

BOLIVIA

INFORMAL ASSISTANCE TO THE STANDARD OIL COMPANY OF NEW JERSEY IN CONNECTION WITH THE CONFISCATION OF ITS PROPERTIES IN BOLIVIA¹

824.6363 St2/238

Memorandum by the Chief of the Division of the American Republics (Duggan) to the Under Secretary of State (Welles)

WASHINGTON, March 10, 1938.

MR. WELLES: When the Bolivian Minister² was here this morning on another matter I inquired whether he had yet received any indication from his Government as to its attitude with regard to an international arbitration of the difficulty with the Standard Oil Company.

The Minister stated that he had received nothing official. Three days ago he received a letter from the Minister for Foreign Affairs in which the Minister stated his personal agreement with Mr. Guachalla's point of view, namely, that it would be to the national interests of Bolivia to settle the Standard Oil difficulty as promptly as possible and that the best way of doing this would be through some international arbitration. Mr. Diez de Medina stated that he had mentioned the matter to the President, as well as to certain Ministers of the cabinet, but not the Minister of Mines. Mr. Diez de Medina did not state, however, the reaction of these officials.

The Minister then went on to tell me that following a rather frank discussion which he and I had about two weeks ago of a purely personal character, he had written further in introducing the idea of an international arbitration and had also written *in extenso* to the Minister of Foreign Affairs detailing reasons why it was desirable for Bolivia to take steps to clear up its difficulty with the Standard Oil Company. In this letter Mr. Guachalla requested the Minister for Foreign Affairs please to read the letter to the President and to other members of the cabinet. Mr. Guachalla observed that this letter had crossed with the letter he had received from Mr. Diez de Medina in which the latter indicated his personal agreement with the plan for an international arbitration.

¹ Continued from *Foreign Relations*, 1937, vol. v, pp. 275-311.

² Luis Fernando Guachalla.

In this connection the attached letter from Mr. Holman³ of the Standard Oil Company points out that the period within which under the statute of limitations as amended the Company may file suit expires on March 22. It will be recalled that by a decree of October 22, 1937, the period for filing suit under the statute of limitations of the Civil Code was reduced from thirty years to ninety days. This decree later was amended to provide a sixty day extension. Mr. Holman states the Company's belief that it would be preferable if the filing of suit could be postponed until after the Bolivian Government has considered a [and?] come to some decision with regard to the proposal for an international arbitration.

From a procedural point of view it would of course be preferable that the Government come to some conclusion concerning international arbitration before the Company files suit, because once the Company files suit the Government might then state that since the matter is in the courts it cannot take any action pending decision of the courts.

The desirability is suggested for your consideration of a personal and informal talk with the Bolivian Minister, who I believe is doing all that he can to bring about a settlement of this dispute by means of an international arbitration. The Minister, I know, is in favor of keeping court action in the background and therefore might not be averse to sending a telegram to his Government suggesting that a further time be given the Company for filing its suit, during which period the Government itself would, it is hoped, come to some conclusion with regard to the proposal for an international arbitration.

824.6363 St2/236 : Telegram

The Minister in Bolivia (Caldwell) to the Secretary of State

LA PAZ, March 10, 1938—10 a. m.

[Received 10:52 a. m.]

7. Confidentially informed through the Foreign Office that detailed reports by Guachalla as to his recent conversations in Washington on Standard Oil problem were read to the Cabinet at last meeting and made profound impression. Foreign Minister favors settlement but attitude of Government still doubtful.

Lawyers of the company are now convinced that presentation of case to court would definitely close path to any solution. They advised company yesterday to refuse to go to court on the ground of unconstitutionality of the court and of the decree of October 22nd.

CALDWELL

³ Not attached to file copy of this document.

824.6363 St2/243

Memorandum of Conversation, by the Chief of the Division of the American Republics (Duggan)

WASHINGTON, March 16, 1938.

I spoke with the Minister further about the Standard Oil difficulty. The Minister defined somewhat more precisely the exact nature of the proposal which he had urged upon his Government. The Minister stated that he doubted whether it would be politically feasible for his Government to submit this controversy to an international arbitration. It is his idea that the Supreme Court in acting upon the appeal which he indicated he presumed the company would file prior to March 22 should state that the decree of March 22, 1937, was not well founded in law, but that there were valid reasons for a recession [*recision?*] of the contract. This decision would uphold the cancellation of the contract but would in fact indicate that there was no ground for expropriation of the company's property. Thereafter the Government and the company would negotiate for a sale which the Minister indicated he thought could be arrived at without undue difficulty if the company has not set too high a price on the properties.

I indicated to the Minister that this was a somewhat different approach than that which I understood Mr. Welles had talked with him about. He agreed with this statement and said that he felt it was much more realistic considering the political situation and the temper of the Bolivian people with regard to the Standard Oil controversy.

I endeavored to draw the Minister out as to whether he would be willing to support before his Government a suggestion for an extension of the time given to the company in which to file its appeal. The Minister was not responsive to the suggestion along this line.

824.6363 St2/239 : Telegram

The Minister in Bolivia (Caldwell) to the Secretary of State

LA PAZ, March 20, 1938—noon.

