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2003

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3	Mr. []	[]	
4	Mr. []	[]	
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1	[]	[]	5/29
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Remarks:

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25 May 1956

MEMORANDUM FOR GUATEMALA FILE

1. The following was derived from meetings with Mr. Greenlee in New York the 23d and 24th of May 1956, through discussion and examination of the record that he has so far compiled.

2. The pertinent chronology appears to be as follows:

1954

- 27 June The date of damage and loss.
- 2 July Shipping Company letter to Guat Minister in London (stating an intention of presenting a claim).
- 9 July U.K. Secretary of State, Foreign Affairs, note to Guat Minister, London (recognizing situation and indicating that Her Majesty reserves the right to present the claim in the name of the proprietors).
- 30 July Shipping Company letter to Guat Minister, London (making a claim for total loss rather than simply damages to the vessel).
- 24 Aug. British solicitors (Sinclair, Roche and Temperley - London) letter to Guat Minister, London, in behalf of the shipping company (extending the claim to cover the loss of about \$270,000 Salvadoran cotton cargo).
- 27 Sept. U.K. Minister in Guat, note to Guat Minister, Foreign Affairs (requesting answer to 8 July note).
- 15 Oct. U.K. Minister, Guat, and Guat Minister, Foreign Affairs discussion (Guat told U.K. that it denied liability but for purposes of good will might be disposed to make a settlement, although it could not accept the claim in full. U.K. did not waive the point that the claim was valid within international law but did thank Guat to discuss a reasonable sum).
- 16 Dec. Discussion Guat with American Law firm (Bigham, Englar, Jones and Houston - N.Y. and D.C.) re claim U. S. underwriter.

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1955

- 19 Jan. Guat Acting Minister, Foreign Affairs, notified the British Ambassador (prepared to offer maximum total settlement \$900,000).
- 2 Feb. U. S. attorneys (Bigham, Englar, Jones & Houston) representing U. S. and at least two British underwriters presented a claim in the amount of about 1.7 million dollars to the Guat Ambassador in Washington.
- 2 May U.K. Minister Guat note to Guat Minister, Foreign Affairs (hope of prompt settlement).
- 25 July Meeting Greenlee with Carlos Salazar (Guat Minister, Foreign Affairs) [a lawyer] and Sanchez Latour (Senior Advisor and commercial counsel to Guat Ambassador to U. S.).
- 15 Aug. Greenlee letter to Guat Ambassador, U. S. (submitting legal memorandum and review of the problem).
- 6 Sept. Guat Ambassador, U. S., acknowledged receipt 15 Aug. letter Greenlee.
- 9 Sept. Greenlee acknowledged this.

1956

- 7 Marc U.K. claim to Guat Minister, Foreign Affairs (presentation by British Government as official adoption of personal claims).
- 26 Apr. State Dept. Airgram to U.S. Embassy, Guat, authorizing Ambassador to present hope of speedy and satisfactory settlement.
- 27 Apr. Guat files to Greenlee (Dr. Julio Asensio Wunderlich, Minister-Counsellor of Guat Embassy, Washington - authorized Greenlee to go ahead in negotiation of pro rata settlement.)

3. The legal memorandum discusses in some detail the international law pertinent to this case and the arguments that might be made in defense of legal liability of the Republic of Guatemala. So far, there has been

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no position taken by the Guat Government except an expression of willingness to discuss a settlement in an amount not to exceed \$900,000 for all the claims. They have not yet answered the British note of 7 March 1956 and have not, therefore, either approved or disapproved. However, note the application of their internal procedure below. The adoption of the claim, which is an assertion by the British Government (rather than simply the general backing of its subjects) may be premature in the light of international law. Normally, as we understand it, the claim should not be adopted unless (a) there had been an obvious justification for it, i.e., a demonstrable wrong or culpa; (b) all internal administrative and legal rights and procedures had been exhausted by the claimants or it was clear that they were unavoidable or that the pursuit of them was feckless. This would work a denial to the claimants which the Government would then consider as an affront to the national integrity justifying the adoption and changing the claim in nature from personal to national.

4. Assuming that there is a provable liability which would overcome normal defenses otherwise available as a matter of international law, successful insurgents would inherit the liabilities of their predecessor. (While it is not the case here, defeat of the insurgents would not result in any liability to the incumbents.) The Guatemalan Constitution provides that:

"Neither Guatemalans nor aliens may, in any case, claim from the Government any indemnification for damages and injuries to their persons or property caused by turbulent parties."

Invoking this section would probably be undesirable since it would seem to work a denial of justice and would then justify the British Government's espousal of its citizens' cases. Furthermore, Ackworth indicates that:

"A Government is not permitted to set up, as a final answer to demands for the performance of international obligations, provisions of its municipal law, either constitutional or statutory."

5. Without going into the statement of the law, which would be repetitive of the legal memorandum, the adoption of the cases by the British Government should presumably be denied as contrary to principles of international law. In a telephone conversation today with Wunderlich Greenlee discovered that the internal administrative and legal procedures had apparently not been exhausted. In a claim of this nature, an administrative resolution can be made by a certain level of official. This may then be appealed to a minister level (or it may be submitted there in the first instance), who in turn may rule upon it, but if he takes

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no action within 30 days he is determined to have denied it. This pocket veto or unfavorable determination can then be appealed to the Court of Administrative Contention, consisting of three magistrates who operate with the assistance of what is a general type of district attorney. An unfavorable decision here could then be appealed to the local Supreme Court which apparently rules not only on constitutional issues involved but also on all phases of the case. Wunderlich (who impressed Greenlee as being an intelligent and competent lawyer) indicated that he thought a claimant sovereign could then take them into the World Court in view of their membership in the United Nations.

6. The net effect of this would seem to be that the British Government might successfully contend a sovereign immunity defense and a settlement of so much on the dollar would be something far less than gratuitous. This might be used to reduce and possibly eliminate any local opposition to the payment.

7. While it would seem that the British have been forcing the issue with more than a fair amount of vigor and that their Government may in fact be premature in adopting their claim, it is interesting to note that there has been only one effort made by the U. S. attorneys in behalf of the U. S. underwriters. The problem then becomes one of coordinating negotiations with both claimants to meet the impetus of one but not to encourage an impetus from the other. With regard to the British, it would seem perfectly logical for the Guatemalan Government to indicate to the British Government that the Greenlee firm was representing their interests in this matter. They could then take the same step with regard to the United States attorneys representing the U. S. underwriters. It would seem undesirable for our State Department to approach the U. S. underwriters (directly or through their representative attorneys) and take a step that would seem to be encouraging active prosecution of the claim. By the same token, it would seem most unlikely that the U. S. Government would wish to enforce such claims by an adoption in the same manner as the British have.

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Assistant General Counsel

cc: WH []

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