

Message Text

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64

ACTION OPIC-12

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TAGS: EINV,BL

SUBJ: OPIC INSURANCE OPERATIONS IN BOLIVIA

REF: LA PAZ 1972: LA PAZ 5513

1. MANSBACH'S VISIT WAS USEFUL TO US AS IT PROVIDED US WITH OPIC'S CURRENT THINKING ON ITS OPERATIONS IN BOLIVIA AND SOME ADDITIONAL INFORMATION ON SPECIFIC CASES.

2. IN A CONVERSATION WITH AMB STEDMAN AND ECOM OFFICERS, MANSBACH INDICATED THAT OPIC CURRENTLY WAS INTERESTED MAINLY IN LOAN AND LOAN INSURANCE OPERATIONS, AND ESPECIALLY WAS LIMITING ITSELF TO THESE OPERATIONS IN THE CASE OF FIRMS EXPORTING 80 PERCENT OF THEIR PRODUCTION TO THE ANDEAN MARKET AND THEREFORE RAISING THE DECISION 24, ARTICLE 51 SUBROGATION PROBLEM. MANSBACH INDICATED OPIC LAWYERS WERE CONSIDERING SOMEHOW SEPARATING OPIC INSURANCE CONTRACTS AND THE NECESSARY FGA'S FROM THEPROVISIONS OF ART. 51, YET PRESERVING SUBROGATION RIGHTS UNDER THE BILATERAL AGREEMENTS. THIS MIGHT BE BASED ON INTERPRETING ART. 51 TO REFER ONLY TO GOVERNMENT "INSTRUMENTS RELATING TO INVESTMENT" WHILE MAINTAINING THAT OPIC INVESTMENT INSURANCE CONTRACTS ARE NOT OR WILL NOT BE GOVERNMENT INSTRUMENTS.MANSBACH SAID THAT OPIC MIGHT HIRE A LOCAL LAWYER TO LOOK INTO SUCH POSSIBILITIES. WE BELIEVE THAT OPIC CANNOT HAVE IT BOTH WAYS. IF IT IS A PRIVATE INSURANCE COMPANY, THEN ITS RIGHTS SHOULD NOT BE SUBROGATED TO USG, EXCEPT PERHAPS BY THE PROCESSES OF STATE DEPT. ESPOUSAL OF PRIVATE CLAIMS. WE DOUBT,

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HOWEVER, THAT THE ANDEAN PACT COMMISSION OR GOB WILL AGREE THAT

ART. 51 REFERS ONLY TO GOVERNMENT INVESTMENT INSTRUMENTS IF THEY ARE AWARE THAT THE "PRIVATE" INSURER INTENDS TO AVAL ITSELF OF THE BENEFITS OF A GOVERNMENT TO GOVERNMENT BILATERAL TREATY.

3. MANSBACH INDICATED THAT OPIC PLANS TO INSURE LOAN OR LOANS TO NEW JERSEY ZINC (NJZ), A SUBSIDIARY OF GULF AND WESTERN, PERHAPS SUPPLEMENTED BY A DIRECT OPIC LOAN AND DIRECT INVESTMENT INSURANCE IN CONCERT WITH A JAPANESE INVESTMENT IN THE MIXED COMPANY NJZ SEEKS TO FORM. WE RECALLED THAT IN LA PAZ 2284 WE WARNED THAT THE EMBASSY MIGHT RECOMMEND AGAINST INSURANCE FOR NJZ. WE STATED USG SHOULD HAVE BIAS AGAINST INSURING INVESTMENTS IN SENSITIVE MINING SECTOR AND THAT WE DID NOT HAVE SUFFICIENT INFO ON NJZ PLANS TO PROPERLY EVALUATE SITUATION. IT APPEARED TO US THAT NJZ HAD MADE ITS MOVES TO BUY GIBRALTAR HUARI-HUARI BEFORE IT COULD HAVE BEEN ASSURED OF HAVING OPIC INSURANCE, ESPECIALLY IN VIEW OF THE PARAGRAPH OPIC PUT IN ITS REGISTRATION NOTICE OF APRIL 2, 1974 WHICH PLACES NJZ PROJECT UNDER "LARGE AND SENSITIVE POLICY GUIDELINES" AND WARNS NJZ THAT ISSUES SHOULD BE DISCUSSED WITH OPIC AND RESOLVED BEFORE IT PROCEEDS TO INVEST OR COMMIT THE PREDOMINANT PART OF ITS PROPOSED INVESTMENT. WE REPORTED IN LA PAZ 1972 THAT NJZ HAD PAID IMPC/GIBRALTAR HUARI-HUARI DEBTS TO BANCO MINERO TOTALLING US\$ 240,000 BEFORE MARCH 28, 1974. IT APPEARS THAT NJZ'S INTEREST WAS SO GREAT THAT IT MADE THIS PAYMENT ON OR BEFORE THE DATE OF ITS REQUEST FOR OPIC INSURANCE. REPORTEDLY NJZ ALREADY HAS INVESTED AT LEAST US\$ 1.4 MILLION AND PERHAPS AS MUCH AS US\$ 4.4 MILLION IN ITS GIBRALTAR HUARI-HUARI PROJECT. IT SEEMS LIKELY, THEREFORE,
THAT OPIC INSURANCE IS NOT ESSENTIAL TO NJZ DECISION TO GO AHEAD WITH THIS PROJECT.

