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In reply refer to
RA 812.52/2818

June 18, 1938

My dear Senator McAdoo:

I have received your letter of June 14, 1938 stating that you have received a communication from Mr. H. W. Brunk, Bank of America Building, Berkeley, California, requesting on behalf of members of his family to be informed as to the steps that have been taken to obtain payment of compensation for American properties expropriated by the Mexican Government.

With reference to the situation of American landowners whose properties in Mexico have been expropriated, I wish to assure you that this has received and will continue to receive this Department's most earnest attention.

You are of course aware that this Government has indicated to the Mexican Government that the properties of American citizens expropriated under Mexican laws should be paid for by compensation representing fair, assured and effective value to the persons from whom these properties were taken. The Mexican Government has replied that it is its intention to make arrangements for the payment of proper compensation for all American properties that have been expropriated, and the methods of payment are now the subject of discussion.

As of probable interest to your constituent in this connection, I take pleasure in enclosing the text of my statement to the press of March 30, last, which indicates not only the policy of this Government with respect to the question of the expropriation of American property in Mexico, but its sincere hopes of arriving at a fair and equitable solution.

Sincerely yours,
CORDELL HULL

Enclosure: Text of statement

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DEPARTMENT OF STATE

FOR THE PRESS

MARCH 30, 1938

No. 151

In response to inquiries at his Press Conference today the Secretary of State said:

"During the past few years the Mexican Government in pursuance of its national policy has expropriated and is continuing to expropriate the properties of citizens ~~and~~ of other countries in Mexico and of its own citizens. Among these have been many hundreds of farms and other properties of American citizens. Many of our nationals have invested their savings in these properties, have undertaken improvements therein of various kinds and have been dependent upon them for their own livelihood. This Government has not undertaken and does not undertake to question the right of the Government of Mexico in the exercise of its sovereign power to expropriate properties within its jurisdiction. This Government has, however, on numerous occasions and in the most friendly manner pointed out to the Government of Mexico that in accordance with every principle of international law, of comity between nations and of equity, the properties of its nationals so expropriated are required to be paid for by compensation ~~representing~~ representing fair, assured & and effective value to the nationals from whom these properties were taken. The recent expropriation by the Mexican Government of oil properties belonging to American citizens is therefore but one incident in a long series of incidents of this character and accordingly raises no new question. The subject now under consideration between the Government of the United States and the Government of Mexico is the matter of compensation for various properties of American citizens expropriated in the past few years. It is my very earnest hope that because of the very friendly relations existing between the two Governments a fair and equitable solution of this problem may soon be found by the Mexican Government.

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UNITED STATES SENATE

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MEMORANDUM

The attached letter refers to a subject in which you are interested and is, therefore, referred for your information.

Yours very truly.

WILLIAM G. MCADOO

September 21, 1938.

The Honorable Cordell Hull
Secretary of State
Washington, D. C.

Dear Mr. Hull:

In his address to Congress of September 1st, President Cardenas of Mexico injected the oil issue into his discussion of your notes on the agricultural confiscations, by stating that Mexico had no intention of paying anything for the subsoil petroleum on land owned or leased by American citizens. He also proclaimed the novel theory that oil "concessions" - possibly he meant the confirmatory concessions issued under the terms of the Morrow-Calles Agreement of 1927 - were granted only to enable the "concessionaires" to recover the amount of their investments; that the "rebellious attitude" of the oil companies invalidated their right to make use of their concessions to recover their investments, and hence that Mexico owes only the amount of the investment not yet recovered.

Apart from the fact that the American companies were primarily the owners and lessees of private oil lands, and not concessionaries of public lands, President Cardenas apparently regards as a fait accompli the confiscation without compensation of the subsoil petroleum, which embraces the greater part of the value of the properties expropriated. This is the very issue on which the United States has challenged Mexico ever since the fear was first created by the Constitution of 1917 that it was Mexico's intention to confiscate these values. On the basis of long-continued negotiations between the two countries, an agreement was reached to the effect that the oil under land owned or leased prior to May 1, 1937 was the property of the surface-owner, as it was when the property was originally acquired.

