THE DEVELOPMENT OF UNITED STATES POLICY REGARDING THE APPLICABILITY OF ANTITRUST LEGISLATION TO INTERNATIONAL PETROLEUM COMPANIES [1]

800.2553/3-3152

Memorandum by the Assistant Secretary of State for Economic Affairs (Thorp) to the Secretary of State [2]

SECRET [WASHINGTON,] March 31, 1952.

Subject: Federal Trade Commission Report on the International Petroleum Cartel

Problem:

To determine a Department position in regard to publication of the Federal Trade Commission report entitled *Report on the International Petroleum Cartel.*[3]

Background:

The report was completed in November 1951 as one of the regular economic studies of the Commission. It was classified secret and about fifty copies were distributed within the Government. Previous studies in the same series on such subjects as the sulphur cartel, the aluminum cartel and others, have been published as soon as completed.

The report is a historical study of the cartel practices of the international oil companies. It is based on company records which it quotes at length. These records indicate that the oil companies, among other things, retarded development of oil in certain Middle East countries and purposely drilled dry holes to comply with the legal technicalities of their contracts and in the 1920's and 1930's endeavored, through company agreements, to control and divide

[1] For related documentation, see volumes IX and X. For documentation concerning antitrust action by the U.S. Government against the United Fruit Company, see volume IV.

[2] Drafted by the Chief of the Petroleum Policy Staff, Robert H.S. Eakens, and by Assistant Secretary Thorp.

[3] The two-volume report was in response to a resolution passed by the Federal Trade Commission on Sept. 19, 1944, directing its economic staff to conduct a long-range investigation of international cartels, and to a supplemental resolution passed by the Commission on Dec. 2, 1949, directing that an investigation of the international oil cartel be carried out. A copy of the completed report, which was circulated within the U.S. Government in November 1951, is in the library of the Federal Trade Commission.

the world oil markets. Many of the objectional practices have been discontinued or are being corrected, but the report concludes that in principle they are still in effect. It contains some inflammatory language and in general is very damaging to the oil companies.

In December 1951, the Department asked the Federal Trade Commission for an opportunity to express its views regarding publication of the report prior to its being published.[4] Publication is now being seriously considered.

Discussion:

Complete suppression of the report is impossible. Its existence is widely known in Government and the oil industry. The question is really when and how it can be published with the least damage to the national interest.

It must be recognized that there is danger in the suggestion for delay. It might become a *cause célèbre* like the Wedemeyer report,[5] with Congressional and public demands for its publication. Speculation about an unreleased report may be more dangerous than a published reality. That the subject of the report is the past behavior of the big oil companies, would not help the situation.

There is, of course, serious danger of the report eventually leaking by one means or another. However, leakage of parts of it on an unofficial basis would not be nearly as damaging as the official publication of the report since it would provide a less authentic propaganda weapon.

Publication now could seriously undermine the position of the oil companies as well as the whole United States–United Kingdom position in the Middle East. Opponents of the oil companies, advocates of nationalization and the Communists would have a substantial amount of material in the report indicating that the oil companies had acted contrary to the best interests of the countries concerned. The fact that these charges could be documented from an official United States Government report would make them doubly effective. A United States Government report of this type would be highly embarrassing to the British. Iraq's Prime Minister Nuri[6] is mentioned in the report in a manner which could be used against him in the elections which will shortly be held in Iraq.

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[4] This is presumably a reference to a letter of Dec. 27, 1951, from Under Secretary of State James E. Webb to the Chairman of the Federal Trade Commission, James M. Mead, which is in the files of the Bureau of Industrial Economics, Federal Trade Commission.

[5] Lt. Gen. Albert C. Wedemeyer's report on China to President Truman, dated Sept. 19, 1947, the text of which is in *United States Relations With China* (Washington, 1949), pp. 764–814.

[6] Prime Minister Nuri Said.

From the legal standpoint, there is no precedent for suppressing publication. The Federal Trade Commission is an "independent agency" with statutory authority to investigate practices of American corporations and to make public information obtained (except trade secrets) as it shall deem expedient in the public interest. L/E believes, however, that the President would be upheld if in the national interest he required suppression of the publication. L/E considers such action to be fraught with danger unless the foreign policy considerations were overwhelming, when balanced against public interest in favor of publication and the fact that the Government does not want to appear to condone any questionable practices of the oil companies. (Annex I [7] sets forth L/E's views.)

Recommendation:

That since our security interest in a highly critical area is involved, the Department ask the National Security Council for a judgment as to whether publication now would be contrary to the national interest.

If the National Security Council decides that publication would be contrary to the national interest, the Department ask that publication be deferred, subject to review at the end of four months, if the Commission so desires.

If a contrary finding is made by the Council, the Department inform the Commission that it takes no position on the question of publication of the report.

[7] Not printed; it is a four-page undated memorandum from Stanley D. Metzger, Deputy Assistant Legal Adviser for Economic Affairs, to Eakens.

800.2553/4-2552

The Secretary of State to the Chairman of the Federal Trade Commission (Mead) [1]

SECRET [WASHINGTON,] April 25, 1952.

MY DEAR MR. MEAD: This is in further reference to the recently completed Federal Trade Commission study of cartel activities in the world petroleum industry. In his letter to you of December 27, 1951,[2] Under Secretary of State James Webb stated that if in the future the Federal Trade Commission plans to publish this study the Department would appreciate an opportunity to present its views prior to publication owing to the importance which it could have on certain aspects of U.S. foreign policy. I have since been in-

[1] Drafted by Legal Adviser Adrian S. Fisher.

[2] Not printed, but see footnote 4, *supra*.

formed by Assistant Secretary of State Willard Thorp that he has been told by Mr. Corwin Edwards of your staff that the Federal Trade Commission is contemplating publication of the study. For that reason, an expression of the views of the Department of State would seem to be in order.

It is not appropriate for the Department of State to interfere in any way with the Federal Trade Commission in carrying out the duties and responsibilities imposed upon the Federal Trade Commission by the laws of the United States. It is the responsibility of the Department of State to bring to the attention of the Federal Trade Commission the effect which the release of the report would have on the foreign relations of the United States. The Federal Trade Commission can thus have this aspect of the national interest before it when it makes its decision.

In the view of the Department of State, the publication of the report will not help the achievement of the foreign-policy aims of the United States in the Middle East and may seriously impair their attainment.

The report makes the point that one aspect of the alleged cartel concerns control of the major oil-producing areas in the world, particularly in the Middle East. This will inevitably be interpreted by the peoples of the region as a statement that, were it not for such agreement, they would be getting a higher return from their oil resources. This will, of course, strengthen the movement for renegotiation of the present concession agreements and may give encouragement to those groups urging nationalization. Since the issues are not only economic but also political, the net effect will probably be to cause a decrease in political stability in the region.

At the present time, the political instability in the Middle East has created a situation unfavorable to the investment of new capital in that area. For that reason it is unlikely that any decision with respect to publication would have the effect of bringing new American enterprises into the Middle East to aid in the development of the oil resources of the area until the political situation has been clarified.

The Department of State makes these considerations available to the Federal Trade Commission in order that the Federal Trade Commission may be fully advised of all the implications of the proposed action when it makes its decision as to its future course of action.

The Department of State is expressing only its own views on this report and is not undertaking to express the views of other Government agencies which may be interested in this matter.

Sincerely yours,

DEAN ACHESON

Truman Library, PSF–Subject file

Memorandum of Discussion at the 116th Meeting of the National Security Council on Wednesday, April 30, 1952 [1]

TOP SECRET

[Here follows discussion of the situation in the Far East, the effective utilization of civilian manpower of non-Soviet nations for work of value to the national defense, a provision for state military forces, the Japanese Peace Treaty, and the status of National Security Council projects.]

At the end of the meeting, the President asked the Secretaries of State and Defense and Mr. Harriman if they had been able to work out jointly a solution to the problem posed at the last Council meeting [2] by the threatened publication of the Federal Trade Commission's report on cartel practices in the oil field.

Secretary Acheson said that, regrettably, they had as yet been unable to come up with a solution. Various suggestions had been made, continued Secretary Acheson, including one that responsibility for the report be shared by the Congress, but each one of these solutions seemed to provide worse complications.

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[1] This memorandum, presumably prepared on May 1 by the Secretariat of the National Security Council, was addressed to the President. According to the minutes of the meeting, which consist of a list of the participants and a brief list of the decisions taken at the meeting, the following members of the Council attended: President Truman, presiding; Secretary of State Acheson; Deputy Secretary of Defense Foster, Director for Mutual Security Harriman, and Chairman of the National Security Resources Board Gorrie. Others present at the meeting were Secretary of the Treasury Snyder, Acting Director of Defense Mobilization Flemming, Mr. Vanech of the Department of Justice, Acting Secretary of Labor Galvin, Director of the Bureau of the Budget Lawton, Acting Federal Civil Defense Administrator Wadsworth, Special Consultant to the President Souers, General Bradley, General Smith, Commander Clausner, Major Rule of the Joint Chiefs of Staff, and Lay and Gleason of the NSC Secretariat. (Truman Library, Truman papers, PSF–Subject file)

[2] According to the memorandum of discussion at the 115th meeting of the National Security Council on Apr. 23, President Truman had raised the question of the Federal Trade Commission's report regarding the oil companies and had said that there was great danger that the contents of the report would leak out, with resultant damage to the national security. Secretary of Defense Lovett had suggested that he and Secretary of State Acheson together frame a statement to the effect that "release of the Federal Trade Commission's report to the public at this time would seriously damage our relations with the British, would have a detrimental effect on U.S. policy with regard to the Arab states, and would certainly accomplish nothing positive to compensate for this change." Acheson had recommended that Harriman also take part in the preparation of this statement. President Truman then had asked that all three join in making a recommendation to him on this problem. (Truman Library, Truman papers, PSF–Subject file)

The President stated that he had been thinking the matter over, but he himself could find no ready solution to a bad situation. Plainly, we would have to do some more thinking about the matter.

General Smith offered to have the Central Intelligence Agency prepare an estimate of the dangers to be anticipated if the Federal Trade Commission report leaked out. He noted that the impact was bound to be serious and was certain to give aid and comfort to anti-Americans in the Middle East. On the other hand, bootleg leaks might be better than official publication of the FTC report.

After further discussion, the President suggested that General Smith and Mr. Vanech get together and see whether they could propose recommendations to him which might succeed in solving the problem. The President said that the Council could well imagine what would happen if the press were able to headline the allegation that the President of the United States had intervened to prevent the Department of Justice from pressing anti-trust suits against the powerful oil companies. There was no need, he added, to point out again the bad effects on the national security of the publication of this report.

Truman Library, Spingarn papers, FTC International file

Memorandum by Federal Trade Commissioner Stephen J. Spingarn to the Chairman of the Federal Trade Commission (Mead)

SECRET [WASHINGTON,] May 1, 1952.

In re: Publication of International Oil Cartel Report.

Attached is a memorandum which I have had prepared itemizing some of the constructive results that might be expected to follow the publication of our Oil Cartel Report. In view of the arguments which have been made on the other side, I thought it worthwhile to have such a memorandum prepared.

It occurs to me that when you see the President about this matter, you might think it worthwhile to give him a copy of this memorandum.

S[TEPHEN] J. S[PINGARN]

[Attachment]

Memorandum Prepared by the Staff of the Federal Trade Commission

SECRET [WASHINGTON,] April 30, 1952.

SOME CONSTRUCTIVE RESULTS WHICH MAY BE EXPECTED TO COME FROM THE PUBLICATION OF THE FEDERAL TRADE COMMISSION'S INTERNATIONAL OIL CARTEL REPORT

1. Publication of the international cartel report would be the most effective way of inducing oil companies to alter their restrictive policies and improve their relations with foreign governments in advance of the time when these governments will have a belligerent minority strong enough to nationalize the oil industry. It is much better that the facts be revealed now when there is still time for policies to be changed and differences settled by negotiation rather than suppressing the facts and postponing changes, as was the case in Iran, until the foreign oil companies are engulfed by a wave of hatred.

2. Publication of the report would not reveal to Middle East governments additional information which would enable them to take undue advantage of the oil companies in future negotiations. Middle East governments are acquainted with most of the major points made in the report. For example, in stating the grounds for the Iranian Government's decision to nationalize the oil industry, an Iranian Government official stated:

". . . In arriving at this conclusion, the Oil Commission was aware of the existence of the 'World Oil Cartel,' and fully realized that the implementation of nationalization would be met by the opposition, not only of the AIOC and the British Government, but the other major oil companies as well. This opposition was expected in terms of the boycott of technical assistance, tanker transportation, and intimidation of independent companies who might otherwise consider buying oil from Iran."*

Although they may not be aware of all the facts and details, they are well aware of the effects of the policies which the oil companies have followed. As a matter of fact, many of the Middle East governments have already acted upon information in their possession,

**Oil Forum,* "Iran Presents Its Case for Nationalization," March 1952, p. 90. [Ellipsis and footnote in the source text.]

similar to much of that in the report, to bring about a change in oil company policies. Evidence of this is the new oil royalty agreements recently concluded by the governments of Iraq, Kuwait, and Saudi Arabia.

3. Publication of the report would be an effective counter to the Communist propaganda, which is widely distributed in the Middle East and which claims, in effect, that the resources of the Middle East are subject to monopolistic exploitation at the hands of "Wall Street" with the support of the United States Government. To have one arm of the United States Government present the facts on the international petroleum cartel will show unmistakably that this government is opposed to cartels and monopoly by oil companies operating abroad and that exploitation will not be condoned.

4. Issuance of the oil report would tend to ease restrictions on world trade and stimulate rather than retard foreign investment. As the hold of the cartel is loosened, competition will to that degree be established; and as competition is reestablished, independent American companies, as well as cartel members, will have more opportunities for expanding foreign investments.

5. Publication of the facts respecting the private oil cartel will go a long way toward counteracting the view which appears to be developing in foreign lands that the United States talks at great length of removing international barriers to trade but does nothing about them. Issuance of the report would thus be a timely symbol of good faith on the part of this government. Moreover, a prerequisite to removal of international trade barriers is public knowledge of the nature and extent of those barriers.

6. Finally, issuance of the oil report would supply to both the Congress and the executive branches of the U.S. Government information essential to the formulation and administration of both domestic and international oil policies, and to the American public, information basic to intelligent public opinion.

Truman Library, Spingarn papers, FTC International file

Memorandum for the File, by Federal Trade Commissioner Stephen J. Spingarn

SECRET [WASHINGTON,] May 6, 1952.

Subject: Publication of International Oil Cartel Report.

Chairman Mead and I saw President Truman about this matter at noon, May 6, 1952. Mr. Mead gave him a copy of the State Department letter of April 25, 1952 [1] and the memorandum of April

[1] *Ante*, p. 1261.

30 prepared here on this subject,[2] together with his covering memorandum of May 6 [3] which I had prepared.

The President told us that following Chairman Mead's last discussion of the matter with him some weeks ago,[4] he had taken the matter up at Cabinet [5] and asked Secretaries Acheson and Lovett and Mr. Harriman to consider the question of publication, obtaining also a report on the matter from General Walter B. Smith, Director of the Central Intelligence Agency and then advise the President as to their views. The President has not yet received a report from these gentlemen and General Smith, but expects it within a week or so. In the meanwhile, he naturally would like us to hold up publication of the report and we assured him that we would. It was agreed that I should act as Federal Trade Commission liaison man with the White House or other agencies on this matter. The President said that I should deal with Charlie Murphy on the matter. He also mentioned that Dave Lloyd and Dave Bell [6] were familiar with the matter.

After our talk with the President, we went to see Joe Short [7] to ask his advice on what to tell the press if we received inquiries about the publication of the report in view of our conference with the President. Short suggested, after consultation with Jimmy Lay, that we say that the matter was being considered by the interested agencies, notably State and Defense, for the purpose of determining whether the continued secret classification of the report would or would not be in the interest of the national security.

We then went to see Charlie Murphy and told him of our talk with the President and Joe Short, and that I was available to discuss the matter at any time with him or anyone else. The question as to whether I should now talk with General Smith or someone designated by him was discussed and Murphy said he would check and let me know. (Murphy had called me last Saturday, May 3, about 1:00 p.m., and told me about the reference of this question which the President had made and which he, himself, told us about today.)

When the press accosted us in the lobby of the White House to ask us what we had discussed with the President, we said that we had discussed the vacancy on the Commission and, without making any recommendation, had voiced the hope that it would be prompt-

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[2] *Supra.*

[3] Not printed.

[4] This conversation has not been further identified.

[5] This is apparently a reference to the discussion at the 115th meeting of the National Security Council on Apr. 23, which is described in footnote 2, p. 1263.

[6] David D. Lloyd and David E. Bell, Administrative Assistants to the President.

[7] Joseph Short, Secretary to the President.

ly filled. We also mentioned that while at the White House, we had seized the opportunity to talk about our appropriation difficulties with respect to the antimerger act particularly. (This last discussion was, of course, with Lawton [8] rather than with the President.) However, the White House reporters did not raise the question of the oil report and we did not mention it.

At the meeting of the Commission the same afternoon, Mr. Mead and I told Messrs. Carson and Mason [9] about our White House visit and also about the arrangement we had with Joe Short as to how we would answer questions about the report. I have also passed this information on to Nick Carey and Scott Daniel.[10]

S[TEPHEN] J. S[PINGARN]

[8] Director of the Bureau of the Budget Frederick J. Lawton.
[9] Federal Trade Commissioners John Carson and Lowell B. Mason.
[10] Nick M. Carey, Director of the Office of Public Information, Federal Trade Commission, and D.C. Daniel, Secretary and Executive Director, Federal Trade Commission.

800.2553/5-652

Memorandum of Conversation, by William J. McMaster of the Petroleum Policy Staff

SECRET WASHINGTON, May 6, 1952.

Subject: Discussion of Federal Trade Commission Report on International Petroleum Cartels With Representatives of the British Embassy.

Participants: Mr. D. A. Greenhill, First Secretary, British Embassy
Mr. J. A. Beckett, Petroleum Attaché, British Embassy
Mr. R. W. Bailey, British Embassy
Mr. Eakens, Miss Mims,[1] Mr. McMaster—PED

Mr. Greenhill summarized a communication received from the British Foreign Office which indicated that if the FTC report cannot be suppressed the British would favor its publication as soon as possible in order to prevent fragments of the report from leaking to the press and stimulating more interest and doing more harm than outright publication. If the report is to be published they would like to obtain a copy as soon as possible so as to be prepared to meet any possible repercussions. They also believe that it would be desirable for the oil companies involved to have an opportunity to see the report and also to be in a position to rebut the charges made against them.

[1] Elizabeth Mims of the Petroleum Policy Staff.

The British were advised of the nature of the Department's position in respect to publication of the report. What the report will probably say when and if published was discussed in general terms with particular reference to the history of the Iraq Petroleum Corporation, which is likely to be the most damaging section of the report.

The British representatives stated that their main concern at this time was to provide their Government with advice regarding the action it should take to counteract the impact of publication.

In view of the nature of the charges made in the report and the continuing uncertainty that it will be published, Mr. Greenhill stated that he would advise his Government that for the present they should be thinking up explanations of the charges in the event of publication.

The British representatives felt that publication of the report would of course have serious implications in the Middle East area. They are aware that similar charges have been placed against the oil companies in the past by some Middle East governments but recognize that publication of the FTC report will tend to confirm those charges.

Before leaving the meeting Mr. Greenhill stated that Mr. Howard A. Cowden, Secretary of the International Cooperative Petroleum Association, has requested a meeting with the British on May 12 to discuss ICPA's proposal for a solution of the Iranian oil controversy.[2] Mr. Eakens stated that Mr. Cowden had discussed ICPA's proposal with officers of the Department and that he had been advised that there was no objection to his discussing the proposal with the British but that we had asked him to check back with the Department before he undertook any discussions with Iran.

Mr. Greenhill believed that the British would probably try to discourage ICPA from entering the controversy and wondered to what extent they could go in advising Mr. Cowden of their reasons for discouraging ICPA action. Mr. Eakens said that Mr. Cowden had in the past abided by the advice of the Department in this case and that he believed Mr. Cowden to be completely reliable.

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[2] For documentation regarding the ICPA proposal, see volume x.

INR files, lot 59 D 27, "Meeting Notes"

Notes on the Intelligence Advisory Committee Meeting, May 6, 1952 [1]

TOP SECRET [WASHINGTON,] May 7, 1952.

[Here follows discussion of the Fourth Progress Report on NSC 104/2, "U.S. Policies and Programs in the Economic Field Which May Affect the War Potential of the Soviet Bloc"; for text, see page 834. The minutes of the previous IAC meeting of April 24 were then amended and agreed to.]

3. Special Estimate 28: Consequences of the Future Revelation of the Contents of Certain Government Documents [2]

General Smith began the discussion on the agenda item by revealing that the terms of reference are in fact different from those under which the Working Group considered the problem. He said that the President had asked CIA both to prepare an estimate, and also to undertake to recommend a sanitized version of the report for release, since it is virtually certain that the report will get out in one way or another. Among other things, the administration is considering placing the report before the full Judiciary Committees of the Senate and the House. Smith said that the CIA estimators were given instructions to word their estimate in such a way that intelligence will not suffer when the expected revelation is made. Smith said that the estimators had identified approximately 12 to 14 paragraphs as particularly injurious. He expressed his view that the preparers of the report (whom he referred to as "a peculiarly oriented minority group in the FTC") have strongly implied in the way the report is written that private ownership and exploitation of natural resources in the manner revealed by the report is more dangerous to the American way of life than is anything emanating from the Soviet Union. It was the consensus of the meeting that (a) complete suppression of the report is impossible since it will unquestionably be leaked; (b) the official release of the complete report would be extremely injurious to U.S. interests in the Middle East and among our Western allies; and (c) the official release of a sanitized version, while damaging, is probably likely to result in slightly less harm. It was the consensus, further, that the release of

[1] Prepared by Howard Furnas of the Office of the Secretary of State's Special Assistant for Intelligence.

[2] A copy of the approved text of SE–28, which dealt with the consequences of the future revelation of the "Report of the Federal Trade Commission on the International Petroleum Cartel," was sent to President Truman under cover of a memorandum of May 8 from Director of Central Intelligence Smith. Both the covering memorandum and SE–28 are printed *infra*.

a sanitized version would probably suit the FTC's and the Attorney General's purposes since they will of course have, in addition, the unexpurgated edition. The following sentence was agreed upon for addition after paragraph two on page two: "The estimated adverse effects could be mitigated to a certain extent by withholding from general release certain of the more damaging paragraphs which provide political ammunition for groups in the Middle East operating contrary to U.S. interests." It was also agreed that the final sentence under Scope in the estimate would have to be removed.[3]

The IAC agreed to the estimate as amended.

[Here follow discussion concerning the distribution to IAC members of CIA intra-agency studies and documents and a report by the Office of National Intelligence regarding the ownership of certain Greek ships.]

[3] No copy of the draft paper which was under consideration here was found in Department of State files.

Truman Library, Truman papers, PSF

Memorandum by the Director of Central Intelligence (Smith) to the President

TOP SECRET WASHINGTON, May 8, 1952.

There is attached a copy of SE 28 covering "Consequences of the Future Revelation of the Contents of Certain Government Documents," as approved by the Intelligence Advisory Committee at its meeting 6 May 1952.[1]

This paper, estimating the consequences for US foreign relations and for US strategic interests of the revelation of the contents of the two-volume study entitled "Report of the Federal Trade Commission on the International Petroleum Cartel," was prepared as a matter of urgency pursuant to the request made at the National Security Council meeting on Wednesday, 30 April.[2]

It is planned that final printed copies of this estimate will be forwarded to the National Security Council on Friday, 9 May.

WALTER B. SMITH

[1] A record of the discussion at this meeting is printed *supra*.

[2] For the memorandum of discussion at this meeting, see p. 1263.

[Attachment]

Special Estimate [3]

TOP SECRET
SE–28

WASHINGTON, May 6, 1952.

CONSEQUENCES OF THE FUTURE REVELATION OF THE CONTENTS OF CERTAIN GOVERNMENT DOCUMENTS

THE PROBLEM

To estimate the consequences for US foreign relations and for US strategic interests of the revelation of the contents of the two-volume study entitled "Report of the Federal Trade Commission on the International Petroleum Cartel."

SCOPE

This estimate considers the consequences of the revelation of the contents of the subject report, whether by official publication or otherwise. The estimate does not consider to what extent the statements in the Report are accurate or already known, but solely the effect of their revelation, individually or collectively, as allegations made under the sponsorship of an arm of the US Government.

ESTIMATE

1. We estimate that official publication of this Report would greatly assist Soviet propaganda, would further the achievement of Soviet objectives throughout the world and hinder the achievement of US foreign policy objectives, particularly in the Near and Middle East, and would otherwise tend to injure US foreign relations and strategic interests, as more fully set forth below.

2. We believe that the manner of the revelation of the report's contents, otherwise than by official publication in full in its present form, would cause the consequences to differ only in degree from the consequences of official publication estimated herein. The adverse effects herein estimated might be mitigated to some extent

[3] Special Estimates (SE's) were high-level interdepartmental reports presenting authoritative appraisals of vital foreign policy problems on an immediate or crisis basis. SE's were drafted by officers from those agencies represented on the Intelligence Advisory Committee (IAC), discussed and revised by interdepartmental groups coordinated by the Office of National Estimates of the Central Intelligence Agency (CIA), approved by the IAC, and circulated under the aegis of the CIA to the President, appropriate officers of Cabinet level, and the National Security Council.

by withholding from general release certain paragraphs which would particularly provide propaganda and political ammunition to Soviet and other forces in the Middle East opposed to the interests of the US.

3. *Assistance to Soviet Propaganda and to the Achievement of Soviet Objectives Throughout the World.* Publication of the report would:

a. Assist the USSR in pursuing its objective of dividing the West and specifically of driving a wedge between the US and UK, and between the US and other European nations.

b. Greatly assist Soviet propaganda designed to discredit the US and other Western Powers in the Near and Middle East, and further the Soviet objective of fostering and perverting to Communist ends the spirit of nationalism in that area.

c. Assist the current Soviet campaign to induce a relaxation of East-West trade controls, through distortion of certain allegations in the Report to support the propaganda argument that US and Western foreign trade practices are deliberately restrictive.

d. Assist the world-wide Soviet campaign to represent the US and other Western Powers as "imperialist" and "colonial" powers. This effect would be felt not only in the Near and Middle East but also in the countries of South and Southeast Asia and to some extent in Latin America.

4. *Specific Adverse Effects on the US Position in the Near and Middle East.* Publication of the Report would:

a. Further prejudice prospects for a settlement of the Iranian oil controversy, in particular by damaging, perhaps irreparably, the status of the US as mediator between the UK and Iran. Publication would thus contribute to the present economic deterioration and political instability in Iran, and increase opportunities for Communist subversion.

b. Assist forces in other oil-producing countries in the area which desire to alter present contractual arrangements with the international oil companies, and thus jeopardize the flow of oil, which is of great strategic importance to the US and its allies.

c. Harm the general position and prestige of the US and other Western Powers in the area, by providing propaganda ammunition not only to Communist elements but also to extreme nationalist and other anti-Western elements.

d. Raise doubts in the UK and France concerning US objectives in the Near and Middle East and possibly jeopardize coordination of overall policies for the area.

e. As a consequence of c. and d. above, reduce the prospects for achieving a Middle East defense organization.

f. Seriously embarrass certain governments in the area, both in their relations with the US and other Western Powers and in their internal political situations, thus increasing the likelihood of disorder and deterioration favorable to extreme nationalist and anti-Western elements, including Communists.

5. *Other Adverse Effects on US Interests.* In addition to the consequences listed above, publication of the Report would:

a. Tend to impair basic relations between the US and UK and to a lesser extent between the US and the Netherlands and between the US and France, to the detriment of US interests in all areas in which close cooperation with these powers is essential to the achievement of US security objectives. In addition to the proposed Middle East defense organization, this would apply to NATO and to efforts to achieve agreed policies in the Far East including Southeast Asia.

b. Tend to jeopardize US oil concessions in areas other than the Middle East and to jeopardize other US commercial and industrial interests abroad, including private mining arrangements in South America and elsewhere.

Truman Library, Spingarn papers, FTC International file

Memorandum for the File by Federal Trade Commissioner Stephen J. Spingarn

SECRET [WASHINGTON,] May 22, 1952.

I had lunch at the White House today with Charlie Murphy and Bob Dennison and we discussed the oil report. While at lunch, Murphy showed me a Special Estimate prepared by the Central Intelligence Agency (SE–28, of May 8, 1952 [1]) containing (without recommendations) CIA's estimate of the effect to be expected from publication of the report, i.e., its effect on other countries and our relations with them and its possible use as a propaganda theme by the Soviets. This estimate, which was classified top secret, takes a *very* serious view of the effects of publication. Murphy also showed me a letter of May 22, 1952 from General Smith,[2] classified secret, containing Smith's specific suggestions as to what passages of the report should be deleted if it is to be published so as to minimize repercussions abroad and Soviet use of it. From a quick reading of the letter, it was impossible to tell what was involved in these deletions without squaring them up against the report, but Murphy told me that generally they represented the elimination of material with respect to acts of skulduggery by the oil companies in dealing with other governments.

Murphy told me that he had had a number of calls from the Hill about the report, including calls from Senator Hill and Senator Hennings.[3] Murphy said that Hennings was angry at State for not

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[1] *Supra.*

[2] Not found in Department of State files or at the Truman Library.

