trade with U.S. Foes," Washington Post, 7 March 1996, p. A20.

compensated under this new policy, but the measure demonstrates that this sensitive chapter in U.S.-Cuban relations is far from over.

Conclusion

The Eisenhower administration's Cold War fears over the spread of communism within the hemisphere influenced State Department policy toward Guatemala and Cuba more than the U.S. property seizures. The Guatemalan case clearly illustrates this because of the minimal value of property loss. This was particularly clear in the Guatemalan dispute where the dollar amount in question was minuscule. The Department certainly would not have risked international uproar and potential estrangement of Latin American allies stemming from discovery of U.S. involvement in a coup designed solely to restore United Fruit property. The company did, however, heighten tension by providing seemingly irrefutable evidence of Guatemala's communist orientation. The State Department's quandary over Cuba was more complex. State Department officials were cautious initially, not knowing what to expect from the Revolution. As the dispute reached the crisis stage, the Department realized that its options were either to continue watching passively as Castro enacted his reform programs, in order to preserve diplomatic relations, or to risk confrontation in hopes of causing an uprising that would replace Castro with a more agreeable government. While remaining conciliatory might have preserved bilateral relations, Washington's actions revealed the general consensus among State Department and other Administration officials that the United States had a better chance of returning to the status quo ante by opposing Castro. In pursuing confrontation, the U.S. government greatly underestimated Castro and the strength and determination of his following.

To further its aims, the State Department used economic and political pressure during both disputes. Against Guatemala, the United States upheld an embargo on military assistance, gradually curtailed economic assistance, and attacked the Arbenz government indirectly at the Tenth Inter-American Conference. After Arbenz's overthrow, the Department rewarded President Armas' pro-U.S. policies with large bilateral assistance packages. Against Cuba, the United States not only withdrew economic assistance, but also dismantled the sugar quota, which it hoped would hurt the country's most vital export. U.S. actions against Guatemala helped to destabilize the government, while its actions against Cuba only served to expedite estrangement and gravitation toward the Soviet bloc. Political conditions in Cuba precluded a successful repeat of earlier events in Guatemala.

The State Department did nothing extraordinary in either property seizure dispute. It debated few technical or legal issues, and neither controversy actually proceeded to the negotiating stage, where the State Department would normally have provided assistance to encourage continued dialogue and a prompt settling of differences. The Department acted in both seizures to forward diplomatic notes of protest to its foreign counterparts.

The State Department did, however, file formal claims against both countries. In April 1954, it filed a formal claim against Guatemala for nearly \$7 million plus \$8,700,000 in severance damages. Official Department involvement came only one year after the Arbenz expropriation announcement. The United States also compiled a list of outstanding claims against Cuba, totaling \$1.8 billion, not including interest, but long after diplomatic ties had been severed. More than three decades later, the U.S.

government moved again to pressure Cuba with the Helms-burton Act, which allows U.S. claimants to sue foreign companies that presently own their former properties. It is at present too early to tell what political and commercial impact this measure will have on Cuba. Should diplomatic relations be restored, it is unlikely that any remaining claims will ever be repaid by a future Cuban government, which undoubtedly will be hard-pressed economically. Instead, the Department will probably maneuver around the compensation issue, explaining the overriding importance of encouraging democracy and liberalized trade and investment policies in Cuba.

Fundamentally, the Cold War property disputes were poor examples of how such crises should be handled. The Department's experience in Cuba, and to a lesser extent in Guatemala, would lead to a revised overall policy toward Latin America under Presidents Kennedy and Lyndon Johnson, and the creation of legislation designed specifically to combat future property seizures.

CHAPTER V

POST-CUBAN COLD WAR SEIZURES: PERU AND CHILE

U.S. policies toward the issues of development and protection of private sector investment in Latin America underwent revision in the aftermath of the Cuban experience. On the development side, the Kennedy administration initiated a new outlook by pledging a decade of increased U.S. economic assistance to the region under the Alliance for Progress program, which promoted both economic and social improvements and the emergence of stable democratic governments throughout Latin America. Meanwhile, the Legislative branch altered mechanisms for protecting private property. Early in the decade, the U.S. Congress took its first step by implementing legislation requiring mandatory, time-sensitive Executive branch retaliation against uncompensated property seizures. Toward the end of the decade, Congress moved again to protect U.S.-owned property by creating a mixed public-private sector corporation that would insure investments in developing regions.

These new mechanisms for encouraging development and discouraging disruptions of free enterprise influenced the State Department's response to property seizures that began in 1968 in Peru and 1970 in Chile. The Department's challenge in the post-Cuba era would be to protect private investment from pervasive Latin American nationalism and avoid another socialist revolution.

Peru

Between 1968 and 1974, Peru's military government initiated a national development program which involved seizing dozens of domestically and foreign-

owned enterprises in the extractive, banking, and agricultural sectors, as well as several public utilities. The government came to terms with most of the seized enterprises.

The most contentious and widely publicized of the unsettled disputes was the 1968-69 seizure of the International Petroleum Company (IPC), a subsidiary of the Standard Oil Company of New Jersey. The IPC issue gained notoriety because of the long history of the dispute, the dollar amount involved, the importance of the company, and the fact that Peru refused to compensate the company for its losses. The dispute dominated U.S.-Peruvian relations over the next five years.

Background

Shortly after toppling the civilian government of President Fernando Belaúnde Terry (1963-1968) in October 1968, the military junta of General Juan Velasco Alvarado (1968-1975) targeted IPC's holdings in Peru, claiming that IPC had "unjustly enriched" itself over nearly a quarter century at the expense of the Peruvian people. The junta seized IPC's La Brea y Pariñas oilfields and Talara industrial complex immediately, and a few months later took its remaining assets. The military government calculated IPC's indebtedness from 1924 through 1968 at \$690.5 million for crude oil extracted under an invalid title and tax arrangement, and demanded that the company pay this sum before Peru would consider compensation for seized assets.¹

President Velasco seized IPC's assets to settle a controversy that had plagued previous Peruvian governments. The dispute stemmed from IPC's claim to subsoil

¹Bruce A. Blornstrom and W. Bowman Cutler, "The Foreign Private Sector in Peru," in U.S. Foreign Policy and Peru, ed. Daniel A. Sharp (Austin: Institute of Latin American Studies. 1972), 260.

rights for the La Brea y Pariñas oilfields. The subsoil title to La Brea y Pariñas, which originally served as a pitch mine, was sold by the state to a Peruvian national in 1826 as part of the state's program to finance enormous debts incurred in fighting for its 1821 independence from Spain. The government approved the title transfer despite a provision in Peru's 1823 Constitution upholding the colonial-era principle that private citizens could only extract subsoil resources under concession status. La Brea y Pariñas was later purchased by British investors in 1888, and extensive petroleum production began soon thereafter. This arrangement still stood when IPC, then a subsidiary of Canada's Imperial Oil Company, purchased the La Brea y Pariñas properties from its British owners in 1924. The Imperial Oil Company was later acquired by the Standard Oil Company of New Jersey.² Since the claim to subsoil ownership was never overruled, IPC maintained the unique status (which could not be claimed by any other private parties) of holding a title to Peru's subsoil resources.

By the mid-1950s, increased public criticism prompted company officials to resolve the situation. They proposed in 1957 that President Manuel Prado Ugarteche exchange the subsidiary's claim of subsoil ownership to La Brea y Pariñas for concession status. As part of the exchange, IPC requested several commercial benefits to enhance its business activities in Peru. The government, however, rejected the

²John E. Huerta, "Peruvian Nationalizations and the Peruvian-American Compensation Agreements," New York University Journal of International Law and Politics 10, no. 1 (Spring 1977): 10-11; Peru, "Origin of the 'La Brea y Pariñas Property,'" La Brea y Pariñas Controversy, (Lima: Government of Peru, no date given), vol. 1: exhibits 1, 14; and Pedro-Pablo Kuczynski, Peruvian Democracy Under Economic Stress: An Account of the Belaúnde Administration, 1963-1968, (Princeton: Princeton University Press, 1977), 110-17.

proposal, stating it should not have to confer further privileges for property that was rightfully Peruvian.³ The government's reaction reflected domestic opinion that the IPC had long operated illegally in Peru.

The election of Fernando Belaúnde Terry as President in 1963 heralded new troubles for IPC. His pledge of extensive agrarian reform, infrastructural development, an improved education system, and a solution to the IPC case within ninety days of assuming office had wide appeal among voters.⁴ Although he made gains on most of these issues, President Belaúnde fell far short on his promises.

Belaúnde's failure to resolve the IPC controversy marred his presidency. Instead of reaching a solution within 90 days, negotiations continued sporadically for two years, before reaching an eventual stalemate in 1966. The State Department, in turn, showed displeasure with Belaúnde's threats toward foreign-owned property by withholding development loans needed for public works projects. Moreover, currency devaluation and a rash of strikes hampered domestic production and economic growth by 1966, and Belaúnde's agrarian reform measures encountered staunch opposition from the legislature and wealthy landowners. His position deteriorated further when the United States withdrew military assistance in 1966 over his decision to purchase French Mirage fighter aircraft after the United States had refused to sell U.S. planes to

³Jessica Pernitz Einhorn, Expropriation Politics, (Lexington: Lexington Books, 1974), 13; Kucyznksi, 117.

⁴For further information on Belaúnde's reform measures, see, Kuczynski, 48-70.

Peru.⁵ This combination of factors sparked strong criticism from Peru's military toward the civilian government and, ultimately, contributed to its downfall.