After diplomatic protests of the United States in 1917 and 1919, the Mexican Supreme Court in five successive decisions, thus establishing what the Mexicans call jurisprudence or established law, held that the subsoil petroleum on land acquired prior to May 1, 1917, was the property of the surface owners. This was confirmed by the Warren-Payne negotiations of 1923 and Mexican acknowledgment of that rule was made by the United States a condition precedent for the recognition of President Obregon. The rule was again confirmed by the Mexican Supreme Court in 1926 and was the basis for the Morrow-Calles Agreement of 1927. Although the Mexican Administration of President Cardenas has tried indirectly to confiscate the oil properties by making their operation extremely difficult, if not impossible, President Cardenas' announced intention to disregard the values of subsoil petroleum is a threat unilaterally to abrogate international agreements between the United States and Mexico of nearly twenty years' standing and to override the Mexican Constitution and the past decisions of the Mexican Supreme Court.

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Quite apart, therefore, from the illegality of the whole expropriation proceeding, the principles of which you have already pointed out, and quite apart from the fact that Mexico has seized much property not even mentioned in the Expropriation Decree, including the property of companies not cited in it, it is our belief that the time has now come when the confiscatory principle announced by President Cardenas with respect to subsoil petroleum and the repudiation of international agreements which it embodies, should be challenged. The United States has heretofore stood firmly on the principle acknowledged by Mexico that vested petroleum rights shall be respected. Contrary to your injunction that no further confiscations shall take place, Mexico is continuing to sell American and foreign-owned oil from the confiscated properties and subjecting the properties to injury which may gradually become irreparable. Mexico is using this confiscated oil in barter agreements with Germany to obtain German airplanes and other products, contrary to the interests of the United States and its citizens.

President Cardenas has taken advantage of the fact that American protests on the oil confiscations have not been published, to convey to the Mexican people and the people of Latin America generally the impression that the United States has either acquiesced in or was not especially interested in the oil confiscations. "O Jornal" of Rio de Janeiro, August 6, 1938, reports an interview to this effect with an emissary of Mexico in Brazil. In his speech to Congress of September 1st, President Cardenas referred to the British protest on oil, but made no reference to the United States, thereby creating the inference that the American and British policies were different. The press now announces that American mining properties are about to be subjected to the same measures of confiscation, through the pathway of extravagant labor demands, which overtook the oil companies.

It is now over six months since American citizens were arbitrarily ousted from their oil properties. Confessedly without funds to make payments for these properties, Mexico is quite content to exchange them for an unredeemable promise to pay in an indefinite and uncertain future. Speeches recently made by President Cardenas, Lombardo Toledano, and other Mexicans and Latin Americans in a labor congress, extolled the Mexican policy of confiscation, and promised its extension in Latin America. Inasmuch as Mexican officials have considered the issues involved as political, and not legal, it is not surprising that all kinds of propaganda pressure is being exerted on the Supreme Court to hold the oil expropriations legal under the Mexican Constitution.

This growing ebullience of the Mexican extremists is encouraged by the Mexican authorities, who rely on the fact that the United States has not published an official protest against the oil seizures or made any demand for the restitution of the properties, as Great Britain and Holland have. Strong as is the United States case on the agricultural seizures, it is even stronger, as we ventured to suggest in our letters of July 25th and August 6th, on the oil confiscations, for they are directed exclusively against foreign-owned

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properties and cannot be defended on any alleged social policy on behalf of the landless peon. Indeed, in our opinion, it would strengthen the whole American case to develop the oil issue which was opened up by President Cardenas himself in his speech of September 1st.

At this stage, therefore, we submit for your consideration the desirability of pointing out to Mexico; first, that the confiscation of the oil properties is a violation of international law, inasmuch as Mexico has not only not paid for them, but has admitted its inability to pay. Second, that the oil confiscations were directed exclusively and discriminatorily against foreign-owned properties and are therefore on that ground a violation of international law. Third, that the purported effort of President Cardenas to disregard the value of the subsoil petroleum under lands owned or leased prior to May 1, 1917, is a repudiation of agreements between the United States and Mexico, of the Mexican Constitution as construed by the Mexican Congress and Executive, and of five uniform decisions of the Mexican Supreme Court confirming it. Fourth, that the further sale of oil from the confiscated properties should cease and that Mexico be formally requested to return the properties to the management of their rightful owners, pending the determination of the whole issue as indicated in our letter of July 25th. Fifth, that if this is done, the United States will participate in conferences looking to the working out of a new agreement which shall safeguard the rights of Mexican labor, of the Mexican treasury and of the stockholders of the oil companies.