[3] Senator Joseph L. Hill (D.–Ala.) and Senator Thomas C. Hennings, Jr. (D.–Mo.).

replying to a letter of his asking why they were holding up release of the report. Murphy understands that State is replying today telling the Senator that they had communicated their views to the Federal Trade Commission on April 25,[4] but that Federal Trade Commission had taken the matter up with the President and the matter was, therefore, out of the State Department's hands. I gather from Murphy that Senator Hill thought there might be some value in publishing the report at this time.

Murphy said the President had talked to Secretaries Acheson and Lovett about the matter at lunch yesterday but apparently inconclusively or at least he has not made his mind up yet. With the approval of the President, Murphy is to talk to Lovett further on this.

Both Murphy and Dennison questioned me at some length as to Federal Trade Commission's reasons for making the report and the purposes which it was expected to serve.

Murphy told me that he felt he would have to go into the matter very carefully and said that he planned to hold a meeting on this with people from the interested agencies, which he would ask me to attend. Because of his heavy workload, he did not expect to be able to do anything further on the matter this week.

Upon my return to the Commission after lunch, I gave Chairman Mead the substance of the above information.

S[TEPHEN] J. S[PINGARN]

[4] For Secretary Acheson's letter of Apr. 25 to Federal Trade Commission Chairman Mead, see p. 1261.

Truman Library, Murphy papers

The President to the Chairman of the Federal Trade Commission (Mead)

TOP SECRET [WASHINGTON,] June 5, 1952.

DEAR JIM: I have been giving further consideration to the question of publication of the report prepared by the staff of the Federal Trade Commission on the International Petroleum Cartel.

I realize that there are very strong reasons why the contents of this report should be made public. I myself made a survey of the cartel situation in the Second World War and found some very startling things in connection with some of the big oil companies. However, I believe that the publication of the report at this time would probably have very serious adverse effects upon our foreign relations. The reasons for this are stated in a report from the Cen-

tral Intelligence Agency [1] which I am enclosing with this letter. Consequently, I am requesting the Commission not to make the report public at this time. However, I would have no objection to the contents of the report being made available to appropriate Congressional Committees on a classified basis.[2]

I am going to speak to the Attorney General about the possibility of presenting the facts in this matter to a grand jury. I think it is possible that this should be done and could be done without having such an adverse effect upon our foreign relations as would the publication of this report as an official Government document.[3]

Sincerely yours,

HARRY S. TRUMAN

[1] Not found as an enclosure to the source text, but, according to a marginal notation, this is a reference to SE–28, "Consequences of the Future Revelation of the Contents of Certain Government Documents," p. 1272.

[2] In a letter to President Truman on June 12, Chairman Mead stated that he would comply with the President's request that the report not be published. A copy of this letter is in the Federal Trade Commission, Bureau of Industrial Economics files.

[3] On July 17, 1952, Attorney General James P. McGranery announced that a Federal Grand Jury would shortly begin investigating the activities of the international oil cartel. In August subpoenas were issued against 21 oil companies and a request was made for the impanelling of a grand jury.

811.2553/7–2552

The Chief of the Petroleum Policy Staff in the Office of International Materials Policy (Eakens) to the Petroleum Attaché in the United Kingdom (Moline)

SECRET
OFFICIAL–INFORMAL

[WASHINGTON,] July 25, 1952.

DEAR ED: I have your note of July 15 enclosing the clipping from the *Financial Times* [1] on the Justice Department's consideration of an anti-trust indictment against the American oil companies.

With the Justice Department's entry into the problem and the publicity which has been given to Justice's action, we felt there were new reasons why we should consider letting the British see a copy of the FTC Report and we proposed to Mr. Thorp that this be done. After talking with Mr. Thorp, Schaetzel [2] held a meeting with Stan Metzger, Roger Dixon,[3] Bill McMaster and me at which we discussed at length the possibility of making the report availa-

[1] Neither Moline's note of July 15 nor the newspaper clipping under reference here has been found in Department of State files.

[2] J. Robert Schaetzel, Special Assistant to Assistant Secretary Thorp.

[3] Roger C. Dixon, Chief of the Business Practices and Technology Staff.

ble to the British for study. At the meeting, it was decided that before a copy could be made available to the British we would have to secure the approval of the FTC and the White House. It was also decided that in view of the back history of the problem, we were just not in a position to ask for this approval and that we would simply have to tell the British that the problem of making a copy available to them was so great that we were not able to do it. We decided to tell the British in addition that there still does not seem to be any likelihood that the report will be published, but if that a decision is made to publish it we will try to make a copy available to them a few days in advance, if this is possible.

I have informed Beckett [4] of the foregoing and presume that he has passed it on to London. I let him know at the same time that our commitment to do our best to make the report available to them a few days in advance may or may not be worth very much since the report might be made available to the public by the FTC at the same time it is announced that the report is being published. In any case, we could let the British see your copy at the same time that the report is released here, which would give them a copy about twenty-four hours earlier than they would be able to get one from here.

Under the circumstances, it does not seem to me that we are in any position to allow them to see your copy at this time. If there is any change in this position, I will let you know.

With best regards.

Sincerely,

ROBERT H. S. EAKENS

[4] J. A. Beckett, Petroleum Attaché at the British Embassy.

Truman Library, Spingarn papers, FTC International file

Memorandum for the File, by Federal Trade Commissioner Stephen J. Spingarn

SECRET [WASHINGTON,] August 15, 1952.

Subject: International Petroleum Cartel Report

Yesterday, Thursday, August 14, Charlie Murphy asked me to come over to the White House for a conference about the publication of this report. I spent about an hour from 4:30 on with him and Admiral Dennison on this matter. They told me that the President had referred Senator Sparkman's letter [1] suggesting publication with certain deletions to the CIA and that conferences there

[1] The letter under reference here has not been further identified.

had ensued with Walter Adams of Sparkman's staff, representing him, Bob Dennison and General Smith and members of his staff. As a result, specific deletions were agreed on between Adams and the CIA people and General Smith transmitted these to the President under cover of a memorandum of August 12 [2] which I was shown. In this memorandum Smith stated that there had been some change in the situation since his agency's previous consideration of the matter at the direction of the President in May, that even with the deletions that he was transmitting, he expected that the report, if published, would be exploited in the Middle East by anti-American elements but that he thought the suggested deletions would minimize this exploitation.

Murphy and Dennison said they wished to keep the President out of the matter as much as possible and, therefore, suggested the following procedure: Instead of the President sending the deletions transmitted to him by Smith to the Commission formally, they were handed to me with the suggestion that if the Commission could go along with these deletions, that it write a letter to the President saying that it was proposing these deletions itself to meet the security considerations raised in his previous letter of June 5 to the Commission,[3] and asking whether with these deletions, the President would approve the publication of the report at this time. Murphy and Dennison also expressed the hope that, if published, this would be done as a staff report rather than a Commission report, and that the publication would be made through the Sparkman Committee as part of its pending hearings on monopoly and small business rather than directly by the Commission. The theory behind these suggestions was that they would help to minimize the impact of the report abroad.

I said that the procedure suggested sounded reasonable to me but that I would have to present it to the Commission for approval and also that we would want the benefit of the judgment of our staff who prepared the report on how much damage to the value of the report would be done by the proposed deletions.

The first thing this morning, I had several copies of the proposed deletions made and gave them to Messrs. Edwards, Blair and Prewitt [4] with instructions to examine them and be ready to advise the Commission at a meeting later in the morning as to their views about the effect of the proposed deletions on the value of the report. I told Chairman Mead and Commissioners Carson and Car-

[2] Not found in Department of State files or at the Truman Library.

[3] *Ante*, p. 1275.

[4] Corwin D. Edwards, Director of the Bureau of Industrial Economics, Federal Trade Commission; John M. Blair, Assistant Director of the Bureau of Industrial Economics; and Roy A. Prewitt of the Bureau of Industrial Economics.

retta [5] about what had happened at the White House (Commissioner Mason is away on a vacation) and at my suggestion, the Chairman called a meeting at 11:00 at which Messrs. Edwards, Blair and Prewitt appeared and gave their views on the deletions. All three felt that under all the circumstances, the Commission would be well advised to accept the deletions in order to get the rest of the report published although Edwards felt much more strongly than Blair and Prewitt that extremely important material was being deleted. After the staff had left, the Commission unanimously agreed to the Chairman sending a letter to the President asking whether he would now approve release of the report with these deletions. I was also authorized to make arrangements with the Sparkman Committee for them to release the report after the Presidential clearance.

I made arrangements with Walter Adams of Sparkman's staff for them to send us a letter (a draft of which I prepared and sent him) as soon as the President had approved release, requesting us to send them the report for release and as a basis for hearings at which our people would appear and explain the contents of the report.

I prepared a letter to the President for the Chairman's signature in accordance with the foregoing decision of the Commission and after Chairman Mead had signed it, I took it over to the White House together with a draft of a letter which I had prepared for the President's signature to Mead approving release of the report. I left these two letters with Bob Dennison. We attempted to get in to see the President but he had gone over to Blair House. However, Dennison told me he would see the President the first thing in the morning so we should get the clearance by Monday [6] at the latest.

[Here follow brief notes by Spingarn, dated August 16 and 18, which described further contacts with the White House and Senator Sparkman's staff regarding the details of the printing and release of the report.]

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[5] Albert A. Carretta.
[6] Aug. 18.

Truman Library, Spingarn papers, FTC International file

The Chairman of the Federal Trade Commission (Mead) to the President

SECRET [WASHINGTON,] August 15, 1952.

DEAR MR. PRESIDENT: I refer to your letter of June 5, 1952,[1] requesting that the Federal Trade Commission not make public at that time the report prepared by its staff on the International Petroleum Cartel because of your belief that the publication of the report at that time would have an adverse effect on national security. I replied to your letter on June 12[2] to advise you that the Commission would, of course, accede to your request.

More than two months have now elapsed since you wrote us on this matter. During this period, our staff has made a number of revisions in the draft report submitted to the White House, on the basis of which you wrote your June 5 letter. Some of these changes have been editorial in character and others have been made to incorporate more up-to-date material in the staff report. The foregoing changes have already been accomplished by the substitution of corrected pages in the copies of the staff report previously sent to the White House.

We now have also given attention to the security considerations mentioned in your June 5 letter and the Central Intelligence Agency's Special Estimate of May 8[3] which accompanied your letter. An attempt has been made to meet those security considerations by certain proposed deletions and revisions in the staff report. I enclose as Attachment A, dated August 15, 1952, a draft of the deletions and revisions which we suggest for this purpose.[4]

The purpose of this letter is to inquire whether, in view of the passage of time and any possible changes in the circumstances which may have prompted your letter of June 5, you would feel it appropriate to authorize the publication of the staff report at this time with the deletions and revisions specified in the Attachment.

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[1] *Ante*, p. 1275.

[2] Chairman Mead's reply of June 12 is not printed, but see footnote 2 to the President's letter, p. 1276.

[3] SE–28, "Consequences of the Future Revelation of the Contents of Certain Government Documents," p. 1272.

[4] Not printed. This 3-page attachment, entitled "Proposed Deletions and Acceptable Amendments in Staff Report of the Federal Trade Commission on the 'International Petroleum Cartel' ", contained 23 items with reference to a total of 71 pages of the 912 pages in the unpublished version of the report. Located in the Federal Trade Commission, Bureau of Industrial Economics files, is a 7-page undated paper, entitled "List of Deletions and Amendments to the Report on the International Petroleum Cartel," which lists the same items and gives page references to both the unpublished and published versions of the report. Attached to this paper are copies of the 71 pages in question from the unpublished report showing the material deleted or amended.

By direction of the Commission.
Sincerely yours,

JAS. M. MEAD

Truman Library, Spingarn papers, FTC International file

The President to the Chairman of the Federal Trade Commission (Mead)

SECRET [WASHINGTON,] August 15, 1952.[1]

DEAR MR. CHAIRMAN: I have given consideration to your letter of August 15th [2] about the release of the report prepared by your staff on the International Petroleum Cartel. You state in your letter that you have made an attempt to meet the security considerations with respect to this report which were discussed in my letter of June 5, 1952,[3] to you, and in the Central Intelligence Agency's special estimate of May 8th [4] which accompanied my letter; and you transmit with your letter proposed deletions and revisions in the staff report designed for this purpose. You inquire whether in view of the passage of time or any possible changes in the circumstances which may have prompted my letter of June 5th, I would now feel it appropriate to authorize the publication of the staff report at this time with the deletions and revisions which you have suggested.

I am glad to advise you that I would not object to the declassification and release of the staff report at this time if the deletions and revisions suggested by you are made.[5]

Sincerely,

HARRY S. TRUMAN

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[1] A handwritten note in the margin of the source text indicates the following: "This letter drafted by SJS [Stephen J. Spingarn] & taken to White House by him Friday Aug. 15 & given to Admiral Dennison. President signed this letter Sat. A.M., Aug. 16."

[2] *Supra.*

[3] *Ante,* p. 1275.

[4] *Ante,* p. 1272.

[5] The amended and abridged version of the staff report by the Federal Trade Commission on the International Petroleum Cartel was published on Aug. 22, 1952, by the Senate Select Committee on Small Business, under the chairmanship of Senator John Sparkman (D.-Ala.).

800.2553/9-352

Memorandum by Jeffrey C. Kitchen of the Executive Secretariat

SECRET WASHINGTON, September 3, 1952.

In his call on the Secretary last evening, Sir Oliver Franks spoke on the subject of "International Oil"—the recent Federal Trade Commission report. Sir Oliver's remarks were essentially a review of his recent conversation on the same subject with Acting Secretary Bruce.[1] In general, he made three points:

(1) He wondered whether it might be useful for the British Government to present a high-level request to the American Government that the investigation to be undertaken by the Justice Department be quashed. The Secretary said that he told Sir Oliver, as Mr. Bruce had previously, that this would not only be harmful but useless.

(2) Sir Oliver wondered whether the Grand Jury procedure would be pushed and concluded before the elections or whether the procedure might extend over a considerable period of time. The Secretary said he did not know but he expected that the proceedings would take a considerable period. He thought it was a question of the state of preparedness of the material which would be examined and that therefore the Grand Jury operation might extend over a longer period of time than that mentioned by Sir Oliver. The Secretary said he was quite certain that the proceedings as a whole would extend over quite a long period of time.

(3) Sir Oliver inquired whether any thought had been given by any other departments or agencies in the Government other than the Justice Department to the propriety of revealing certain documents which might be subpoenaed. The Secretary replied that this problem was under active consideration and that he felt quite certain that something would be done in this regard.

[1] This conversation has not been further identified.

800.2553/9-1952

Memorandum of Conversation, by the Director of the Policy Planning Staff (Nitze)

CONFIDENTIAL WASHINGTON, September 19, 1952.

Subject: Problems of American Oil Company Operating Abroad

Participants: *State*
The Secretary
Henry A. Byroade
Paul H. Nitze
Arabian American Oil Company
Terry Duce
Fred Davies

Mr. Duce began the conversation by outlining the difficulties which his company and other American oil companies operating abroad were now in and foresaw in the future resulting from the Federal Trade Commission Report and the subsequent grand jury investigation. He said that the impression had been created that the U.S. Government considered the American oil companies as being criminals or potential criminals; that this was having an adverse effect upon their effectiveness; and that it might very possibly lead to a decision by the host countries to conduct investigations themselves as to the propriety of the actions of the oil producing companies.

Mr. Duce also referred to the problem created by the subpoena of all records and memoranda. These records included not only memoranda with respect to matters which were highly classified from the U.S. Government's standpoint, but also matters which would be extremely embarrassing to the host countries. The Saudi Arabians had made it clear that they would be much concerned if a particular memorandum concerning Sheik Abdullah were to be made public.

The Secretary pointed out that the question of classified documents was under active consideration and, he felt, that some appropriate procedure would be developed for meeting this part of the question.

Mr. Duce had with him a chart showing the oil reserves of various countries and their status as importing or exporting nations. He emphasized that the oil reserves of the Middle East were at least three times those of the United States; that the great majority of the peoples of the world lived in countries dependent upon imports of oil; that the population of countries that were large-scale exporters was relatively small. He said that the oil reserves in the Middle East were not only an important asset but, if one contemplated the alternative situation where they were under the control of the Communists, this would give them a very important trading asset with respect to all other countries that were dependent upon imports for their fuel supply. He went on to say that if no solution were found to the problem raised by the Federal Trade Commission Report, he thought it quite likely that developments would result which could completely undermine the position of American oil companies operating abroad. He thought that operations had already been affected, and that worse developments were to be anticipated.

There was some discussion of the Federal Trade Commission Report, it being pointed out that most of the matter dealt with re-

ferred to the 20's and the 30's—problems which had been subsequently dealt with. Mr. Duce said that ARAMCO had tried to keep the State Department fully informed as to its actions, but no one was in a position to tell them what to do or what not to do.

Mr. Duce said that he had been considering what could be done about this situation. He said he felt that there was some analogy to the situation existing within the United States in the period prior to 1924. At that time there was unrestricted competition between the states, accompanied by various abuses. At that time, President Coolidge had appointed a Commission, consisting of the Secretaries of War, Navy, Interior, and Commerce. This Commission had made various recommendations which had eventually resulted in the interstate oil compact and its accompanying machinery. Mr. Duce said he felt that the time might have come when it would be appropriate to contemplate some similar commission to look into the problems of the national interest with respect to the operation of American oil companies abroad.

The Secretary said that he also had been disturbed by the possible repercussions on our national interest of some of the consequences which might be expected to flow from the publication of the Federal Trade Commission Report. The British, among others, had registered their concern. He felt, however, that there were certain problems which should be considered in connection with Mr. Duce's suggestion. The first one of these was that useful action might be difficult prior to the election. In the heat of a campaign, either side might well make political capital out of whatever was done. Mr. Nitze said that even though this was undoubtedly a problem, he was not sure that something useful could not be begun.

The Secretary then raised a question as to the composition of any such commission. He wondered how useful a report by Cabinet officers could be whose terms of office were about to be expired. He also wondered whether a report by a commission, composed of outsiders appointed by this Administration, would be considered adequate by a subsequent Administration. The Secretary also said that a problem was presented by the relationship between the work of such a commission and the pending legal action. Clearly an investigation by a commission could not and should not infringe upon consideration of a case before the courts.

The Secretary then asked what issues such a commission might consider and what type of recommendation it was envisaged such a commission might make. At this point the Secretary had to leave temporarily to receive a visiting ambassador.

In the ensuing discussion, the following points were developed. A Commission might find that the operations of American oil companies abroad were affected with a public interest going beyond the

range of interest of the anti-trust laws and affecting our security interests and our foreign relations. It might also find that certain of the problems involved, such as the relative rates of developments of one producing country as against another, the continued assurance of adequate supplies to consuming countries, and the general price relationships of oil and oil products at various locations affected the national interest of other countries in addition to those of the U.S. to such a degree that international arrangements rather than purely national ones might be required to adequately deal with the subject.

Mr. Duce said that he felt that the American oil companies would be prepared to make all information available to any commission which might be appointed and would fully cooperate with any recommendations which were made.

After the Secretary returned to the meeting, there was some discussion of other elements which bore upon the current situation of American oil companies operating abroad, including the MSA suit [1] and the developments in Iran. With respect to the MSA suit, Mr. Duce said that he would prefer not to discuss the matter since his company was one of the companies involved. With respect to Iran, the Secretary asked Mr. Duce how much oil he thought Iran would be able to sell in the absence of a settlement with AIOC. Mr. Duce felt that they might be able to sell between 100—150,000 barrels per day, but he thought this would take a considerable period of time.

[1] On Aug. 22, 1952, the Department of Justice filed three civil suits in the U.S. District Court in New York to recover more than $67 million from four American oil companies and six subsidiaries which it accused of overcharging the Economic Cooperation Administration and the Mutual Security Agency for Middle East oil delivered to Marshall Plan countries between May 1949 and June 1952.

811.054/10-652

Memorandum of Conversation, by the Under Secretary of State (Webb) [1]

CONFIDENTIAL WASHINGTON, October 6, 1952.

Subject: 1. Dutch Security Apprehensions regarding the Justice Department's Anti-Trust Action Against the International Oil Cartel.
2. EDC Ratification
3. France and the Tunisian Case in the UN.

[1] Drafted by Roswell D. McClelland of the Office of Western European Affairs.

Participants: Dr. J. H. van Roijen, Netherlands Ambassador
The Under Secretary
L/E—Mr. Metzger
WE—Mr. McClelland

Ambassador van Roijen said that he wished to speak about the anti-trust litigation between the U.S. Justice Department and the international oil concerns. He recalled that Dr. Luns had raised the matter with the Secretary in their conversation of September 10,[2] particularly its impact in Indonesia. The Ambassador said he was instructed to reiterate his Government's "grave concern" regarding these developments, and to express their fear that the disclosure of information regarding the operations of these oil companies outside of the U.S. and Europe might result in strategic impairment to the Netherlands. His Government was especially concerned, the Ambassador emphasized, over the position of Royal Dutch Shell in Indonesia. There was already tangible evidence of the difficulties which could arise from the U.S. action. The Indonesians, for example, having agreed to a date on which discussions were to be held with the Dutch regarding various oil property financial arrangements, had immediately pulled back when the news of the U.S. anti-trust action broke and had postponed further action indefinitely. Given the existing strong opposition in the Indonesian Parliament to the oil companies, the levelling of an official accusation in the United States against these concerns for illegal acts made the position of the Indonesian Government doubly difficult.

Ambassador van Roijen went on to say that he had been instructed, secondly, to tell us confidentially that the Netherlands Government was seriously considering what measures should be taken to prevent their oil companies from handing over documents which might prejudice national security interests. He said that his Government hadn't yet decided what course to adopt. It was not yet certain whether they would follow the procedure of sending a letter to the oil companies requesting them not to surrender documents used by the British in the Anglo-Iranian case. He was inclined to think, however, that the Netherlands Government might go even farther and pass a decree forbidding the companies to do so.

I replied that we had taken it for granted that sooner or later the Dutch would be in to see us on this matter. We had already had numerous approaches by U.S. and British oil concerns. The Department was, of course, well aware of the serious international complications which could result from the Justice Department's

[2] A memorandum of this conversation is in the Secretary's Memoranda, lot 53 D 444, "September 1952".

action. With respect to the release of documents, I told the Ambassador that while we recognized its serious implications, I was afraid that our courts would sustain the subpoenas. It was my understanding, I added, that to date no Dutch concerns, properly speaking, had been subpoenaed, but only the Asiatic Petroleum Corporation, which was a United States concern.

The Ambassador confirmed the correctness of my statement, adding that he believed Royal Dutch Shell maintained only a representational office in the United States and did not operate here as such. Dr. van Roijen noted that a complicating factor in this respect, nevertheless, was that one of the directors of Asiatic Petroleum, Mr. Wilkinson, was also a director of Royal Dutch Shell.

In response to my query, Mr. Metzger explained that the arguments of the oil concerns to quash the subpoenas would be concluded today, and that the court was expected to render a decision later on in the week. Mr. Metzger went on briefly to describe the nature of the subpoenas served on Asiatic Petroleum, and emphasized that as yet no Dutch concerns were directly involved.

Ambassador van Roijen remarked somewhat wryly that although this might, in fact, be correct, the subpoena against Asiatic Petroleum was obviously only a first step.

I observed that this also could be taken for granted. The Ambassador then described laughingly the position of a common Dutch acquaintance of ours who was at present in Canada, and who, he said, had no intention of setting foot across the border under present circumstances.

I told the Ambassador that unfortunately there was almost nothing I could say at the moment about this whole affair. We had, of course, assumed in advance that the Dutch would be making representations to us regarding Royal Dutch Shell. Ambassador van Roijen rejoindered that he hoped very much some way could be found to safeguard Netherlands security interests in respect to the action against these companies. I told him we hoped that some screening of the documentary material to be presented could be carried out, but that I could give him no definite assurances on this score. Unquestionably the whole matter had dangerous aspects.

The Ambassador reacted promptly and with obvious interest to my mention of the possibility of screening, and wondered how much could be done in this respect. I told him that depended, of course, on just how the Justice Department made its case. The Department of State had no legal right to intervene, but, at most, the possibility of perhaps bringing some moral pressure to bear. Mr. Metzger observed that the Department could, for example, call attention to any evidence involving extreme security considerations. I remarked that what might affect security, however, might be quite

different from information which could have very unpleasant political repercussions. About the only comfort I could give the Ambassador, I said, was to state that we are greatly concerned regarding the potential effects of this action on our own foreign policy. We also realize that it complicates the Indonesian situation.

[Here follows discussion of the European Defense Community and the Tunisian question at the United Nations.]

811.2553/10–2953

Memorandum of Conversation, by the Deputy Assistant Secretary of State for Economic Affairs (Linder)

CONFIDENTIAL WASHINGTON, October 29, 1952.

Subject: "Oil Cartel"—Federal Anti-Trust Suit.

Participants: James Terry Duce, ARAMCO
Paul H. Nitze, S/P
Harold F. Linder, E

Mr. Duce came in to give us a little of the background relating to his letter to the Secretary of Interior and accompanying memorandum.[1] After his talk with the Secretary some time ago,[2] he called on Mr. Lovett, who agreed that action needed to be taken and Mr. Sawyer, who concurred, and then on Mr. Steelman. The last took the position that a mistake had been made in proceeding with the suit and that he thought that the Secretary of the Interior was the proper man to bring the matter forcefully to the attention of the President. Mr. Chapman stated that he had not been consulted when the decision was made to proceed with the suit and he undertook to present his views, which coincided with those of Mr. Duce, to the President. The Secretary of Interior requested Mr. Duce to prepare a background memorandum and a letter which might be addressed by the President to the Secretaries of State, Defense, Interior and Commerce. He also suggested that Mr. Duce might wish to undertake to prepare an executive order. This, in addition to the paper submitted, is in the course of preparation.

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[1] This is a reference to Duce's letter of Oct. 23 to Secretary Chapman and his attached five-page memorandum arguing the need for the establishment by the President of a special commission to investigate the oil industry. Copies of the letter and the memorandum, as well as a copy of a draft letter which Duce had prepared for the President to send to the Secretaries of State, Defense, the Interior, and Commerce announcing the formation of a "National Oil Policy Board," were attached to a covering memorandum of Oct. 24 from Philip H. Watts of the Policy Planning Staff to various officers in the Department of State. (800.2553/10–2452)

[2] This is apparently a reference to the conversation on Sept. 19, a memorandum of which is printed on p. 1282.

Mr. Duce stated that he did have some degree of concern about the reaction of the domestic oil industry were the suit to be dropped and plans to talk to Mr. Russell Brown who represents the Independent Petroleum Association. He hopes to convince Brown that the procedure recommended will be in the long-run interest of his clients. Mr. Nitze asked Mr. Duce whether his principals were fully aware of this proposal and approved it, to which Duce replied that they were aware but not committed. (Admiral Kelly, Washington representative of Socony-Vacuum sent me the papers prepared by Mr. Duce, so one can assume that the parents of ARAMCO approve.)

After Mr. Nitze had indicated our concern with the international repercussions of the suit, he said that we nevertheless, as Government servants, were charged with upholding U.S. laws. To this Duce replied that he for one had always favored the elimination of practices which could properly be construed as violations of our own law.

S/S-NSC (Miscellaneous) files, lot 66 D 95, NSC 138 Memoranda

Memorandum by the Deputy Assistant Secretary of State for Economic Affairs (Linder) to the Acting Secretary of State [1]

CONFIDENTIAL [WASHINGTON,] December 16, 1952.

Subject: NSC 138 [2]

Problem

To determine a Department position on NSC 138.

Discussion

NSC 138 was prepared and submitted to the Council by the Secretary of the Interior who is also the Petroleum Administrator for Defense.

A summary of the paper is attached as Annex I.

The main points of the paper are:

1. Oil from Venezuela and the Middle East is indispensable to the free world both in peace and war.

2. The consequences of the premature publication of the FTC oil cartel report and the grand jury investigation of the operations of

[1] The memorandum was sent through the Counselor of the Department of State, Charles E. Bohlen, to the Acting Secretary.

[2] Not printed; NSC 138, a 45-page report by the Secretary of the Interior and Petroleum Administrator for Defense Chapman on "National Security Problems Concerning Free World Petroleum Demands and Potential Supplies," dated Dec. 2, 1952, was circulated to the National Security Council under cover of a memorandum of Dec. 8 from Executive Secretary of the NSC Lay. (S/S–NSC (Miscellaneous) files, lot 66 D 95, NSC 138 Memoranda)

the international oil companies have been catastrophic and could lead to the expulsion of United States and United Kingdom oil companies from Venezuela and the Middle East and the loss of oil from those sources to the free world.

3. National security considerations require that nothing should be allowed to interfere with the free flow of petroleum and petroleum products from Venezuela and the Middle East.

4. A reexamination of the acts that have been taken in these matters is required from the standpoint of national security.

Based upon these considerations, the paper recommends that State and Defense each give its appraisal of these suggestions and their recommendations for dealing with these problems. The paper also suggests that State no doubt has more complete reports concerning foreign public reactions and will undoubtedly be able to furnish additional information on these reactions.