Realizing that domestic and external pressures were taking a toll on the nation, Belaúnde executed a last-ditch effort to resolve the IPC controversy in mid-1968. He had several reasons for urgency. First, on 20 June, the Peruvian Congress had granted him a 60-day period during which he could enact emergency economic measures, exempt from legislative review, to resolve the domestic financial crisis. Second, he understood that full U.S. economic assistance would not resume until he settled the IPC issue.⁶ While both the public and press had grown extremely critical of IPC by this stage, Belaúnde apparently believed that the long-term benefits of resolving the controversy (which would undoubtedly require concessions by Peru) outweighed any short-term criticism he might encounter.

After several weeks of intense negotiations, Belaúnde presented the nation with the Act of Talara, a series of agreements to settle permanently the La Brea y Pariñas controversy. The principal document declared that the La Brea y Pariñas oilfields henceforth belonged to the state (to be operated by the state-owned Empresa Petrolera Fiscal), canceled all debts claimed to have been owed Peru by the IPC, legitimized IPC's other operations in Peru, and granted the company permission to expand the

⁵Jorge Avendaño Valdés and Domingo García Belaunde, "Peru," in Expropriation in the Americas: A Comparative Law Study, ed. Andreas F. Lowenfeld (New York, Dunellen, 1971) 190; and Charles T. Goodsell, "Diplomatic Protection of U.S. Business in Peru," in U.S. Foreign Policy and Peru, ed. Daniel A. Sharp (Austin: University of Texas Press, 1972), 248-49.

⁶Kuczynski, 260-63.

Talara refinery. A second document detailed the future price for IPC's purchase of natural gas from Empresa Petrolera Fiscal (EPF), while a third explained the rates at which it would purchase crude oil.⁷ To Belaúnde's surprise, this did not end the controversy.

Rather than settle the issue, the Act of Talara stirred up more trouble. Carlos Loret de Mola, who had directly participated in the IPC negotiations as head of EPF, declared on 10 September that the final page of the IPC crude oil purchasing agreement was missing from the official text. According to Loret de Mola, the final page contained the calculations for the purchase of crude oil. While the existence of this missing page was never determined, the calculations it allegedly contained were already part of the agreement itself. Nevertheless, Loret de Mola's accusations alerted observers who had not carefully read the agreement to the fact that IPC had been given very favorable rates, and many came to believe that Belaúnde had rushed to resolve the IPC issue during the two-month congressional grant of extraordinary powers to circumvent congressional review.⁸ No amount of explaining would satisfy those who had long opposed the continued existence of IPC, including military leaders.

On 3 October 1968, nearly one month after the "missing page" controversy began, the Peruvian military toppled the Belaúnde government. This military junta was

⁷American Society of International Law. "Documents and Legislation Concerning Expropriation of La Brea and Pariñas Oilfields in Peru, 1922-1968," International Legal Materials 7, no. 6 (November 1968): 1217-54.

⁸For an explanation of the calculations, see. "No se Encuentra Original del Contrato Celebrado Entre EPF-IPC Peru la Copia Tiene Valor Legal Sostienen Ministros," El Comercio (Santiago) 15 September 1968, 4; and Kuczynski, 260-263, 266-272.

unlike any past Peruvian military government. Its progressive, nationalistic, and reform-minded leaders sought to reduce foreign economic dependence, distribute national wealth more equitably, and dismantle the government institutions which it believed were responsible for the nation's current economic crisis. As part of that plan they immediately took on the IPC issue. Junta leader General Juan Velasco Alvarado voided the Act of Talara, nationalized IPC's La Brea y Pariñas oilfields and Talara refinery, and later nationalized its remaining assets while simultaneously charging the subsidiary \$690.5 million for profits accrued through unjust enrichment, plus nearly \$15 million for profits received from petroleum production between October and December 1968.⁹

IPC immediately worked through Peru's legal system to have the debt claims overturned and to obtain compensation for the seized property. Company executives met with Peruvian officials through early spring 1969, but were unable to sway them on the debt issue. Meanwhile, the Peruvian government conducted its own valuation of the La Brea y Pariñas properties and determined they were worth \$71 million, an amount to be deducted from Peru's \$690.5 million claim.¹⁰ The IPC claimed that this

⁹While the IPC dispute certainly was a chief cause for the overthrow, the military also had other motivations. Primarily, it had lost confidence in the ability of Belaúnde, and civilian governments in general, to implement needed economic and political reforms. Furthermore, the traditionally anti-military American Popular Revolutionary Alliance (APRA) party seemed likely to take power in national elections slated for June 1969. Therefore, October 1968 seemed a wise time for military intervention. Ingram, 61; James D. Rudolph, Peru: Evolution of a Crisis, (Westport: Praeger Publishers, 1992), 53-64; and Peru, La Brea y Pariñas Controversy, vol. II: exhibits 60 and 62.

¹⁰Congress, Senate, Committee on Foreign Relations, United States Relations with Peru, 91st Cong., 1st sess., 14, 16 and 17 April 1969, p. 104; and George

proposal hardly constituted compensation and submitted its own valuation figures, as shown in Table 3. The central issue that concerned IPC was whether Peru would stand firm on the unjust enrichment issue.

From the start Velasco tried to isolate the IPC from other seizures. Between 1968 and 1974, Peru nationalized dozens of enterprises in the agricultural, banking, mining, and public utility sectors, many of which were U.S.-owned. While most U.S. investors were compensated by the Peruvian government, several had difficulty agreeing upon a compensation figure. Meanwhile, Velasco repeatedly assured the international community that the uncompensated IPC seizure was a justifiable, isolated action. He added that Peru welcomed continued foreign investment, if subordinated to domestic economic considerations. In fact, even after deducting the generous sums awarded as compensation to expropriated foreign-owned enterprises, Peru still netted over \$400 million in new foreign direct investment between 1968 and 1975.¹¹

Nevertheless, the IPC seizure came to dominate U.S.-Peruvian relations in the Nixon administration.

Jackson Eder, "Hickenlooper and Hereafter," The International Lawyer 4, no. 4 (July 1970): 619.

¹¹The Peruvian government's strategy over the next six years was to direct foreign investment away from vital sectors, such as agriculture, banking, and public utilities, and into lagging sectors, such as manufacturing. Belco, Marcona Mining, the Southern Peru Copper Corporation, Occidental Petroleum, and other influential U.S. companies felt comfortable with arrangements under Velasco and continued to invest capital in new projects in Peru. Huerta, 33-34; Rudolf, 56; Ingram, 81; and Edmund Valpy Knox FitzGerald, The Political Economy of Peru, 1956-78: Economic Development and the Restructuring of Capital, (Cambridge: Cambridge University Press, 1979), 45.

Item	Value (in millions)
La Brea y Pariñas producing assets	\$80
Talara refinery/industrial complex	<u>\$40</u>
Subtotal	\$120
Lima concessions producing assets (estimated value)	\$50
Marketing and distribution system (estimated value)	<u>\$20</u>
Grand total	\$190

Table 3 Standard Oil's Valuation of Properties Seized by Peru. Source: Congress, Senate, United States Relations with Peru, 111.

The State Department Response

The State Department used bilateral assistance to pressure Peru on the IPC dispute throughout Belaúnde's term. President Lyndon Johnson's Assistant Secretary of State for Latin America, Thomas C. Mann, opted to curtail bilateral assistance to Peru in 1964. By late 1965, the State Department realized that its policies had failed to resolve the controversy or further the goals of the Alliance for Progress. When Lincoln Gordon replaced Mann as Assistant Secretary in early 1966, he reversed U.S. policy. The State Department halted bilateral aid again in 1967 over the Mirage dispute.¹² In all, vacillating U.S. bilateral assistance failed to expedite a solution.

The State Department had an even greater mix of opinions about Peru's new military government. While the Department sympathized with the junta's objectives of building a self-sufficient, progressive economy, it opposed the means by which the military had seized control, and its assault on foreign-owned property. The Department expressed displeasure by withholding diplomatic recognition for nearly one month, and after resuming official ties, Assistant Secretary Covey Oliver instructed U.S. Ambassador John W. Jones to call upon Peru's Foreign Minister to acknowledge Peru's right to expropriate IPC property, so long as it provided the company just compensation.¹³ Aside from these activities, the State Department left the burden of the IPC dispute to the incoming Nixon administration.

¹²Einhorn, 19; and Ingram, 50-52.

¹³Department of State, "U.S. Policy Toward Governments of Peru, 1822 - Present: Questions of Recognition and Diplomatic Relations," State Department Bulletin 71, no. 1947 (18 November 1974): 698; and Einhorn, 36.

Punitive measures designed by the U.S. Congress to deter uncompensated seizures made the IPC controversy President Nixon's first regional problem when he assumed office in January 1969. These measures were the 1962 Hickenlooper Amendment to the Foreign Assistance Act of 1961 and the Hoeven Amendment to the Sugar Act of 1948. The Hickenlooper Amendment was created in the aftermath of nationalizations in Cuba, Brazil, and Ceylon, and required the President to suspend assistance to any nation that nationalized or expropriated U.S. property without reasonable steps toward providing just compensation within six months. The 1962 Hoeven Amendment was also motivated by property seizures of the early 1960s and required that the President suspend the sugar quota for nations that failed to compensate for seized U.S. properties, while simultaneously authorizing the President to levy a tax on subsequent sugar imports to recompense U.S. claimants. Alteration of the sugar quota posed the greatest threat to Peru, since its sugar sales to the United States in 1968 constituted seven percent of its total exports. Removal of the quota would cost Peru at least \$45 million in the first year alone, while implementation of the Hickenlooper Amendment would result in an additional \$34 to \$37 million loss.¹⁴ Together, these laws threatened to have an enormous impact on the Peruvian controversy.