Yours very respectfully,

TRA/EBS

T. R. Armstrong

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TRADUCCION

Sept. 21 de 1938

Al Honorable Cordell Hull
Secretario de Estado
Washington, D. C.

Estimado Sr. Hull:

En su mensaje al Congreso de Sept. primero, el Presidente Cárdenas de México inyectó la cuestión petrolera en su discusión de sus notas sobre las confiscaciones de tierras agrícolas, diciendo que México no tiene intención de pagar nada por el petróleo del subsuelo de terrenos pertenecientes o arrendados por ciudadanos americanos. El también proclamó la nueva idea (teoría) que las "concepciones" petroleras - posiblemente él se refiere a a las concepciones confirmatorias expedidas bajo los términos del Acuerdo Morrow-Calles de 1927 - que fueron concedidas solamente para permitir que los concesionarios recobraran el monto de sus inversiones; que la "actitud rebelde" de las compañías petroleras nulificaron (invalidaron) sus derechos para hacer uso de sus concepciones para cubrir sus inversiones, y en consecuencia que México debe solamente la suma de la inversión no recuperada aún.

Aparte del hecho que las compañías americanas eran los dueños o arrendatarios primordiales de propiedades petroleras particulares, y no concesionarios de terrenos públicos, el Presidente Cárdenas aparentemente considera como un hecho consumado la confiscación sin compensación del petróleo del subsuelo, que consiste en la mayor parte del valor de las propiedades expropiadas. Este es precisamente el punto sobre el cual los Estados Unidos han disputado con México desde que surgieron los primeros temores con motivo de la Constitución de 1917 de que era la intención de México de confiscar estos valores. Sobre la base de largas y continuas negociaciones entre los dos países, se llegó a un acuerdo al efecto de que el petróleo existente bajo tierras pertenecientes en propiedad o arrendamiento antes de Mayo 1 de 1917 era la propiedad del dueño de la superficie, tal como era cuando la propiedad fué originalmente adquirida.

Después de las protestas diplomáticas de los Estados Unidos en 1917 y 1919, la Suprema Corte de Justicia mexicana, en cinco decisiones sucesivas, estableció así lo que los mexicanos la llaman jurisprudencia o ley establecida, la decisión de que el petróleo del subsuelo de tierras adquiridas con anterioridad a Mayo 1 de 1917, era la propiedad del dueño de la superficie. Esto fué confirmado por las negociaciones Warren-Payne de 1923 y el reconocimiento mexicano de esa decisión fué aceptado por los Estados Unidos como una condición para el reconocimiento del Presidente Obregón. La sentencia fué confirmada otra vez por la Corte Suprema de Justicia en 1926 y fué la base para el Arreglo Morrow-Calles de 1927. A pesar de que la Administración de Mexicana del Presidente Cárdenas ha tratado indirectamente de confiscar las propiedades petroleras poniendole toda clase de dificultades para hacerle extremadamente difícil su operación, si no imposible, la intención anunciada del Presidente Cárdenas de no tomar en cuenta los valores del petróleo del subsuelo es una amenaza unilateral para anular los acuerdos internacionales entre Estados Unidos y

México de cerca de 20 años de duración y desconocer la Constitución Mexicana y las decisiones pasadas de la Suprema Corte de Justicia Mexicana.

Muy aparte, en consecuencia, de la ilegalidad de todos los procedimientos de la expropiación, los principios de la cual ya Ud. ha dejado asentados, y muy aparte del hecho que México ha quitado muchas propiedades ni siquiera mencionadas en el decreto de expropiación, incluyendo las propiedades de compañías no mencionadas en él, es nuestra creencia de que el tiempo ha llegado ya para que el principio confiscatorio anunciado por el Presidente Cárdenas con respecto al petróleo del subsuelo y la repudiación y de de acuerdos internacionales que éste encierra, debe ser recusado. Los Estados Unidos hasta la fecha han permanecido firmes en el principio reconocido por México que los derechos petroleros legítimos serán respetados. Contrario a su(indicación) mandamiento que no se llevarán a cabo más confiscaciones, México continúa vendiendo petróleo extranjero y americano de las propiedades confiscadas y sujetando las propiedades a daños que gradualmente pueden llegar a ser irreparables. México está haciendo uso de este petróleo confiscado en tratos de trueque con Alemania para obtener areoplanos Alemanes y otros productos, en contra de los intereses de los Estados Unidos y sus ciudadanos.