[Received 8:04 p. m.]

8. Under instructions from New York, Standard Oil Company case will be presented to the Supreme Court tomorrow afternoon (Monday). At the same time Metzger is instructed to present personally a letter to the Foreign Minister denying legal validity of the various decrees, reserving rights of the company under international law, and stating that the case is presented to court under protest to prevent Bolivian Government from contending that local remedies have not been tried.

Metzger's instructions contain the following sentence: "Metzger should first inform American Minister and ask him if he will personally accompany Metzger when letter is delivered."

I have explained to Metzger that the step suggested can not properly be taken without direct instructions from the Department.

CALDWELL

824.6363 St2/239 : Telegram

The Secretary of State to the Minister in Bolivia (Caldwell)

WASHINGTON, March 21, 1938—11 a. m.

3. Your 8, March 20, noon. You should not take the step suggested by the Company.

HULL

824.6363 St2/249

Mr. E. Holman of the Standard Oil Company of New Jersey to the Under Secretary of State (Welles)

NEW YORK, March 31, 1938.

MY DEAR MR. WELLES: With reference to your letter of March 18, 1938⁴ and Mr. Palmer's telephone conversations with Mr. Duggan on March 21, 1938, we may advise that the Standard Oil Company of Bolivia filed suit before the presently existing Supreme Court of Bolivia at Sucre at two p. m. March 21, 1938.

On the morning of March 23, 1938 our representative, Mr. H. A. Metzger, delivered personally to the Minister of Foreign Affairs at his office in La Paz a letter dated March 22, 1938 written on the letter-head of the Standard Oil Company of Bolivia, copy of which is attached together with an English translation. Mr. Metzger was accompanied only by Mr. Franco, the local manager of the Company. The Minister read the letter in their presence and his reaction, as reported by Mr. Metzger, seemed to be one of understanding.

We deeply appreciate your continued active interest in this matter which has had and is having such a serious bearing on the security of American investments generally in Latin America.

Respectfully yours,

E. HOLMAN

⁴Not printed.

[Enclosure—Translation]

The Standard Oil Company of Bolivia to the Bolivian Minister for Foreign Affairs (Diez de Medina)

[LA PAZ,] March 22, 1938.

MR. MINISTER: Although a matter not directly connected with the Ministry under your most able direction, the Standard Oil Company of Bolivia takes the liberty of informing you that it considers it has a right to make respectful though formal protest against the denial of international justice resulting from the following facts brought about by the Supreme Government:

I. Cancellation of the contract between the Supreme Government and the Company with the subsequent confiscation of the properties of the latter by Governmental Resolution without previous judicial process.

II. The unprecedented action of having reduced, also by Executive order, the period of the statute of limitations, which in this case was 30 years under the Civil Code and which could be modified only by the Legislative Power in accordance with the Constitution in effect, to an arbitrary term of 90 days, later extended for 60 days—a term of 150 days that expires today.

III. The unconstitutional and irregular organization of the present Supreme Court, also by a decree of the Executive who should not intervene in the matter, by which the previous court constitutionally established was suppressed.

Notwithstanding the three points above mentioned, the Standard Oil Company of Bolivia, although under protest, is filing suit before the Supreme Court of Justice in order that it may not be alleged that the Company has not exhausted all local remedies.

Taking this opportunity [etc.]

STANDARD OIL COMPANY OF BOLIVIA

H. A. Metzger

Representative in Bolivia

824.6363 St2/285

Memorandum of Conversation, by the Chief of the Division of the American Republics (Duggan)

WASHINGTON, September 9, 1938.

During the course of the conversation, the Minister informed me that his Government had not looked with favor upon his plan for the termination of the difficulty arising out of the cancellation of the con-

tract with the Standard Oil Company of New Jersey. He recalled that his plan depended upon the Government in its presentation to the court suggesting that the caducity of the contract be declared, but not its cancellation. The Minister has been informed that the Government's presentation had already been made at the time of the arrival of his suggestion and that it did not include the proposition for declaring the caducity of the contract. Moreover, the Minister was informed that the Minister of Mines did not look with favor upon the idea.

The Minister expressed himself as in a very pessimistic way over the possibility of a settlement now being arrived at that would be satisfactory to both the Government and the Standard Oil Company.

824.6363 St2/292

Mr. T. R. Armstrong of the Standard Oil Company of New Jersey to the Chief of the Division of the American Republics (Duggan)

NEW YORK, November 16, 1938.

DEAR MR. DUGGAN: As we did not consider the matter at the time to be serious or significant, we did not report to you a denouncement made in September, 1938 against the Standard Oil Company of Bolivia by the Comptroller General of the Republic for alleged violations by the Company of exchange regulations reputed to have occurred during the period February 1, 1934, to February 4, 1935. In fact, our people in La Paz gained the definite impression from statements made after the filing of the denouncement by an official of the Y. P. F. B.⁵ to a representative of Southern Radio Corporation, that the Y. P. F. B. in reality considered the transactions legally executed. The purpose of filing the denouncement was purely to discredit the Company in public opinion and as a part of the campaign of defamation against it.