4. IN RESPONSE TO THESE VIEWS, MANSBACH SAID "ADDITIONALITY" NOT ALWAYS ESSENTIAL AND THAT OPIC NEEDS TO SPREAD ITS RISKS IN SOME CASES TO SOUND INVESTMENTS THAT MAY NOT BE "ADDITIONAL" DUE TO THE OPIC INSURANCE INCENTIVE. WE BELIEVE THAT BOLIVIAN MINING SECTOR IS ONE OF LAST PLACES OPIC SHOULD LOOK FOR DIVERSIFYING INTO SOUND INVESTMENTS. WE SUSPECT NJZ INVESTMENT WILL BE ECONOMICALLY SOUND, BUT POLITICALLY RISKY.

5. GULF AND WESTERN ALSO OWNS, THROUGH ITS SUBSIDIARY BROWN & CO., KELLGUANI MINE. TOGETHER WITH GIBRALTAR HUARI-HUARI, GULF AND LIMITED OFFICIAL USE

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WESTERN COULD RAPIDLY BECOME BIGGEST AND MOST VISIBLE PRIVATE MINING INTEREST IN BOLIVIA.

6. MINOR POINT IS THAT IMPC/GIBRALTAR HUARI-HUARI HAS ALREADY INVESTED US\$ 1.2 MILLION OR MORE. OPIC WOULD HAVE TO BE QUITE CLEAR ON EXACTLY WHAT IT WOULD BE COVERING.

7. GIVEN ALL THESE CONSIDERATIONS, WE BELIEVE IT IS IN USG

INTEREST TO OPPOSE OPIC INSURANCE FOR NJZ, AT LEAST UNTIL DETAILED INFORMATION MADE AVAILABLE TO EMBASSY. CAREFUL DECISION CAN THEN BE MADE ON BASIS SUCH INFORMATION.