The State Department policy-makers in charge of the Peruvian dispute opposed the sanctions for numerous reasons. First, they believed that reducing or terminating Peru's sugar quota under the Hoeven Amendment would not just harm Peruvian

¹⁴For the full text of the Hickenlooper Amendment see, Foreign Assistance Act of 1962, amended, U.S. Code, Title 22, sec. 2370(e)(1) (1970). For the Hoeven Amendment see, Sugar Act Amendments, Statutes at Large, 85, sec. 17, 408 (1971). Einhorn, 24-25.

producers, but also U.S.-owned enterprises, which comprised approximately 25 percent of Peru's sugar producing industry. Second, more than 250 U.S. companies currently operated in Peru, with assets worth between \$600 and \$700 million. Their investments might also be affected if Peru chose to retaliate against U.S. sanctions. Third, the pressure of formal sanctions could radicalize Peru's new military government.¹⁵ Fourth, Standard Oil had not lobbied either the Administration or the U.S. Congress for implementation of sanctions. Fifth, the U.S. Congress had not demanded that sanctions be enforced against Peru (presumably due to the lack of pressure from the private sector). Sixth, given the numerous international crises already confronting the United States in Southeast Asia, a dispute with Latin American neighbors was to be avoided at all cost.

In addition, the State Department maintained a dislike for these Congressionally-mandated constraints on both the time period and form of response. Years earlier, under President Kennedy, Department officials had testified that such disputes could best be handled through a policy of flexible response, while cautioning that hard-line policies could raise nationalist tendencies and actually hamper

¹⁵The CIA's Office of National Estimates concurred with the State Department's assessment of the potential impact of formal sanctions. Congress, Senate, United States Relations with Peru, 127; Department of Commerce, Survey of Current Business 50, no. 10 (October 1970): 28.; W.E. Kuhn, "The Hickenlooper Amendment as a Determinant of the Outcome of Expropriation Disputes," The Social Science Journal 14, no. 1 (January 1977): 75; and Einhorn, 53.

negotiations, as policy makers believed could now happen in Peru.¹⁶ Despite Department opposition to sanctions, the laws could not be ignored.

The Department hoped to postpone sanctions on the grounds that Peru was taking "appropriate steps" (as required in both the Hickenlooper and Hoeven amendments) toward resolving the controversy. To ensure that such steps were taken required official diplomatic involvement, since the IPC's appeal through Peru's legal channels had failed. The State Department decided to send a high-level U.S. representative to negotiate. U.S. Ambassador to Peru John W. Jones was not selected to lead the talks since he had acquired a reputation during his six years as Ambassador for being closely connected to IPC executives and former President Belaúnde. Instead, the Department settled on John Irwin III, a Wall Street lawyer who had earlier served as Assistant Secretary of Defense (1958-1960) and had helped negotiate a new Panama Canal Treaty (1965-1967). The White House made its official announcement on 11 March, and the State Department gave him an open-ended agenda, using IPC's valuation of its assets as the basis for negotiations.¹⁷ The Administration, in truth, doubted initial negotiations would lead to a compromise, but the mission at least bought the White House time and provided a pretense for deferring sanctions.

¹⁶Congress, House, Committee on Foreign Affairs, Expropriation of American-owned Property by Foreign Governments in the Twentieth Century, 26-27; and Charles Lipson, Standing Guard: Protecting Foreign Capital in the Nineteenth and Twentieth Centuries, (Berkeley: University of California Press, 1985), 210-13.

¹⁷President, Statement, "Special Emissary to Peru," Weekly Compilation of Presidential Documents 5, no. 11 (17 March 1969): 395; Huerta. 13-14; and Einhorn. 42, 44-45.

The initial talks were merely exploratory. Irwin conducted nearly three weeks of negotiations in Peru with government officials, including President Velasco. Talks ended in early April 1969 with little progress, but Irwin announced that he would resume negotiations after consulting with U.S. officials. In the final week before the 9 April deadline for sanctions, Irwin briefed both top State Department policy-makers and President Nixon on the IPC dispute. After careful review, Secretary of State William Rogers announced on 7 April that the United States would postpone sanctions at least until August, citing continued talks between Irwin and Peruvian officials and Peru's promise to conduct an "administrative review" of the IPC dispute, scheduled for completion on 6 August 1969.¹⁸ Both actions, from the State Department's view, constituted appropriate steps toward resolution, thereby making punitive action unnecessary.

Although the State Department had managed to justify temporary deferral of official sanctions, it realized that the move provided only a temporary respite. The U.S. Congress supported the Department's efforts to negotiate and its policy of flexible response, but reserved the power to reverse its position if the climate for U.S. investors deteriorated or the Department failed to make progress. To alleviate these concerns, the Administration coupled the negotiations with the silent curtailment of bilateral and multilateral economic assistance to Peru, following unofficially the dictates of the Hickenlooper Amendment.

¹⁸Einhorn, 48; and Congress, Senate. United States Relations with Peru, 119.

The State Department had several means for applying bilateral economic pressure to Peru. They included cutting future Agency for International Development (AID) and other foreign assistance programs. Also, an unrelated dispute over Peru's firing upon and seizure of U.S. fishing vessels, within Peru's recognized 200 mile territorial waters, had already caused the State Department to suspend military sales in February 1969.¹⁹ The trend in bilateral assistance during this period is illustrated in Figure 3.

More so than in previous disputes, the Treasury Department played an active role in pressuring Peru economically. Treasury officials represented the United States before the multilateral lending institutions, and from its vantage point, voted against multilateral assistance on the grounds that Peru had proven itself uncreditworthy. Treasury began its policy under President Johnson in late 1968, shortly after the military coup, and maintained this course under President Nixon's Treasury Secretary David Kennedy.²⁰ The Treasury Department needed no cue or formal legislation to pursue these policies, and it did so strictly on the basis of protecting U.S. economic interests, with little regard for the long-term impact on diplomatic relations between the two countries. Treasury's greater willingness to take a hard-line approach in defense of U.S. economic interests would later become a primary factor in the U.S. Congress'

¹⁹The decision to suspend military assistance through the Pelley Amendment was not made public until May 1969 so as not to endanger the Irwin negotiations. Einhorn. 39.

²⁰Ibid., 37-38.

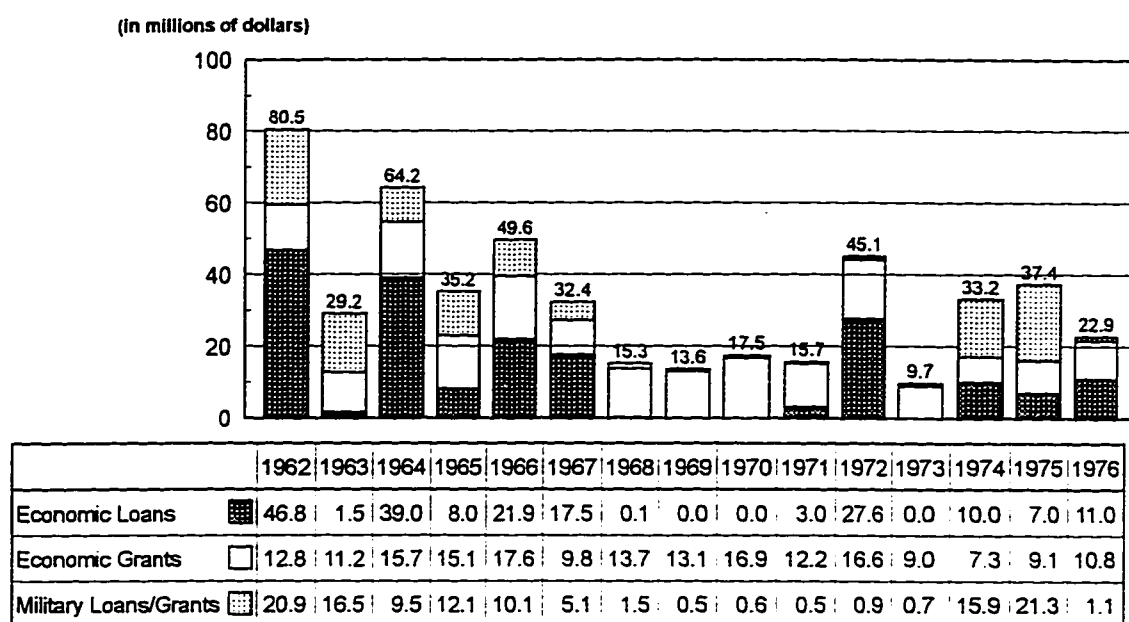


Figure 3 U.S. Bilateral assistance to Peru, 1962-1976. Source: U.S. AID, U.S. Overseas Loans and Grants, Series of Yearly Data, Peru tables.

decision to formalize the use of multilateral sanctions at the height of the Chilean controversy, as described in the next section of this chapter.

The State Department stopped short of applying further economic pressure on Peru. With curtailment of bilateral and multilateral assistance under way, the Department decided not to alter Peru's sugar quota. Apparently, it wanted the Velasco government to feel pressured by the aid withdrawal, but not to the breaking point. By combining the Irwin mission with this less confrontational economic approach, the State Department managed to appease Congressional and private-sector hard-liners who would otherwise push for formal sanctions.²¹ This strategy saved the Department from confrontation that inevitably would have resulted from the formal announcement of sanctions.

The Department's approach proved successful at averting demands for further action. When the August deadline arrived, the White House once again deferred sanctions, this time indefinitely, citing continued talks between Irwin and Peruvian officials. On 25 August 1969 Irwin returned to Peru for two weeks of discussions, but once again failed to reach an understanding. At the same time, there is no indication that Standard Oil pushed for sanctions against Peru during this period. Perhaps Standard Oil was satisfied with the silent curtailment of funds, or maybe it believed its best hope for receiving compensation rested with the State Department's efforts. Likewise, nearly a year had passed since the La Brea y Pariñas seizures, as had two deadlines for implementing mandatory sanctions, and Congressional attention toward

²¹Martha L. Cottam, Images and Intervention: U.S. Policies in Latin America, (Pittsburgh: University of Pittsburgh Press, 1994). 66-67.

the dispute had also subsided.²² For the next four years, as Peru expropriated other U.S.-owned properties, and stalled in the IPC negotiations, the United States continued its policy of silent economic pressure.