The Department is now making a broad study of the current international petroleum situation. The study will determine whether, and, if so, to what extent, the national interest is being endangered by the effects of the FTC oil cartel report, the grand jury investigation of the operations of the international oil companies, and the suit to recover alleged over-charges on sales to ECA/MSA of Middle East crude oil.[3] The study will recommend the policies which seem to be required to promote the international objectives of the United States in regard to petroleum. About two weeks will be required for its completion.

It would seem that the Department could take either of two courses of action at this time in regard to NSC 138: (1) It could report that it is already studying the problems raised by NSC 138, and will, as soon as its study is completed, submit a report and its recommendations to the Council, or (2) it could recommend that the Senior Staff appoint a committee of State, Defense, and PAD to make the study and prepare the recommendations called for by NSC 138. State could then make its study available to the committee.

The latter course is preferable. The problems at issue are properly matters which are primarily the concern and responsibility of Defense, PAD, and State. Recommendations to the Council on security and international petroleum issues should therefore come from these three agencies. The Justice Department should be responsible for explaining the anti-trust and domestic aspects of the problem.

Recommendation

1. The Department should take the position that the issues raised in NSC 138 should be referred to a special committee of State, De-

[3] See footnote 1 to the memorandum of conversation, Sept. 19, p. 1285.

fense, and PAD for study and recommendation to the Council. Attached is a draft (Annex II) of an NSC action to present to the Council for adoption.

2. The Department should not reveal, either in Senior Staff or in the Council, the fact that it has had a study of this problem under way, but should be prepared to make the study available to the committee suggested in recommendation 1 if this committee is established.

Annex I

Paper Prepared in the Department of State

CONFIDENTIAL [WASHINGTON, undated.]

SUMMARY OF NSC 138

1. Petroleum is indispensable in peace and war.

2. The Petroleum Administration for Defense (PAD) is responsible for ensuring to the U.S. an adequate supply of petroleum in all circumstances. The Petroleum Administration for War (PAW) successfully accomplished this objective in World War II, and PAD has done so in the existing emergency.

3. Demand for petroleum since World War II has increased about 14 per cent a year abroad and 7 to 8 per cent yearly in the U.S. Demand will continue to increase but at a slower rate than during the years since World War II. 90 per cent of European requirements will have to be supplied from the Middle East and Venezuela. The U.S. will be short 2.5 million barrels daily in 1975; Venezuela will have a surplus of only 1.3 million barrels daily at that time; hence in 1975 the U.S. will have to be importing 1.2 million barrels daily from the Middle East.

4. The free world now has a 11.5 to 1 advantage over the USSR and its satellites from the standpoint of oil supplies; the loss of the Middle East and/or Venezuela would materially alter this ratio to the disadvantage of, if not catastrophically to, the free world.

5. The report discusses the history of the entry of American oil companies with the Middle East and their current ownership of a majority of the 52 billion barrels of oil reserves in the Middle East. By comparison U.S. reserves are 32 billion barrels and those of Venezuela 10 billion barrels.

6. The report discusses the FTC report entitled "The International Petroleum Cartel" at length and makes the following points in regard to it:

(a) It was a staff report that was never approved by any member of the FTC.

(b) Foreign governments, the foreign press, and left wing groups have interpreted the FTC Report as an action of the U.S. Government.

(c) Evidence is cited to show that the effects of the release of the FTC Report and the grand jury investigation on U.S. petroleum interests abroad have been seriously damaging.

(d) Expulsion of U.S. and British interests from the Middle East would mean the eventual loss of Middle East oil to the free world.

(e) The Department of State undoubtedly has more complete reports concerning foreign public reactions [to the FTC Report and the grand jury investigation][4] and will undoubtedly be able to furnish additional information.

(f) Expulsion of American interests from the Middle East, the Far East or Venezuela can serve the cause of no one but the Communists.

(g) While officials in Arab countries may distinguish between the U.S. Government and the American oil companies, the Arab in the street is not likely to do so. Certainly Communist agitators will not do so. Condemnation of Americans in those countries will inevitably adversely affect this Government.

(h) It is apparent from the press statements quoted that the reaction to the premature release of the FTC Report and impaneling of the grand jury has been intense.

(i) Loss of Venezuelan and Middle East petroleum resources for any reason would be catastrophic.

7. Consequences of FTC release and impaneling of grand jury "remain catastrophic and compel reexamination of the acts taken from the standpoint of national security. Certainly all would agree that the interests of national security in this tinder box would transcend all other considerations."

8. It may well be that the interests of national security will be affected by results stemming from the FTC Report and the grand jury investigation. Undoubtedly the Secretaries of State and Defense can provide authoritative comment on these matters.

9. The National Security Council is the proper and most appropriate forum to view this matter and to recommend to the President the course of action required by the over-riding, all important considerations of national security.

10. In the interest of national security nothing should be done to interfere with the free flow of petroleum and its products from these surplus production areas, i.e. the Middle East and Venezuela, to the free friendly foreign nations of the world.

11. The Departments of State and Defense are perhaps better able to evaluate subject matter of this memorandum. "It is suggested that the Department of State and the Department of Defense

[4] Brackets in the source text.

each give its appraisal of these suggestions with their recommendation for dealing with these problems."

Annex II

Paper Prepared in the Department of State

CONFIDENTIAL [WASHINGTON, undated.]

[DRAFT MOTION TO BE PRESENTED TO THE NATIONAL SECURITY COUNCIL]

The National Security Council notes the memorandum of December 8, 1952 by the Secretary of Interior and Petroleum Administrator for Defense (NSC 138) and welcomes the initiative undertaken in raising the security and international political problems implicit in the current petroleum situation. The Council requests the Departments of State, Defense, and Interior (Petroleum Administrator for Defense) to prepare a study and recommendations on the security and international issues arising from the current situation. The study should, if possible, be completed by January 5, 1953, and the Department of Justice should be asked simultaneously to furnish a report to the Council on the domestic and legal aspects of the problem.[5]

[5] The source text contains the following handwritten notation: "State to take coordinating job if others suggest it." Also written in the margin is the following notation: "(Orally) CIA should be requested to prepare a Special Estimate on the effects abroad of the pending proceedings for the use of the Committee."

880.2553/2-154

Intelligence Report Prepared by the Office of Intelligence Research [1]

SECRET [WASHINGTON,] December 17, 1952.
No. 6104

FOREIGN IMPACT OF RECENT UNITED STATES ACTIONS IN THE FIELD OF PETROLEUM

PART I—SUMMARY AND CONCLUSIONS

Recent U.S. Government actions bearing on the international activities of the oil industry could evoke reactions abroad affecting U.S. foreign policy with respect to petroleum. These actions include

[1] The following statement appears on the title page of the report: "This is an intelligence report and not a statement of Departmental policy."

the Federal Trade Commission's report on an alleged international oil cartel, the anti-trust suit of the Department of Justice against certain oil companies, the Mutual Security Agency's suit through the Justice Department against certain American oil companies for overcharging on Middle East oil sales and the decision by that agency to cease financing most purchases of crude oil. Accordingly inquiries were addressed to 54 U.S. foreign service posts instructing them to report responses of governments, the business community and foreign government officials to these actions. The posts were specifically directed to report only upon information acquired in the ordinary conduct of business and *not* to initiate any inquiries. Most of the posts reported either no reaction at all or only limited straight news coverage in the local press. Those responses which contained significant information have been summarized individually in Section II of this paper and an evaluation of the effects of these activities summarized for the major geographic regions is in the following paragraphs.

The responses indicate that the aforementioned U.S. actions apparently have not thus far evoked any marked reaction outside of the United States. However, a number of posts and various of their sources of information believe that further reactions may come later, after the FTC report achieves wider circulation and possibly depending on the handling of these matters by the new Administration.

Nature of Reactions

The repercussions have principally been in the nature of comments in the foreign press or reactions of oil company officials abroad. No significant official comments have been reported in any of the countries canvassed except the United Kingdom, the Netherlands and Saudi Arabia. These related to the submission of company records in foreign countries in response to subpoenas issued in the U.S. In addition the French Government expressed concern over the possible effect of the anti-trust suit on the operation of companies in which the French have interests. Even in the press active interest in the several U.S. actions has been restricted to a relatively few countries—mainly Venezuela and the United Kingdom—and in none of these do the reactions appear to have affected U.S. interests adversely so far.

Attention has focused mainly on the release of the FTC report and on the anti-trust suit. The MSA suit and the termination of oil financing have attracted less notice. The FTC report is generally considered to be an official U.S. Government pronouncement and in many instances no distinction is made between the report and the Justice suits. Interest in the several actions has generally been

closely correlated with, and to a great extent can be traced to press coverage of the topics in the United States. The foreign reaction to date has apparently been inspired more by U.S. news accounts, disseminated abroad via wire services, than by the FTC report per se. These news accounts, many of which have apparently been inspired by statements from the oil companies in the U.S. have undoubtedly contributed to some of the unfavorable comments. The reactions of the oil companies in the U.S. to to the FTC report, the MSA and Justice Department suits; attempts to quash subpoenas directing companies to produce documents in the anti-trust suit; predictions of unfavorable foreign reactions; etc., have been widely quoted abroad and appear to have been accepted at face value. On the other hand, the contents of the FTC report have yet to figure prominently in press analysis in any of the oil producing countries abroad. Except in the United Kingdom and Venezuela, there have been virtually no instances reported to date where portions of the document have been specifically quoted in the press.

Middle East

In the Middle East, possibly the most sensitive area involved, repercussions have been neither highly significant nor altogether unfavorable to the U.S. Whereas the issues have been featured as straight news coverage in some countries, only sparse editorial comment has been noted. The Communist, left-wing and extreme nationalist newspapers have provided some unfavorable comment but for the most part have failed to sensationalize the issues. Some apprehension has been expressed in the Middle East that successful anti-trust action against the companies might result in a decrease in oil revenues to the Arab States. On the issue of petroleum prices the Arab press is inclined instinctively to side with the companies. However, no official reaction has yet been reported from any of the Middle East countries, other than an expression of concern by the Saudi Arabian Ambassador in the U.S. over the submission of documents in the anti-trust suit.

Western Europe

In Western Europe reaction has been principally confined to the United Kingdom, France and the Netherlands. In the other countries the Justice suits and the release of the FTC report have been given varying degrees of straight news coverage but virtually no local comment, press, official or otherwise, has been reported.

In the United Kingdom, both the anti-trust action and the FTC report have been thoroughly covered in the press—generally in an unfavorable vein. The report has been summarized in the British petroleum journals and quoted in the press. Much of the local comment reveals a lack of sympathy for U.S. anti-trust laws and cur-

rent U.S. actions against the companies—particularly where British companies are involved.

The only official action to date has been the British Government's instruction on October 2, 1952[2] to British oil companies under U.S. subpoenas not to submit records of their operations "which are not in the United States of America and which do not relate to business in the United States, or to give information which does not relate to business in the United States without in either case the authority of Her Majesty's Government". The British Government on November 29 specifically confirmed that the letter of instruction to the Anglo-Iranian Oil Co. was an official act of the British Government.

In the case of France there has been straight news coverage of the issues but only limited local comments. The French Government on November 12[3] informed the State Department through the French Embassy that the French Government is concerned over possible consequences of the anti-trust action as they might relate to companies in which French interests are involved—especially the Iraq Petroleum Company. The opinion was advanced that the suit may jeopardize existing agreements between companies in the Middle East, including French companies, as well as disturb the political and economic equilibrium of that region. The French indicated that they would welcome a decrease in petroleum prices.

The Government of the Netherlands notified the Department of State on December 3, 1952[4] that it considers subpoenas that would in effect collect evidence from Netherlands companies in a suit against American companies, an infraction of Netherlands sovereignty. That Government further indicated that it will not allow any documents listed in the subpoena to be removed from the country and that Netherlands companies would be held accountable under Netherlands law for their actions in this respect.

Western Hemisphere

In the Western Hemisphere the most significant reaction outside of the United States has come from Venezuela where the release of the FTC report and the anti-trust suit have caused considerable unfavorable press comment. Our Embassy believes that the operations of the companies have not been affected thus far. However, it may be that the several U.S. actions will touch off a government investigation of company activities, especially in the pricing field.

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[2] A copy of the letter sent by the British Minister of Fuel and Power to certain British oil companies on Oct. 2 is in file 800.2553/10–752.

[3] An unofficial translation of the informal *aide-mémoire* of Nov. 12 from the French Embassy is in file 800.054/11–1252.

[4] A copy of the *aide-mémoire,* dated Dec. 4, 1952, is in file 800.2553/12–452.

Elsewhere in the Western Hemisphere there have been no significant repercussions although the issues have been carried in the press of a number of countries as straight news items with occasional local comment. There has been no official reaction reported anywhere in Latin America to date.

Soviet Bloc

Reports were not requested from posts in the Soviet Bloc countries, but the usual intelligence sources have not yet revealed that the USSR or any of the satellite countries have played up the cartel theme propaganda-wise to any appreciable extent. A survey of material monitored by the Foreign Broadcast Information Service has uncovered only two articles by TASS on the alleged cartel and one propaganda broadcast beamed to the Middle East from Radio Baku. The Communist, left-wing and extreme nationalist press outside of the Soviet Bloc have generally not given the cartel issue more than nominal attention.

Prospects for Further Reaction

Despite the mild foreign reaction so far it cannot be assumed that no further repercussions will take place. When the FTC report has been more widely disseminated throughout the world and its contents digested it may evoke considerably more response official or otherwise than it has thus far—especially in the oil producing countries. Oil company officials abroad are generally reported as feeling that there is nothing in the FTC report that is not already known to the governments of the countries where they are located. However, oil men in some producing countries in Latin America and the Middle East have expressed the opinion that the adverse publicity occasioned by the release of the FTC report and by the anti-trust and MSA suits may cause some of these countries to undertake an investigation of the activities of the industry in their respective areas. They also fear that some governments may attempt to use the cartel issue as a lever to extract more advantageous financial concessions and that the trend toward nationalization in some countries may be stimulated. Reports from France and Israel indicate that some oil consuming countries may attempt to use the FTC report and the Justice Department suits to substantiate charges that the companies are charging exorbitant prices for petroleum imports. Press comment in a number of countries has implied that the release of the FTC report and the instigation of the Justice Department suits were politically inspired and that the issues would probably be dropped by the incoming administration in the U.S. Meanwhile both the private and official attitude in many countries appears to be to wait for further developments in the United States. It is believed that if the Justice Department con-

tinues to press the several suits after January 20, official reaction, which to date has been conspicuously absent in the major oil producing countries, may begin to manifest itself. Experience thus far suggests that the intensity of foreign interest in future developments in the Justice Department suits, as well as in the cartel issue in general, will probably continue to be greatly influenced by the degree and nature of coverage of these topics in the U.S. press.

[Here follows Part II, a 21-page analysis on a country-by-country basis.]

Truman Library, PSF–Subject file

Memorandum of Discussion at the 127th Meeting of the National Security Council on Wednesday, December 17, 1952 [1]

TOP SECRET

The following notes contain a summary of the discussion at the 127th Meeting of the National Security Council, at which you presided. The Vice President was unable to attend the meeting because of his absence from the city. Under Secretary Bruce attended for the Secretary of State, and Deputy Secretary Foster attended for the Secretary of Defense. Mr. Harriman was unable to attend because of his absence from the city.

[Here follows an oral briefing on the military situation in Korea given by Major Richard Rule, USAF.]

2. National Security Problems Concerning Free World Petroleum Demands and Potential Supplies (NSC 138; NSC 97/2; NSC 136/1; NSC 129/1 [2])

Following the briefing on the situation in the Far East, the President observed that the "oil situation" was the most important

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[1] This memorandum, presumably prepared on Dec. 17 by the Secretariat of the NSC, was addressed to the President. According to the minutes of the meeting, which consist of a list of the participants and a brief list of the decisions taken at the meeting, the following members of the Council attended: President Truman, presiding, Under Secretary of State Bruce, Acting Secretary of Defense Foster, and Chairman of the National Security Resources Board Gorrie. Others present at the meeting included Acting Secretary of the Treasury Foley, Director of Defense Mobilization Fowler, Secretary of the Interior Chapman, Secretary of Commerce Sawyer, Murray and Emmerglick of the Department of Justice, Special Consultant to the President Souers, Chairman of the Joint Chiefs of Staff Bradley, Director of Central Intelligence Smith, J. Patrick Coyne of the NSC Staff, Maj. Richard Rule (USAF) and Cmdr. R. M. Niles (USN) of the staff of the Joint Chiefs of Staff, NSC Executive Secretary Lay, and NSC Deputy Executive Secretary Gleason.

[2] NSC 138, a report to the NSC by the Secretary of the Interior and Petroleum Administrator for Defense Chapman on "National Security Problems Concerning Free World Petroleum Demands and Potential Supplies," is not printed. A summary

Continued

matter on the Council's agenda for this meeting, and asked Secretary Chapman if he had any further comments to supplement his memorandum to the Council.

Secretary Chapman asked leave to give the members of the Council a brief presentation which he had prepared. He first discussed the oil situation in the United States in order to provide a basis for comparison with the Middle East, Latin America, and other large oil-producing areas. Citing figures on United States oil reserves, and citing statistics to indicate the enormous increase in military consumption since World War II, Secretary Chapman emphasized the falseness of any claim that the United States can be self-sufficient with respect to its oil supply. Turning to a map of the Middle East area and its oil fields, Secretary Chapman noted that while the production of petroleum in the United States was still larger than the total production of the rest of the world, there were vast oil reserves in the Middle East which far exceeded what our geologists deduced to be the extent of our own reserves. As an illustration, Secretary Chapman noted that a single 65-mile stretch in this area contained an estimated reserve of 60 billion barrels. To add urgency to the situation he was describing, Secretary Chapman pointed out that the great Abadan refinery was only 650 miles by road from the Caspian Sea. Contrary to views widely held in the past, his geologists were convinced that at least a 14-inch pipeline could be laid between these two points in a matter of months. Thus it would be possible for the Soviet Union to acquire extensive amounts of oil from this region.

In conclusion, Secretary Chapman again stressed the fact that the reserves in this area were much greater than those known in any other part of the world, and that it would be very serious indeed for the free world if these reserves were lost to it. The United States could not, he insisted, supply Europe with what it needed even in peace-time, to say nothing of the intensified demands in the event of war. Thus the current trend toward nationalization of oil industries in the Middle East and Latin America was a serious cause of concern to the United States, and might cost us our concessions.

The President then turned to Secretary Bruce for his views on Secretary Chapman's memorandum.

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of NSC 138 is attached as Annex I to the memorandum of Dec. 16 from Linder to Bruce, p. 1291. For text of NSC 97/2, "A National Petroleum Program," dated Dec. 13, 1951, see *Foreign Relations*, 1951, vol. I, p. 978. For text of NSC 136/1, "U.S. Policy Regarding the Present Situation in Iran," dated Nov. 20, 1952, see volume X. For text of NSC 129/1, "U.S. Policies and Objectives With Respect to the Arab States and Israel," dated Apr. 24, 1952, see volume IX.

Secretary Bruce said he simply desired to endorse heartily Secretary Chapman's memorandum and the elaboration he had just given. The State Department, Secretary Bruce added, was seriously worried about what is taking place and what may occur in the future. He therefore desired to present to the Council a possible form of action to meet the situation. After reading his motion,[3] Secretary Bruce added that it might also be desirable to request the Central Intelligence Agency to prepare a special intelligence estimate on the probable effects of the FTC report, the current anti-trust suit, and other developments as they affected the situation abroad.

Secretary Foster said that he also endorsed the Secretary of the Interior's report, especially as it bore on the problem of military security. He agreed also, he said, with the form of action proposed by Secretary Bruce, but stated his belief that it might be necessary, in view of the seriousness of the situation, for the Council to recommend action prior to the date, January 5, on which the reports envisaged by Secretary Bruce's motion were to be completed.

Stating his belief that, in the words of Secretary Chapman's report, the situation could become "catastrophic", Secretary Foster wondered if it were not desirable to suggest to the Department of Justice immediate steps to put an end to the situation which was being aggravated by the anti-trust suit. In any event, he concluded, we must urgently take a new look at this situation.

The President then asked Mr. Emmerglick to state his views.

Speaking for the Attorney General, Mr. Emmerglick said that he was opposed to the motion which Secretary Bruce had recommended to the Council. Indeed, he continued, the Department of Justice was opposed to any review of the decision which had been taken by the President on June 23, 1952 which had initiated the current legal proceedings against the oil companies. Apart from the propriety of a review of the Presidential order, which could scarcely lead, said Mr. Emmerglick, to anything but a reversal, Justice was opposed to the review and re-examination recommended by Secretary Bruce for six factual reasons.

First of all, said Mr. Emmerglick, he insisted that Secretary Chapman's report admitted the substantial accuracy of the case presented in the report of the Federal Trade Commission. It was on this FTC report that the Grand Jury investigation was based. A cartel had most certainly been organized, and it was the duty of the United States Government to investigate its development and powers.

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[3] For a draft of this motion, attached as Annex II to the memorandum of Dec. 16 from Linder to Bruce, see p. 1293.

Secondly, continued Mr. Emmerglick, Secretary Chapman, on November 12, and his Deputy Administrator for Petroleum, had made speeches,[4] from which Mr. Emmerglick quoted, to indicate the insufficiency of United States oil reserves. It seemed quite likely to Mr. Emmerglick that the reason our reserves were so inadequate was because the world cartel was deliberately slowing up the development of United States resources in order to obtain advantages to itself by the importation of foreign oil supplies. At any rate, said Mr. Emmerglick, he was sure that a Grand Jury investigation was necessary to determine the relationship between our own inadequate reserves and the operations of the cartel.

Furthermore, continued Mr. Emmerglick, he was aware of no new facts set forth by the Secretary of the Interior which seemed to recommend any reversal of the President's early decision.

Finally, said Mr. Emmerglick, it was the vigorous opinion of the Attorney General that the President should not be placed in a position of reversing himself.

In reply, Secretary Chapman reiterated his strong belief that the United States must obtain oil from areas outside the country.

Mr. Emmerglick did not deny this contention, but insisted that the prosecution of the anti-trust suit would not prevent this.

Secretary Chapman said he felt compelled to disagree, and that the present suit was obviously giving impetus to difficulties this country was facing abroad. He was not objecting, he said, to the Government's oil suit, but he insisted that it could be carried on at a more suitable time and that he was more interested in the national security aspect of this problem than in the Government's suit.

In answer to Secretary Chapman, Mr. Emmerglick stated that the Justice Department was trying to emphasize the relationship between the operations of the cartel and the apparent drying up of incentive in this country for exploiting our own oil reserves. It seemed very significant to him that in 1948 the United States abruptly ceased being an exporter of oil products and became an importer. Justice believed that this phenomenon required investigation, since it was quite possible that the sudden switch, and also the lack of facilities for the production of aviation fuel, was the result in good part of an agreement by this cartel not to duplicate facilities among its members.

Called upon for his opinion, Secretary Sawyer said that he strongly supported the recommendation which Secretary Bruce had placed before the Council. If he had any quarrel with it, he said, it was because it probably did not go far enough. Moreover, said Sec-

[4] These speeches have not been further identified.

retary Sawyer, he could not be convinced that because authority for the institution of the anti-trust suit came from the President, this precluded any review of the situation by the National Security Council and the possibility of a recommendation to the President for a reversal. If he understood the arguments of the Justice Department, said Secretary Sawyer, we shouldn't import oil because it would be more desirable to obtain it from our own reserves.

At this point the President interposed to state that he did not feel that this was the essence of the Justice Department view. It was rather, said the President, that we should not cease exploring possible oil fields in the United States and that the oil cartel might be responsible, in part at least, for impairing the incentive to do this.

Secretary Sawyer then observed that his European trip had confirmed his fears that the present anti-trust suit was creating a serious situation for this country abroad. He emphatically urged that something be done now to counteract its adverse effects both in Latin America and in the Middle East. He simply could not convince himself that there was any comparison between the importance of this suit and the loss of the great oil supplies upon which this country depended. Continued attack on these oil companies, he concluded, could be nothing but "bad public policy".

Mr. Foster then stated his desire to support the motion made by Secretary Bruce, which, so far as he could see, was simply designed to clarify the situation, to illuminate the problem, and to provide the basis for a sensible action later. It was a question, as he saw it, of balancing the factors on both sides from the national security point of view and from the domestic legal point of view. The preparation of the reports suggested by Secretary Bruce, he continued, would not necessarily mean that the President would be faced with the necessity of halting the suit. He believed it quite possible that there were other methods than that of the criminal suit for getting from the oil companies the information desired by the Government. At the very least, Secretary Bruce's motion would give us the information on the issues which the National Security Council required. Accordingly we had everything to gain and nothing to lose by following Secretary Bruce's proposal.

The President then asked Mr. Gorrie if he desired to comment.

Mr. Gorrie asked permission to address certain questions to Secretary Chapman, the answers to which he believed would help to clarify the problem. Mr. Gorrie then inquired what percentage of exploration of new fields in this country is carried on by the major companies involved in the present suit, and what by the so-called independent group.

The lion's share, said Secretary Chapman, was in the hands of the major companies. While it might be possible for the smaller companies to do a good deal more of this work, Secretary Chapman said he felt he must point out that the main factor which had prevented the major companies from developing their exploration activities was the steel shortage. If Mr. Fowler could spare them the steel to build their machinery, they would take all they could get and push their exploration activities to the limit.

Mr. Gorrie then inquired of Secretary Chapman his views as to the adequacy of our own oil reserves to meet the problems which confronted us in peace and in war.

Secretary Chapman replied that he could not be very hopeful because in spite of the great development of fields in this country and also the importation of large supplies of oil from abroad, the increased demand both in this country and in Europe had the effect of maintaining a precarious balance between supplies and reserves. In short, our reserves have not increased in anything like the ratio which our security requires.

Mr. Gorrie then stated his endorsement of the motion of Secretary Bruce.

The President then asked General Smith for his comments.

General Smith reminded the Council of the very adverse effects which he had earlier brought to the Council's attention when the FTC report had been published.[5] The effect on United States security interests and on the objectives of our foreign policy had been serious, and the advantages to the Soviet Union, in the Middle East particularly, had been great. He stated he was perfectly prepared to make the special estimate requested by Secretary Bruce, but he believed that it would merely reiterate and emphasize the damaging effects abroad which had been noted earlier.

General Bradley then commented that the present problem was one of the most important issues ever to arise in the NSC. The Joint Chiefs of Staff, he stated categorically, were very worried indeed about the effects of this anti-trust suit in foreign countries. No matter, said General Bradley, how much oil we can find, whether at home or abroad, we can always use more. He also insisted that it was a matter of the greatest importance that we use as much foreign oil as possible in order to save our own reserves in this country against unforeseeable contingencies in the future.

Having thus canvassed the views of the members of the Council, the President stated that he could perceive no harm and much use

[5] This is apparently a reference to the Special Estimate prepared by the CIA on May 6, 1952, SE–28, "Consequences of the Future Revelation of the Contents of Certain Government Documents," a copy of which was sent to President Truman under cover of a memorandum of May 8 from Smith, p. 1271.

in the motion which Secretary Bruce had sponsored, although, he added, the Attorney General was correct in his position. The President stated that he had ordered the Attorney General to do what he had done, but even so, there could be no harm in securing the information and accepting the motion proposed by Secretary Bruce. So, he added, the motion was carried.

At this point Mr. Fowler inquired whether it would not be possible for the Department of Justice to indicate, in the report which it would place before the Council on January 5, any possibilities other than criminal proceedings which might accomplish the purposes envisaged in the present suit.

The President said that the Department of Justice report would contain a discussion of such possibilities.

Mr. Lay then inquired whether he should assume that the Department of State would be the coordinator of the report which would be prepared by State, Defense and Interior.

Secretary Bruce said that he would be prepared to undertake this task, and the President confirmed Mr. Lay's understanding.

The National Security Council:

a. Noted the memorandum of December 8, 1952 by the Secretary of the Interior and Petroleum Administrator for Defense on the subject (NSC 138), and welcomed the initiative undertaken in raising the security and international political problems implicit in the current petroleum situation.

b. Requested the Departments of State (as coordinator), Defense and Interior (Petroleum Administration for Defense), to prepare a study and recommendations on the security and international issues arising from the current situation. This study should, if possible, be completed by January 5, 1953.[6]

[6] This action was designated NSC Action No. 692. (S/S–NSC (Miscellaneous) files, lot 66 D 95, "Record of Actions")

800.054/12–1952

Memorandum by the Assistant Legal Adviser for Economic Affairs (Metzger) [1]

WASHINGTON, December 19, 1952.

THE CURRENT SITUATION OF THE ANTI-TRUST OIL CASE

At present, the so-called Anti-Trust oil case is not actually a criminal case against defendants; rather, it is a Grand Jury investi-

[1] Attached to the source text was a memorandum, dated Dec. 19, from Metzger to Armstrong, informing the latter that the memorandum contained some material for the oil paper he was preparing. (800.054/12–1952)

gation into possible violations of the Anti-Trust statutes on the part of five major American companies and the Anglo-Iranian Oil Company, and the Shell combination. Subpoenas have been issued for domestic and foreign records of the American companies; no subpoena has been issued to the foreign Shell corporations, while the subpoena which had been issued to the Anglo-Iranian Oil Company was quashed by the court in its order of December 15, 1952. Under the court's orders of November 10 and December 15, 1952, the domestic records of the American companies must be submitted pursuant to the subpoena by January 12, 1953. Regarding the foreign records, the American companies must make good faith efforts to gain consent from foreign sovereigns to remove foreign documents in order to present them; the court must be advised of these good faith efforts by February 2, 1953; where the foreign sovereign has granted consent, the foreign documents must be submitted for consideration by the Grand Jury by March 16, 1953; where the foreign sovereign denies consent, it shall be done through diplomatic channels in clear and unambiguous terms, and a preliminary hearing shall take place on February 16, 1953, at which time these refusals will be disclosed to the court, and the court will determine the proper procedure of presenting the proof and effect of foreign laws as they pertain to the question of enforcement of the subpoena; the presentation of such proof of foreign laws will then commence on March 2, 1953, in the manner ordered by the court at the preliminary hearing of February 16, 1953.