El Presidente Cárdenas se ha valido del hecho que las protestas americanas sobre las confiscaciones del petróleo no se han publicado, para dar a conocer al pueblo mexicano y al pueblo de la America Latina en general la impresión de que los Estados Unidos ha consentido o no tienen nignun interes especial en las confiscaciones del petróleo. "O Jornal" de Rio de Janeiro, de Agosto 6, 1938, reporta una entrevista a este respecto con un emisario de México en Brazil. En su mensaje al Congreso el primero de Septiembre, el Presidente Cárdenas se refirió a la protesta Británica sobre el petróleo, pero no se refirió a los Estados Unidos, creando así la inferencia de que la política americana y británica eran diferentes. La prensa ahora anuncia que las propiedades mineras americanas están por sujetarse a las mismas medidas de confiscación, por los medios de demandas extravagantes de los trabajadores, que sorprendieran a las compañías petroleras.

Ya hace más de seis meses que los ciudadanos americanos fueron arbitrariamente lanzados de sus propiedades petroleras. Sin fondos para hacer los pagos por estas propiedades, según confesión, México está muy satisfecho de ~~cambiar-estas-~~ tomarlas a cambio de una irredimible promesa de pago en un indefinido e incierto futuro. En recientes discursos del Presidente Cárdenas, Lombardo Toledano, y otros mexicanos y latino-americanos en un congreso de trabajadores, se ensalzó la política mexicana de confiscación, y se prometió su extensión en la América Latina. Puesto que los funcionarios mexicanos han considerado los puntos a discusión como puntos políticos, y no legales, no es de sorprender que toda clase de propaganda de presión esté siendo ejercida sobre la Suprema Corte para que sostenga la legalidad de las expropiaciones petroleras bajo la Constitución Mexicana.

Esta creciente efervescencia de los extremistas mexicanos es animada por las autoridades mexicanas, quienes se valen en del hecho que los Estados Unidos no han publicado una protesta oficial en contra de las expropiaciones petroleras ni han hecho ninguna demanda para la restitución de las propiedades, como la Gran Bretaña y Holanda lo hicieron. Sin embargo de tener bastante peso el caso de los Estados Unidos sobre las tierras agrícolas expropiadas, tiene aun más peso, como nos permitimos indicarlo en nuestras cartas de Julio 25 y Agosto 6, la confiscación del petróleo, porque ésta va dirigida exclusivamente en contra de las propiedades pertenecientes a extranjeros y no se pueden defender con alegatos que favorecen a una política social de parte del peón desposeído de tierras. Seguramente, en nuestra opinión, vendría a fortalecer todo el caso americano el desarrollo del punto petrolero que fué iniciado por el mismo Presidente Cárdenas en su discurso de Septiembre lro.

En este estado las cosas, consecuentemente, nosotros sometemos para su consideración la deseabilidad de hacer ver a México; primero, que la confiscación de las propiedades petroleras es una violación de la ley internacional, puesto que México no solamente no ha pagado por ellas, sino que admitió su incapacidad de pago.- Segundo, que las confiscaciones petroleras fueron dirigidas exclusivamente y arbitrariamente en contra de propiedades pertenecientes a extranjeros y son, en consecuencia, bajo esa base, una violación de la ley internacional. Tercero, que el significado esfuerto del Presidente Cárdenas de desdeñar el valor del petróleo del subsuelo bajo tierras ~~permanecientes~~ en propiedad o arrendamiento con anterioridad a Mayo 1 de 1917, es una repudiación de acuerdos entre Estados Unidos y México, de la Constitución ~~de~~ Mexicana según interpretación del Congreso y Ejecutivo Mexicanos, y de cinco decisiones uniformes de la Corte Suprema Mexicana confirmando esto. Cuarto, que las futuras ventas de petróleo de las propiedades confiscadas ~~deben~~ ~~xxx~~ deben suspender y que a México se le pida formalmente que devuelva las propiedades al cuidado de sus dueños legales, mientras se determina el asunto en conjunto como lo indicamos en nuestra carta de Julio 25. Quinto, que si esto se hace, los Estados Unidos participarán en conferencias que tiendan a encontrar la forma de un nuevo acuerdo que resguarde los derechos de los trabajadores mexicanos, del Tesoro mexicano y el de los accionistas de las compañías petroleras.

Respetuosamente de Ud.,

TRA/EBS

T. R. Armstrong

CORDELL HULL



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