The U.S. policy began to shift in 1973, primarily at the urging of U.S. Ambassador Taylor Belcher. Ambassador Belcher, a career Foreign Service Officer, had pushed for a more lenient U.S. policy since his arrival in 1969. He gained the Department's full support after Secretary William P. Rogers visited Peru in May 1973. The military leadership's development-oriented objectives impressed Secretary Rogers and he requested that the Department renew talks with the Peruvian government on all outstanding claims. Moreover, massive nationalizations in Chile under the Marxist government of Salvador Allende overshadowed the Peruvian dispute, and Secretary Rogers hoped to make clear to Allende the contrast between the Chilean dispute and the relatively smaller dispute with Peru.²³ To encourage a settlement, the opening of talks was coupled with new aid packages.

The Velasco government readily accepted the U.S. offer to resume negotiations, but a significant problem remained. Peru insisted that IPC's claims be excluded from discussion, since the issue had, in its view, been resolved. Thus, the State Department understood that it would have to develop a creatively-worded settlement that would somehow incorporate IPC, yet allow the Peruvian government to deny that the company had been compensated. This responsibility was left to a new special

²²Ibid, 57; and Lipson, 302.

²³Congress, House, John Culver, "Renewal of Credits to Peru," Congressional Record 93rd Cong., 1st sess. (20 September 1973). vol. 119, pt. 24, 30759.

emissary, James R. Greene, whose August 1973 appointment was followed a few weeks later by U.S. support for a \$12.3 million Inter-American Development Bank (IDB) loan, a \$25 million World Bank loan, and consideration of a second \$41 million IDB loan.²⁴ The State Department hoped that these gestures would create a positive setting for negotiations and flexibility on the part of Peru toward IPC.

Peru did indeed bend on the IPC issue. After six months and several rounds of talks, both countries announced on 19 February 1974 that suitable compensation figures had been agreed upon for the companies that Peru recognized as having valid outstanding claims. An annex to the final agreement specified the affected companies, and IPC, of course, was not on the list. Meanwhile, the agreement called for Peru to deliver a lump sum payment of \$76 million to cover those claims, while leaving the actual distribution of those funds to the U.S. government's discretion.²⁵ Such wording enabled the State Department to acknowledge Peru's intended recipients of compensation and at the same time use over \$22 million from the settlement to compensate Standard Oil.

The State Department approach to the Peruvian settlement revealed that innovative approaches to resolve disputes touching sensitive issues of national pride and

²⁴Department of State, "United States and Peru Hold Investment Discussions," State Department Bulletin 69, no. 1783 (27 August 1973): 310; Huerta, 37-38; and Congress, House, John Culver, "Renewal of Credits to Peru," Congressional Record, 30759.

²⁵Department of State, "U.S. and Peru Reach Agreement on Certain Investment Disputes," State Department Bulletin 70, no. 1812 (18 March 1974): 272-73; and Huerta, 36-39.

sovereignty did work. In the overlapping Chilean dispute, however, a drastically different political environment led to a very different ending.

Chile

Despite the State Department's successful diplomatic settlement of the Peruvian controversy, a similar solution could not be found in Chile. President Nixon's expressed dislike of Salvador Allende Gossens (1970-1973) led the White House to formulate confrontational economic and political policies toward Chile. These actions added to the international and internal pressures that ultimately led to Allende's downfall. Meanwhile, new actors, new policies, and new legislation emerged from the Chilean experience, which affected the way in which the State Department handled property seizure disputes.

Background

For the six years preceding Allende's 1970 victory, Chile was governed by Eduardo Frei Montalva, leader of the centrist Christian Democrat party. Frei was highly regarded by Presidents Lyndon Johnson and Richard Nixon for his liberal trade and investment policies, coupled with a moderate program of social and economic development. They responded to Frei's approach by forwarding greater per capita Alliance for Progress assistance to Chile than to any other nation in the hemisphere during this period.²⁶

Allende's program differed from Frei's in degree. Frei had begun popular programs of agrarian reform and wealth redistribution, and had initiated a

²⁶Nathaniel Davis, The Last Two Years of Salvador Allende, (Ithaca: Cornell University Press, 1985), 3.

"Chileanization" program to capture greater domestic control over Chile's vital copper industry. Allende's Popular Unity party (a coalition of Chile's Communist, Socialist and other left-wing parties), however, called for radical redistribution of land and wealth. He initiated agrarian reform and complete government control of vital industries.²⁷ While Frei had laid the groundwork for these reforms, his programs paled in comparison to the size and pace promised by Allende.

Both wealthy nationals and foreign investors feared the proposed nationalization program. Allende's plan singled-out the foreign-dominated copper industry, the nation's financial institutions, large landholdings, public utilities, and numerous manufacturing enterprises as early targets for seizure.²⁸ Several of these industries were domestically controlled, such as large landholdings and the textile industry, but it was clear from the beginning that foreign-owned (predominantly U.S.-owned) investments would also be greatly affected by the new government's plans.

Given the large number of seizures enacted by the Allende government, they must be described in broader terms. The seizures generally took one of three forms: administrative takeover, purchasing arrangement (often under duress), or nationalization. U.S.-owned property was first seized in mid-November, less than three weeks after Allende's inauguration, when the Chilean government took over subsidiaries controlled by the Northern Indiana Brass Company and Ralston Purina.

²⁷Ibid., 5. Arturo Valenzuela, The Breakdown of Democratic Regimes: Chile, (Baltimore: Johns Hopkins University Press, 1978), 50.

²⁸Paul E. Sigmund, The Overthrow of Allende and the Politics of Chile, 1964-1976, Pittsburgh: University of Pittsburgh, 1977), 88-90.

Then, in January 1971, Allende began to nationalize the banking industry (of which two firms were U.S.-owned), reaching eventual settlement with the affected companies, followed by negotiated buyouts and takeovers of at least two-dozen other U.S.-owned firms, including Bethlehem Steel's iron producing facilities and the Chilean subsidiaries of RCA-Chile and Armco Steel.²⁹ In July 1971 came the largest seizures, those of the U.S.-owned copper subsidiaries, followed by the administrative takeover of International Telephone and Telegraph (ITT) subsidiaries in September 1971. Meanwhile, thousands of estates (most of which were Chilean-owned) and dozens of manufacturing enterprises were seized throughout Allende's term in office. However, due to the monetary amount involved and actions taken by the affected companies, the copper and ITT disputes warranted greatest attention from the State Department.

As stated, Frei had started the process of nationalizing the copper industry four years earlier through his "Chileanization" program, which drew upon decades of domestic discontent over foreign dominance in Chile's chief export and foreign exchange earner. Allende himself accurately summarized domestic sentiment when he estimated that the foreign firms had made at least a \$10 billion profit from sixty years of mining Chilean copper, while Chile's total accumulated national wealth over the previous four centuries had amounted to no more than \$9.5 billion. In 1965, Frei raised the state's share of ownership in the Anaconda Group, Kennecott Copper Corporation, and Cerro de Pasco Corporation (the three largest U.S.-owned copper

²⁹Congress, House, Committee on Foreign Affairs, United States and Chile During the Allende Years, 1970-1973: Hearing before the Subcommittee on Inter-American Affairs, (Washington, D.C.: GPO 1975), 116-117.

companies) by gradually increasing Chilean participation, and compensating the copper companies out of profits accrued through increased production.³⁰ The arrangement was designed to appease the copper companies and at the same time enable Chile to continue receiving much needed foreign assistance.

Allende's approach, by contrast, risked confrontation by discarding the Frei method and moving quickly to nationalize the entire industry. The Chilean Congress approved an amended version of Allende's nationalization proposal in July 1971. The final bill provided for compensation based on the company's declared book value as of 31 December 1970, minus amortization, depreciation, and total "excess profits" extracted by the companies, to be paid over 30 years at not less than 3 percent annual interest. The Comptroller General determined compensation, factoring in the excess profits calculations that Allende would himself provide. Three months after passage of the copper nationalization bill, the Comptroller General announced his valuation figures and Allende's excess profits determination. After combining excess profits with other book value deductions, the Comptroller General charged that only Cerro de Pasco

³⁰Louis Wiznitzer, "An Interview with Chile's Allende," Christian Science Monitor, 11 February 1972, 7. John Fleming, "The Nationalization of Chile's Large Copper Companies in Contemporary Interstate Relations," Villanova Law Review 18, no. 4 (March 1973): 594-95.

Corporation merited compensation.³¹ For Anaconda and Kennecott, calculated excess profits greatly exceeded valid claims (see Table 4).

Anaconda and Kennecott immediately protested the seizures in Chile and abroad. They demanded that President Allende make public his calculations for determining the excess profits figure, which he never did. Next, they engaged in a long process of appealing Allende's ruling, and appeared before the Chilean Special Copper Tribunal in December 1971. After months of deliberation, the Tribunal declared that it did not have the power of judicial review over the excess profits determination, and later rejected Kennecott's request for a rehearing in September 1972. In the meantime, Kennecott and Anaconda exerted international pressure, by mounting an effective campaign to boycott Chilean copper, and by initiating suits in the United States and Europe to attach Chile's foreign assets.³² Simultaneously, their Washington offices lobbied the U.S. government to take a hard-line toward Chile.