8. MATTER OF INVESTMENTS IN AGRICULTURAL LAND WAS RAISED BY STATE 185136 DURING MANSBACH'S VISIT. AS EMBASSY HAD NOT RECEIVED RESPONSE TO EARLIER MESSAGES ON STOKES APPLICATION (AS WELL AS TO SOME OTHER APPLICATIONS), WE SENT LA PAZ 5513 OPPOSING INSURANCE FOR STOKES AT LEAST UNTIL ISSUES RESOLVED. EMBASSY CONSIDERS AGRICULTURAL LAND TO BE SECTOR AS SENSITIVE AS MINING IN VIEW LONG STANDING AGRARIAN REFORM POLICIES AND UNRESOLVED LAND INVESTMENT DISPUTE (APPLEGATE/YOUNGUIST CASE). WHILE THIS GOVERNMENT HAS DONE NOTHING TO EXTEND REACH OF AGRARIAN REFORM, IT HAS ALLOWED COFADENA (MILITARY CORPORATION) TO TAKE OVER CAMPO LUMINOSA, ONE OF BOLIVIA'S LARGEST CATTLE RANCHES WHICH HAD OVERDUE DEBTS WITH BANCO DEL ESTADO. AS POPULATION PRESSURE MOUNTS IN SANTA CRUZ, CHAPARE BENI AND NORTHERN LA PAZ, WE EXPECT FURTHER EXTENSION AGRARIAN REFORM WILL BECOME BURNING POLITICAL ISSUE WHICH ALMOST ANY PROSPECTIVE GOVERNMENT LIKELY TO RESOLVE TO SOME EXTENT IN FAVOR OF BOLIVIAN SMALL FARMER AT EXPENSE OF LARGE FOREIGN FARMER. MOREOVER, AS WE HAVE NOTED PREVIOUSLY, LAND TITLE EVEN AMONG LARGE DEVELOPERS APPARENTLY MATTER OF CONTINUAL DISPUTE. MANSBACH ASKED EMBASSY TO CONSIDER MATTER CAREFULLY TO DECIDE WHETHER WE WISHED RAISE OBJECTIONS TO INVESTMENTS IN AGRICULTURAL LAND ON POLITICAL GROUNDS.

9. AFTER CONSIDERATION OF OPIC POSITIONS IN GENERAL ON SIGNIFICANCE OF REGISTRATION NOTES, SUBROGATION AND INVOLVEMENT OF OTHER USG PROGRAMS IN EFFORTS ARRANGE PAYMENTS TO OPIC INSURED FIRMS IN NATIONALIZATION CASES, AS WELL AS RECENT EXPERIENCE WITH HANDLING APPLICATIONS COVERING MINING AND AGRICULTURAL LAND INVESTMENTS, WE CONFIRM OUR EARLIER POSITION THAT THERE SHOULD BE A STRONG BIAS AGAINST INSURING SUCH INVESTMENTS IN BOLIVIA, BUT WE STILL DO NOT WISH TO CLOSE THE LIMITED OFFICIAL USE

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DOOR COMPLETELY. AS MAJORITY OF "BOLIVIAN" APPLICATION TO OPIC APPEAR TO BE TWO MOST SENSITIVE AREAS AND AS OPIC PROCEDURES NOW RESULT IN ALMOST IMMEDIATE AND AUTOMATIC ISSUANCE OF REGISTRATION NOTICE AND AS OPIC BENDS EVERY EFFORT TO GRANT INSURANCE ONCE REGISTRATION NOTICE ISSUED, WE BELIEVE BEST PROCEDURE TO MEET OUR POLITICAL AND PROGRAM CONCERN IN SENSITIVE AREAS, DEFINED AS MINING AND AGRICULTURAL LAND, WOULD BE ALONG FOLLOWING LINES: 1) OPIC WOULD ADVISE APPLICANT THAT REGISTRATION NOTICE CANNOT BE ISSUED UNTIL DETAILED INVESTMENT PROPOSAL PRESENTED TO OPIC AND OPIC CAN CONSULT WITHIN USG; 2) EMBASSY SHOULD BE PROVIDED WITH THESE DETAILS AND ALLOWED TO MAKE RECOMMENDATION BEFORE REGISTRATION NOTICE ISSUED; 3) IF INVESTOR ALTERS A PROJECT, EMBASSY SHOULD BE ADVISED SO RECOMMENDATION CAN BE REVIEWED.

10. EMBASSY FULLY REALIZES THAT OPIC CAN DEAL WITH MANY PROBLEMS

BY CAREFUL DRAFTING INSURANCE CONTRACT, BUT SUCH ADJUSTMENT MAY
NOT BE SUFFICIENT IN SOME CASES. WE BELIEVE BEST INTERESTS USG
WILL BE SERVED BY GIVING MOST CAREFUL, CAUTIOUS AND BROAD CONSIDER-
ATION TO INSURING U.S. INVESTMENTS IN SENSITIVE AREAS RATHER THAN
EMPHASIZING OVERCOMING (PERHAPS ONLY SUPERFICALLY) ANY OBSTACLES
THAT APPEAR AND OBJECTIONS THAT MIGHT BE RAISED.

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