It cannot now be predicted what the court will do with respect to further orders upon an American company in the event that any foreign sovereign refuses permission to export documents of that company or its subsidiary located abroad. It also cannot be stated whether the quashing of the subpoena upon the Anglo-Iranian Oil Company takes that company out of the case for good; if the Justice Department were to appeal from the court's order quashing the subpoena, it may well secure a reversal.

If the case were continued along present lines, it does not appear that an indictment would be secured until sometime in the fall of 1953, or that trial would be completed until the end of 1954 and possibly later, during 1955. Appeals might result in a final determination not being made until 1956 or 1957. Since it is understood that following the criminal case a civil case would be instituted, and since the trial of a civil case might take substantial time by itself, even though evidence would have been obtained, the litigation in connection with international operations in oil might continue through the remainder of the decade; this time might be shortened if the civil case were instituted prior to the determination of appeals in the criminal case. It should be noted, in this con-

nection, that effective remedies leading to a change in the practice of conducting oil operations abroad of American companies can only be had through a decree in the civil case. Fines and imprisonment are the only remedies on the criminal side.

If the criminal case were to be postponed, a civil suit by the Justice Department could, nevertheless, be instituted through the filing of a complaint. The foreign documents problem would be much the same in a civil case, since the Justice Department could, through discovery under the Federal rules, call for the production of documents relating to the issues in the complaint. If the basis of the court's order quashing the subpoenas on the Anglo-Iranian Oil Company is valid, Anglo-Iranian Oil could not be made a party defendant in the case, or, if made a defendant, could secure dismissal of the complaint; if, however, the basis of the court's order is erroneous, as may well be held upon appeal, Anglo-Iranian Oil Company would be a defendant in the civil action. It should be emphasized that the decree in the civil case is the instrument by which restrictive practices, changes in organization, etc., affecting oil operations, are accomplished. The institution of a civil suit during a postponement of the Grand Jury's proceedings would not preclude a subsequent institution of a criminal suit.

880.2553/12-2252

Memorandum by the Director of the Office of Near Eastern Affairs (Hart) to the Deputy Director of the Office of International Materials Policy (Armstrong) [1]

SECRET [WASHINGTON,] December 22, 1952.

Subject: Your Request for NE Views Re (a) Impact of Anti-Trust Suit in the Middle East; (b) Recommendations Regarding Future Course of Action

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[1] Drafted by Richard Funkhouser of the Office of Near Eastern Affairs. Attached to the source text were two brief typewritten notes. One, dated Dec. 23 and addressed to Hart from Stephen P. Dorsey, the Officer in Charge of Economic Affairs in the Office of Near Eastern Affairs, stated that appointment of a special commission would be desirable in order to deflect Arab comment that the whole matter had been dropped as a result of the oil companies' influence. According to Dorsey's note, it was also important that there be a careful study of the causes of the present situation and the policy changes which the U.S. Government desired. The other note was from Hart to Armstrong, dated Dec. 24, in which Hart said, "I had to delegate this memorandum and I am sure that it covers exactly the points you had in mind, and I am informed that you must have it this morning. However, I am sending it along as a tentative think-piece by NE, very tentative indeed. Please read NE wherever NEA, mentioned in the memorandum as 'believing' or 'feeling', on this problem. This matter is so serious and has such ramifications that spot studies like this cannot be considered as representing the considered opinion of this office."

(a) Impact of Anti-Trust Suit in the Middle East

OIR Report 6104 December 17 [2] contains the NEA answer to question (a). Whereas oil companies tend to equate their current problems in the area to the anti-trust action and the FTC report, NEA considers these recent actions have and probably will continue to have only marginal bearing on oil company difficulties in the Middle East. It is extremely doubtful that any of the pressures now on ME oil companies would have been avoided if the U.S. Government had decided not to publish the FTC report or prosecute under anti-trust legislation. The basic causes for the Western oil problem in the Middle East should be equated rather to (a) social unrest, (b) the controversial fifty-year record of ME oil operations, (c) intimate knowledge of Middle Eastern peoples with the forces and effects of colonialism and imperialism, particularly where connected with oil operations, (d) an ostentatiously successful oil industry which to Near Easterners has always been able to "pay more", (e) the world's greatest concentration of oil which offers the only means of bringing the greater part of the Middle East into the 20th century immediately, (f) an oil industry which serves as a "whipping boy" for Western and particularly U.S. support for Israel.

Against such deep-seated forces the report and suit mean little, except to add friction where no further friction should be added. The FTC report, principally, and to a lesser extent the anti-trust suit, have lent support to those many Middle Easterners who already are criticizing oil operations. Both these actions will probably prove damaging to settlements of Western problems in the Middle East over the short run. Both actions have served to confirm popular views of Near Easterners that they have had a "raw deal". Another year of headlines would further complicate the problem.

Among the more intelligent leaders in the Middle East it might be expected that the U.S. Government would stand to gain by supporting the interests of Near Eastern States and the public at large by such self-criticism; it is action not to be expected from either the colonial powers or Communist governments and is consequently somewhat surprising to Middle Eastern peoples. The more intelligent ME student, official, teacher may well have had his faith in the U.S.G. and people strengthened by such action. Unfortunately, however, these voices are not too frequently heard or listened to in the Middle East. Therefore the quick conclusion that the oil companies are guilty can be expected to be the most widespread reaction, to our discomfiture.

The above represents the short-term impact; the long-term impact would presumably depend on what good might come from

[2] *Ante*, p. 1293.

the Justice action. The need for remedy is apparent. The Justice Department would undoubtedly claim, as would the FTC Board, that to increase the competitive aspects of Middle East oil would decrease the possibilities of nationalization, and do the most good for the most people in the free world over the long run. NEA agrees with this principle and has consistently worked toward this goal. A strong case can be made that had both British and American companies been operating in Iran, the Anglo-Iranian Oil Company would never have been nationalized. The case is based on the assumption that AIOC would have been forced by a competitive environment in Iran to have adopted many years earlier the demands which were made on the company prior to nationalization. It is also patently more difficult to nationalize and organize an oil industry consisting of many companies than it is of one centralized company.

NEA also believes that a case can be justly made that the large oil companies in the Middle East may not be induced into a more competitive environment by government suggestion alone. This has been tried by the State Department over the years without too impressive effects in the Middle East. In fact cooperation with oil companies may have increased following the FTC report.

Pressure from an Inter-Departmental group such as State, Defense and Interior could from a realistic point of view be expected to produce even a lower common denominator of positive results, as has been seen from previous Inter-Departmental attempts to find Inter-Departmental solutions to the basic oil problems in the Middle East.

Therefore, from a practical standpoint, action to produce important and far-reaching corrective measures may perhaps only be possible by taking the critical facts to the public, facts which perhaps too long have been kept from public view on grounds of strategic and political considerations. Whether the U.S.G. can afford the luxury of the long-term solution at risk of short-term increased friction in the NE is consequently one of the vital questions.

(b) Recommendations Re Future Course of Action

NE has not yet reached any conclusions regarding a future course of action. Withdrawal of the law suit might indicate to the Middle Eastern States a U.S. Government "whitewash" following the traditional colonial practice of identification of oil companies with foreign governments. The slanted FTC report will be read and believed in the area, and both government and industry criticized for non-prosecution. Whether or not this criticism would be more serious than a series of headlines following a year of lawsuit is difficult to determine. The difference between criminal action and

civil action is probably too refined for those Middle East minds with which we are concerned in this problem; it might provide little solution from strictly an NEA point of view, unless it served to diminish headlines.

In the presence of only poor alternatives, NEA would probably have to make a "command decision" balancing the need for short-term benefits against long-term solutions. In such a case, the situation in the NE is considered such that the short-term answer may have to be seized, i.e. by squashing the headlines and perhaps the lawsuit; by endeavoring to commit the oil companies to desired policy changes *in camera,* while working to remove basic causes of ME discontent with the West. This course may at least delay the day of more serious crisis in Middle East oil and really provides no solution to Middle East oil problems except a play for time.

(*Note:* The Eisenhower Administration presumably will take this course of action in any case.)

S/P-NSC files, lot 61 D 167, NSC 138

Memorandum by the Deputy Director of the Office of International Materials Policy (Armstrong) to the Deputy Assistant Secretary of State for Economic Affairs (Linder)

SECRET [WASHINGTON,] December 26, 1952.

Subject: Decision on Oil Anti-trust Case.

In our conversation of December 23 you asked me to give you a statement of my reasons for preferring the translation of the criminal action into a civil suit, as against the suspension or implied termination of legal proceedings against the oil companies. You have pointed out that in your opinion a civil suit could be as injurious to our foreign policy and national security as a criminal suit. You have further indicated that the translation of the criminal action into a civil action leaves unsolved the problem of documents located in other countries. You have further suggested that it is more desirable for adjustments in oil company practices to be made by a process of free negotiation between the companies and a commission of executive agencies than by means of the legal process. I have perhaps not stated fully all the points covered in our talk but these will suffice for the purposes of this memorandum. The following comments are relevant, in my opinion and in that of a number of other people who are profoundly interested in the question.

1. The first point is that suspending the criminal action without putting any legal action in its place would be regarded publicly as a whitewash of the oil companies and as a signal that they were so

powerful that the Government could do nothing about them. The appointment of a commission to consider the problem in all its aspects would be regarded as the normal device for starting the process of forgetting about the matter.

2. The only recourse if the criminal action were dropped and no civil action instituted would be voluntary cooperation between the companies and the Government. The Government's record in seeking voluntary cooperation shows that in all instances in which the pocketbooks of the oil companies would have been affected by the adoption of Government suggestions they declined to take any of the actions suggested. We have four specific cases in mind. ((a) The MSA attempt to obtain a reduction in price; (b) the idea that Tapline would reduce the delivered price of oil in Europe; (c) the suggestion that Aramco cut down the size of its concession—subsequently it actually extended it to a new area; (d) the suggestion that market-sharing agreements be dropped in certain specific cases.) There is the further point that even if oil companies agree to make certain changes, there is no assurance without court action that these changes will be maintained, or that the evils may not reappear in some other form. Furthermore, in some cases the companies may not be able to make certain changes without incurring the liability of private suits for breach of contract. If they have a court decree they can avoid such suits.

3. The material concerning company practices has been in existence for some time and no conscientious Attorney General can ignore it. It is always, from some standpoint, a bad time to initiate legal action. The only way in which any changes which companies might undertake voluntarily, without a legal action, could be made attractive to the companies would be if they were assured that they would be free from anti-trust action in the future. Executive agencies, including the Department of Justice, simply cannot give such assurances, unless the anti-trust laws are amended. Thus a commission of executive agencies acting in the absence of specific legal proceedings would have little or no leverage with the companies, no means of assuring them that a negotiated settlement would be immune from further anti-trust action, and no way of being certain that the companies would not return to their original practices, even if they agreed to change them.

4. Our real interest both at home and abroad lies in finding corrective measures without the implications of punitive action. The economic, political and security interests of the United States are in no way promoted by indictments, convicting, fining, and sentencing prominent business executives for civil misdeeds. A criminal process does not regulate the conduct of the companies, the problem with which we should be properly confronted. The only way in

which this conduct can be regulated is through a civil action, and this would have to follow the criminal action anyway, if present conditions were allowed to continue. The regulation of conduct through civil action starts with a general complaint, and is followed by a legal investigation. At some stage in the investigation, or in the process of court action, an opportunity develops to negotiate a consent decree. The consent decree is a legal action of a court which binds both the Government and the oil companies and which provides for the corrective measures. No consent decree or negotiated settlement is legally effective except through court action. In the course of fifteen years from 1935 to 1950, 171 civil anti-trust actions were terminated, and of these 134 were settled by consent decree. This indicates the rather great extent to which the consent decree is used. As a matter of fact, a consent decree in a major anti-trust case serves the purpose of defining the issues and problems for the companies, and eliminates subsequently a good part of the general area in which the law and its application are not entirely clear. It also involves no admission of guilt.

5. The question of foreign reaction is perhaps most important from the standpoint of the Department. It should be clear in this context that we are talking primarily about possible foreign reaction in the future, rather than about the current reaction, which has thus far been mild. This foreign reaction has several elements:

(a) There is a real distinction between a criminal action and a civil action, and this distinction can be made clear both at home and abroad by appropriate publicity;

(b) There is a very great difference between, on the one hand, branding leading American businessmen and their companies as conspirators and criminals and perhaps imposing jail sentences or fines, and, on the other hand, ordering changes in company practices and structure as a result of a negotiated consent decree which contains a statement to the effect that the companies do not admit any violation of the anti-trust laws. There is no possibility of a negotiated settlement in a criminal action, and a trial cannot be avoided, unless the companies plead guilty, which they certainly will not. In a civil suit a prolonged trial may perhaps be avoided, and a negotiated consent decree action can be readily explained abroad and at home. In fact there should be no more publicity of an adverse nature from a civil action leading to a consent decree than from a commission which might find substantial need for corrective action.

(c) The United States philosophy of competitive enterprise is an important and well justified aspect of our foreign economic policy, and our stake in this policy is very great. The maintenance of this policy is very closely connected with the way in which the current oil company cases are handled. Suspending the criminal action, failing to institute civil action, and appointing a commission to report could lead only to the conclusion on the part of other coun-

tries that the American doctrine of competitive enterprise was intended to apply to their corporations and not to our own oil companies, and that perhaps our insistence upon it abroad was so as to benefit our own corporations. Thus, any action which looked like a whitewash in the case of the oil companies could seriously impair our position abroad, on both economic and moral grounds.

(d) In the case of countries where American companies are engaged in oil production, there is always the possibility that local interests will seek a larger share of the profits and that they may move toward nationalization. These tendencies exist now, regardless of the anti-trust action. The publication of the FTC report, together with the initiation of the anti-trust action, has perhaps supplied new ammunition to the proponents of these two tendencies. This supply of ammunition cannot now be withdrawn. It may put the American companies in a somewhat poorer bargaining position with foreign nationals or sovereigns. But if the anti-trust action shows to other countries that it is the intent of the U.S. Government to correct whatever is contrary to our laws, they may have no very good reason to object. A withdrawal or termination of the action already undertaken, without the substitution of further legal action, might very well lead other countries to assume that the hope of corrective action by the U.S. Government had vanished. They might consequently assume that any action to be taken would have to be on their own initiative, and this might do serious harm to the position of the companies and of the U.S. national interest.

(e) The Communists have made little use of the material already provided. If there were the appearance of a whitewash, and if the Communists chose to take advantage of the opportunity which this created for them, they would have a real gold mine. In the current situation they can take advantage, propaganda-wise, of the companies. If there appeared to be a whitewash, they could direct their entire attack against the United States Government as controlled by the oil "monopolies". There is no assurance that the Communists would make effective use of good propaganda material, but this is no reason for giving it to them.

6. The documents question is the only one which has aroused the official concern of foreign governments thus far, and most damage to U.S. interests on this account has already been done. This is by no means an insoluble question. Adequate measures can be taken to assure the protection of the vital interests of governments concerned, while at the same time the Department of Justice can obtain all the documents it needs for its purposes. All that is needed is a measure of commonsense and reasonableness on the part of the Justice Department, the foreign governments, the oil companies, and the court. Perhaps this is too much to expect but there is a very strong possibility that changing the suit from a criminal to a civil action would be exactly what is needed to bring this element of reason into play. This problem is not overriding, however, even though the criminal action should proceed. If some

foreign governments decline to allow documents to be furnished to the court, this will not necessarily impair the ability of the Department of Justice to make its case against the companies.

7. A civil suit investigation would take a fair amount of time. It should attract only minimum publicity. It can be explained abroad as one of the investigations so common in the United States. Meanwhile, a commission can examine the whole problem and can recommend to the President the basis upon which relief should be sought in the civil suit, and this would provide a useful negotiating base for achieving a consent decree. The commission would presumably have a good many other things to do as well, and it could be the means by which a definitive national policy on foreign petroleum could be developed.

8. The oil companies have not been particularly frank in telling the Government as much as it ought to know about their arrangements in other countries. Voluntary measures are not enough to ensure that the Government knows what it needs to, especially if it is eventually to be called upon for action in the event an oil company has a real grievance against another government. If the U.S. Government is not properly informed, it may find itself in the position of defending an oil company against a foreign government where the moral basis for the oil company's position is entirely inadequate. Real cooperation between government and industry is necessary. This is almost impossible while a criminal action is being conducted; it is ineffective if no legal action against the companies is under way or possible, but it can be developed if the civil suit and consent decree are used.

9. It is not realistic to expect either this Administration or the next Administration to suspend the criminal action undertaken against the oil companies without substituting a legal process which will give every evidence to the public that it is designed equally well to enforce the law. It would be a political error for either Administration to create the impression that it was whitewashing the companies. Furthermore, if the Departments of State, Defense, and Interior were to suggest this, or something which looked like it to the Department of Justice, it would be fought tooth and nail by the Attorney General, and the result might well be no change in the current situation. This would be more harmful to the State Department's interest in the matter than anything else that could happen. The Department should ask for the solution which is really justified on its merits, and should not seek to bargain with the Department of Justice in the NSC.

800.2553/12-2952

Memorandum by the Assistant Legal Adviser for Economic Affairs (Metzger) to the Legal Adviser (Fisher)

SECRET [WASHINGTON,] December 29, 1952.

Subject: Anti-Trust Oil Case

This is to bring you up-to-date on the National Security Council's consideration of further measures relating to the Anti-Trust Oil Case. The National Security Council requested State, Defense, and Interior to submit a paper with recommendations by January 5, 1953, for consideration by the Council; the Justice Department is to prepare a separate paper containing its side of the matter for submission at the same time.

Regarding the recommendations in the State, Defense, Interior paper, the officers on the economic side of the Department below Mr. Linder have been unanimously of the view that the recommendations should call for the discontinuance of proceedings which would result in a criminal indictment, the simultaneous translation of these proceedings into a civil suit, and the creation of a Cabinet Commission which, within 120 days, would recommend, from the security standpoint, those measures which should be sought by the Government in a civil decree (either consent or litigated, depending on the course of the litigation), with the Commission having a longer time to study and report upon longer range international aspects of oil policy.

Mr. Linder is not convinced that there should be a civil suit, being inclined to the view that the Grand Jury proceedings should be terminated and the Commission established with only a longer term frame of reference, with no civil suit. Attached is a memorandum from Mr. Armstrong to Mr. Linder,[1] setting forth the reasons why it is desirable to translate the criminal proceeding into a civil proceeding rather than "whitewash" the whole matter.

From a working party meeting held on December 28th with representatives of Interior and Defense, it appears that Interior agrees with Mr. Linder that there should not be a civil proceeding, but that the Grand Jury proceeding should simply be called off; Defense tends to share that view but did not appear to hold to it so strongly. If State Department were to take a firm position for the civil proceeding, it is believed that Defense could be lined up with State; on the other hand, if State Department does not take a strong position for a civil suit, that proposition will not carry the day.

[1] Not found as an attachment to the source text, but this is presumably a reference to the memorandum of Dec. 26 from Armstrong to Linder, *supra*.

I agree with Mr. Armstrong's memorandum to Mr. Linder, believing that if anything is to be done, translation of the present proceeding into a civil proceeding is the least bad thing.

811.2553/12-3052

Memorandum of Conversation, by the Deputy Assistant Secretary of State for Economic Affairs (Linder) [1]

SECRET [WASHINGTON,] December 30, 1952.

Subject: NSC Consideration of Oil Suit.

Participants: George Brownell, of Davis, Polk, Wardwell, Sunderland & Kiendl (representing Standard Oil Co. of New Jersey)
Assistant Secretary Harold F. Linder

Mr. Brownell came in to see me at the suggestion of Mr. Bohlen. He indicated that he knew of the consideration that was being given to the subject of the oil suit by the NSC. Without any indication on my part as to what might come of it, I did ask him for his ideas as to how the present situation should be handled. He emphasized that he did not think that the suit would have been brought had the President not been pressed by Senator Sparkman during the period of the campaign. Obviously, the oil companies would hope that all legal action be dropped and for it an investigation by a commission be substituted. When I asked how a commission could be certain that the oil companies would accept and carry out its recommendations without Court approval, Brownell stated that the government always had the right to bring suit. He was of the opinion that there was little to choose from the point of view of repercussions on our own and the oil companies' foreign relations between a civil and a criminal action. He admitted that it would be rather difficult for any administration formally to drop legal action and suggested that it should be possible for the President to direct the Attorney General to drag his feet and make no further presentation to the Grand Jury until a commission had opportunity to study and report on the entire situation.

Throughout the conversation, he reverted to the serious risk of repercussions, which is not borne out by the reports we have had from our missions abroad. To these I did not make any reference whatever.

HAROLD F. LINDER

[1] A note on the source text indicates that Linder drafted the memorandum of conversation on Jan. 2.

INR–NIE files

Special Estimate [1]

TOP SECRET
LIMITED DISTRIBUTION
SE–28/1

WASHINGTON, January 2, 1953.

PROBABLE CONSEQUENCES OF THE PROSECUTION OF THE ANTI-TRUST SUIT AGAINST CERTAIN US OIL COMPANIES

NOTE

This paper deals only with the consequences of the publication of the FTC report and of the possible indictment and trial of US oil companies. It does not consider the consequences of a judgment for or against the oil companies.

ESTIMATE

1. In SE–28,* we estimated that publication of the "Report of the Federal Trade Commission on the International Petroleum Cartel" would:

a. be exploited in Soviet-Communist and other anti-US propaganda;
b. tend to impair basic US relations with the UK and other Western countries;
c. adversely affect the position of the US, and of US oil companies, in the Middle East; and
d. strengthen attacks against US business interests in other areas.

2. The FTC report was published on 22 August 1952. The fact that deletions were made is a matter of public report, but the text of the deleted portions has not been publicly revealed.

3. The effects noted in SE–28 have not yet materialized in any significant degree as a result of publication of the FTC report or of the initial legal proceedings stemming therefrom.

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[1] According to a note on the cover sheet, "The following members of the Intelligence Advisory Committee participated with the Central Intelligence Agency in the preparation of this estimate: The intelligence organizations of the Departments of State, the Army, the Navy, the Air Force, and the Joint Staff. All members of the Intelligence Advisory Committee concurred in this estimate on 29 Dec. 1952, except the Assistant to the Director, Federal Bureau of Investigation, who abstained from comment, neither concurring nor dissenting." The minutes of the Dec. 29 IAC meeting are in the INR files, lot 59 D 27, "Meeting Notes."

*Published May 8, 1952. [Footnote in the source text. The text of SE–28 is printed as an attachment to Smith's memorandum of May 8 to the President, p. 1271.]

4. However, publication of the report has already provided Communists and nationalist extremists with material which they can use in an aggressive propaganda campaign to the detriment of US interests at any time they so decide. We are unable to estimate when or in what manner they will do so.

5. Indictment and trial of the oil companies would probably bring out additional material which could be exploited by Communists and nationalist extremists to discredit US oil companies and other US foreign business enterprises. On the other hand, abandonment of the case would lay the US Government open to charges of attempting to suppress damaging evidence and of condoning the practices alleged in the original complaint.

6. Past and possible future revelations will probably provide an additional stimulus to demands in Middle Eastern countries and in Venezuela for a larger share of oil revenues. They will also provide nationalist extremists with additional ammunition for use in their campaign in behalf of nationalization of oil. These revelations are not, however, in our judgment, likely to be a decisive element affecting the policy of these countries with regard to nationalization of oil resources.

7. In the UK and other Western European countries there has been criticism of the soundness of US judgment in publishing the FTC report. The prosecution of the case would place a further strain on US relations with these countries. These countries are generally more tolerant of cartel arrangements than is the US. They have questioned, and will probably continue to question, the soundness of a policy which, in order to support a principle that they regard as of minor importance, risks reactions in oil producing countries which might result in the loss of major strategic resources. There are, however, no indications that the publication of the FTC report has impaired basic relations with the UK and other Western countries, or that the indictment and trial of the oil companies would be likely to do so.

S/S-NSC (Miscellaneous) files, lot 66 D 95, NSC 138 Memoranda

Report to the National Security Council by the Departments of State, Defense, the Interior, and Justice [1]

TOP SECRET
NSC 138/1

WASHINGTON, January 6, 1953.

[1] Attached to the source text was a note, dated Jan. 6, from National Security Council Executive Secretary Lay to the Council, indicating that the three reports constituting NSC 138/1 were in response to action taken by the Council at its Dec.

Continued

National Security Problems Concerning Free World Petroleum Demands and Potential Supplies

[Part 1]

Report by the Departments of State, Defense and the Interior on Security and International Issues Arising From the Current Situation in Petroleum [2]

THE PROBLEM

1. The Justice Department has begun a judicial process which can be expected to lead to the indictment and trial of the principal international American oil companies on charges of criminal violations of American law in their foreign operations. There is serious danger that the trial of these oil companies on criminal charges would be harmful to critical American foreign policy objectives. No responsible official can assert either that American law should be wholly inapplicable to the foreign operations of these oil companies or that our critical foreign policy objectives should be placed in jeopardy. The problem is to determine the course of action which in these circumstances will best serve the over-all national interest.

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17 meeting (see p. 1298). Lay said that the reports would be considered at the Council's meeting on Jan. 9 (see p. 1338) and he particularly called the Council's attention to paragraph 44 of the first report. He also noted that the Attorney General and the Secretaries of the Interior and Commerce were being invited to participate with the Council, the Secretary of the Treasury, and the Director of Defense Mobilization in the consideration of the reports. The text of NSC 138/1 and Lay's covering note are printed in U.S. Senate, Committee on Foreign Relations, Subcommittee on Multinational Corporations, *Hearings on Multinational Petroleum Companies and Foreign Policy,* 93d Cong., 2d sess. (Washington, 1974), Part 8, pp. 1–13 (hereafter cited as Multinational Subcommittee *Hearings*). A report similar to part 3 of NSC 138/1 is printed in U.S. Senate, Committee on Foreign Relations, Subcommittee on Multinational Corporations, *The International Petroleum Cartel, The Iranian Consortium and U.S. National Security,* 93d Cong., 2d sess. (Washington, 1974), pp. 29–33. It is entitled "Report of the Attorney General to the National Security Council Relative to the Grand Jury Investigation of the International Oil Cartel—January 1953." This version contains two additional sentences. In paragraph 13 after the words "it is essential that all of the facts be known and weighed," the following sentence appears: "A civil suit would have to be almost a subterfuge to secure evidence, through discovery proceedings available after a complaint is filed, by means of which an amended and much different complaint seeking different relief would ultimately be filed." The following additional sentence is at the end of paragraph 16: "A decision at this time to terminate the pending investigation would be regarded by the world as a confession that our abhorrence of monopoly and restrictive cartel activities does not extend to the world's most important single industry." This may have been the text of a Department of Justice draft of the report with language which was subsequently omitted from part 3 of NSC 138/1.

[2] This report was classified secret.

IMPORTANCE OF PETROLEUM

2. Oil is vital to the United States and the rest of the free world both in peace and war. The complex industrial economies of the western world are absolutely dependent upon a continuing abundance of this essential source of energy. And expanding economies, whether modern and progressive, or backward and underdeveloped, require ever increasing quantities of petroleum.

3. No other nation relies upon petroleum to such an extent as the United States. Petroleum and natural gas supply roughly 50 percent of the vast amount of the total energy consumed in the United States; our vital transportation system is far more heavily dependent upon oil. National consumption of petroleum is at a rate of more than seven million barrels per day. This is over 60 percent of current world demand. By 1955, United States consumption is expected to rise to nine million barrels per day, and by 1975, to 13.7 million barrels per day.* Until recently the United States supplied its own requirements from its own indigenous resources. But this could not continue indefinitely. Proved crude oil reserves in the United States are now less than one-third of the world's total. In 1948, because of the tremendous increase in demand, the United States became a net importer of oil. Assuming the continuing high level of domestic exploration and development by a vigorous and healthy United States petroleum industry, it is estimated that by 1975 the United States will be using 2.5 million barrels daily more than it produces and this difference will have to be drawn from foreign sources. Without a vigorous and expanding domestic oil industry, the availability of foreign oil would be even more critical.

4. The free world is currently increasing its use of petroleum at an even greater relative rate than the United States. Since World War II foreign demand for petroleum in the free world has increased at a rate of about 14 percent annually, compared with an increase of about 7 to 8 percent a year in the United States. In total terms, foreign demand for petroleum has doubled since the end of World War II. The recovery and development of the free world at its current vigorous rate would be impossible without petroleum in ever increasing quantities. Although future increases in foreign demand are not expected to continue at the high post-war rates, they are nevertheless estimated at roughly double the rate of increase in demand in the United States. By 1975 demand from

* All estimates for 1975 are drawn from the Paley Commission Report. [Footnote in the source text. On June 23, 1952, the President's International Materials Policy Commission, headed by William S. Paley, issued the first of a five-volume report entitled *Resources for Freedom.* Volume I of the report, "Foundations for Growth and Security," was summarized in the Department of State *Bulletin,* July 14, 1952, pp. 54–60. See the editorial note, p. 857.]

free European nations alone is estimated at 4.0 million barrels per day. With production of only about 0.3 million barrels per day, Europe's deficit to be supplied from non-European and non-United States sources will amount to 3.7 million barrels daily.