³¹For the full-text of the copper industry nationalization bill, see American Society of International Law, "Chile: Constitutional Amendment Concerning Natural Resources and their Nationalization," International Legal Materials 10, no. 5 (September 1971): 1067-72; Ingram, 273-75; and Falcoff, 181. For details on the Comptroller General's final ruling on compensation see, American Society of International Law, "Comptroller General's Resolution on the Determination of Compensation," International Legal Materials 10, no. 6 (November 1971): 1240-53.

³²Ingram, 283, 288; Davis, 101. The Special Copper Tribunal was comprised of a Justice of the Supreme Court (presiding member), a member of the Appeals Court of Santiago, a member of the Constitutional Tribunal, the President of the Central Bank of Chile, and the National Director of Internal Revenue. The decision of the Copper Tribunal was considered final. American Society of International Law, "Chile: Constitutional Amendment Concerning Natural Resources and their Nationalization," International Legal Materials 1069.

(in millions of dollars)						
Company	Book Value	Revaluation	Mineral Rights	Defective Assets	Excess Profits	Net Due
Anaconda	325.2	n/a	6.05	23.25	364	-68.1
Kennecott	318.8	198.6	0.2	20.5	410	-310.4
Cerro de Pasco	20.1	n/a	1.5	0.3	--	+18.3

Table 4 Chilean Government Rulings on Compensation to American Mining Concerns.
Source, Falcoff, 182.

The September 1971 ITT seizures created equally difficult problems for the State Department. ITT had possessed over \$200 million in assets in Chile by 1971, including 70 percent ownership of the Compañía de Teléfonos de Chile (Chitelco), and full ownership of a telephone directory company, a telecommunications equipment plant, and two hotels. The Allende government had negotiated with ITT for at least six months on nationalizing Chitelco and the phone directory company. After losing patience with ITT's delaying tactics, Allende took over both subsidiaries in September 1971, but continued with negotiations on compensation. ITT rejected Chile's subsequent offer of \$25 million for the seized properties and later proposal for an impartial assessment, arguing publicly that Chitelco alone was worth at least \$153 million, while apparently reasoning privately that it would be satisfied with the \$92 million due in insurance from the U.S. Overseas Private Investment Corporation (OPIC). ITT's strategy backfired, however, upon disclosure in March 1972 that company executives had channeled covert financial assistance to opposition parties during the 1970 elections in an effort to thwart an Allende victory. Allende had long suspected that ITT had worked actively to block his election campaign, and with revelation of these allegations, he withdrew his compensation offer. ITT suffered a further setback in April 1973 when its request for payment on its OPIC insurance policy was rejected on the basis that the company had failed to comply with the non-provocation clause in its insurance contract, thereby harming the U.S. position as a

successor to the claim.³³ Even before Allende enacted his program, however, ITT had begun to lobby the Executive and Legislative branches for action against Chile.

As the nationalization program proceeded, economic and political difficulties mounted for Allende. Rampant inflation, over \$3 billion in loan obligations, capital flight, and the drop in global copper prices took a toll in 1972. At the same time, his political coalition, which had been weak from the very beginning, now began to slip even further. Allende's Popular Unity party had come into power with a mere 36.6 percent of the popular vote, compared to 35 percent for the National Party candidate and 27.8 percent for the Christian Democrat party. By 1972, however, Allende would also have to contend with independent political actions taken by the most radical leftists (who had different views as to the pace and direction the reforms should take) and a series of damaging strikes.³⁴ The crises fragmented his coalition and destabilized his government.

Surprisingly, despite Allende's Marxist-oriented platform, other communist countries failed to come to his rescue, as they had for Castro one decade earlier. Within six months of his inauguration, Allende had reestablished diplomatic and economic ties with Cuba, most of the Soviet bloc, and the People's Republic of China.

³³Davis, 69-71; Syndicated columnist Jack Anderson revealed in March 1972 that ITT had supported opposition parties against Allende in the 1970 elections. Jack Anderson, "Memos Bare ITT Try for Chile Coup," Washington Post, 21 March 1972, B18.

³⁴Congress, House, United States and Chile During the Allende Years, 1970-1973, 68-69, 74-75; Edward Boorstein, An Inside View: Allende's Chile, (New York: International Publishers, 1977), 187-204; Valenzuela, 61; and Davis, 5, 85-93, 196-203.

During his first two years in office, total aid from the U.S.S.R. ranged between \$500-600 million, while other Warsaw Pact countries contributed approximately \$250 million. Even though bilateral aid from the Soviet bloc massively overshadowed the \$34 million in bilateral assistance forwarded to Chile by the United States during the same period (over one-half of which was military assistance), it did not alleviate the nation's massive economic problems.³⁵ Apparently, the U.S.S.R. concluded that Cuba was enough of an economic burden, Chile's plight was a low strategic priority, domestic concerns outweighed its desire to ensure Allende's success, and emerging East-West detente made full-fledged support for Chile untenable.

Insurmountable international and domestic difficulties prompted the traditionally conservative and non-interventionist Chilean military to cut short Allende's Marxist experiment in September 1973. In the aftermath of the 11 September coup, junta leader General Augusto Pinochet Ugarte quickly reversed Allende's three years of initiatives by divesting the government of its recently acquired assets, compensating aggrieved former owners, encouraging the return of Western capital, and re-building cordial ties with the United States.³⁶ As will be described below, the U.S. contribution to the climate that brought about this change more closely resembled actions previously undertaken toward Guatemala two decades earlier than the parallel dispute with Peru.

³⁵U.S. Agency for International Development, U.S. Overseas Loans and Grants. Series of Yearly Data: Volume II. Latin America and Caribbean, Chile tables.

³⁶Davis, 26.

The State Department Response

Even though diplomacy failed to resolve the Chilean dispute, the exercise proved a learning experience for the State Department. The Department would have to contend with a confrontational White House agenda toward Chile, pressure from the private sector and Congress for a hard-line approach, and the involvement of new U.S. government actors in shaping foreign policy.

The Nixon White House set the U.S. position toward Chile's Allende. Its approach was confrontational, largely due to the President's belief that Chile represented a greater threat to U.S. investment and regional security than Peru. Allende had demonstrated that it was possible for a Marxist to be elected through peaceful democratic channels, and he made clear his intention to nationalize large portions of the Chilean economy at any cost, bringing him into direct conflict with U.S. investors.³⁷ The Nixon White House feared Chile's Marxist experiment, if successful, might be emulated elsewhere.

The White House had good reason to believe that tough, yet non-overt pressure could produce results. First, the Allende coalition was very weak, making many of its drastic reforms all the more difficult to implement. Second, U.S. military attaches operating in Chile enjoyed a long and close relationship with the traditionally conservative Chilean armed forces, which Allende had neither the strength to control nor dismantle.³⁸ This relationship enabled U.S. intelligence to monitor the Chilean

³⁷Henry Kissinger, White House Years, (Boston: Little, Brown and Company, 1979), 657, 671.

³⁸Davis, 26.

opposition movement, which in turn allowed the White House to formulate U.S. policy toward Chile without relying on U.S. diplomats, or even consulting with Department officials on covert activities.

The strategy of confrontation consisted of covert funding to opposition groups and economic pressure. Covert assistance was not a new policy in U.S.-Chilean affairs. During the 1964 elections, the CIA had channeled funds to Allende's opponents, and it did so again during the 1970 elections, under a program that became known as Track I. Once Allende assumed power, the funding continued under a course now termed Track II. White House officials later explained that covert assistance had continued after Allende's inauguration to ensure survival of opposition parties until the 1976 Chilean presidential elections. Critics, however, have alleged that covert assistance sponsored more damaging opposition activities (such as strikes and propaganda campaigns) in order "destabilize" the Allende government. As for economic pressure, President Nixon took the advice of National Security Advisor Henry Kissinger to pursue a "cool but correct" outward policy toward Allende. Kissinger issued a National Security Decision Memorandum six days after Allende's inauguration, outlining new policies for putting indirect economic pressure on Chile. The memorandum instructed the State Department and other U.S. government agencies with authority over bilateral and multilateral aid not to approve new funding for Chile, to deny investment guaranty requests, and to assess whether on-going funding programs could be either reduced or terminated.³⁹ These policies resulted in a sharp decline in

³⁹Congress, Senate, Select Committee to Study Governmental Operations with Respect to Intelligence Activities, Covert Action in Chile, 1963-1973, 94th Cong., 1st

funding to Chile during the Allende years (see Figure 4), and ultimately helped to destabilize the government. While unpublicized U.S. economic policies toward Chile set the tone for U.S.-Chilean economic relations, the Nixon administration still had to develop a policy with regard to Congressionally-mandated sanctions. In the Chilean dispute, only the Hickenlooper amendment applied, since Chile produced virtually no sugar.

As White House political and economic policies unfolded, several of the most influential U.S. firms with investments in Chile moved quickly after Allende's victory to pressure the Executive branch into taking strong action against Chile. An ad hoc group of Washington representatives of several U.S. firms with subsidiaries in Chile convened periodically to discuss the situation in Chile and responses they wanted from the U.S. government to protect their investments. During these meetings, ITT representatives (the committee's organizers) attempted to persuade other companies to pressure the Administration to take a hard-line approach toward Chile. ITT predicted that the State Department would convince the White House to avoid implementing the Hickenlooper amendment and suggested that efforts should instead be focused on the National Security Council, the White House, and sympathetic members of Congress.⁴⁰

sess., 1975, Committee Print, 6-13; Davis, 5-13, 21-22; Blaiser, 266; and Kissinger, 679-81.

⁴⁰Congress, Senate, Committee on Foreign Relations, Multinational Corporations and U.S. Foreign Policy: Hearings before the Subcommittee on Multinational Corporations, 93rd Cong., 1st sess., March and April 1973, 629, 794-95.

