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The Secretary of State to the Mexican Ambassador (Castillo Nájera)

WASHINGTON, July 21, 1938.

EXCELLENCY: During the recent years the Government of the United States has upon repeated occasions made representations to the Government of Mexico with regard to the continuing expropriation by Your Excellency's Government of agrarian properties owned by American citizens, without adequate, effective and prompt compensation being made therefor.

In extenuation of such action, the Mexican Government both in its official correspondence and in its public pronouncements has adverted to the fact that it is earnestly endeavoring to carry forward a program for the social betterment of the masses of its people.

The purposes of this program, however desirable they may be, are entirely unrelated to and apart from the real issue under discussion between our two Governments. The issue is not whether Mexico should pursue social and economic policies designed to improve the standard of living of its people. The issue is whether in pursuing them the property of American nationals may be taken by the Mexican Government without making prompt payment of just compensation to the owner in accordance with the universally recognized rules of law and equity.

My Government has frequently asserted the right of all countries freely to determine their own social, agrarian and industrial problems. This right includes the sovereign right of any government to expropriate private property within its borders in furtherance of public purposes. The Government of the United States has itself been very actively pursuing a program of social betterment. For example it has undertaken to improve the share of the farmer in the national income, to provide better housing, the wider use of electric power at reasonable rates, and security against old age and unemployment, to expand foreign trade through reduction of trade barriers, to prevent exploitation of labor through excessive hours and inadequate pay, to protect debtors from oppression, to curb monopolies; in short it is carrying out the most far-reaching program for the improvement of the general standard of living that this country has ever seen. Under this program it has expropriated from foreigners as well as its own citizens properties of various kinds, such as submarginal and eroded lands to be retired from farming, slums to [Page 675]

be cleared for housing projects, land for power dams, lands containing resources to be preserved for government use. In each and every case the Government of the United States has scrupulously observed the universally recognized principle of compensation and has reimbursed promptly and in cash the owners of the properties that have been expropriated.

Since the right of compensation is unquestioned under international law, it cannot be conceived that insistence on it by this Government should impair in any way the warm friendship which exists between the Government of Mexico and our own, and between the people of Mexico and our own. This is particularly true because we have, in fact, pursued a constantly expanding program of financial, economic and moral cooperation. We have been mutually helpful to each other, and this Government is most desirous, in keeping with the good neighbor policy which it has been carrying forward during the last five years, to continue to cooperate with the Mexican Government in every mutually desirable and advantageous way.

One of the greatest services we can render is to pursue, and to urge others to pursue, a policy of fair dealing and fair play based on law and justice. Just as within our own borders we strive to prevent exploitation of debtors by powerful creditors and to protect the common man in making an honest living, so we are justified in accordance with recognized international law in striving to prevent unfair or oppressive treatment of our own people in other countries. It is the experience of this hemisphere, and this Government is convinced, that only by these means can the conditions of the peoples in all countries be soundly and permanently improved. Certainly the destruction of underlying principles of law and equity does not conduce to such improvement.

In its negotiations with the Mexican Government for compensation for the lands of American citizens that have been expropriated, my Government has consistently maintained the principle of compensation. That it has been no party to an unjust or unreasonable use of the doctrine is demonstrated by the following record.

Agrarian expropriations began in Mexico in 1915. Up to August 30, 1927, 161 moderate sized properties of American citizens had been taken. The claims arising therefrom were after much discussion referred to the General Claims Commission established by agreement between the two Governments. It is appropriate to point out, however, that, as yet, and for whatever the reasons may be, not a single claim has been adjusted and none has been paid. The owners of these properties notwithstanding the repeated requests of this Government for settlement, lost their property, its use and proceeds, from eleven years to more than twenty years ago, and are still seeking redress.

Subsequent to 1927, additional properties, chiefly [Page 676] farms of a moderate size, with a value claimed by their owners of \$10,132,388, have been expropriated by the Mexican Government. This figure does not include the large land grants frequently mentioned in the press. It refers to the moderate sized holdings which rendered only a modest living. None of them as yet has been paid for. Considering that expropriation was the free act of the Mexican Government and the liability was voluntarily incurred by it, certainly on the basis of the record above stated, the United States Government cannot be accused of being unreasonable or impatient.