5. The total import requirements of the United States and Europe combined thus are estimated at 6.2 million barrels per day by 1975.

6. In war, petroleum is absolutely vital. It is indispensable to every military operation. In World War II, 60 percent of the total tonnage which the United States moved overseas consisted of petroleum and petroleum products. The petroleum which remained at home and went to defense-supporting civilian activities was no less essential to the successful prosecution of the war.

7. With the increase in demand that will occur under war conditions, the successful conduct of a major war by the United States and its allies will be dependent upon continuing availability of foreign petroleum supplies. Due to the continually expanding world demand, the more extensive use of oil-powered military equipment, and the use of heavier oil consuming equipment, such as jet aircraft, the farther in the future such a war occurs, the more critical is access to foreign petroleum. Major sources of foreign oil are now indispensable to the economy of Europe and in the future may become indispensable even to the peacetime economy of the United States.

FOREIGN SOURCES OF PETROLEUM

8. There are only two known areas which can supply the import requirements for petroleum in the other countries of the free world. These are the Middle East and the Caribbean area, largely Venezuela.

9. The greatest known petroleum reserves in the world are those of the Middle East. They are now conservatively estimated at some 52 billion barrels out of total world reserves of about 101 billion barrels. Venezuelan oil is of special strategic value, due to its location behind the screen of our Caribbean chain of defenses, across sea routes relatively easy to keep open. It is closer than Texas to our Atlantic Coast consuming area. Venezuela alone is able to supply most of the foreign oil essential to the United States in time of war. In addition to our own import needs, Venezuela supplies substantially all of the import requirements of the Western Hemisphere outside the United States.

10. Since the United States is today a small net importer of petroleum, it is not now making any contribution toward meeting crude oil demand in the rest of the world. That demand, including the United States' deficit, of about 5 million barrels per day, is

being supplied at the rate of slightly less than 2 million barrels per day from Venezuela, slightly more than 2 million barrels per day from the Middle East, and about 1 million barrels daily from the remainder of the free world.

11. Since Venezuela and the Middle East are the only sources from which the free world's import requirements for petroleum can be supplied, these sources are necessary to continue the present economic and military efforts of the free world. It therefore follows that nothing can be allowed to interfere substantially with the availability of oil from those sources to the free world.

12. With the exception of Iran, the production of oil in those areas is almost entirely in the hands of United States and United Kingdom nationals.† These nationals have provided the ingenuity, capital, and technology to bring forth production from those areas on the tremendous scale required to fulfill world requirements. As matters now stand, they alone are capable of maintaining and expanding the production of those areas to meet the rising demand for petroleum of the free world. If United States and United Kingdom companies were for any reason expelled from Venezuela and the Middle East, the oil from those areas would to a serious extent be lost to the free world.

13. Where areas have fallen under Soviet domination, such as in Rumania, eastern Austria, Hungary, Czechoslovakia, and Poland, the oil has been lost to the free world. Almost the same result has followed from the expulsion of American and British oil companies from other countries for other reasons. Iran is the most recent example of nationalization. The repercussions of this action have led to an interruption in the flow of a substantial quantity of oil to the free world. While the initial interruption in such cases is caused by negotiating difficulties, the longer-run factors are know-how and capital. The record of nationalization and governmental operations in such countries as Bolivia, Mexico, and Argentina has shown that vigorous expansion of production does not occur, despite excellent prospects.

14. American and British oil companies thus play a vital role in supplying one of the free world's most essential commodities. The maintenance of, and avoiding harmful interference with, an activity so crucial to the well-being and security of the United States and the rest of the free world must be a major objective of United States Government policy.

15. Since the United States is the greatest consumer of petroleum and its products in the world (60% of total world consump-

†"United Kingdom" or "British" in this section includes British-Dutch interests. [Footnote in the source text.]

tion) now and for the foreseeable future, it is vastly important that the operations of the great oil fields of the world remain as far as possible in the hands of American-owned companies. We are gradually increasing imports. To be assured of these imports, and to ensure that this outstanding example of American investment abroad continues to make its great contribution to the American economy and the economies of other countries, it is essential that the American companies have full opportunities for profitable and expanding operations.

UNITED STATES FOREIGN POLICY OBJECTIVES

16. The operations of American oil companies abroad have profound effects on the conduct of American foreign relations. In the first place, oil is the principal source of wealth and income in the Middle Eastern countries in which the deposits exist; their economic and political existence depends upon the rate and terms on which oil is produced. American oil operations are, for all practical purposes, instruments of our foreign policy toward these countries. These oil producing countries are on or near the borders of the Soviet Union. For this reason and because of certain local conditions the Middle East comprises one of the most explosive areas of the world. The oil companies are in a position of great influence upon our relations with the peoples and governments of these countries. What they do and how they do it determine the strength of our ties with the Middle Eastern countries and our ability to resist Soviet expansion and influences in the area.

17. A major corollary of this is the fact that the internal economic development of these countries depends in good measure upon the operating policies of the oil companies. The United States has been pressing for economic development in the backward areas not solely for humanitarian reasons, but also on the assumption that economic growth contributes to political stability. Oil operations can accelerate that growth, and their cessation can block it. The rate of such growth depends to an important degree on the policies the oil companies follow. They can help or injure the political stability we need in the area.

18. A third factor which interrelates our foreign policy objectives to the operations of the international oil companies is their role as a supplier of western Europe's needs. The terms on which these needs are supplied are critical to the strength and balance-of-payments position of this area which is vital to our security.

19. The operations of the oil companies are also important to our foreign policy objectives in a more fundamental way. At this moment, and for some time to come, the United States and the Soviet Union will be engaged in a struggle to capture the support

and the allegiance of political groups throughout the free world. We shall be arguing the case for freedom and dignity of the individual and freedom of enterprise, and we shall claim the virtues of our system in providing well-being and economic growth. The activities of the United States Government in petroleum must be handled in such a way as to avoid giving strength to the claim that the American system is one of privilege, monopoly, private oppression, and imperialism.

20. In this struggle of ideas on which our security depends, the oil companies of the United States play a significant role. Their operations extend throughout the free world. They are by far our largest overseas investment. In many foreign countries, they are the principal contact of the local inhabitants with American enterprise. What such people think of the oil companies, they think of American enterprise and the American system; we cannot afford to leave unchallenged the assertions that these companies are engaged in a criminal conspiracy for the purpose of predatory exploitation.

FOREIGN IMPACT OF FTC REPORT AND ANTITRUST ACTION

21. Before the publication of the FTC Report, the international oil companies have frequently been attacked in underdeveloped countries by governments and private groups on various grounds, and in some cases have been subjected to nationalization or lesser forms of harassment. Even in more developed areas the companies have been feared by existing local vested interests, in part because of their superior efficiency, greater technological abilities, and their great size, necessary for the vast scale of these foreign operations, and in part because they represented a broader and sometimes more vigorous and competitive approach. The companies in some cases have successfully resisted attacks from these sources; in others they have not been so fortunate. In either event, they have for a long time, because of the success of their operations, been vulnerable to the possibility that any derogatory information about them is likely to be seized upon by some elements somewhere in the world, to their disadvantage. The problem in part is to reduce this vulnerability of American oil companies to future attacks.

22. The governments from which the United States has heard officially and directly regarding the FTC Report and the antitrust action have been those of the United Kingdom, the Netherlands, France, and Saudi Arabia. In each case, except France, the communications dealt with the question of making documents available to the Grand Jury in the antitrust investigation.

23. The United Kingdom Government instructed the Anglo-Iranian Oil Company and subsidiaries of other companies located in the

United Kingdom to the effect that documents not relating to business in the United States should not be presented to the Grand Jury except with the approval of the British Government. These instructions have been made a part of the official record of the court proceeding.

24. The Netherlands Government, according to an *aide-mémoire* of December 4, 1952 [3] presented to the Department of State, has instructed all Netherlands oil companies not to furnish any documents in response to the subpoena.

25. The FTC Report and the antitrust action have been duly noted in the press in many countries. In most cases there has been some editorial comment, mostly in Venezuela and the United Kingdom. The press reports appear primarily to be based on wire services' accounts in the United States, and quote rather widely the reactions of the American oil companies, including references to the attempts to quash subpoenas, and predictions of unfavorable foreign reactions. In the United Kingdom, the FTC Report and the antitrust action have been thoroughly covered in the press, and most of the editorial comment has revealed a lack of sympathy for United States antitrust laws and apprehension over their possible application to British companies.

26. In Venezuela, the only Latin American country where any comment has developed, there has been an unfavorable press reaction, and a suggestion that perhaps a Venezuelan Government investigation of company activities should be undertaken.

27. Middle Eastern reaction in the press has not been highly significant, although apprehension has been expressed that successful antitrust action might decrease oil revenues for the Arab states. The communist, left-wing, and extreme nationalist newspapers have made some unfavorable comments.

28. The Soviet telegraph agency has printed two articles, and Radio Baku has made one propaganda broadcast, which found in the charges of the FTC Report and the antitrust action evidence of American monopolistic imperialism. Revelations which might be made in the course of the current Grand Jury proceedings, or as a result of a criminal indictment and trial, could doubtless be used and distorted by Soviet agencies in such a way as to injure seriously the prestige and security of the United States.

29. This entire situation is fraught with great potential danger to the national interests of the United States. For example, expressed reactions to date in Venezuela, many of which do not voice the threat of nationalization, are less important than the potential reaction which can well develop. The national economy and Govern-

[3] A copy of the *aide-mémoire* is in file 800.2553/12–453.

ment finances are dependent upon the oil industry, and political forces have unanimously backed radical overhaul of the present petroleum laws and the sharp upward revision of the benefits from petroleum to the nation. All political parties in opposition to the Government agree that ultimate nationalization of petroleum is their goal, to be achieved as soon as possible. The opposition has utilized the criminal proceedings to charge the present Government with incompetence and indifference in administering the national wealth, and has placed it in the position of sole Venezuelan defender of the foreign oil companies. A Government commission has already been appointed to investigate the companies' pricing practices, which are an essential feature of any cartel agreement. Since the present Government is aware of the benefits the industry brings to Venezuela and that the Venezuelans themselves lack the technical skill and marketing facilities to take over the industry, it has pursued a temperate course against its critics which, however, has dismally failed to stem the tide of criticism. The Embassy in Caracas has reported that the companies' broad programs for better public relations and cooperation with the Government have been set back years by the FTC allegations against them. In sum, the criminal action may well renew an era of recrimination and hatred, and stimulate a movement toward anti-Americanism and nationalization of all important foreign investments, including also those in iron ore. Indictment and prosecution would accelerate this trend.

30. The Middle Eastern countries were so long subjected to foreign political and economic control that the motives of any foreign enterprise are still suspect. Although the oil companies are doing much to allay this suspicion, the success of their operations nevertheless invites envy and dislike. Furthermore, anti-Westernism and anti-Americanism are widespread in the Middle East. These are the basic factors, and they are complicated by the feudal or semi-feudal structure of Arab society, in which certain groups may seek to avert or resolve existing frictions by resort to anti-Westernism. The FTC Report and the antitrust action add fuel to the flame.

31. In both Venezuela and the Middle East a wave of economic nationalism which might endanger American interests is entirely possible. Once such powerful political and emotional forces are unleashed, it is difficult or impossible to restrain them. The developments in Iran are an example.

32. There is, of course, no way of preventing adverse reactions arising from the FTC Report, because it has been published and widely disseminated. Therefore, it is hard to assess the full foreign implications of dropping or appearing to drop the antitrust action.

33. The United States is waging a constant struggle to dispel the concept, very much alive not only among communists but also in non-communist circles of the free world, that capitalism is synonymous with predatory exploitation. On the more positive side we seek to make the point that freedom of competitive enterprise is the economic counterpart of the concept of freedom of the individual in the political and social spheres. We have sought to lead the way toward a wide acceptance of this American way of life, and one of our best arguments has been that the productive achievements of the American economy have been attained largely as a result of the competitive system. Notwithstanding the constant action of the oil companies to expand production at home and abroad, there would be a risk that a United States failure to follow up our antitrust approach with respect to other aspects of oil company operations would be regarded as hypocrisy. This might add to the distrust of capitalism and free enterprise on the part of many elements in the world, and could impair not only the immediate position of the oil companies abroad, but also the broader interests of the United States as a whole.

34. One of the most disadvantageous features of the current antitrust action, in terms of foreign impact, is the fact that an investigation leading to a criminal indictment by a Grand Jury has been initiated. Although under American law a person or a corporation accused of criminal action is presumed innocent until judged guilty, this point is often overlooked by foreign observers. An indictment by a Grand Jury on the complaint of the United States Government, alleging crimes by the leading oil companies and their executives, is almost as effective in foreign propaganda terms as a decision finding the oil companies guilty as criminals and conspirators. This obviously harms the prestige of the companies in other countries, and can very well lead to an adverse effect upon the interests of the United States. Thus, it is concluded that American interests abroad will be adversely affected by the continuation of the present Grand Jury proceedings. Alternative means for dealing with this problem in the light of the foregoing considerations are developed below.

RESOLUTION OF PROBLEMS

35. The objectives of the United States in foreign petroleum require the continuance and expansion of the flow of oil from producing to consuming areas in the free world. United States foreign policy calls for the promotion of political and economic stability and development in the Middle East, Latin America, and other underdeveloped areas. American policy in free Europe requires maximum availability of oil at reasonable prices. United States domestic

policy requires compliance with the antitrust laws on the part of the petroleum industry. The extent to which the antitrust laws apply to the foreign activities of petroleum companies is not clear, and judgment on this issue can be rendered only by the courts. The publication of the FTC Report and the initiation of the antitrust action have thus far had some adverse effect upon foreign opinion, on our national security, and on our foreign relations. Potentially great difficulties may arise as a result of the simultaneous pursuit of our security, foreign policy, and law enforcement objectives, unless adequate correlation is achieved. The purpose of the Government should be to seek the best means of moving toward all United States objectives effectively and simultaneously.

36. The point has been made above that a criminal indictment and trial of companies which are a major factor in American business abroad can scarcely be conducive to the development of confidence in American business institutions. A good deal of the difficulty caused by this fact could be removed if the criminal action were terminated, and any relief which the United States Government decides to seek were pursued in a civil suit, which might lead to a consent decree. In this way a trial might well be avoided, and hence a great reduction in the number of possible sensational disclosures brought about. Foreign reactions to a civil rather than a criminal action should be substantially less adverse to United States interests.

37. A second aspect of the difference between a civil and criminal action lies in the importance of correcting evils in this sensitive field, if they exist. Correction of any evils which may exist should in fact promote United States security and economic objectives in the foreign field. A criminal action such as that now under way leads to no substantial corrective measures unless and until it is supplemented by a civil action, resolved either through a court judgment or through the negotiation of a consent decree. At the same time, whenever there is a violation of the antitrust laws, a civil action ensures adequate enforcement. It entails less publicity, and brings corrective action more promptly.

38. A third consideration affects United States national security and foreign relations. While it is of paramount importance that American petroleum interests abroad act in a manner consistent with the foreign policy of the United States, industry expects Government support abroad and is entitled to such support, except when it acts contrary to our national interests. In many fields no legal or formal control over the action of American private interests abroad is exercised by this Government. This is in accord with the view that a minimum of regulation and control is an accepted American principle. On the other hand, this means that if Govern-

ment and industry are to act together to promote foreign policy and security objectives in petroleum, there must be a basis of mutual confidence between them. Criminal proceedings are not likely to produce such confidence between the two parties in this dispute.

39. The fact that the FTC Report has been published and the antitrust action begun creates a series of issues between industry and Government. These issues must be resolved if the groundwork for future cooperation between them is to be laid. Corrective action, if and where needed, and a clearer picture of the interpretation and application of the law should make this vital cooperation possible.

40. The problem of international petroleum, with all its complex and diverse elements, should be reviewed by the responsible executive departments. A commission consisting of the Secretaries of State, Defense, Interior, and Commerce should be created to give careful attention to the interrelationships of antitrust, security, and foreign policies in petroleum. The commission should have as its specific task the development of recommendations to the President on changes, if any, in oil company practices or structure required by security, economic, and political considerations in the foreign field, which changes would have a bearing upon the remedies that might be sought in an antitrust suit. The commission's works should be of a classified nature, and it should be required to report on this subject within a specified period of time, for example 90 days from the time of appointment.

41. The commission's report could be used by the President as he saw fit, and presumably would be useful to the Attorney General in developing the specific form of relief which might be sought from the companies. The Attorney General will no doubt wish to have a reasonable measure of latitude, but the commission could well demarcate certain areas of primary importance in the foreign policy and security fields.

42. If this program—terminating the criminal action and establishing a Cabinet commission with the foregoing terms of reference—were put in effect, a careful and explicit statement should be made to the public both at home and abroad. This statement should explain why the criminal action was being terminated and what the Cabinet commission would be expected to do, and assure the world that security and foreign policy considerations would be major factors in the determination of United States action in international petroleum.

RECOMMENDATIONS

43. The Departments of State and Defense submit the following recommendations to the National Security Council:

a. The Grand Jury proceedings now under way should be terminated.

b. The President should appoint a Commission of the Secretaries of State, Defense, Interior, and Commerce (the Attorney General should be invited to attend the sessions of the Commission, and to participate to the extent considered appropriate by him and the Commission) to develop recommendations regarding our national objectives and policies in security, economic and political fields which have a bearing on the application of United States antitrust laws to the overseas operations of United States oil companies, and to the remedies to be sought in a civil antitrust suit.

c. The President should instruct the Attorney General to prepare a complaint as a basis for a civil action under the antitrust laws, if in the judgment of the latter this action is warranted, copies to be transmitted to the members of the Commission mentioned in recommendation b for their information as soon as practicable after completion but in any event at least 10 days before it is publicly filed.

d. An announcement of this course of action should be made by the President.

44. The Department of the Interior concurs in the foregoing report (not including its recommendations in paragraph 43), the report being generally in accord with the memorandum of the Secretary of the Interior (NSC 138) [4] but the Department of the Interior does not either approve or disapprove the recommendations in paragraph 43 and does not join therein.

[Part 2]

Report by the Departments of State and Defense on Foreign Petroleum Policy [5]

1. The question of the applicability of anti-trust laws to the international operations of the oil companies has called attention to the fact that there are many complex and intricate problems, of great importance in our national security and foreign policy, inherent in the situation. These problems are likely to be of substantial duration, and the effective disposition of the current action against the oil companies will contribute only to a partial solution of them. It

[4] NSC 138, a report to the NSC by the Secretary of the Interior and Petroleum Administrator for Defense Chapman on "National Security Problems Concerning Free World Petroleum Demands and Potential Supplies," is not printed. A summary of NSC 138 is attached as Annex I to the memorandum of Dec. 16 from Linder to Bruce, p. 1291.

[5] This report was classified secret.

is the conviction of the Departments of State and Defense that the entire situation needs to be examined in all its aspects by responsible Executive departments.

2. The Departments of State and Defense therefore recommend that the commission proposed in the report submitted to the National Security Council in response to NSC Action No. 692 [6] be asked to undertake a full study of the problem, and to report within a year. For this purpose the Commission should have its terms of reference extended to include the following:

a. Clarification and development of national objectives and a national economic and political policy on foreign petroleum.

b. A determination of the security objectives of the United States and its allies in regard to petroleum and the development of a program for assuring the achievement of these objectives.

c. Examination of American foreign petroleum operations and recommendations as to the best means of assuring consistency between United States objectives and oil operations in such fields as pipeline agreements, concessional arrangements, marketing arrangements, and transport.

d. A definition of the proper role of the United States Government in regard to foreign oil operations, and recommendations on the development of effective cooperation abroad between the Government and the petroleum industry.

e. Review of the impact upon United States objectives of nationalism and tendencies toward nationalization in underdeveloped countries where oil is produced by American companies.

f. The study of petroleum problems faced by consuming countries, such as cost, assurance of supply, and machinery for distribution.

g. Review of relationship of anti-trust law and policy to United States objectives in foreign petroleum.

h. Consideration of intergovernmental relationships concerning petroleum, and recommendations on possible changes in these relationships.

i. Recommendations on means for coordinating United States Government action in the more complex situations where security, political, economic, foreign, and domestic influences come into play.

j. Recommendation for such legislation as might be required.

3. In making this recommendation, the Departments of State and Defense recognize that portions of this problem have been and are being attacked either separately by various Government agencies, or together through the National Security Council. This material should provide a useful background for the study now suggested. (NSC 97, 129/1, and 136 [7] have a bearing on this subject.) The De-

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[6] Regarding NSC Action No. 692, see the memorandum of discussion at the 127th meeting of the NSC, Dec. 17, 1952, p. 1298.

[7] For the text of NSC 97, "A National Petroleum Program," Dec. 28, 1950, see *Foreign Relations*, 1950, vol. I, p. 489. For the text of NSC 129/1, "U.S. Policies and

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partments of State and Defense believe that these efforts should be joined in a fundamental attack on the problem, for the purpose of evolving a truly national program, properly coordinated, and carefully designed to assure the clarification and achievement of the objectives of national policy in this highly important and sensitive field. Failure to approach the problem on such a basis can result only in recurrent crises and improvised solutions.

[Part 3]

REPORT BY THE DEPARTMENT OF JUSTICE ON THE GRAND JURY INVESTIGATION OF THE INTERNATIONAL OIL CARTEL [8]

1. Following cancellation of wartime suspension of antitrust investigations and prosecutions of the oil industry, investigation of world-wide oil cartel activities was resumed. Much information had been obtained through file searches conducted under grand jury subpoenas in 1940 and 1941. Coincident with this resumption, the Special Committee of the Senate Investigating the National Defense Program, was engaged with public hearings on the same subject. The Chairman of that Committee had requested the Attorney General to look into cartel relationships which were alleged to have caused the United States Navy to pay high prices for petroleum products purchased from American companies doing business in the Middle East. Additional file searches were conducted in 1946 and 1947 and the American oil companies supplied copies of current contracts and other arrangements through 1949.

2. On December 2, 1949, the Federal Trade Commission passed a resolution to investigate "agreements entered into by American petroleum companies among themselves and with petroleum companies of other nations in connection with foreign operations and with international trade in petroleum and petroleum products." Subpoenas duces tecum were issued in January 1950. In order not to duplicate the investigative work of the Commission, this Department deferred further investigation until the Federal Trade Commission staff filed its report in October 1951. On December 2, 1951 the Select Committees on Small Business of both the House and Senate published a report on The Third World Petroleum Congress by Elmer Patman, appointed to investigate oil cartel activities. Thereupon a study and appraisal of all available material was made. The Attorney General decided that further investigation by grand jury process was necessary and recommended such action to

Objectives With Respect to the Arab States and Israel," Apr. 24, 1952, see volume IX. For the text of NSC 136, "U.S. Policy Regarding the Present Situation in Iran," Nov. 6, 1952, see volume X.

[8] This report was classified top secret.

the President who, on June 23, 1952, instructed that proceedings go forward immediately.

3. Early investigative efforts revealed the outline of a world cartel formed as early as 1928 by one American and two foreign oil companies. Over the succeeding years many other American companies joined the cartel. It appears that the uninterrupted extension and continuance of the basic cartel agreements has resulted in a world-wide pattern in which seven of the major oil companies—(1) control all major oil producing areas outside the United States; (2) control all foreign refining operations; (3) control patents, know-how and technology covering refining processes; (4) effectively divide world markets; (5) maintain non-competitive world prices for oil and its products; and (6) control foreign pipeline and world tanker transportation facilities.

4. Since petroleum and petroleum products are so essential to national defense, world economic recovery and defense of the free world, it is imperative that petroleum resources be freed from monopoly control by the few and be restored to free competitive private enterprise. Any full scale mobilization would depend more on petroleum products than upon any other commodity.

5. The domestic oil economy of this country is directly involved in and affected by cartel operations. Imports of crude oil into the United States are not free and subject to the natural competitive forces of our economy but are regulated by contracts and agreements between American companies. A cartel program for agreed upon imports is supplanting domestic production and retarding the drilling of new wells to find and earmark *proven* reserves as an underground stockpile, available for immediate production beyond present actual production. As Secretary Chapman pointed out on November 12, 1952 "We do not begin to have the reserve we should have in order to provide, not absolute security, but just the minimum of security that would give us room to maneuver in the opening months of a war". Deputy Petroleum Administrator J. Ed Warren publicly stated on October 31, 1952 that our domestic reserve capacity is less than one million barrels per day, which is only 15% of present domestic consumption. In his words—"That's a percentage much too small for comfort".

6. In order to maintain the fictitious pricing bases, the American cartel partners engage in uniform collusive bidding when our military seeks to buy petroleum products from them in foreign lands. The Department of National Defense has transmitted this evidence to the Department under the provisions of Title 41, U.S. Code, Section 151(d). The same pricing practices have been engaged in when selling to Mutual Security Agency for European delivery. At least three of the American companies have "over-charged" the MSA ap-

proximately 70 million dollars in approximately a 3-year period, on the basis of lower prices they charged on sales "among themselves". At the request of MSA suits to recover these overcharges have been filed by me.[9] Prices for Middle East oil, delivered to any point in the world, are based on the fiction of American Gulf Coast prices plus delivery costs to a given destination.

7. The international petroleum cartel is a serious threat to our national security. Prompt discovery of its dimensions and effects, and expeditious termination of the cartel and its effects can be accomplished only by pursuing the pending grand jury investigation.

8. Noting that we do not begin to have the domestic petroleum reserve we should possess in order to provide even the minimum of security that would give us room to maneuver in the opening months of a war, the Secretary of the Interior has said that he is not sure how we can go about getting the reserve we must have, and that the present profit incentive alone may prove inadequate to produce the results we must have. This problem exists in the presence of a world cartel whose total operations and total effects are not known but can quickly be ascertained by the grand jury through the subpoena process which it has set in motion to secure the facts.

9. As with petroleum reserves so also with aviation gasoline—we teeter on the edge of a great shortage in the grades the military must have. The prospect is for increasing shortage unless something is done and done quickly, in the words of the Secretary of the Interior. While recognizing industry's reluctance to build installations for manufacture of the essential alkylate, the Secretary emphasizes that the military need is imperative. This condition, in a period of high productivity and high profitability of company operations, is traceable to the cartel, for the American companies, by working within the cartel, can make more money by investing it abroad than by creating additional domestic facilities. The Paley Commission recently reported that private American investment abroad in the petroleum industry has risen from 1.3 billion dollars in 1940 to 4.1 billion dollars in 1948; and that the ratio of earnings to book value on such direct foreign investments was 27.6% in 1948, whereas the ratio on domestic petroleum investment was only 22.7% in the same year. Here again the condition can be illuminated, and speedily corrected, only by going forward with the grand jury investigation. Any other effort to find the facts and correct them will take so much longer to complete that it will subject the national security to continuing and increasing hazards.

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[9] Presumably a reference to the Attorney General.

10. Moreover, the cartel constitutes such a complex network of close relationships and joint interests among the major United States and foreign companies as to inevitably identify and entangle the United States with economic and political decisions of foreign governments as to oil. The dangers inherent in this situation ought to be ended in the most expeditious way.

11. The cartel arrangements are in effect private treaties negotiated by private companies to whom the profit incentive is paramount. The national security should rest instead upon decisions made by the Government with primary concern for the national interest. These private treaties and the other cartel arrangements have already served and can continue to serve as an agreed upon deterrent to development of our domestic resources by the major American companies. This is not to say that importation of petroleum and petroleum products should be discouraged. But the basic noncompetitive principle of a world cartel requires the major domestic producers to agree to give up both normal incentive and freedom to do the major work of enlarging our domestic petroleum resources. As a result, the cartel members, by their control over dominant segments of the domestic industry, regulate and determine the extent to which this nation shall be dependent on foreign supplies which could be cut off in time of war.‡

12. This cartel has existed since 1928, but has been extended and complicated over the years. Its general structure and skeleton are known, but its total outlines and proliferating effects are not known. They could be uncovered by a Congressional Committee but such an investigation could not make any determination as to the legality or illegality of the multiform operations and their effects. In the presence of clear evidence of criminality, as indicated in the staff report of the Federal Trade Commission, the grand jury investigatory method is clearly indicated for two objectives must be achieved: (1) the cartel's total operations and effects must be brought to light in order that (2) it shall be promptly ended. These combined needs can be met only by grand jury investigation if the

‡The industry itself through a January 1949 report of the National Petroleum Council, warned:

Imports in excess of our economic needs, after taking into account domestic production in conformance with good conservation practices and within the limits of maximum efficient rates of production, will retard domestic exploration and development of new oil fields and the technological progress in all branches of the industry which is essential to the nation's economic welfare and security.

Since the date of this warning the pattern of dependence of foreign supplies from sensitive areas of the world has become more deeply imbedded; indeed, by the end of 1950 the excess of imports over exports of petroleum and petroleum products increased by almost 350 percent. [Footnote in the source text.]

public interest in adequate petroleum supplies is not to be hazarded by needless delay.