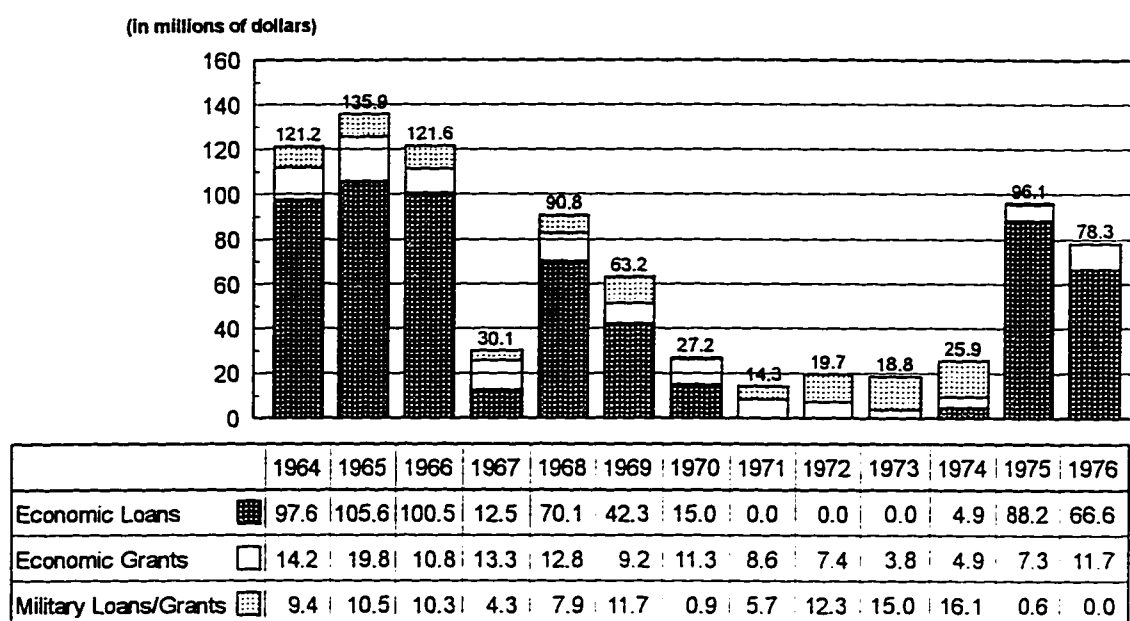


Figure 4 U.S. Bilateral Loans and Grants to Chile, 1964-1976. Source: U.S. AID, U.S. Overseas Loans and Grants, Series of Yearly Data, Chile tables.

As ITT had predicted, the State Department had various reasons to oppose use of the Hickenlooper amendment, for several reasons. First, as in the case of Peru, the Department feared that the remaining U.S. investments in Chile (valued at over \$85 million) would be seized in retaliation. Second, the Department had, for good reasons, dodged mandatory sanctions in Peru, and a dissimilar course of action toward Chile would trigger allegations of discrimination. Third, official sanctions would have a minimal impact on U.S. bilateral assistance and might actually galvanize Chilean support for Allende. Fourth, during the first two years of the Allende government, further avenues of recourse remained open to U.S. firms, since those companies which had not received acceptable compensation were either still engaged in some form of negotiation or appealing such actions through Chilean legal channels. Finally, the Department feared Chile might retaliate by reneging on \$940 in existing loan obligations to the Export-Import Bank and AID.⁴¹ The Department believed official use of sanctions would provoke a crisis, with no foreseeable benefits.

Despite the soft-line State Department position, the Treasury Department, as in Peru, took a strong stance against multilateral aid and debt negotiations with Chile. Negative votes by Treasury representatives before the World Bank and the IDB meant that virtually no loans were approved for Chile during the Allende years. Treasury once again argued that its decision was not political, but economic, because Chile was a bad credit risk. Later, in April 1972 Paris Club debt renegotiations, the Treasury Department pressured Chile on compensation by inserting a provision into the final

⁴¹Davis, 73; and Ingram, 308-09.

agreement promising that Chile would provide just compensation for seized properties, and Chile signed it.⁴² The Treasury Department's actions revealed once again its ability to influence U.S. policy toward property seizures independent of the State Department.

Even though the State Department had justified rejection of the Hickenlooper amendment, public and private pressure for formal action mounted. As the pace of Chilean seizures gained momentum in early 1971, and action against the copper industry appeared eminent, informal discussion began in mid-spring 1971 between the under secretaries and assistant secretaries of Commerce, State and Treasury as to the appropriate official response. The meetings expanded into a formal inter-agency review in July, at President Nixon's request. Over the following months, officials from all three departments, OPIC, the National Security Council, and the White House worked on clarifying the Administration's position toward property seizures, long-term strategies for safeguarding U.S. foreign investment and developing a U.S. government response plan for future seizures.⁴³

Six months later, on 19 January 1972, President Nixon publicly announced the Administration's policy on uncompensated seizures. It was the first time the Executive

⁴²Davis, 76-77. The Paris Club is comprised of the leading Western industrialized countries, and provides a procedure whereby debtor governments can negotiate with creditor governments to lighten debt obligations or acquire new financing. For more information, see, Alex Rieffel, The Role of the Paris Club in Managing Debt Problems, (Princeton: Princeton University Press, 1985), 2-10.

⁴³Mark L. Chadwin, "Foreign Policy Report/Nixon's Expropriation Policy Seeks to Soothe Angry Congress," National Journal 4, no. 4 (22 January 1972): 148-153.

branch ever delineated actions it would take to combat this problem. Nixon declared that the United States would reject new bilateral loans and oppose multilateral aid for seizures unaccompanied by compensation. To further pacify critics, Nixon announced that a permanent inter-agency group would coordinate the U.S. response. Officially established in 1972, the State Department-chaired Inter-Agency Expropriation Group drew members from the Departments of Commerce, Defense, and Treasury, as well as the National Security Council.⁴⁴ The Expropriation Group reported directly to the White House Council on International Economic Policy. As mandated, the Expropriation Group would continuously review potential and on-going seizure disputes, determine in each instance whether a seizure had occurred (and if so, whether efforts were being made to provide just compensation), recommend Administration action consistent with the President's January 19 policy statement, and coordinate the implementation of U.S. policy. The Expropriation Group marked the first formal mechanism designed to improve inter-agency dialogue and decision-making.

Although Congressional advocates of stronger Executive response to Chile were temporarily appeased, the drive for further binding legislation to address future disputes continued. Congressman Henry Gonzalez (D-TX) introduced legislation in late 1971 requiring the Treasury Department to vote against multilateral assistance to countries that enacted uncompensated seizures of U.S. property, in a manner similar to the

⁴⁴Department of State, "President Nixon Issues Policy Statement on Economic Assistance," State Department Bulletin 66, no. 1702 (7 February 1972): 152-154. See also, General Accounting Office, Nationalizations and Expropriations of U.S. Direct Private Foreign Investment: Problems and Issues, (Washington: GPO, 1977): 1-8.

existing requirement under the Hickenlooper amendment for bilateral assistance.⁴⁵

Experience had shown that the Treasury Department was more likely to invoke such measures than the State Department, and would probably do so with or without State's concurrence.

While the President, his advisors, other departments, and Congress struggled to control and define the Administration's policy toward uncompensated seizures, State Department and U.S. Embassy officials endeavored to maintain normal diplomatic relations with Chile and to push for a solution to individual property seizure disputes. Edward M. Korry, who had worked as U.S. Ambassador to Chile since October 1967, continued at his post through the first year of the Allende government, the period during which the bulk of the U.S. property seizures took place. Ambassador Korry's efforts focused primarily on assisting U.S. firms targeted for seizure. For example, when Allende seized the Northern Indiana Brass Company's Chilean subsidiary in November 1970, the U.S. Embassy urged the Chilean government to offer compensation, and it made a similar effort on behalf of Ralston Purina. In January 1971, the Embassy moved to defuse potential conflict between the Chilean government and both Bethlehem Steel and Cerro de Pasco, by asking Chilean officials to negotiate buyouts.⁴⁶ At this early stage, the Chilean government was engaged in buyout

⁴⁵The provision became known as the Gonzalez Amendment. International Development Association Act. U.S. Code. Title 22, sec. 284j (1988). For a legislative history, see, United States Code Congressional and Administrative News, (St. Paul: West Publishing Co., 1972), 2:2017-2021.

⁴⁶Congress, Senate, Select Committee to Study Governmental Operations with Respect to Intelligence Activities, Intelligence Activities, Senate Resolution 21: Hearings Before the Select Committee to Study Governmental Operations with Respect

negotiations with targeted U.S. investors, and left open avenues for recourse. As a result, the U.S. Embassy did not recommend State Department interposition on behalf of U.S. companies, or ask for strong notes of protest.

The U.S. Embassy's involvement intensified during the summer of 1971 when the Chilean legislature took up consideration of Allende's copper nationalization bill. After the announcement, Ambassador Korry met discreetly with opposition members of the Chilean Congress in an effort to soften the blow to the U.S. copper companies. In the months between passage of the copper nationalization bill and the Comptroller General's compensation ruling in September 1971, Ambassador Korry presented suggestions for compensation, not only for the copper companies, but also for the ITT Chiltelco takeover. Korry proposed that Chile offer compensation to the copper companies over a period of twenty years and to ITT over twelve years, both in the form of bonds at a "reasonable" interest rate. The seized U.S. companies would simultaneously request that OPIC provide a guarantee for the Chilean bonds. The Ambassador reasoned that the arrangement would benefit the U.S. companies by ensuring compensation for their investments and at the same time enable Chile to continue receiving foreign assistance.⁴⁷ Despite Korry's efforts, the negotiations failed to reach a solution.