About three weeks ago the Manager of the Company in La Paz was notified by a decree of the Comptroller General that unless proof of the legality of the exportation of the foreign currency was presented within a period of six days a large fine (Bs. 3,000,000.00) would be imposed. The threat was made that, if the fine was not paid, the Company's representative would be imprisoned. Just what has happened in La Paz since the expiration of the six days we are not advised. In the meantime, Mr. Metzger has arrived at La Paz and informed the American Minister of all pertinent facts.

⁵ Yacimientos Petrolíferos Fiscales Bolivianos.

As reported to the Department, all of the files and records of the Standard Oil Company of Bolivia were seized and taken over by the Bolivian Government in March, 1937, being subsequently delivered to Y. P. F. B. On September 15, 1938 the Manager of the Standard Oil Company of Bolivia, Mr. C. Franco, was served with notice of the above denouncement phrased in vague terms but, in substance, claiming that the Company had violated the exchange regulations and stating that the only records available were the amount of Bolivian money remitted. Thereafter, the Manager replied to the denouncement stating, among other points, that the Company's records were all in the possession of the Government and asked permission to examine such records. This was at first refused on the ground that the Y. P. F. B. had all the information necessary. The statement accompanying the denouncement merely listed check numbers, dates and respective values in Bolivianos issued by the Company, and there is nothing to indicate that the Y. P. F. B. had evidence of the purpose for which these checks were issued. The Company is presumably obliged to prove the negative fact that the checks were not issued for the purchase of clandestine exchange. To do this we must search files which have been seized by the Y. P. F. B. and possibly despoiled. We must seek this evidence despite the fact that Bolivian law flatly prohibits the use of private files for bringing charges against the owners.

Eventually, on October 21, a term of six days, declared to be non-extendable, was granted for a representative of the Company to examine certain files. Our representative reports that the vouchers attached to the checks were not found, having been either misplaced or removed.

The Government claims that the amount involved is Bs. 2,870,942.48 and is threatening to impose a fine in that amount or more and possible imprisonment of the Manager if the fine be not paid. The charges are being preferred under a regulation which did not come into effect until after all of the transactions referred to occurred, with the exception of one, a minor amount.

Mr. Franco has petitioned for a delay of thirty days during which time the Accounting Department in Buenos Aires will forward photostatic copies of the records it has of all the transactions, which should prove their legitimacy. We doubt that the Government will go so far as to actually imprison Mr. Franco who, incidently, had no personal connection with the exchange transactions now questioned. However, the illegal imposition of a large fine without a hearing is a real possibility.

We will be glad to procure and furnish you with copy of the entire record if you wish to have it. However, as the matter is urgent, we ask that you request the American Minister, preferably by cable, to investigate the facts of the denouncement and promptly report the present status of the situation.

Yours very truly,

T. R. ARMSTRONG

824.6363 St2/290a : Telegram

The Acting Secretary of State to the Minister in Bolivia (Caldwell)

WASHINGTON, November 26, 1938—4 p. m.

17. Armstrong reports that Standard Oil Company of Bolivia has been accused of illegal exchange transactions during 1934 and 1935 for which it may be subject to a large fine. Please report facts and present status of case briefly by telegram and forward full air mail report.

WELLES

824.6363 St2/291 : Telegram

The Minister in Bolivia (Caldwell) to the Secretary of State

LA PAZ, November 27, 1938—10 a. m.

[Received 12:21 p. m.]

48. Referring to the Department's telegram No. 17, November 26, 4 p. m., Standard Oil Company was publicly charged by individual close to Y. P. F. B. with illegal export of 3 million bolivianos during 1934 and 1935, involving a possible fine in equal amount. Metzger brought from Buenos Aires documents which seem to disprove charges. Whole matter is now in hands of comptroller who has not as yet indicated his decision. Appeal to courts from an unfavorable decision would be subject to previous deposit of amount of fine.

Full report by air mail.

CALDWELL

824.6363 St2/294

The Acting Chief of the Division of the American Republics (Briggs) to Mr. T. R. Armstrong of the Standard Oil Company of New Jersey

WASHINGTON, December 9, 1938.

MY DEAR MR. ARMSTRONG: Reference is made to your letter of November 16, 1938, and to subsequent correspondence, regarding the

charges of illegal exchange transactions which have been brought against the Standard Oil Company of Bolivia.

The Department has now received a complete report dated November 29, 1938 ⁶ from the Legation in La Paz. As you are undoubtedly familiar with the steps taken by the Company's representatives to obtain evidence to refute these charges, I do not believe it will be necessary to review them here.

Mr. Caldwell reports that on November 14, 1938 the attorney for the Company presented a definitive reply accompanied by a photostatic copy of the accounts covering the period in question which had been obtained from Buenos Aires as those now in the possession of the Y. P. F. B. were not complete. These accounts show the origin and nature of each check purchased and have been presented at the Central Bank for certification.

The Minister adds that the verification by the Central Bank has not yet been received and that he is not able to say if or when the Comptroller General may make a decision.

Sincerely yours,

ELLIS O. BRIGGS

⁶ Not printed.