13. Civil antitrust action is not adequate for the necessities. A civil complaint could be filed but it would have to be very narrowly drawn since only the skeletal facts are available. Similarly, an indictment could have been returned on the basis of the Federal Trade Commission's staff report and a small number of documents in the possession of the Department of Justice. But in order to do justice to the public interest and to be fair to the companies and their principal officials, it is essential that all of the relevant facts be known and weighed.[10] A civil case, on the basis of experience with comparable activities, would require four to six years to complete. An indictment and trial could be concluded within twelve to fifteen months.

14. Conviction under an indictment will leave correction of the conditions found to be illegal to the companies by renegotiation, while a judgment in a civil case would put responsibility upon a judge to reorient a world industry by decrees acceptable to foreign governments. Correction will be accomplished much more rapidly and smoothly if the companies are obliged to set their houses in order, in view of the nature of the international petroleum industry.

15. The secrecy of a grand jury investigation makes it preferable to an investigation by any other means, such as a Congressional or interdepartmental committee, or a civil antitrust suit. Grand jury investigation will avoid the possibility of public, inflammatory exposures. The pending investigation is being conducted with the aid of a committee composed of representatives of State, CIA, Defense and Justice, specifically concerned with problems of sensitivity and the international repercussions of the inquiry, with provision for submission to the President of questions which cannot be otherwise resolved.

16. The Sherman Act was described by Chief Justice Hughes as our charter of economic freedom. The Supreme Court has repeatedly rejected proof of public benefit and business necessity as justification for cartel operations and has emphasized the primacy of economic freedom as the highest value for our economy. Our concern for an adequate future supply of petroleum is a concern ultimately for the preservation of freedom for ourselves and the free world. Free private enterprise can be preserved only by safeguarding it from excess of power, governmental and private. The selective socialization of business in the ancestral home of our free institutions

[10] For the text of an additional sentence at this point in a different printed version of this document, see footnote 1 above.

points to the end result of the cartels which flourished and became the outstanding characteristic of the British economy after Great Britain adopted the Import Duties Act of 1932. The world petroleum cartel is authoritarian, dominating power over a great and vital world industry, in private bands. National security considerations dictate that the most expeditious method be employed to uncover the cartel's acts and effects and put an end to them. The urgency of these considerations requires that the grand jury investigation go forward even though it might ultimately appear that indictments would not be warranted. The facts presently available strongly suggest that the high policy represented by the Sherman Act has been consciously and persistently violated by activities long since determined by the Supreme Court to be illegal. The cartel should be prosecuted criminally if there is to be equal justice under the law and if respect for the law and its even-handed administration is to be maintained. Far from hurting us abroad, the investigation and prosecution of this cartel's activities will authenticate our protestations made continuously through the Marshall Plan, ECA, MSA, Point IV and NATO. We cannot promote free private enterprise and productivity abroad unless we are seen to conscientiously enforce our laws designed to preserve them for our own economy and our own domestic and foreign commerce.[11]

[11] For the text of an additional concluding sentence as found in a different printed version of this document, see footnote 1 above.

S/P–NSC files, lot 61 D 167, NSC 138

Memorandum by the Director of the Office of International Materials Policy (Evans) to the Counselor of the Department of State (Bohlen)

TOP SECRET WASHINGTON, January 9, 1953.

Subject: Additional Material on Foreign Reaction to U.S. Actions in Regard to Oil

You have pointed out that our NSC paper, 138/1 (1),[1] is not very specific in its appraisal of the harmful effects which can result from the criminal proceeding. This, of course, is true. No one can be certain what the effect will be if the Grand Jury investigation results in criminal prosecution and trial. But the geographic bureaus believe that the risk is very great. My own belief is that nationalistic feelings are running so high that almost anything could set them off, and that we should take no unnecessary risks.

[1] Reference is to Part 1 of NSC 138/1, p. 1318.

We purposely omitted some of the more extreme statements available to us for fear of overstating the case. If you have time, you may find it worth while to glance at the attached material: [2]

1. A portion of a draft paper submitted by ARA, based in part on an appraisal by Embassy Caracas. The first three pages of this will give you a sufficient idea. Incidentally, ARA strongly urged that we insist on the case being dropped completely without institution of civil proceedings.

2. A report by Franklin Bates of Trans-Arabian Pipe Line Company to the New York office of that company. This is hardly a disinterested report. His own appraisal must be discounted. But the quotations in his report do indicate that some government officials and some of the press in Lebanon, Syria and Egypt have taken advantage of the FTC report and the Grand Jury proceedings for attacks on the oil companies. I have marked a few of these, on pages 8, 10, 12 and 14 for your attention. A number of the reactions in the Middle East apparently were set off by the United States civil suit to recover what MSA contends were excessive charges in their purchases. Our proposal, of course, would not correct any damage this suit may have done, as we do not propose that it be dropped.

One reason I am fearful of the results of a criminal trial cannot very well be mentioned in the NSC. Mr. Emmerglick, the Assistant Attorney General handling the case, has already made statements in court calculated to appeal to those who oppose United States imports of oil. The Justice report to the NSC again devotes several paragraphs to the danger of oil imports and charges that collusion among the companies is the cause of the high level of imports. I am afraid that a public trial will lead to more of this sort of thing. The effect on both domestic public opinion and foreign relations can hardly be good. A civil proceeding could, of course, also serve as a sounding board for isolationist sentiment by the Department of Justice, but we are hopeful that civil proceedings would lead to negotiations for a consent decree instead of a trial.

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[2] The materials under reference here were not found as attachments to the source text. A marginal handwritten notation indicates that the attachments were returned to Evans on Jan. 12 as he had requested.

Truman Library, PSF–Subject file

Memorandum of Discussion at the 128th Meeting of the National Security Council on Friday, January 9, 1953 [1]

TOP SECRET

The following notes contain a summary of the discussion at the 128th Meeting of the National Security Council, at which you presided. The Vice President was unable to attend the meeting. Mr. Bohlen attended for the Secretary of State, and Deputy Secretary Foster attended for the Secretary of Defense. Mr. Emmerglick for the Attorney General, and the Secretaries of the Interior and Commerce participated in the Council's action on Item 1.

1. National Security Problems Concerning Free World Petroleum Demands and Potential Supplies (NSC 138/1; SE–28/1 [2])

In introducing NSC 138/1, the President remarked facetiously that he had heard of this matter before and, turning to Mr. Bohlen, said that doubtless the State Department would want to be heard on it.

In reply, Mr. Bohlen observed that the report spoke largely for itself, and that naturally State had to look at the problem from the broad over-all policy point of view. There were three major facets to the problem: the United States security interests and objectives in the Middle East, the vital importance of Middle Eastern oil, and the business practices which might interfere with the development of international trade. Beyond this, Mr. Bohlen added, the State Department felt strongly that prosecution of the criminal proceedings against the oil companies would prove extremely damaging to United States security interests not only in the Middle East but particularly in Venezuela.

The President then asked Secretary Foster if he had anything to add to Mr. Bohlen's remarks.

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[1] This memorandum, presumably prepared on Jan. 9 by the Secretary of the NSC, was addressed to the President. According to the minutes of this meeting, which consist of a list of the participants and a brief list of the decisions taken at the meeting, the following members of the Council attended: President Truman, presiding, Bohlen for the Secretary of State, Deputy Secretary of Defense Foster, Director for Mutual Security Harriman, and Chairman of the National Security Resources Board Gorrie. Others present at the meeting included Secretary of the Treasury Snyder, Director of Defense Mobilization Fowler, Emmerglick for the Attorney General, Secretary of the Interior Chapman, Secretary of Commerce Sawyer, Special Consultant to the President Souers, Chairman of the Joint Chiefs of Staff Bradley, Deputy Director for Central Intelligence Dulles, NSC Executive Secretary Lay, and NSC Deputy Executive Secretary Gleason.

[2] For text of NSC 138/1, dated Jan. 6, 1953, see p. 1317. For text of SE–28/1, dated Jan. 2, 1953, see p. 1316.

Secretary Foster reminded the Council that he had made quite a speech on the subject once before, but nevertheless felt that he must make another, since he felt so strongly in favor of the recommendations of the Departments of State and Defense in the reference report. We are not criticizing the suits against cartels or monopolies, continued Secretary Foster, but our strong feeling relates to the method chosen in this particular instance, in view of the overriding importance to the national security of procuring petroleum supplies from abroad, of increasing our own reserves and, finally, of helping to save the Middle Eastern countries from Communism. Doubtless, said Secretary Foster, we in Defense are prejudiced, but we are convinced that the national security will be gravely damaged if the present course of a criminal action is followed. What is needed above all is a broad over-all look at the whole problem of this nation's oil policies, and this is the great advantage of the recommendations advanced by the Departments of State and Defense.

The President then called on Mr. Dulles, who, however, said he would rather defer his remarks until the Council had heard from Mr. Emmerglick.

Mr. Emmerglick stated that he desired to emphasize two or three points in the report of the Department of Justice, and begged the Council's indulgence while he discussed them. He stated that there were two important conditions to be noted. First of all, the undoubted fact that a monopoly cartel exists today in the petroleum industry. Secondly, the United States formerly had a large percentage of reserve productive capacity quite adequate for its needs. Such a reserve no longer exists in amounts adequate for peacetime, to say nothing of wartime. In short, while the cartel has in recent years been expanding its operations overseas, our own reserves and our own supplies of aviation gasoline have been steadily shrinking. The Department of Justice believes that there is a vital relationship between these two conditions, that this relationship has got to be investigated, and that for these reasons the Grand Jury proceedings to ascertain the facts should not be stopped. After these proceedings have resulted in amassing the necessary facts and information, the Government will be in a position to determine whether or not to proceed with the criminal action against the major oil companies.

Mr. Emmerglick also argued that the criminal suit procedure was much more likely to enable the companies quickly to correct their past mistakes and to set their houses in order, than would a civil action, which would leave the corrective arrangements to be determined by a judge. Furthermore, continued Mr. Emmerglick, a criminal suit would be much more expeditious in reaching a deci-

sion than would a civil suit. In support of this view Mr. Emmerglick cited a number of examples, notably the aluminum company, in which civil suits lasted for many years. In addition, Mr. Emmerglick stressed the fact that the Grand Jury proceedings would be secret, while the proceedings under a civil suit could not be. He also noted that a committee consisting of officials of the Departments of State, Defense and Justice and the Central Intelligence Agency, had been created to screen sensitive documents before they could reach the hands of the Grand Jury. Finally in support of his position, Mr. Emmerglick referred to arrangements now being made by the Department of State and other agencies of the Government to get Iranian oil on the market by virtue of granting to certain oil companies immunity from anti-trust action for a certain number of years in the future. A civil suit would jeopardize such arrangements as those now being made to save the Iranian situation. Accordingly, Mr. Emmerglick again expressed the conviction of the Department of Justice that the national security would best be served by a continuance of the Grand Jury proceedings looking to a criminal action.

Mr. Dulles, asked a second time by the President for his views, stated that he was prepared to talk only of the probable effects of the various courses of action which were before the Council. Up to this point, he said, the effect of the Grand Jury proceedings had been very serious in Venezuela and somewhat less serious in Colombia. The reactions in the Middle East had not been so notable, thanks largely to the preoccupation of the governments of the Middle Eastern countries with their own problems and because the Soviet Union had not yet seized on the Grand Jury proceedings against the oil companies as a major propaganda instrument. If they did so, however, Mr. Dulles predicted that the effect on American security interests in the Middle East would be very serious indeed.

Secretary Sawyer stated that his observation during the course of his recent visit to Europe more than bore out the views just expressed by Mr. Dulles. It seemed to Secretary Sawyer, therefore, that if any investigation of the major oil companies is really in order, he could not understand why the Cabinet commission recommended in the report of the Departments of State and Defense would not serve that problem better than the use of the Grand Jury.

The President states that he wished this question to be answered by Mr. Emmerglick.

In response, Mr. Emmerglick pointed out that the Cabinet commission had no power of subpoena and, even more important than

that, no remedial power; it could, in effect, only make recommendations. Therein lay the value of the Grand Jury proceeding.

In response to this argument, Secretary Sawyer inquired why, if the commission found that it could not get the facts, it could not turn the case back to the Justice Department to proceed with the criminal suit.

Secretary Foster added that it seemed to him possible that the commission might apply to Congress for legislation which would give it subpoena powers.

The President then called upon Secretary Chapman, who reiterated the points which he had made in his remarks to the Council at its previous meeting on this subject. He emphasized the very good record for exploration and development of American oil resources maintained by the major oil companies. He further insisted that the major obstacle to greater exploration and drilling was the lack of steel and other materials needed for this process, and he cited statistics to illustrate this point. In short, Secretary Chapman said that he could not understand how a criminal indictment would solve in any way the problem of increasing domestic production.

In explanation of why he had not positively endorsed the recommendations of the Departments of State and Defense in the reference report, Secretary Chapman noted that he was in the position of being a claimant for these oil companies before the Defense agencies in their search for steel and tubular goods that they so desperately required. To make his point, Secretary Chapman noted that the Government had proceeded to indict one of the major oil companies for obtaining materials on the black market in an effort to correct the deficiencies in the supplies allocated to it by the Department of the Interior. Although Secretary Chapman did not deny that these oil companies might well have been guilty of violations of the anti-trust laws, he himself had no evidence that they were guilty. Furthermore, he could not see how, after the closing down of the Abadan refinery, the oil companies could conceivably have avoided making some kind of agreements among themselves designed to get needed oil supplies from Iran to Western Europe, which had depended on supplies from this area. Moreover, continued Secretary Chapman, this criminal suit could have been brought ten years ago or it might be brought ten years hence. At any rate, this was not the precise moment to bring it. But in any case, Secretary Chapman stated his conviction that in terms of our over-all security problem a criminal suit was not the answer. If the basis of the suit was failure by the major oil companies to drill more oil wells in this country, no jury would indict, or at least none would convict.

After further discussion by Mr. Bohlen and Mr. Emmerglick of the arrangements presently being contemplated by the United States Government to get oil out of Iran, Secretary Sawyer turned to Mr. Emmerglick and asked him if he thought it would be a fair summary of the position of the Justice Department to say that Mr. Emmerglick was proposing to prosecute the oil companies criminally for past practices which he proposed to give them immunity to carry out in the future with respect to Iran.

Mr. Emmerglick denied that this represented a fair statement of his position, and read statistics designed to refute Secretary Chapman's contention that the oil companies were drilling as many wells as they had equipment to drill.

General Bradley then asked the President's permission to speak briefly. He said he understood the need for anti-trust laws. He said that he held no brief for the oil companies, but he nevertheless thought that the present Grand Jury proceedings constituted a serious threat to the national security. It was absolutely necessary that this country procure oil from abroad. It was absolutely necessary that this country conserve its own limited resources at home. For this reason General Bradley totally failed to understand Mr. Emmerglick's arguments. It seemed to him, he said, that what we are now proposing to do, in proceeding against the oil companies by a criminal action, would do more harm to the interests of the national security than any single thing that the Russians were presently doing to us. This, General Bradley admitted, was a very strong statement, but he believed it to be true.

Mr. Harriman and Mr. Gorrie stated their agreement with the recommendations of the Departments of State and Defense.

Mr. Fowler said that he had a very considerable amount to say to the Council on the general subject. The basic issue before us, he said, was how to secure oil in quantities adequate for the national security, and the test of our action at this meeting was what the impact of the decision should be on the national security. The Department of Justice argues that the criminal action will enhance and advance security because it will increase the exploration and use of our domestic resources. Yet Mr. Fowler stated his belief that the real attitude of the oil companies toward the exploration problem was shown by the heavy demands of these companies for tubular goods which ODM could not supply. Mr. Fowler cited statistics to support this argument, and also noted that with regard to aviation gasoline there was now a diminishing market because of the change-over from piston to jet engines. As a result of this change-over, many of the oil companies were being cautious about investing their stockholders' money in plants which turned out aviation gas. This was understandable, and the way to overcome the diffi-

culty was to have the Government say to the companies that it would be willing to assume some of the risks of this shrinking market. On the other hand, Mr. Fowler did not deny the Government's responsibility to enforce the anti-trust laws. This being so, the real question was the form of proceeding best designed to discharge this responsibility. Quoting from various legal opinions, Mr. Fowler said that he reached the conclusion that the civil suit was more desirable than the criminal if the Government had in fact long acquiesced, for one reason or another, in illegal actions by the oil companies, or if extenuating circumstances had contributed to this acquiescence. The extenuating circumstances, continued Mr. Fowler, were considerations of national security. Accordingly it seemed to him that the civil proceeding was the best one. Nor could Mr. Fowler agree, he said, with Mr. Emmerglick's argument that the results of a criminal suit would hasten the process by which the oil companies would feel compelled to set their houses in order. Under the threat of continuing violation of the anti-trust laws after conviction, the oil companies might attempt to get out of their cartel arrangements so rapidly that not only their own interests but the interests of national security in foreign countries would be overlooked in the scramble. With reservations, therefore, Mr. Fowler stated his agreement with the recommendations in NSC 138/1. The first reservation was that the civil complaint which, in recommendation c on pages 12 and 13,[3] was to be merely prepared, should instead be instituted. Secondly, the recommendations of the Departments of State and Defense carried an implication that the Cabinet commission would advise the Attorney General on the propriety of going ahead with the suit. It would be better, thought Mr. Fowler, if the commission were to advise the President as to the nature of the decree which he should issue.

In reply to Mr. Fowler, Mr. Emmerglick stated that the proposals for a Cabinet commission in the reference report were regarded by the Department of Justice as inconsonant with the tradition of procedure in anti-trust cases. He reiterated his conviction that the Grand Jury was the only way to get the evidence required. A civil suit on the basis of evidence now existing would be a mere subterfuge to get the evidence that was required. He did not think this a dignified and appropriate position for the United States Government to take.

At this point Secretary Foster asked permission to make one more point. It was the fact that the Government does not seem to have the evidence necessary to proceed with a civil suit that had caused the Departments of State and Defense to make their second

[3] Part 1, paragraph 43, p. 1329.

recommendation with respect to the appointment of a Cabinet commission. Secretary Foster emphasized that it was not the intention of this recommendation to interfere with the Attorney General as to his methods of prosecuting anti-trust suits. All that we wanted to do, he said, was to safeguard the national security in all its aspects, and he felt that the commission was the best way to do this. However, if the Attorney General wanted to institute a civil suit immediately, the Defense Department had no objection whatsoever.

Secretary Sawyer expressed strong support of this argument of Secretary Foster's, and said that the whole point of the meeting was to decide what was best for the national security.

The President agreed with this position emphatically. He recalled to the members of the Council that he had always been a strongly anti-trust President. Moreover, he continued, he had had long and bitter experience with the oil companies, and was of the opinion that they had almost lost us the last war. Nevertheless he believed that the national security was at stake, and he therefore said, "I am approving the recommendations of State and Defense."

The National Security Council:

a. Discussed the subject in the light of the reference reports.

b. Noted that the President approved the recommendations contained in pages 12–16 of the reference report on the subject (NSC 138/1).[4]

Note: Mr. Bohlen and Mr. Foster represented the Departments of State and Defense, respectively, for the above action. Mr. Emmerglick for the Attorney General and the Secretaries of the Interior and Commerce participated in the above action with the Council, the Secretary of the Treasury and the Director of Defense Mobilization.

[Here follows the conclusion of the meeting with the Council noting the status of NSC projects as of January 7, 1953.]

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[4]For paragraphs 43 and 44 of Part 1 and paragraphs 1–3 of Part 2, see pp. 1329–1331.

This action by the Council was designated NSC Action No. 697. (S/S–NSC (Miscellaneous files, lot 66 D 95, "Records of Action")

Editorial Note

In a memorandum of January 9, 1953, to Secretary of State Acheson, the Counselor of the Department of State, Charles E. Bohlen, summarized the discussion regarding NSC 138/1 which had taken place at the meeting of the National Security Council earlier that day. Bohlen said that the Department of Justice "on the whole presented a rather weak case and in line with the paper submitted to

the Council tended to stray into areas in which they were not as well informed as Interior." He also noted that after the President had rendered his decision, the meeting had been adjourned immediately with no opportunity to discuss procedures. According to the memorandum, Bohlen had therefore conferred with Lay, who had asked that the Department of State prepare an announcement, as provided in the recommended course of action, as soon as possible. At Bruce's suggestion, Legal Adviser of the Department of State Fisher had undertaken to prepare such a statement in conjunction with the Department of Defense. Bohlen also noted that the question of whether the President should appoint the Commission or should recommend its appointment to President-elect Eisenhower had been left undecided. (S/P–NSC files, lot 61 D 167, NSC 138)

In testimony before the Subcommittee on Multinational Corporations of the Senate Committee on Foreign Relations in 1974, Emmerglick recalled that on Sunday evening, January 11, 1953, he and Bohlen had been called to the White House by President Truman, who told them that he had reached his decision on the oil cartel case with great reluctance and that he had been constrained to take that decision, not on the advice of the Cabinet officers who had attended the NSC meeting, but "solely on the assurance of Gen. Omar Bradley that the national security called for that decision." The President had also informed them that he wanted the civil action to be vigorously prosecuted. (Multinational Subcommittee *Hearings,* Part 7, page 107)

On January 12, 1953, the White House released the text of a letter of that date from President Truman to Attorney General McGranery, giving his opinion that "the interest of national security might be best served at this time by resolving the important questions of law and policy involved in that investigation [the oil cartel investigation] in the context of civil litigation rather than in the context of a criminal proceeding." The President stated, however, that he believed "that this would be the case only if the companies involved agreed to the production of documentary material which the companies are required to produce under an existing order of court based on grand jury subpoenas." He asked the Attorney General to confer promptly with representatives of the companies to determine if they would agree to enter into a stipulation to that effect. If they were to agree, the President asked that a civil proceeding then be instituted and that the pending grand jury proceedings be terminated. (*Public Papers of the Presidents of the United States: Harry S. Truman, 1952–1953* (Washington, 1966), pages 1168–1169)

Eisenhower Library, Eisenhower papers, Whitman file

Memorandum of Discussion at the 139th Meeting of the National Security Council on Wednesday, April 8, 1953 [1]

TOP SECRET EYES ONLY

Present at the 139th meeting of the Council were the President of the United States, presiding; the Vice President of the United States; the Secretary of State; the Secretary of Defense; and the Director for Mutual Security. Also present were the Secretary of the Treasury; the Attorney General (for Item 1); the Secretary of the Interior (for Item 1); the Director, Bureau of the Budget; the Acting Director of Defense Mobilization; the Chairman, Joint Chiefs of Staff; the Director of Central Intelligence; the Special Assistant to the President for National Security Affairs; the Special Assistant to the President for Cold War Planning; the Military Liaison Officer; the Executive Secretary, NSC; and the Deputy Executive Secretary, NSC.

There follows a general account of the main positions taken and the chief points made at this meeting.

1. *National Security Problems Concerning Free World Petroleum Demands and Potential Supplies* (NSC 138/1;[2] NSC Action No. 697 [3])

The Attorney General informed the Council that he had been carefully studying the problem and the referenced report, and was now prepared to make his recommendations to the Council. These were that the criminal prosecution of the oil companies should be dropped and a civil action commenced in its place. The oil companies were to send in their domestic papers bearing on the suit, but not at this time to send in papers dealing with operations in foreign countries. In order to make certain that no confidential information bearing on the national security should be made public or be handed over to the court, a committee consisting of representatives of the Departments of State, Defense and Justice was to screen all materials sent in by the oil companies.

The Attorney General thereupon read to the Council the statement which he proposed to make to the court within the next few days.[4]

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[1] Prepared on Apr. 16 by Deputy Executive Secretary of the NSC Gleason.

[2] Dated Jan. 6, 1953, p. 1317.

[3] For the text of NSC Action No. 697, see the memorandum of discussion at the 128th meeting of the National Security Council, Jan. 9, p. 1338.

[4] A copy of this statement as read by Attorney General Brownell has not been found in Department of State files or at the Eisenhower Library.

The President then inquired the difference between criminal and civil proceedings.

His question was answered, and the Attorney General pointed out that there was no commitment on the part of the Government not to prosecute criminally if the civil suit brought out evidence to justify criminal proceedings.

The President asked what the companies had done which required the Government to take legal action.

The Attorney General replied that there was no reasonable doubt that they had combined in restraint of trade within the meaning of the anti-trust laws and that indeed some of the companies had admitted this and had already consented to produce their documents. Nevertheless, the Attorney General went on, a committee was about to be set up in the Department of Justice to review the operation of the anti-trust laws of the United States as they affected areas outside the United States. There was some feeling that these laws operated unfairly against American companies in competition with foreign companies operating overseas.

Secretary Dulles stated flatly that he could not conceive of any decree issuing from this civil suit which would not wreck the oil companies' arrangements outside the United States and therefore redound to the disadvantage of United States national security.

The Attorney General replied that however well taken the Secretary of State's point, officials of the State Department itself had appealed to him for relief in Venezuela, where the cartel arrangements were so tight as to threaten a blow-up.

Secretary Humphrey stated his belief that we were hamstringing our own American oil companies by applying our anti-trust laws to American oil companies which buy Venezuelan oil and sell it abroad.

The Attorney General expressed agreement with Secretary Humphrey, and said that he expected that the result of the suit would be recommended changes in existing anti-trust legislation with a view to removing unfair restrictions on United States companies buying and selling abroad.

The President observed that if the companies' own lawyers admitted violations of the anti-trust laws, the Government had no recourse but to institute a civil suit. But he thought that the problem ought to be brought back to the Council after the civil proceedings were over, in order to determine on appropriate changes in the anti-trust laws.

Secretary Dulles again made it plain that he wished to go on record as to the dangerous effect on our national security of the decision to go forward with this civil suit.

Secretary Humphrey inquired whether it would not be sensible to decide on the desired changes in the anti-trust laws before proceeding with the suit.

The President answered that such a course would anger the Congress. The Executive branch instead should follow the existing laws, institute the civil suit, but as soon as possible after its conclusion change the law. It was possible, he thought, that Congress might agree to make the changes in the law *ex post facto.*

There was then a discussion between Council members of the dangers of a leak to the press of the decision which was not being taken. The President suggested that no record of the Council's decision on this item should be made until after the Attorney General had made his statement to the court.

The National Security Council:

Concurred in the recommendations on the subject presented orally by the Attorney General at the meeting.

Note: Record of the above recommendations retained in the official NSC files for reference by Council members only.

[Here follows discussion of significant world developments affecting United States security, United States policies in the Far East, possible courses of action in Korea, United States objectives and courses of action with respect to Formosa, United States objectives and courses of action with respect to Japan, basic national security policies and programs in relation to their costs, and National Security Council status of projects.]

800.2553/4-1753

Memorandum of Conversation, by the Assistant Legal Adviser for Economic Affairs (Metzger)

SECRET WASHINGTON, April 17, 1953.

Subject: Request for Omission of ARAMCO and of Foreign Oil Companies as Defendants in Proposed Civil Antitrust Suit

Participants: The Honorable Herbert Brownell, Jr., Attorney General,
Mr. Herman Phleger, The Legal Adviser, Department of State,
Mr. Stanley D. Metzger, Assistant Legal Adviser for Economic Affairs, Department of State

At 9:15 A.M., April 17, 1953, Mr. Phleger discussed with the Attorney General the omission of ARAMCO and of foreign oil companies as defendants in the proposed civil antitrust suit to be filed by the Department of Justice.

Mr. Phleger handed to the Attorney General copies of the British note of April 14, 1953 [1] and the advance copy of the Dutch note,[2] which was to be given to the Department today, which he read. Mr. Phleger pointed out the political desirability of omitting these companies as defendants, and also that, as a practical matter, there could be no effective enforcement of decrees against the foreign companies. It appeared that the principal concern of the Justice Department with respect to the inclusion of ARAMCO as a defendant was the matter of ARAMCO documents. Mr. Phleger stated that he understood that ARAMCO might be willing to make arrangements relating to the delivery of the documents, and the Attorney General asked Mr. Metzger to get in touch with Mr. Emmerglick, who is in charge of the case, in an effort to work something out regarding documents, in which case ARAMCO might be eliminated as a defendant.

Regarding the foreign companies, the Attorney General stated that he would consider the matter further in the light of Mr. Phleger's remarks.

[1] Not printed; the British note was in protest to the announcement on Apr. 9, 1953, by Attorney General Brownell that he would file a civil complaint against major U.S. and other oil companies for violation of the antitrust laws. The note indicated that the British Government believed the civil proceedings were no less contrary to "international comity" and no less unjustified "under international law" than criminal proceedings. It also expressed the British Government's concern that publicity arising from the civil proceedings would "prejudice the political, economic, and strategic interests of the Western Powers." (800.2553/4-1453)

[2] The Dutch Ambassador had given an advance copy of his government's note to the Department of State on Apr. 16. It presented arguments similar to those in the British note. (800.2553/4-1653)

800.2553/4-1753

Memorandum of Conversation, by the Assistant Legal Adviser for Economic Affairs (Metzger)

SECRET WASHINGTON, April 17, 1953.

Subject: Request for Omission of ARAMCO and of Foreign Oil Companies as Defendants in Proposed Civil Antitrust Suit

Participants: Mr. Leonard Emmerglick, Special Assistant to the Attorney General.
Mr. Stanley D. Metzger, Assistant Legal Adviser for Economic Affairs, Department of State.