With a lull between crises, the Department deployed its new ambassador to Chile, Nathaniel Davis, who arrived in Santiago on 13 October 1971. His prior service

to Intelligence Activities, 94th Cong., 1st sess., vol. 7, 4 and 5 December 1975, 129.

⁴⁷Congress. Senate, Intelligence Activities, 128-133.

as Acting Peace Corps Director to Chile in 1962, extensive service in Eastern Europe, and most recent service as Ambassador to Guatemala made him well suited for the job. A series of new crises left Davis with a short adjustment period, however. Just before his arrival, the extremely costly ITT seizure had taken place, and Chile's Comptroller General had announced his final compensation determination for the U.S. copper companies. Secretary of State Rogers responded publicly to this on 13 October, the day of Davis' arrival. Rogers noted that the U.S. companies had operated in full compliance with Chilean law, and he denounced the retroactively-applied excess profits determination as arbitrary and in violation of international law. He indicated that Chile's failure to adhere to internationally accepted standards for compensation could endanger future public and private investment.⁴⁸ There was nothing more the Embassy itself could do overtly regarding the copper dispute until the Special Copper Tribunal issued its ruling.

Internally, the Department began to prepare for possible bilateral talks as a fallback measure. When the Tribunal issued its expected ruling against Kennecott and Anaconda in August 1972, the State Department formally proposed bilateral negotiations the following month. Through an exchange of notes, the Chileans agreed, and four rounds of talks were held between December 1972 and Allende's overthrow in September 1973. The closest the two sides came to making progress was during the second session, held in Washington in March 1973, when the Chilean delegation proposed that the copper dispute and other outstanding claims be subjected to

⁴⁸Congress, House, Multinational Corporations and United States Foreign Policy, 957.

arbitration under a 1914 treaty of conciliation and arbitration. U.S. Ambassador Nathaniel Davis supported this option, but the U.S. delegation instead countered that the issue should be negotiated bilaterally, as Chile had pledged under Article 4 of the April 1972 Paris Club accord on debt renegotiation.⁴⁹ Although the bilateral talks were merely exploratory, they at least bought the State Department time, thereby diverting the need for harsher overt measures.

Unlike previous disputes, OPIC played an active role in the Chilean controversy. The U.S. Congress had established OPIC in 1969 to assume responsibility for the government-sponsored investment guarantee program which had been handled by AID since 1949. AID had administered the direct insurance program as part of the Marshall Plan's Economic Cooperation Act, which included political risk insurance for U.S. investors in Europe after World War II. As Europe's need for assistance diminished during the 1950s, the political risk insurance program had turned its attention toward developing countries, and continued to do so under OPIC one decade later. Investors interested in development-oriented business ventures could apply for OPIC insurance against war risk, inconvertibility, and expropriation.⁵⁰ Thus,

⁴⁹Congress, House, United States and Chile During the Allende Years, 1970-1973, 67. Chilean Ambassador to the U.S., Orlando Letelier, headed the first two talks for Chile, while José Tohá, former Minister of Interior and Defense headed the final two delegations. On the U.S. side, Assistant Secretary of State Charles Meyer chaired the first U.S. delegation, Acting Assistant Secretary for Inter-American Affairs John Crimmins and Treasury Assistant Secretary John Hennessy jointly chaired the second delegation, and newly-appointed Assistant Secretary for Inter-American Affairs Jack Kubisch and Treasury Assistant Secretary Hennessy jointly chaired the final two talks. Davis, 103-04, 197.

⁵⁰Congress, House, Committee on Foreign Affairs, The Overseas Private Investment Corporation: A Critical Analysis, report prepared by Foreign Affairs

in the event of an expropriation, insured investors could file a claim on their investment policies, and, if awarded, OPIC would then inherit the company's former claim and proceed to negotiate with the expropriating government.

OPIC's presence created both advantages and disadvantages for the State Department. Whereas OPIC had not guaranteed loans to companies investing in Peru, it inherited a number of AID guarantees for investments in Chile issued during the more stable days of the Frei administration. In fact, total OPIC exposure in Chile by 1973 was only exceeded by commitments issued for Jamaica and Korea.⁵¹ Expropriation insurance had been issued to at least a dozen companies operating in Chile, including ITT and the copper companies, and over \$150 million in claims had been filed with OPIC for seized assets (see Table 5). To compound problems, AID had issued these guarantees without having first secured a solid Bilateral Investment Treaty acknowledging the U.S. right to subrogate outstanding claims to the Agency for negotiation, which AID had usually (but not always) required before backing investment projects.⁵² Despite having over-extended itself in Chile, OPIC presented three advantages for the State Department. First, it served as a buffer between the

Division, Congressional Research Service, 93d Cong., 1st sess., 1973, Committee Print, 5-13, 17-21.

⁵¹Ibid., 54.

⁵²President Frei had negotiated a Bilateral Investment Treaty with the United States, but reportedly decided not to present the treaty to the Chilean Congress for ratification because he feared it would be voted down. Congress, Senate, Multinational Corporations and U.S. Foreign Policy, 392. For more information on subrogation rights see, Congress, House, The Overseas Private Investment Corporation: A Critical Analysis, 100-103.

Investor	Amount Paid
Anaconda	\$13,640,000
Bank of America	\$3,010,272
Bethlehem Steel	\$3,076,820
Cerro Corp.	\$47,504,034
International Chem. Fibers, Inc.	\$103,000
ITT	\$34,706,917
Kennecott	\$66,900,000
Nibco, Inc.	\$110,000
Ralston Purina Company	\$826,475

Table 5: OPIC Claims Resolved by Cash Settlements and Guarantees. Source: OPIC 30 September 1991 Press Release; Congress, House, United States and Chile During the Allende Years, 1970-1973, 73.

Department and the Chilean government, by providing yet another level of recourse for U.S. investors. OPIC worked closely with several U.S. firms in Chile to keep negotiations going and to obtain just compensation for their seized properties. Second, OPIC expropriation insurance contracts called for a one-year "cooling-off period" after a seizure had taken place, during which the U.S. claimant was required to endeavor to negotiate for compensation.⁵³ Third, several U.S. companies had received payment on their insurance policies, and others were in the process of negotiating settlements with OPIC. Although payment by OPIC would still affect the Department in the long-term, since its investment guarantees ultimately were backed by the U.S. Treasury (which would therefore be burdened with the outstanding claim), OPIC's presence at least alleviated part of the expropriation problem in the short-term, by enabling the State Department to further justify a delay of sanctions.

State Department and OPIC efforts to press the Allende government for compensation yielded few results. Most of the outstanding disputes would be settled unilaterally by Chile, under the Pinochet-led military junta that deposed Allende. During Pinochet's first year in office, Chile successfully negotiated dozens of agreements with affected U.S. companies, including the U.S. copper producers, for either compensation or the return of seized properties. Over 100 other state-owned enterprises went up for sale (which helped to finance many of the compensation awards), open to bidding by both domestic and foreign investors. Anaconda and Cerro were awarded very favorable compensation, a portion of which they received in cash

⁵³Congress, House, The Overseas Private Investment Corporation: A Critical Analysis, 96-100.

and the bulk through long-term promissory notes.⁵⁴ In all, the military junta succeeded in reversing Allende's actions as quickly as they had been enacted.

Conclusion

Although the two Nixon-era seizures overlapped chronologically, they evolved differently. The Belaúnde and Frei were moderate and reform-minded, yet the State Department pressured Belaúnde politically and economically throughout its term because it repeatedly threatened U.S. foreign investment. At the same time, the Department provided substantial economic and military assistance to the Frei government because of its pro-Western stance and its gradual approach toward purchasing greater ownership of the nation's copper industry. When the Velasco government seized control in Peru, the Department moved to a conciliatory approach because of the junta's ability to convey its pro-Western stance and its successful isolation of the IPC seizure from other activities. In Chile, however, Allende's ideological and political orientation concerned the Nixon White House so much that it took direct control over U.S. decision making and established confrontational economic and political policies to combat this perceived threat to regional stability.

With the Administration's position toward each dispute fairly well established, the State Department nevertheless had to deal with the possible use of official sanctions against property seizures for the first time in Latin America. The Department's decision not to use the Hickenlooper and Hoeven amendments against Peru restricted its range of options toward Allende. Other Latin American nations would have

⁵⁴Business International Corporation, Chile After Allende, (New York: Business International Corporation, 1975), 25-29.

immediately accused the United States of discriminatory policies against Allende had the Department succumbed to private sector and Congressional pressure for formal retaliatory measures against Chile.

The timing of the State Department's involvement appeared appropriate in both disputes, but its level of effort toward Allende could have been greater. In Peru, the Department began negotiations early in the crisis to justify postponement of the Hickenlooper amendment, and it made use of appointed envoys to help break the stalemate. Early direct involvement in Chile, however, was deemed inappropriate since the Allende government had, at least for the first two years, left open some further avenue of recourse to which U.S. investors could appeal. When the Department did attempt to negotiate bilaterally with Chile, it made little progress. The negotiators, State and Treasury Department Assistant Secretaries, could only devote a limited amount of time given their wide areas of responsibility. Apparently, consideration was not given to appointing a special emissary whose effort would have been to reach a settlement on outstanding claims. This approach, used successfully toward Peru, was never attempted in Chile.

The bureaucratic framework in which the Department operated had changed considerably by the close of the Chilean dispute. On the positive side, the pressure of the Chilean seizures had forced the Executive branch to establish the Expropriation Group, to produce a unified response toward future seizures of U.S. properties abroad. Also, the presence of OPIC added a new factor which furthered the Department's aim of delaying the use of sanctions and reducing the need for diplomatic involvement. On

the negative side, Congressionally imposed punitive measures further complicated both disputes and remained as an obstacle for future disputes.