This latter group of cases has been in the past few years the subject of frequent representations by my Government. On March 27 of this year, it inquired of your Government²⁹ what specific action with respect to payment was contemplated. On April 19 the Mexican Government responded,³⁰ expressing its willingness to make a small monthly payment as settlement for a small number of agrarian claims of American nationals in one locality in Mexico. In response to an inquiry for further information you reiterated to this Department, on May 26 last,³¹ substantially what the Government of Mexico had already stated. On June 29 a detailed communication was addressed to you, setting forth the amount of the claims advanced for compensation to American nationals for agrarian properties expropriated, containing suggestions as to how the value of these properties might be determined in a manner satisfactory to both Governments, and requesting that payments be commenced while the determination of value was being reached. On July 15 Your Excellency sent a further communication²⁹ to this Government in which no reference whatever was made to the suggestions advanced as to the method of determining the amounts owing for compensation, offering no indication that the Government of Mexico is prepared to make payments while the amount of the value of the properties expropriated is being determined, and stating that the Government of Mexico "has not contemplated covering entirely, during the present presidential term, the amount of the properties expropriated; much less has it undertaken, nor can it undertake, to proceed in such manner". In result, the American owners whose properties have been taken, are left not only without present payment, but without assurance that payment will be made within any foreseeable time.

The taking of property without compensation is not expropriation. It is confiscation. It is no less confiscation because there may be an expressed intent to pay at some time in the future.

If it were permissible for a government to take the [Page 677] private property of the citizens of other countries and pay for it as and when, in the judgment of that government, its economic circumstances and its local legislation may perhaps permit, the safeguards which the constitutions of most countries and established international law have sought to provide would be illusory. Governments would be free to take property far beyond their ability or willingness to pay, and the owners thereof would be without recourse. We cannot question the right of a foreign government to treat its own nationals in this fashion if it so desires. This is a matter of domestic concern. But we cannot admit that a foreign government may take the property of American nationals in disregard of the rule of compensation under international law. Nor can we admit that any government unilaterally and through its municipal legislation can, as in this instant case, nullify this universally accepted principle of international law, based as it is on reason, equity and justice.

The representations which this Government has made to the Government of Mexico have been undertaken with entire friendliness and good will, and the Mexican Government has recognized that fact. We are entirely sympathetic to the desires of the Mexican Government for the social betterment of its people. We cannot accept the idea, however, that these plans can be carried forward at the expense of our citizens, any more than we would feel justified in carrying forward our plans for our own social betterment at the expense of citizens of Mexico.

The good neighbor policy can only be based on mutual respect by both governments of the rights of each and of the rights of the citizens of each. President Roosevelt could not have spoken more truly than when he recently stated that the good neighbor policy is

"a policy which can never be merely unilateral. In stressing it the American Republics appreciate, I am confident, that it is bilateral and multilateral and that the fair dealing which it implies must be reciprocated."³²

The Government of Mexico from the standpoint of the long run and healthy progress of the Mexican people should be just as vitally interested in maintaining the integrity of the good neighbor policy as any other country. The surest way of breaking up the good neighbor policy would be to allow the impression that it permits the disregard of the just rights of the nationals of one country owning property in another country. In company with the citizens of the other American republics citizens of the United States own properties not [Page 678] only in Mexico, but in practically all countries. The same may be said of the citizens of the great majority of the nations of the world.

The whole structure of friendly intercourse, of international trade and commerce, and many other vital and mutually desirable relations between nations indispensable to their progress rest upon the single and hitherto solid foundation of respect on the part of governments and of peoples for each other's rights under international justice. The right of prompt and just compensation for expropriated property is a part of this structure. It is a principle to which the Government of the United States and most governments of the world have emphatically subscribed and which they have practiced and which must be maintained. It is not a principle which freezes the *status quo* and denies change in property rights but a principle that permits any country to expropriate private property within its borders in furtherance of public purposes. It enables orderly change without violating the legitimately acquired interests of other countries.

The Government of Mexico has professed its support of this principle of law. It is the considered judgment, however, of the Government of the United States that the Government of Mexico has not complied therewith in the case of several hundred separate farm or agrarian properties taken from American citizens. This judgment is apparently not admitted by your Government. The Government of the United States therefore proposes that there be submitted to arbitration the question *whether there has been compliance by the Government of Mexico with the rule of compensation as prescribed by international law in the case of the American citizens whose farm and agrarian properties in Mexico have been expropriated by the Mexican Government since August 30, 1927, and if not, the amount of, and terms under which, compensation should be made by the Government of Mexico.* My Government proposes that this arbitration be carried out pursuant to the provisions of the General Treaty of Arbitration signed at Washington January 5, 1929,³⁴ to which both our countries are parties.

Accept [etc.]

CORDELL HULL

29. Not printed.[↔]
30. Memorandum from the Mexican Ministry for Foreign Affairs not printed.[↔]
31. Letter not printed.[↔]

29. Not printed.[↔]
32. Address at laying of cornerstone of Federal Building at New York World's Fair, June 30, 1938, *The Public Papers and Addresses of Franklin D. Roosevelt* (New York, 1941), vol. vii, p. 412.[↔]

34. *Foreign Relations, 1929*, vol. i, p. 659.[↔]

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