Following the 9:15 A.M., April 17, 1953 meeting between Mr. Phleger and the Attorney General,[1] Mr. Metzger, at the request of

[1] A record of this meeting is printed *supra*.

the Attorney General, discussed the above subject with Mr. Emmerglick.

1. Regarding ARAMCO, Mr. Emmerglick was informed that there was reason to believe that ARAMCO would agree to deliver, upon service of a subpoena, documents of a character similar to those which a court order would direct its parent companies to deliver, if it could be eliminated as a party defendant. The Company had indicated that it would prefer that this agreement be an oral agreement. Mr. Emmerglick was at first opposed to the suggestion, but, after discussion, agreed if, as a minimum, the agreement were in the form of a written stipulation, and if it contained a time limit—that ARAMCO would deliver over documents of a character similar to those which its parent companies or any one of them were required to turn over under court order, within five days after such an order. Mr. Metzger then called the ARAMCO representatives, explaining the Justice Department's present proposal, which was quite close to the company's earlier position, and recommending its acceptance by the Company. The Company representatives indicated that they were prepared to accept, and that they were willing to come to a 2:00 P.M. meeting in Mr. Emmerglick's office to sign such a stipulation; Mr. Emmerglick indicated his willingness to draft such a stipulation. It thus appears that, under this arrangement, ARAMCO will be eliminated as a defendant in the proposed civil suit to be filed on April 21. Mr. Metzger stated that similar considerations were involved in Bahrein, Kuwait, and Iraq Petroleum Companies. Mr. Emmerglick did not indicate anything in regard to these companies.

2. The matter of the elimination of foreign oil companies was discussed. After considerable discussion, it appeared that the Justice Department might be willing to eliminate the Anglo Iranian Oil Company as a party defendant, since, in the face of its limited operations in the United States it was doubtful that any decree directed against that company could be effectively enforced. The matter of public relations in the event that the Anglo Iranian Oil Company were dropped, which appeared to worry Mr. Emmerglick, was discussed, and Mr. Metzger made some suggestions. Mr. Emmerglick is to see the Attorney General on this and the other foreign oil companies at 4:00 P.M. this afternoon.

The Dutch Shell group was also discussed. Asiatic Petroleum Company, which operates extensively in the United States and which is a member of the Shell group, is going to be made a party defendant, and there seemed to be no basis upon which its elimination could be based. Regarding the Royal Dutch Shell Holding Company, the same considerations appeared to apply as in the case of the Anglo Iranian Oil Company, but there appeared to be much

greater reluctance on the part of the Justice Department regarding dropping that Company.

Mr. Emmerglick agreed to take these matters into consideration with the Attorney General later in the afternoon. Mr. Metzger agreed to be in Mr. Emmerglick's office for the 2:00 o'clock meeting with the ARAMCO representatives, at which time the stipulation as to documents will, it is hoped, be consummated.[2]

[2] No record was found in Department of State files of the scheduled 2 p.m meeting between Emmerglick, Metzger, and ARAMCO representatives, nor of the scheduled 4 p.m. meeting between Attorney General Brownell and Emmerglick.

Editorial Note

On April 21, 1953, the Department of Justice filed civil suit in the United States District Court for the District of Columbia (Civil Action No. 1779–53) against Standard Oil Company (New Jersey), Socony-Vacuum Oil Company of California, the Texas Company, and Gulf Oil Corporation, charging these companies with establishing a "combination and conspiracy and monopolization" in violation of the Sherman Antitrust Act and the Wilson Tariff Act. The text of this action is printed in United States Senate, Committee on Foreign Relations, Subcommittee on Multinational Corporations, *The International Petroleum Cartel, the Iranian Consortium and U.S. National Security,* 93d Cong., 2d sess. (Washington, 1974), pages 35–46.

Eisenhower Library, Eisenhower papers, Whitman file

Memorandum of Discussion at the 140th Meeting of the National Security Council on Wednesday, April 22, 1953 [1]

TOP SECRET EYES ONLY

Present at the 140th Meeting of the National Security Council were the President of the United States, Presiding; the Vice President of the United States; the Acting Secretary of State; the Acting Secretary of Defense; and the Acting Director for Mutual Security. Also present were W. Randolph Burgess, for the Secretary of the Treasury; the Secretary of the Interior (for Item 4); the Director, Bureau of the Budget; the Chairman, Atomic Energy Commission (for Item 5); the Director of Defense Mobilization; the Federal Civil Defense Administrator (for Item 5); Robert LeBaron, Department of Defense (for Item 5); General Vandenberg, for the Chairman, Joint

[1] Prepared on Apr. 23 by Deputy Executive Secretary of the NSC Gleason.

Chiefs of Staff; the Director of Central Intelligence; Sherman Adams, Special Assistant to the President (for Item 3); the Special Assistant to the President for National Security Council Affairs; the Special Assistant to the President for Cold War Planning; the Special Assistant to the President for Atomic Energy Matters; the Military Liaison Officer; the Executive Secretary, NSC; and the Deputy Executive Secretary, NSC.

There follows a general account of the main positions taken and the chief points made at this meeting.

[Here follow an oral briefing by the Director of Central Intelligence on significant world developments affecting United States security and a discussion of the situation in Korea.]

3. National Security Problems Concerning Free World Petroleum Demands and Potential Supplies (NSC Action No. 756 [2])

The National Security Council:

Confirmed the following action on the subject taken at the last meeting of the Council on April 8:

a. Concurred in the statement which the Attorney General proposed to make to the court with respect to termination of the Grand Jury proceedings in the so-called oil cartel case, institution of a civil action under the anti-trust laws, and constitution of a committee drawn from governmental departments and agencies to screen evidence and segregate from public disclosure evidence with national security implications.

b. Noted that the Secretary of State agreed with the decision in a above to discontinue the criminal proceedings, but believes that the institution of a civil suit would seriously prejudice United States foreign relations unless the proceedings are conducted with due regard for all matters affecting such foreign relations as well as national security.

c. Recommended that the President request the Attorney General to initiate a restudy of the anti-trust laws with particular attention to the provisions relating to operations by Americans wholly outside of the United States.

d. Recommended that the President press for an extension, beyond its present expiration date, of Section 708 of the Defense Production Act of 1950, as amended,[3] relating to voluntary agreements to further the objectives of said Act.

e. Approved that public announcement of the action under a above be made by the Attorney General and at a time determined by him.[4]

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[2] Regarding NSC Action No. 756, see the memorandum of discussion at the 139th meeting of the National Security Council, Apr. 8, p. 1346.

[3] P.L. 774, enacted Sept. 8, 1950; for the text, see 64 Stat. 799.

[4] The wording of this action had been the subject of correspondence between the Special Assistant to the President, Robert Cutler, and Secretary of State Dulles. Attached to a memorandum of Apr. 14 from Cutler to Secretary Dulles was a draft

Continued

Note: The above actions have been approved by the President, and a, b, c and e transmitted to the Attorney General for implementation.[5]

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record of action to be confirmed at the Apr. 22 meeting of the NSC, which Cutler said Attorney General Brownell had approved. The wording of this draft was identical to the action as subsequently approved at the meeting except for paragraph b, which reads, "Noted that the Secretary of State, while not opposing the action in a, believes that a civil suit will seriously prejudice U.S. foreign relations in the Middle East unless the proceedings are conducted with due regard for all matters affecting the national security." (800.2553/4-1453) In a memorandum of Apr. 20 to Cutler, drafted by Legal Adviser Phleger, Secretary Dulles suggested that paragraph b be rephrased as follows: "Noted that the Secretary of State agreed with the decision in a to discontinue the criminal proceedings but believes that the institution of a civil suit would seriously prejudice United States foreign relations. Recommended that this matter be given further study." (800.2553/4-1453)

[5] The entire action was designated NSC Action No. 766. (S/S-NSC (Miscellaneous) files, lot 66 D 95, "Records of Action")

800.2553/7-2953

Memorandum of Conversation, by the Deputy Director of the Office of International Materials Policy (Armstrong)

CONFIDENTIAL WASHINGTON, July 29, 1953.

Subject: Foreign Petroleum Policy and the Anti-Trust Proceedings

Participants: Mr. James Terry Duce—ARAMCO
Mr. Waugh—E
Mr. Armstrong—OMP

Mr. Duce came to call on Mr. Waugh, to discuss general foreign petroleum problems. The net effect of his suggestions and comments was as follows:

1. The world petroleum industry needs continual expansion if the amount of consumption predicted for 1975 by the Paley Commission Report [1] is to be possible.
2. The only place where such expansion can occur is in the Middle East.
3. The Middle Eastern area is characterized by weak and unstable governments, and all questions of foreign petroleum operations in the area must be handled with delicacy and care.
4. The anti-trust suit has been injurious to the positions of the companies abroad and has been of potential danger to United States national security.
5. There should be a governmental commission, for which the oil companies would be prepared to do the necessary staff work, which should decide what reforms the companies would make. Acceptance by the companies of these reforms should make it possible to call off the anti-trust suit.

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[1] Regarding the Paley Commission Report, see footnote*, p. 1319.

6. Such a commission was proposed by Mr. Duce last fall, and obtained some support within the Government, but has apparently been dropped by the present Administration.

7. The new Foreign Economic Policy Commission of seventeen members,[2] which is the subject of current legislation, should be called upon to do this task, so that security of operation for the oil companies could be assured.

In the course of Mr. Duce's presentation, Mr. Waugh commented to the effect that he was certain that the Attorney General had every intention of conducting the anti-trust suit proceedings in such a way that foreign policy problems are fully recognized. Mr. Waugh said that he would be glad to pass on to the Administrative Assistant to the President Mr. Duce's suggestion that the Foreign Economic Policy Commission look into the oil issue, but in making this comment Mr. Waugh pointed out that the main problem the Commission would have to consider was that of general commercial policy, and that it would have very little time in which to do its work, since its report would be due in March 1954 and it does not yet exist as an entity. Mr. Armstrong commented that he had examined in some detail, during the fall of 1952, the amount of work which it would be necessary for any government petroleum policy commission to do if it were to get a clear picture of the issues and problems requiring resolution. It was his conclusion that it would be impossible for the proposed Foreign Economic Policy Commission or a subcommittee of it to get the work done properly within the allotted time.[3]

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[2] The Commission was established as a result of the enactment on Aug. 7, 1953, of the Trade Agreements Extension Act of 1953. For the text of the act, see 67 Stat. 472. For documentation regarding the establishment of the Commission, which was headed by Clarence B. Randall, see pp. 49 ff.

[3] Attached to the source text was a memorandum of July 31 from Armstrong to Assistant Secretary Waugh, in which Armstrong stated that, if a commission or committee were to be set up, "it should be confined to Government people, because the problem cannot be comprehended properly except with the use of a good deal of classified information." While Armstrong pointed out that in some respects coordination of foreign petroleum policy was already being handled quite well within the government, he thought that at some point it might be a good idea "for a formal governmental arrangement to be made to develop an explicit policy." He added, however, that he did not think that time had yet arrived. In the margin of this memorandum was Waugh's handwritten note that he agreed with this view.

Editorial Note

During the fall and winter of 1953, there was considerable discussion within the United States Government of the need of the new Iranian Government, headed by Premier Fazollah Zahedi and sup-

ported by the Shah, for oil revenues and the effect of this situation on the Department of Justice's civil suit against certain oil companies. This matter was discussed at the 160th meeting of the National Security Council on August 27, 1953; at the 178th meeting of the NSC on December 30, 1953; and at the 180th meeting of the NSC on January 14, 1954. A plan was proposed to establish an international oil consortium in Iran; and, in a letter of January 21, 1954, to President Eisenhower, Attorney General Brownell stated his opinion that the plan, which included the participation of some American oil companies, was not in violation of the antitrust laws, subject to certain conditions. He also said that his opinion did not limit the rights of the Department of Justice in continuing its civil suit against Standard Oil Company of New Jersey and other oil companies. For the memoranda of discussion at these NSC meetings and the text of Brownell's letter, as well as other documentation related to the civil suit against the oil companies, see volume X.

811.2553/4-954

The Under Secretary of State (Smith) to the Attorney General (Brownell) [1]

SECRET [WASHINGTON,] April 9, 1954.

MY DEAR MR. ATTORNEY GENERAL: On January, 1954, the Department received a letter [2] from attorneys representing Socony-Vacuum Oil Company, Inc., Standard Oil Company of California and The Texas Company in connection with the pending civil antitrust suit against these companies. In this letter the oil companies requested an opportunity to place before the Department of State and other interested agencies the results of their investigation concerning the probable effects on United States interests of pursuing the case against them. This request apparently resulted from a suggestion made in Judge Stanley N. Barnes' letter of December 24, 1953,[2] to a representative of one of the companies.

On January 23, 1954, representatives of the companies concerned met representatives of this Department, the Department of Defense and the Central Intelligence Agency and presented evidence of the effect upon United States interests which may be expected to

[1] Drafted by A. David Fritzlan of the Office of Near Eastern Affairs and Armstrong and cleared by Fritzlan with Phleger, Kalijarvi, and Eakens. A note on the source text indicates that the original letter was delivered by special messenger on Apr. 10.

[2] A copy of the letter under reference here is in file 800.2553/4-554.

follow prosecution of this suit.[3] A transcript of this presentation was transmitted to Judge Barnes shortly thereafter. Since then the Department of State has sought and obtained the views of our Ambassadors in the Near East concerning this question and has made an intelligence estimate of it. I enclose two copies of this estimate for your consideration.

In view of the conclusions reached in the estimate, it is my hope that arrangements can be made to settle the suit without protracted proceedings or publicity which would serve to damage United States interests in the Middle East.[4]

Sincerely,

WALTER B. SMITH

[Attachment]

Memorandum by Herbert J. Liebesny of the Division of Research for Near East, South Asia, and Africa to the Assistant Secretary of State for Near Eastern, South Asian, and African Affairs (Byroade)[5]

SECRET [WASHINGTON,] April 1, 1954.

Subject: Estimate of the Consequences of the Prosecution of the Pending Civil Suit Against Certain Oil Companies in the US

The Problem

To estimate the consequences for US national security interests in the Middle East* of the prosecution of the pending civil suit against certain American oil companies.

Scope

This estimate considers the consequences in the Middle East of a vigorously pressed, protracted civil suit. It is assumed that there will be extensive evidence on the points raised in the government's complaint and that the suit will be widely publicized in all its phases. No attempt will be made to forecast the nature of an eventual judgment in the suit or to estimate the actual economic conse-

[3] For extracts of a 57-page transcript of the discussion at this meeting, see volume IX.

[4] No reply to this letter has been found in Department of State files.

[5] The memorandum was sent to Assistant Secretary Byroade through Philip H. Tresize, the Deputy Director of the Office of Intelligence Research. There is no indication on the source text as to who drafted the memorandum.

*For purposes of this estimate the Middle East is defined to comprise Aden, Bahrein, Egypt, Iran, Iraq, Jordan, Kuwait, Lebanon, Muscat, Qatar, Saudi Arabia, Syria, Trucial Oman, and Yemen. Israel and Turkey are excluded. [Footnote in the source text.]

quences for the companies or the local governments of such a judgment, except insofar as speculations on the eventual outcome of the suit may influence reaction to the suit in the Middle East.

The consequences of prosecution of the civil suit will be considered solely from the point of view of US national security interests, which are assumed to comprise (a) maintenance of stable governments friendly to Western objectives, (b) maintenance of control of Middle Eastern oil resources by US or Allied Western interests, (c) maintenance of Western military facilities in the area, and (d) denial of Middle Eastern resources and strategic facilities to hostile interests. Consequences for the private interests will be considered only as far as they affect directly or indirectly the US national security interests. It is assumed that general world conditions and the basic aims of US foreign policy will remain essentially the same (i.e., that no general war will break out), that there will be no renewal of large scale Arab-Israeli hostilities, that the cold war will continue, and that the US cold war objectives will not undergo a significant change.

Background for the Estimate

1. *Basic Factors Affecting the Estimate.*

The US national security interest in the Middle East in its basic aspect is concentrated upon keeping the area available to the West and denying it to the Soviet Bloc. Availability of the area is considered important because of the increasing role of the area's petroleum resources in the supply of the West and because of the strategic position of the area as a whole. Under the assumption of continued cold war it has been considered essential that the oil resources of the Middle East be available to Western Europe so as to avoid the depletion of Western hemisphere resources during the period of cold war. If control of these oil resources by the West is lost, an element of chance would be injected which may make advance planning difficult. As the Iranian example has shown, the aftermath of nationalization stopped the flow of oil from that country for several years and made the development of alternate sources of crude oil mandatory. Even if the flow of oil is restored, control by a government not friendly to the West or by unfriendly private sources might lead to an interruption of the flow at some critical juncture in East-West relations thereby providing interests hostile to the West with an additional means of pressure and strategic and economic advantage.

The strategic position of the West in the Near East can be maintained without a significant increase of Western military force in the area only if there are in the Middle Eastern countries stable governments friendly to the West. The stability of the governments

of the Middle East is in many instances closely related to the continued exploitation of oil resources and the steady flow of oil revenue. This dependence probably is greatest in Saudi Arabia but it is true to a significant degree also in the other oil producing areas such as Kuwait, Bahrein and Iraq. Iran's pressing financial problems are not likely to be solved satisfactorily without the restoration of the flow of oil revenue. Up to the present time all important Middle Eastern oil resources have been controlled by Western companies. Nationalization has been carried out only in Iran and is not believed to be an immediate threat in any of the other oil producing countries. Since approximately 1948, however, there has been an acute and ever increasing pressure on the part of the governments of the oil producing countries for higher oil revenues and this trend is likely to continue. It is likely to receive a stimulus if the Iranian oil controversy is resolved in such a manner as to give Iran real or apparent benefits which the Arab governments feel that they are not receiving.

The fact that there is significant participation by the respective governments in major British and French oil companies in the Middle East is well-known to the local governments and peoples. As a result, the interests of the oil companies and the interests of their home governments are frequently considered very closely linked and local grievances against one almost automatically become grievances against the other. The fact that the US adheres strictly to the principle of free enterprise and does not participate in the American companies exploiting oil resources in the Middle East, does not make any appreciable difference in this approach. The concept of large and interlocking corporate entities, such as the oil companies with their various subsidiaries constitute, is difficult for the average Middle Easterner to grasp, as are the complicated financial transactions involved in the operations of these companies. Therefore, it is difficult for the Middle Easterner in general to discern the difference between private companies operating independently, supported by their government only when they need such diplomatic support to preserve their acquired rights, and companies which actually come close to being instrumentalities of their home governments. This does not mean that the local governments are wholly unaware of the difference between the relationship of US companies to their government and that of British and French companies to theirs. However, it is difficult for them to realize that this difference is basic and not merely in the degree and form of influence.

Nationalist and leftist propaganda in the Middle East has exploited this close link in the Middle Eastern mind between oil companies and Western governments to represent the former as "tools

of imperialism" and instrumentalities of the Western governments through which they exercise political and economic control in the Middle East. In addition this propaganda has stressed the theme that the oil companies use all possible means to exploit the Middle Eastern countries and to deprive the people of their just share in their countries' natural resources.

The US is a relative newcomer to this area both with regard to large-scale economic as well as strategic and political interests. However, in this short span of time it has become deeply involved in the controversies affecting the area. The Palestine War significantly lowered the prestige of the US in the Arab states because of alleged partiality toward Israel and the continued tension between the Arab states and Israel has not allowed the suspicion of US motives to subside. In addition, nationalist and leftist propaganda have frequently pictured the US either as fully supporting alleged British imperialist moves in the area or as attempting to replace the UK in the position of prime "imperialist" power.

The actual relationship between the US and the UK in the region has been marked by collaboration on the broad questions of security facing the West in the Middle East. However, British and US aims are not identical, since the UK is attempting to preserve the remnants of its imperial position in the Middle East and to consolidate its control in selected areas, such as for example the Persian Gulf principalities as far as feasible. With regard to oil, too, the aims of the US and the UK are parallel but not identical. While the oil resources of the Middle East are of importance to the US primarily from the viewpoint of its NATO defense interests rather than from the standpoint of domestic requirements, the UK's principal source of oil is the Middle East.

The aims of the USSR in the Middle East can probably best be characterized at this time as being directed toward denial of the area to the Free World as a base and source of raw materials in case of a crisis. While it may be true that the Soviet Bloc does not need the Middle Eastern oil resources under present cold war conditions, it would be very advantageous to it if Western Europe could be made to feel that continued availability of Middle Eastern oil is in last analysis dependent on Soviet good will.

2. *The Impact of Earlier Disclosures.*

Aside from these general considerations, the extent and impact of the publication of the "Report of the Federal Trade Commission on the International Petroleum Cartel" and of the criminal suit which was dropped will have to be taken into account in estimating the consequences of a sustained and vigorously pressed civil suit. Before the publication of the FTC report it was estimated that the effects of that publication would significantly aid Soviet propagan-

da in the Middle East and adversely affect the US position. The immediate tangible effects of the publication and the institution of the criminal suit were not as severe as anticipated. This may in part have been due to the fact that the more potentially damaging portions of the report were deleted before publication. In addition, in the fall of 1952 the attention of the Middle East public was rapidly drawn away from the report and the suit by the ouster of King Faruq and the events following it in Egypt, the worsening of the Iranian situation, and the possible effects for the Middle East of the forthcoming presidential elections in the US. However, the governments were aware of the existence of the report and of its implications and there have been definite indications that they were ready to use it against the oil companies should occasion warrant. The Saudi Government had the report translated into Arabic and used it during negotiations with Aramco. The stay in criminal proceedings in January 1953 and the dropping of the criminal suit in April 1953 further removed the oil cartel issue from public attention in the Middle East. The filing of a civil suit as such does not appear to have aroused great or sustained interest, probably because it was a technical move which was not followed by any intensive action and was not accompanied by large-scale publicity.

Estimate

1. *General.*

It is not estimated that a vigorously pressed and widely publicized civil suit will provoke entirely new trends in the Middle East or that any failure to press the civil suit will of necessity prevent the development or the intensification of trends adverse to Western interests in the Middle East. It is believed, however, that revelations in the course of a civil suit with their attendant publicity could intensify adverse trends and provide interests hostile to the US and its Allies with effective propaganda material.

2. *Effects Upon the Attitude of Middle Eastern Governments.*

The effects of a vigorously pressed civil action upon the attitude of the Middle Eastern governments would vary from country to country. The character and the intensity of these reactions would depend not only on the nature of the arguments made and the evidence produced in the suit, but also on such variables as the policy objectives the individual government may have at the moment; the state of its relations with the companies, with the US and with other Western powers at the time; and, to some extent, on cold war and general Middle East political developments.

In general, effects are likely to be most adverse in areas where local pressures on the companies have been strongest. In Iran, it is probable that the suit would not lead the Zahedi government to

refuse to reach an agreement with the oil companies, since the Zahedi government is strongly inclined toward such an agreement. However, those elements in Iran which are strongly opposed to any foreign participation in the production of Iranian oil could utilize the revelations during a civil suit, along with other arguments, to make it more difficult for the Zahedi government to "sell" the oil agreement to the general public and to obtain parliamentary ratification. Should these elements again come to power in Iran they might well use such revelations to justify complete ousting of foreign interests from the Iranian oil picture.

However, even if there are no immediate tangible adverse effects in Iran, Iranian developments may increase adverse reactions in the neighboring oil producing Arab states. Should US companies be permitted to combine with other Western companies for the exploitation and marketing of Iranian oil while combinations of oil companies in the Arab states are at the same time under attack in court by the US Government, the governments of the Arab states involved will be very likely to reach the conclusion that the US is applying two yardsticks—one for Iran where the Palestine question is not involved and where the US feels "it has to come to the support of the British," the other in the Arab states where the US does not want to give any decisive help because of the Arab-Israeli tension.

In Saudi Arabia governmental reactions to the civil suit are likely to be twofold. On the one hand there will probably be bewilderment that the US Government regarded as Saudi Arabia's fast friend, is moving against major American commercial interests in the Middle East with the likelihood of hurting Saudi Arabia economically. It is not to be ruled out that the strongly anti-Israeli King might see some pro-Zionist angle in the pressing of the civil suit, even without taking Iranian developments into account. On the other hand the Saudi Government may conclude that the company should be more urgently pressed for increased revenues since it apparently made profits which were far too large. These two reactions may at first glance seem contradictory. However, Western logic cannot be applied to Middle Eastern reactions which are likely to be governed more strongly by emotions than by coldly logical deductions. In addition, the Saudi Government will probably be impressed much more by superficial deductions and conclusions stemming from isolated facts than by a careful, reasoned analysis of the whole suit which is likely to be beyond comprehension even of most of their experts except the very few who have at least some training in Western law.

In Iraq, the suit may not have an immediate effect upon the standing of the oil companies there since US firms hold only a mi-

nority interest in the Iraq Petroleum Company (IPC) and its subsidiaries. In addition, the present Iraqi Government and its probable successors (unless the complexion of the government changes radically) may not want to use the suit as means of pressure for increased revenues. They may regard it as more politic to await the results of Saudi pressure on Aramco and then move against IPC.

Reaction among the governments of the Persian Gulf principalities will probably be extremely limited since these governments are under effective British control and could not move freely unless present British controls were considerably relaxed.

In view of the present uncertain situation in Egypt, governmental reaction there is difficult to predict. However, it is very probable that whatever the complexion of the Egyptian Government, it will be preoccupied by the questions of the Suez Canal and of the Sudan. While revelations of the suit may be taken as another indication of "imperialist machinations" they are unlikely to influence governmental attitudes very strongly.

In the non-producing countries which have granted pipeline transit rights—Jordan, Lebanon and Syria—governmental reactions to the suit are likely to manifest themselves in increased pressures for greater benefits from the pipeline companies, thereby merely intensifying an existing trend. Here too increased suspicion of US as well as company aims may result.

An additional possible effect of a prolonged suit on all governments of the Middle East countries may be the raising of doubts as to the security of their oil revenues and the usefulness of continued negotiations or dealings with the oil companies. Such a reaction is likely to come later, when speculations as to the eventual outcome of the suit may become strong with an outcome adverse to the oil companies being forecast. It is unlikely that the governments would be able to evaluate the consequences of a possible judgment against the oil companies beyond the fact that the oil companies operating within their borders would be affected seriously. At that point the governments might even begin to ask themselves whether they should not try to find other interests to take over the exploitation of the national oil resources or perhaps approach some form of nationalization.

3. *Effect on Non-Governmental Attitudes.*

In most Arab states outside the Arabian Peninsula, the urban middle group constitutes the politically articulate element. This group is growing, in general is dissatisfied with its economic and political position within Middle Eastern society and supplies most of the leaders and supporters both for nationalist and leftist movements. It is generally hostile to the former imperial powers, Great Britain and France, and strongly resents what it regards as sup-

port given to these powers and to Israel by the US. This group is likely to seize immediately upon any issue which would put US motives into question. Revelations made during the suit are likely to be played up by the Middle Eastern press which frequently indulges in sensationalism. They may then be used by elements in the middle group to support their argument that the US cannot be trusted, that it tolerated exploitation of the Middle Eastern countries by the oil companies for a long time and even now stepped in not because it had the interests of the Middle Eastern countries at heart but because of internal US political reasons or possibly in order to help Israel or the UK. The longer the suit lasts, the more sustained and sensational the publicity and the more detailed the evidence, the more profound and widespread are the effects of this exploitation of the suit by middle group elements likely to be.

4. *Communist and Fellow Traveler Reactions.*

In pursuance of their ultimate strategic goal of swinging the Middle East into the Soviet orbit, the Communists are taking the initial tactical approach of attempting (a) to eliminate Western economic interests from the Middle East as a step in isolating the area from the West and (b) to undermine all non-Communist governments or groups in power by identifying them as willing tools of Western economic "exploitation." The section of the press dominated by Communists or fellow travelers took the line in 1952 especially in Beirut, the center of Communist propaganda machine activities in the Arab states, that the FTC report demonstrated what the Communists had always contended: namely that the oil companies were exploiting the Middle East. Therefore it was argued, "popular" demands for the nationalization of the oil companies was justified. It is likely that a prolonged and vigorously pressed civil suit will bring not only a revival but an intensification of this propaganda line. It could be utilized with some chance for success in attempts to jeopardize negotiations between the governments and the oil companies for increased benefits by publicizing the belief that the oil companies are not to be trusted, that the governments are falling into the traps set by "international monopolies," and that the solution of the Middle East's oil problem is nationalization and not negotiation. It should be pointed out that Communist and fellow traveler propaganda is likely in any event to stress the alleged sinister motives and the need for nationalization. However, the allegations made and facts divulged and broadcast during a civil suit would provide these groups with additional propaganda material which would have the great advantage from a propaganda viewpoint of not being wild accusations but statements made in a US court. It is to be expected that propaganda by local Communists

and fellow travelers will be supported by similar propaganda from Moscow.

5. *Effects of Adverse Reactions on Other Western Interests in the Middle East.*

Strong adverse reactions in the Middle East to a civil suit may also reflect upon other Western interests, especially oil interests, in the area. Middle Eastern opinion and least of all Soviet and Communist propaganda are not likely to distinguish between American and non-American companies, especially since the latter are involved in the suit and evidence showing their dealings with the American defendants in the suit is likely to be submitted. Therefore, it is likely that whatever adverse reactions there are will be directed against the oil companies in general. By the same token, any "anti-imperialist" propaganda derived from facts established or allegations made during the suit is likely to be extended to all Western countries with interests in the Middle East and not restricted to the US.