The end result of the Peruvian and Chilean disputes were ambiguous. Peru proved a good case study of the State Department's handling of property seizures. There was one prominent property seizure in dispute, virtually no extra-regional threat, and a willingness by the Department to employ dedicated private sector negotiators in order to reach a settlement. The extensive Chilean seizures, in contrast, were poorly handled by the Department, primarily because the White House set a confrontational tone early into the dispute, which restricted the Department's response options.

SECTION III
CONCLUSION

CHAPTER VI

RESULTS AND CONCLUSIONS

The six property seizure disputes discussed in this thesis span forty years and represent a specific regional and institutional focus. This diversity of case studies provides an ample framework for analyzing the evolution of U.S. Department of State responses to seizures over time, within the context of national and economic security concerns. Additionally, the cases provide guidance as to how the Department might avoid pitfalls in the future.

Several generalizations can be drawn from the case studies. First, conciliatory political approaches led to successful diplomatic outcomes, and confrontational policies led to failed diplomacy. Second, the State Department based its policy more on perceived economic and political security threats (i.e., world war and communism) than property seizure disputes. Third, neither the type or size of the property seized, nor the influence of the seized company, had a noticeable impact on Department decision making. Fourth, while various forms of economic pressure were applied throughout every dispute, the tone of the Department's political response had a greater effect than any economic measures taken. Fifth, when the State Department did become directly involved in negotiations, or in assisting claimants, its performance was consistent throughout every dispute.

The cases were evenly split between use of a conciliatory and confrontational approach. The State Department used a conciliatory policy toward the small Bolivian petroleum confiscation, the large Mexican petroleum nationalization (over strong protests from prominent U.S. companies) and the large Peruvian petroleum

confiscation. All three cases were resolved through diplomatic channels with existing governments, and U.S. claimants were compensated for their losses. As a result, the Bolivian, Mexican and Peruvian disputes were diplomatic successes. In contrast, the Department ultimately adopted a confrontational approach toward the small Guatemalan agrarian expropriations and the enormous Cuban and Chilean nationalizations. Diplomatic communications turned antagonistic, and it became impossible to reach settlements with the existing governments. These three Cold War cases therefore were diplomatic failures.

The perceived level of political and (or) economic threat posed by a given Latin American nation accounts for the political approach adopted by the State Department. The seizures themselves, meanwhile, were just one factor influencing U.S. policy. In Bolivia and Mexico, for example, the United States did not rush immediately to the aid of U.S. oil interests, and adhered instead to President Roosevelt's Good Neighbor Policy, which advocated non-interference and non-intervention into the affairs of Latin American nations. The United States became even more conciliatory toward both countries as involvement in World War II loomed on the horizon, and the need for hemispheric unity came to overshadow bilateral property disputes. The conciliatory approach taken toward Peru nearly a quarter century later was governed by Cold War concerns. The Department viewed Velasco as pro-foreign investment, and posing a low economic or political security threat. The Peruvian case also afforded the Department a chance to distinguish between "acceptable" policies and the "unacceptable" approach taken by Chile. The Cold War likewise colored the Department's approach toward Guatemala and Cuba, where both countries were

perceived as potential beachheads for communist expansion. In those cases, the Department took a hard-line.

Regardless of whether U.S. policy makers believed they could co-exist with a particular government, they nevertheless pursued fairly similar economic retaliatory measures, with no consistent pattern of success or failure. The State Department countered all six seizures by silently curtailing bilateral loan and grant assistance. In Mexico, Peru and Chile, the U.S. Treasury Department became involved. As requested by State Department hard-liners, the Treasury Department canceled Mexico's silver purchasing arrangement. Later, in Peru and Chile, it voted against continued multilateral assistance. In Cuba, President Eisenhower suspended the nation's sugar quota. While the silent curtailment of bilateral and multilateral assistance appeared appropriate and justified, dabbling in commodity-specific retaliatory measures yielded undesirable results. The U.S. economy, for example, was as much harmed as the Mexican economy by the silver cancellation, and halting Cuba's sugar quota merely expedited a break in bilateral diplomatic relations. Given the negative experience of these additional measures in Mexico and Cuba, the U.S. government should forego use of non-conventional sanctions unless it can be ascertained with certainty that the pressure created will be exclusively unilateral.

The dubious benefit of economic pressure brings into question the strategy favored by hard-liners of imposing mandatory economic sanctions, either as a tool or deterrence. After the Cuban nationalizations, Congressional hard-liners responded to public opinion by passing legislation requiring formal mandatory sanctions against uncompensated seizures, believing these measures would accomplish both objectives.

while at the same time appeasing constituents who argued that the State Department would not fight to protect U.S. economic interests unless forced to do so. While not all State Department decision makers opposed this hard-line approach, the Department's consensus was that mandatory formal sanctions were unnecessary, likely to cause further retaliation, and could potentially harm long-term bilateral and regional relations. Notwithstanding the unprovable argument of deterrence, the Department appeared justified in its position. It curtailed new economic assistance in every dispute. The Department apparently realized that such high-profile nationalistic political seizures were irreversible for the existing government, and that formal sanctions would have been met with yet another formal and hostile response, thereby needlessly harming diplomatic relations with countries that might otherwise pose little threat to U.S. political and economic security.

The kind of property seized, the dollar amount involved, and the political influence of the U.S. companies involved had little impact on State Department policy. The sectors varied from the oil industry in Bolivia, Mexico and Peru to the agricultural sector in Guatemala to widespread industrial enterprises and basic infrastructure in Cuba and Chile. All three oil seizures were political successes, while the agricultural and large industrial seizures were political failures. The dollar amounts ranged from small disputes in Bolivia and Guatemala to very large seizures in Mexico, Cuba, Peru and Chile. The Department succeeded politically in the small Bolivian and large Mexican and Peruvian seizures, and failed politically in the small Guatemalan and large Cuban and Chilean disputes. Also, the U.S. companies involved were all regarded as very influential and capable of gaining access to U.S. government officials at the

highest levels. Nevertheless, three failed and three succeeded. The only hint of a trend is that the oil seizures were all resolved through diplomacy. This appears to be a false lead, however, given that the Guatemalan agrarian dispute (in a sector far less strategic than oil) was met by confrontation, while the petroleum seizures had been prompted by irresponsible behavior on behalf of U.S. oil companies.

The State Department used similar mechanisms to defend U.S. interests during each dispute, regardless of whether U.S. policy was conciliatory or confrontational. The Department only interposed officially in each case once the affected companies had exhausted all local remedies and direct negotiations had collapsed. Official diplomatic representation only appeared premature in the Guatemalan dispute. Even though a year passed before the State Department presented an official claim to the Arbenz government, the dispute was not given ample time to cool off, had the U.S. objective been to achieve an amicable settlement to the United Fruit Company's claim. This approach differed significantly from Under Secretary of State Sumner Welles' earlier decision not to take formal action against the Bolivian confiscation of Standard Oil's subsidiary given the existence of the Calvo Clause, a policy which the United States did not officially recognize.

While the Department did provide a degree of assistance to U.S. claimants, it should have commissioned special envoys more often. Deployment of special envoys in Mexico and Peru contributed to a successful resolution. In the highly sensitive Guatemalan, Cuban and Chilean disputes, however, the Department assigned no envoys, and failure to do so may have contributed to the poor outcomes of each case. While it is true that U.S. officials at the assistant secretary level from both the State

and Treasury Departments did enter negotiations with Chilean officials, the dispute was only one of numerous responsibilities, and could only be given limited attention.

Every dispute would have benefitted from the services of an experienced private sector negotiator, whose presence would have helped to isolate specific seizures from political rhetoric, and whose attention would have been focused exclusively on the property seizure disputes.

By the close of the Chilean dispute, it appears as though adequate institutions had been developed within the U.S. government for handling property seizure disputes. The Foreign Claims Settlement Commission provided one of several recourses for validating claims and determining just compensation. The Overseas Private Investment Corporation encouraged U.S. companies to assume a reasonable degree of risk against expropriation when investing in markets into which they might not otherwise venture. The Inter-Agency Expropriation Group enabled a rational and unified U.S. response to future property seizures, in an era when an increasing number of U.S. government agencies have an interest in, and the capability of influencing, U.S. foreign policy. This arrangement benefits the State Department by creating a buffer between itself and its foreign counterparts, alleviating the burden of verifying and validating claims, and by providing a forum for devising a coherent approach to U.S. government decision making.

Although the U.S. weathered four decades of periodic property seizure disputes, recent events in Latin America indicate that the days of government seizures of foreign-owned properties may be waning. Dissatisfaction with inefficient and unprofitable state-run activities over the past two decades pushed most Latin American nations

toward divestment of these enterprises. However, since it is uncertain what the future holds for the hemisphere, the lessons learned from these earlier experiences must not be forgotten, and the mechanisms created to help resolve politically-charged property seizure disputes should continue to be refined.

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VITA**NATHAN D. YOUNGE****Professional Experience**

Country Manager, Africa & Middle East, March 1994 - Present
U.S. Trade & Development Agency, Rosslyn, VA

International Trade Analyst, February 1991 - January 1994
Ablondi, Foster & Sobin, Washington, DC

Staff Assistant, May 1991 - January 1994
North American Free Trade Association, Washington, DC

Graduate Intern, Summer 1989
Old Dominion University, Norfolk, VA

Intern, Office of Computer Operations, August 1987 - August 1988
Office of the U.S. Trade Representative, Washington, DC

Education

M.A. International Studies, Fall 1996
Old Dominion University, Norfolk, VA

- Earned Graduate Certificate in Strategy & Policy Studies.

B.A. International Relations and Latin American Studies, Spring 1988
American University, Washington, DC

- Concentration in U.S. Foreign Policy and U.S.-Latin American Diplomatic Relations.
- Spring 1987 studies in Madrid, Spain through Middlebury College.