6. *Effects on Relations Between the US and Its Allies in the Area.*

While it is unlikely that the civil suit and attendant propaganda will have a decisive influence on the relations between the US and its allies in the area, it may exacerbate existing tensions and difficulties. The relations between American and non-American oil interests are likely to be affected to some degree. British oil interests have not always approved of the methods of operation of American oil companies in the Middle East, feeling that they were too prone to give in too easily to local government pressure. The possible revelations of the suit and the uncertainties created thereby are likely to reinforce the feeling particularly on the part of British interests, that collaboration with American interests is difficult. The overall impression might also be created among our European allies that the US does not have a clear cut and forceful Middle Eastern policy and that the US Government allows itself to be swayed by the contingencies of the domestic political situation in the US.

7. *Conclusions: Probable Overall Effects on the US National Security Interests in the Middle East.*

A protracted and vigorously pressed civil suit is likely to intensify the already existing atmosphere of suspicion and distrust with regard to the aims in the Middle East of the US and the Western powers in general. The exact extent of the damage that might be done is difficult to estimate since the intensity of the exploitation of the suit in adverse propaganda will depend to a considerable degree on the general political situation developing in the Middle East. However, it is estimated that the overall effect will be damaging and will render the achievement of US policy goals more difficult. The prestige of the US, already impaired as a consequence of

the Arab-Israeli conflict, is likely to be further lowered if it is revealed that companies regarded for so long more or less as symbols of the US, have indulged in practices strongly disapproved by their government. Uncertainty about US aims is likely to be increased and the willingness to believe in announced US policy goals may possibly be affected. While hardly the decisive element in US relations with the Middle East the suit is likely to constitute a potent aid to those elements in and beyond the Middle East which wish to diminish if not eliminate the role of the US in that area.

Eisenhower Library, Eisenhower papers, Whitman file

Memorandum of Discussion at the 210th Meeting of the National Security Council on Thursday, August 12, 1954 [1]

TOP SECRET EYES ONLY

Present at this meeting were The President of the United States, presiding; the Vice President of the United States; the Secretary of State; the Secretary of Defense; the Director, Foreign Operations Administration; and the Director, Office of Defense Mobilization. Also present were the Acting Secretary of the Treasury; the Secretary of Commerce (for Item 1); the Director, Bureau of the Budget; the Chairman, Atomic Energy Commission (for Item 4); the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force (for Items 5 and 6); General Twining for the Chairman, Joint Chiefs of Staff, the Chief of Staff, U.S. Army, Vice Admiral Gardner for the Chief of Naval Operations, and General Pate for the Commandant, U.S. Marine Corps (for Items 5 and 6); Robert R. Bowie, Department of State (for Items 1, 2 and 3); Marshall Smith, Department of Commerce (for Item 1); Walter S. Delany, Foreign Operations Administration (for Item 1); the Director of Central Intelligence; the Assistant to the President; Robert Cutler, Special Assistant to the President; the Executive Secretary, NSC; and the Coordinator, NSC Planning Board Assistants.

There follows a summary of the discussion at the meeting and the main points taken.

[Here follows discussion of economic defense policy and United States export controls.]

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[1] Prepared on Aug. 13 by the Coordinator of the NSC Planning Board Assistants, Marion W. Boggs.

2. Study of Anti-Trust Laws (NSC Action No. 766–c [2])

Mr. Cutler reported that the Attorney General had appointed a committee of 100 legal experts to restudy the anti-trust laws, with particular attention to provisions relating to operations by Americans wholly outside the United States. This committee was expected to conclude its work this week, and the Attorney General would be prepared, pursuant to NSC Action No. 766–c, to submit his recommendations on the subject in time for consideration by the Council at its meeting on September 30.

The National Security Council:

Noted a report by Mr. Cutler that the Attorney General, pursuant to NSC Action No. 766–c, would be prepared, before September 30, 1954, to submit his recommendations, based on a restudy of the anti-trust laws, with particular attention to existing provisions relating to operations by Americans wholly outside the United States.[3]

Note: The above action subsequently transmitted to the Attorney General.

[Here follow a briefing by the Director of Central Intelligence on significant world developments affecting United States security and discussion of the question of cooperation with other nations in the peaceful uses of atomic energy, of the redeployment of United States forces in Trieste, United States policy in the Far East, and the status of National Security Council projects.]

[2] Regarding NSC Action No. 766, see the memorandum of discussion at the 140th meeting of the National Security Council, Apr. 22, 1953, p. 1351.

[3] This action was designated NSC Action No. 1200. (S/S–NSC (Miscellaneous) files, lot 66 D 95, "Records of Action")

S/S–NSC (Miscellaneous) files, lot 66 D 95, "Miscellaneous Memos, 1954"

The Assistant Attorney General (Barnes) to the Executive Secretary of the National Security Council (Lay) [1]

SECRET WASHINGTON, October 29, 1954.

Re: NSC Action 766c,[2] that the Attorney General would be prepared to submit his recommendations, based on a restudy of the antitrust laws with particular attention to existing provisions relating to operations by Americans wholly outside the United States

[1] Attached to the source text was a copy of a memorandum of Nov. 1, 1954, from Lay to the National Security Council transmitting Barnes' preliminary report and

Continued on next page

DEAR MR. LAY: The Attorney General will probably not receive the report of his National Committee to Study the Antitrust Laws before January 1955. Because of this fact, he has requested Stanley N. Barnes, Assistant Attorney General in charge of the Antitrust Division and one of the Co-Chairmen of the Committee, to discuss with the National Security Council the probable recommendations that group will make.

As background, it should be emphasized that Congress has in language unequivocal expressed its purpose that antitrust should apply to "commerce . . .[3] with foreign nations." So it is that the Sherman Act applies to "commerce among the several states or with foreign nations . . ." (15 U.S.C. (1952) 1, 2, 3). And Section 8 of that Act specifies that "the word 'person' includes corporations 'existing' under the laws 'of any foreign country.' " (15 U.S.C. (1952) 8) In like fashion, the Clayton Act covers within its definition of commerce "trade or commerce . . . with foreign nations." (15 U.S.C. (1952) 12) And the Wilson Tariff Act of 1894 applies to those "engaged in importing any article from any foreign country into the United States." (15 U.S.C. (1952) 8) Similarly note the Tariff Act of 1930 (19 U.S.C. (1952) 1337); and the anti-dumping provisions of the Revenue Act of 1916 (15 U.S.C. (1952) 72).

Further emphasizing Congressional design that antitrust law apply generally to foreign commerce is the fact that Congress saw fit carefully to limit the immunities granted to American corporations operating abroad by the Webb–Pomerene Act of 1918. Thus the antitrust exemption that law grants is limited to associations

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Continued from previous page

noting that the Attorney General's definitive recommendations on the subject were not expected to be ready for submission to the Council prior to the Committee's final report in January 1955. A note on this memorandum indicates that copies of Barnes' preliminary report were also sent to the Secretary of the Treasury, the Attorney General, the Director of the Bureau of the Budget, the Chairman of the Joint Chiefs of Staff, and the Director of Central Intelligence.

[2] Regarding NSC Action No. 766–c, see the memorandum of discussion at the 140th meeting of the National Security Council, Apr. 22, 1953, p. 1351.

[3] Ellipses and brackets throughout in the source text.

"entered into for the sole purpose of engaging in export trade" or agreements "made . . . in the course of export trade by such association" (15 U.S.C. 62, 1952). The Act applies only, however, where the association or act "is not in restraint of trade within the United States and is not in restraint of the export trade of any domestic competitor of such association" (15 U.S.C. 62, 1952). And the Supreme Court, construing Webb–Pomerene, has observed that there "is a strong indication that there was no thought of depriving the Attorney General of any of his powers to prosecute antitrust suits." (*United States Alkali Export Ass'n* v. *United States,* 325 U.S. 196, 211 (1945)). As one lower court put it, it seems clear "whatever exemptions the Webb Act did bestow upon associations organized thereunder, it affirmatively appears upon the face of the statute that Congress did not intend thereby to abandon the rule of competition as applied to our export trade" (66 F. Supp. 59, 67, S. D. N. Y. 1949).

I. Scope of the Committee's Inquiry

At the outset it should be understood that the Committee is not a fact-finding body. The group has no subpoena powers, has been supplied with no research or fact-gathering staffs. There will therefore be no generalizations as to the past effects of antitrust on achievement of national security foreign policy, or on international trade groups. Instead of generalizing about past policies, it will make recommendations built on the treatment by the courts of various problems with an eye toward avoiding any future policy conflicts.

II. Amendment of Antitrust Laws as Applied to Foreign Commerce

The American Bar Association Committee on International Trade Regulation in its August 1953 report on the Impact of the Antitrust Laws on Foreign Trade recommends that "antitrust laws . . . [should be] clearly and explicitly amended to eliminate their extraterritorial effect and to keep their application to the foreign commerce of the United States within due bounds." (Id. at 36) More specifically, that report recommends legislation legalizing certain combinations between United States competitors unless such combinations "directly or substantially restrain the foreign commerce of the United States or substantially decrease competition between the owners of the enterprise in the domestic market of the United States." (Id. at 37)

This and like proposals have been discussed at various work group meetings, as well as by the entire Committee, in Ann Arbor. One or two members have spoken in favor of such Sherman Act amendment. The Committee apparently believes, however, these problems can best be solved by judicial and administrative construction of existing law, rather than by statutory amendment.

And suggestions hereinafter enumerated for construction of the existing law go, in the opinion of the Committee, a long way toward meeting many of the difficulties the ABA sought to treat by way of amendment.

Prognostication: No amendment of the Sherman Act, as applied to foreign commerce.

III. Extraterritorial Jurisdiction

The Committee apparently believes that in taking jurisdiction over acts committed abroad by Americans alone, by Americans joined with foreign nationals, and by foreign nationals whose deeds affect the foreign commerce of the United States, the Department should at all times consider questions of international comity.

A. It should be here recalled that both *American Banana Company* v. *United Fruit Company* (213 U.S. 347 (1909)) *U.S.* v. *Aluminum Company of America* (148 F. 2d 416 (2nd Cir. 1945)) rested conclusions regarding extraterritorial application on "the international complications" likely to stem from over-extension of antitrust jurisdiction. As Judge Hand expressed the thought in *Alcoa* (148 F. 2d 416), "we are concerned only with whether Congress chose to attach liability to the conduct outside the United States to persons not in allegiance to it. . . ." The Court then says that if Congress intended to impose the liability and if the Constitution permitted it to do so, the Court cannot look beyond the Congressional intent properly expressed in law. Nevertheless:

"It is quite true that we are not to read general words, such as those in this Act, without regard to the limitations customarily observed by nations upon the exercise of their powers; limitations which generally correspond to those fixed by the 'Conflict of Laws.' We should not impute to Congress an intent to punish all whom its courts can catch, for conduct which has no consequence within the United States. . . . On the other hand, it is settled law—as 'Limited' [one of the corporate defendants] itself agrees—that any state may impose liabilities, even upon persons not within its allegiance, for conduct outside its borders that has consequences within its borders which the state reprehends; and these liabilities other states will ordinarily recognize. . . . It may be argued that this Act extends further. Two situations are possible. There may be agreements made beyond our borders not intended to affect imports, which do affect them, or which affect exports. Almost any limitation of the supply of goods in Europe, for example, or in South America, may have repercussions in the United States if there is trade between the two. Yet when one considers the international complications likely to arise from an effort in this country to treat such agreements as unlawful, it is safe to assume that Congress certainly did not intend the Act to cover them."

Prognostication: The Committee will approve the intent and spirit of the foregoing

B. As a practical matter, the Committee will probably emphasize the use of clauses in decrees, whether by judgment or consent, similar to the ones discussed in *British Nylon Spinners, Ltd.* v. *Imperial Chemical Industries, Ltd.* (All Engl. L. Rep. Vol. 2, p. 780, 784 (1952)). As the concurring opinion there observed; "[T]here is a saving clause which prevents any conflict, because, although the defendant company has been ordered to do certain acts by the United States Court, nevertheless there is a provision which says that nothing in the judgment shall operate against the company for action taken in complying with the law of any foreign government or instrumentality thereof to which the defendant company is for the time being subject. In view of that saving clause I hope that there will be no conflict between the orders." For similar decree provisions see *United States* v. *General Electric Co., et al.* (82 F. Supp. 753 (D. C. N. J. 1949)), (115 F. Supp. 835 (D. C. N. J. 1953)) and *In re Investigation of World Arrangements with Relation to the Production, Transportation, Refining & Distribution of Petroleum* (13 F.R.D. 280 (D.C. D.C. 1952)).

Prognostication: The Committee will recommend use of such saving clauses.

C. The Committee apparently feels that the Attorney General should consult with the National Security Council before instituting antitrust action in a foreign field. This is an apparent effort to avoid problems that may have stemmed from the institution of proceedings in the oil cartel case. Resolution of conflict in any case between antitrust and our foreign or security needs could thus be reconciled, in accord with the classic dictates of *United States* v. *Curtiss-Wright Corp.* (299 U.S. 304), by the President through his appointed representatives.

The Committee seems to agree that the prime responsibility in this area rests not on the Attorney General, but on the President. As the Supreme Court put it in the *Curtiss-Wright* case:

"In this vast external realm . . . the President alone has the power to speak or listen as the representative of the nation. . . . He manages our concerns with foreign nations. . . . It is important to bear in mind that we are here dealing not alone with authority vested in the President by an exertion of legislative power, but with such an authority plus the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations—a power which does not require as a basis for its exercise an act of Congress, but which, of course, like every other governmental power, must be exercised in subordination to the applicable provisions of the Constitution." (Id. at 319-320)

Prognostication: Recommendation that the Attorney General consult with the National Security Council on any antitrust action involving foreign commerce.

IV. Measuring Injury to Foreign Commerce of the United States

The fear that injury to foreign commerce might be measured solely by reference to export and import of goods was engendered by certain dicta in *United States* v. *Timken Co.* (341 U.S. 593 (1949)) and *United States* v. *Minnesota Mining and Manufacturing Co.* (92 F. Supp. 947 (D.C. Mass. 1950)). In *Timken*, argument was advanced that foreign trade and exchange restrictions made it necessary for the defendants to operate abroad "through the ownership of stock in companies organized and manufacturing there." (341 U.S. 593, 599) While it would have been sufficient to answer that argument by pointing out that even in its own terms it did not justify illegal combination with *a major competitor* abroad, the Court went further commenting,

"that the provisions in the Sherman Act against restraints of foreign trade are based on the assumption, and reflect the policy, that export and import trade in commodities is both possible and desirable. These provisions of the Act are wholly inconsistent with appellant's argument that American business must be left free to participate in international cartels, that the free foreign commerce in goods must be sacrificed in order to foster export of American dollars for investment in foreign factories which sell abroad."

This contention, the Court said, "would make the Sherman Act a dead letter. . . . If such a drastic change is to be made, Congress is the one to do it." (Id. at 599)

This statement was not necessary to answer the defense argument—if the case is viewed as one of combination between an American company and its British competitor. Nevertheless, its possible implication that any American investment for production abroad involves *pro tanto* a restraint on American exports of goods deserves careful consideration and possible rejection.

This doubtful construction of the dictum in *Timken* is supported by certain language in *United States* v. *Minnesota Mining and Manufacturing Company* (92 F. Supp. 947 D. C. Mass., 1950). That case concerned the legality of an arrangement through which four American competitors, which with their associates had formerly done over 86% of the American export business in the relevant market, had combined to run factories in England and Canada. The decree requires joint control of the foreign companies to be abandoned. For the conclusion of illegality, two reasons are advanced: (1) the combination of important, perhaps dominant, American competitors in the ownership of a foreign subsidiary restrains the

foreign commerce of the United States, through its effect on American exports; and (2) by way of dictum, the association of American competitors abroad develops habits in restraint of trade which would adversely affect their competition at home. The Court continued, however, to say:

"it is no excuse for the violations of the Sherman Act that supplying foreign customers from foreign factories is more profitable and in that sense is, as defendants argue, 'In the interest of American enterprise' [Def. Rep. Br. 31]. Financial advantage is a legitimate consideration for an individual non-monopolistic enterprise. It is irrelevant where the action is taken by a combination and the effect, while it may redound to the advantage of American finance, restricts American commerce. For Congress in the Sherman Act has condemned whatever unreasonably restrains American commerce regardless of how it fattens profits of certain stockholders. Congress has preferred to protect American competitors, consumers and workmen." (Id. at 962)

At another point, the *Minnesota Mining* Court said that any factory established abroad by a single American company would "be a restraint upon American commerce with foreign nations" although not accomplished by combination or conspiracy, and hence not in violation of Section 1.

Insofar as *Minnesota Mining* holds the Sherman Act applicable to combinations between a dominant group of American competitors, and *Timken* to combinations between a dominant American company and its chief foreign competitor, their basic reasoning seems correct. However, these dicta, taken out of context, should not develop into a mercantilist policy of discouraging American investment abroad in the name of protecting American manufacturing. The basic aims of the Sherman Act require that the words "trade and commerce" have the same scope in their application to foreign as to domestic commerce. The Sherman Act is not of course intended to protect foreign consumers against monopoly in their home markets. Instead its operative hypothesis in the foreign field should be to encourage the competitive allocation of American resources to investment either at home or abroad depending on the usual indicia of profit, in the interest of maximizing the long-run economic welfare of the United States. This may involve the export and import of goods or the receipt of dividends, interest, and profits on foreign investments. Both types of transactions have the same place in United States' balance of payments and may contribute equally to well being of the American people.

Prognostication: The Committee will recommend that the Courts should recognize that foreign commerce includes not only export and import of goods but also capital invested. In this way national

foreign commerce objectives can best be reconciled with antitrust enforcement.

V. National Foreign Trade Policy

Antitrust must not hinder the nation's foreign trade policy efforts to overcome foreign political and economic barriers to American trade and investments abroad.

A. As the Court put it in *United States* v. *Minnesota Mining and Manufacturing Company* (92 F. Supp. 947, 958 (1950)):

"It is axiomatic that if over a sufficiently long period American enterprises, as a result of political or economic barriers, *cannot export directly or indirectly* from the United States to a particular foreign country at a profit, then any private action taken to secure or interfere solely with business in that area, whatever else it may do, does not restrain foreign commerce in that area in violation of the Sherman Act. For, the very hypothesis is that there is not and could not be any American foreign commerce in that area which could be restrained or monopolized.

"Since there is no offense against the foreign commerce clause of the Sherman Act if political or economic conditions meet the conditions of the hypothesis just stated," the Court went on, "it is legitimate for defendants to show such political and economic conditions, if they exist."

Prognostication: The Committee will probably support this reasoning.

B. There exists a difference of opinion over whether the Sherman Act should apply where it is not impossible to do business abroad but merely more convenient to do business abroad by means which, if employed in domestic commerce might violate the antitrust laws. Again, to refer to the words of the Court in the *Minnesota Mining* case:

"It is not [here] claimed that the United Kingdom imposed a legal ban upon imports of abrasives. Nor is it asserted that economically no American coated abrasives could be profitably exported to the British market. The precise contention is that it was economically impractical to continue to export to Britain a large volume of such abrasives. Stated in another way this means . . . only that it was more profitable to make abrasives in Britain than to export them to Britain." (92 F. Supp. 947, 959 D.C. Mass. (1950))

As a result, the Court found:

"as an ultimate fact that defendants' decline in exports to the United Kingdom is attributable less to import and currency restrictions of that nation and to the preferential treatment afforded to British goods by British customers than to defendants' desire to sell their British-made goods at a large profit rather than their American-made goods at a smaller profit and in a somewhat (but not drastically) reduced volume." (Id. at 961)

Prognostication: The Committee may likely be unable to reach agreement on this subject, and there may be a minority expression of opinion.

VI. The Defense Production Act

This Act authorizes Government officials to consult with business and other groups in order to encourage voluntary action to carry out national defense objectives. Under it, the President may request members of an industry to enter into a voluntary agreement or program, upon a finding that it is vital to the national defense. No act or omission to act pursuant to any such voluntary agreement, the Act provides, shall be construed to be within the prohibitions of the antitrust laws *while the Act is in effect.*

A. In practice, the President has delegated his power to request voluntary agreements principally to the Office of Defense Mobilization (ODM). Upon such delegation under the Act, all requests for voluntary agreements are conditioned upon the approval of the Attorney General. Under the procedure now in effect, the Attorney General, upon submission by ODM, considers such proposed agreements and, prior to approval, seeks to have the parties conform them to the antitrust laws insofar as possible, having in mind the objectives of the particular agreement or program. The Attorney General has recognized, of course, that some activities, otherwise illegal, such as those involving cooperation between competitors in defense projects, have been necessary to accomplish the purposes of the Act. Approximately 70 voluntary agreements or programs have been thus approved. In only one or two cases has approval been withheld, and in these cases alternative plans have been worked out.

Prognostication: The Committee will recommend that at least with respect to programs for preserving the supply of critical and strategic materials from abroad, the Defense Production Act should be further extended.

B. The Committee has discussed larger exemptions. It has been suggested that for a designated period beyond the Act's expiration, conduct requested or approved by the President shall not be subject to antitrust. Conduct authorized by the President may require committing large funds for long periods of time—indeed, periods that may stretch beyond the Act's short extensions. To protect such investments, antitrust immunity should, in some instances, be extended beyond the Act's termination.

However, such immunity should be conditioned upon express findings when the conduct was undertaken: first, that national defense required its duration beyond the expiration of the Defense Production Act; and second, that before granting the immunity,

consideration was given to the possibility of accomplishing the same defense objectives by alternative methods involving less restriction on competition.

Prognostication: The Committee will probably recommend thus broadening the Defense Production Act.

Respectfully submitted,

STANLEY N. BARNES

Eisenhower Library, Eisenhower papers, Whitman file

Memorandum of Discussion at the 223d Meeting of the National Security Council on Tuesday, November 9, 1954 [1]

TOP SECRET EYES ONLY

Present at the 223rd meeting of the National Security Council were the President of the United States, presiding; Under Secretary Hoover for the Secretary of State; the Secretary of Defense; the Director, Foreign Operations Administration; and the Director, Office of Defense Mobilization. Others present were the Secretary of the Treasury; the Attorney General (for Items 2 and 3); the Director, Bureau of the Budget; the Director, U.S. Information Agency; Assistant Attorney General Barnes (for Item 3); the General Counsel, Department of Defense (for Item 2); Thomas J. Donegan, Special Assistant to the Attorney General (for Item 2); the Acting Chairman, Joint Chiefs of Staff; Assistant Director Botkin, Office of Defense Mobilization (for Item 5); the Director of Central Intelligence; Robert Cutler, Special Assistant to the President; Robert R. Bowie, Department of State; the NSC Representative on Internal Security; the White House Staff Secretary; the Executive Secretary, NSC; and the Deputy Executive Secretary, NSC.

There follows a summary of the discussion at the meeting and the main points taken.

[Here follows discussion of the redeployment of United States forces in Trieste and a uniform clearance program for individuals other than full-time federal employees who required access to classified information.]

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[1] Prepared on Nov. 10 by Deputy Executive Secretary of the NSC Gleason.

3. Anti-Trust Laws Affecting Activities Outside the U.S. (NSC Actions Nos. 766–c and 1200;[2] Memo for NSC from Executive Secretary, same subject, dated November 1, 1954[3])

In the course of his briefing, Mr. Cutler indicated that the final report based on the findings of the large committee which had been assembled in the Department of Justice would be ready in January 1955. In the present interim report Judge Barnes would attempt to guess the results of the findings of the committee. Mr. Cutler then invited Judge Barnes to play the part of Cassandra, but to confine his prognostications to fifteen minutes.

Judge Barnes at the outset stressed the fact that his remarks were indeed prognostications and should not be considered firm predictions. He then proceeded to summarize his guess as to the decisions which would be reached in the final report.

At the conclusion of Judge Barnes' oral statement, Mr. Cutler said that as he understood it, and despite the fact that he had not practiced law for ten years, the present report does not indicate the likelihood that the Attorney General would suggest any basic changes in the fundamental anti-trust laws such as the Sherman Act. Nevertheless, as far as he could see and understand the law, Mr. Cutler said that certain activities conducted by American companies, though wholly overseas, would have at least some impact on United States foreign and domestic commerce. Accordingly, the Department of Justice could reach out and claim to control such activities outside the United States. The Attorney General does not propose to try to change the basic law which permits such control. As a result, each time that the Department of Justice determines that it should proceed into litigation with such a United States company, it will first have to come to the National Security Council to see whether or not the national security is involved.

The Attorney General said that Mr. Cutler's idea was correct, but that he himself would phrase the matter differently. We would not, continued the Attorney General, probably try to change the Sherman Act, but we can get the flexibility we desire from the point of view of the national security by simply amending the Defense Production Act. In very close cases, moreover, Justice would not move against such an American company without consulting the Departments of State and Defense.

The President commented that the only instances in which the National Security Council (as opposed to the Cabinet) has any in-

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[2] Regarding NSC Action No. 766–c, see the memorandum of discussion at the 140th meeting of the National Security Council, Apr. 22, 1953, p. 1351. Regarding NSC Action No. 1200, see the memorandum of discussion at the 210th meeting of the National Security Council, Aug. 12, 1954, p. 1365.

[3] This memorandum transmitted to the NSC Barnes' report of Oct. 29, *supra*.

terest in these anti-trust cases is when considerations of national security are involved in them. It is for this reason that the Attorney General must go along with the idea that when national security issues are plainly involved, he is on safe ground in not suing the company in question for breach of the anti-trust laws. The Attorney General replied that this was indeed the spirit of the present report.

Secretary Humphrey expressed the belief that the Attorney General should try somehow to eliminate from the law provisions which applied to the conduct of operations by American companies conducted entirely overseas. In other words, the Department of Justice should move against such American companies only if the practices they followed overseas had a very direct effect on U.S. commerce. The NSC should be called upon to exercise its discretion just as little as possible. Secretary Hoover agreed in general with Secretary Humphrey, and said there should be some specific protection for these American companies in the law if possible.

Secretary Wilson said he assumed that the Attorney General in his deliberations would also consider such problems as patents, know-how, and management. He said he saw a great need for clarification of the anti-trust laws. Many business men simply did not know the legal and correct thing to do.

Secretary Humphrey said he could assure the Attorney General that we all realized how very dangerous it would be to attempt to change the nation's basic anti-trust laws, but that we all recognized the changed world which had come about since these laws were enacted. Accordingly, a clarification was necessary.

Dr. Flemming pointed out that the Defense Production Act would expire on June 30, 1955, at which time it would be necessary to ask for an extension and revision of the law. He hoped that he would have timely guidance from the Department of Justice with respect to amending the present Act.

Governor Stassen thought that if the fundamental anti-trust laws were not to be changed, it would certainly be necessary to formulate new legislation to deal with the problem of American corporations conducting business entirely outside of U.S. territory. Both the Attorney General and the Secretary of the Treasury thought that the point made by Governor Stassen could be covered by recourse to amending the Defense Production Act. They repeated their view of the dangers of resorting to the current expedient of asking the President to decide whether or not to invoke the anti-trust law against such an American corporation on the basis of an NSC recommendation involving considerations of national security.

The President expressed the opinion that it would be desirable for the National Security Council to provide the Attorney General

with a study of the kind of changes that the United States would be facing in this area in the coming years. This would provide the Attorney General with a basis for developing new anti-trust legislation which would not only assist the legitimate activities of American firms, but have the added advantage of helping the economies of friendly foreign nations. The Attorney General said that he would be delighted to receive such suggestions and studies from the Treasury Department and the Foreign Operations Administration. Governor Stassen suggested the addition of the Department of Commerce, and went on to say that it might be useful if a representative group of American business men engaged in operations outside the United States could be brought together to explain their problems to the Department of Justice.

Judge Barnes pointed out that 70 agreements dealing with this problem had already been approved under the Defense Production Act. Secretary Hoover, however, noted that the provisions of the Defense Production Act applied only to critical and strategic materials. Its terms of reference should therefore be expanded.

Mr. Cutler inquired whether this issue could be covered in new legislation to be presented at the next session of Congress in the interest of carrying out the recommendations of the Randall Committee.[4] The Attorney General replied by suggesting possible procedure for drafting new legislation and sending it up for consideration by the Congress at the new session in January.

The National Security Council:

a. Noted and discussed a preliminary report on the subject by Assistant Attorney General Barnes transmitted by the reference memorandum.

b. Requested the Attorney General to consider the possibility of appropriate legislation which would clarify and encourage the conduct of operations by U.S. companies outside of U.S. territory when such operations are in the U.S. interest and do not substantially affect U.S. foreign and domestic commerce.[5]

Note: The action in b above subsequently transmitted to the Attorney General.

[Here follow a briefing by the Director of Central Intelligence on significant world developments affecting United States security and discussion of reports on electromagnetic communications, United States policy toward Iran and Finland, and the status of National Security Council projects as of November 1.]

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[4] The Commission on Foreign Economic Policy, established in Aug. 1953 and headed by Clarence B. Randall, issued its report on Jan. 23, 1954. For documentation regarding the report, see pp. 49 ff.

[5] This action was designated NSC Action No. 1263. (S/S–NSC (Miscellaneous) files, lot 66 D 95, "Record of Actions")