

NATIONALIZATIONS IN BOLIVIA: GULF OIL INVESTMENTS NEGOTIATION PATTERNS AND SETTLEMENT AGREEMENTS

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The Standard Oil Experience

The history of Bolivian petroleum begins with the discoveries during the years of 1919 and 1920 in the departments of Santa Cruz, Tarija, and Chuquisca bordering the Chaco. In 1921, Standard Oil of New Jersey (StO) acquired the concessions obtained from the Bolivian Government by Richmond Levering and Braden Associates. Standard Oil of Bolivia was founded in November of 1921. An oil development agreement with the Bolivian Government was signed by StO on July 27, 1922. Until 1927 StO had acquired rights to 19 additional concessions but later reduced their holdings to fields at Bermejo, Sanandita, Camiri, and Catamindi. By 1928 eight wells were operating and in 1931, two small refineries were completed at Camiri and Sanandita. The annual production reached 6,000 tons during 1930—1932. Standard Oil held concessions also in Argentina near the Bolivian border in the State of Salta¹.

Difficulties between StO and the Bolivian Government began first in July 1928 when President Hernan Siles demanded back taxes payable not later than January 1, 1930, for oil shipped to Argentina by way of a temporary two-inch pipeline from StO's Bolivian to their Argentine properties. StO was reported to have shipped about 704 tons of oil across the border between 1925 and 1926. Since StO did not comply with the President's request, the dispute went before the Supreme Court of Bolivia in October 1932, and was eventually settled out of court in November 1936².

In June 1932, open hostilities broke out between Bolivia and Paraguay over the Chaco territory. Besides, both parties obviously assumed that there was oil in the Chaco region worth fighting for. Bolivia also needed a transportation outlet for her Oriente oil. A pipeline across the Andes was not feasible at that time and instead was planned across the Chaco territory. Since the Bolivian Government needed money to finance the Chaco war, it demanded that StO step-up oil production. Indeed, production rose to 20,000 tons in 1933—34 and to 20,600 tons in 1935. On December 21, 1936, however, Bolivia followed the example of Argentina and formed its own oil company, "Yacimientos Petrolíferos Fiscales Bolivianos (YPFB)". On March 15, 1937, President David Toro became the first Latin American president to nationalize the properties of a North American petroleum company³.

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Flow Diagram of Trustee Agreements signed September 23, 1971, on page 293 made available by courtesy of Gulf Oil Corporation - Latin America, Comptroller Department, Los Angeles, California.

1 Leslie B. Rout, Jr., University of Texas Press, Austin, 1970: "Politics of the Chaco Peace Conference 1935—1939", pages 25, 46, 157.

2 Rout, *ibid.*, p. 47 fn. 15; p. 149, fn. 22.

3 Decree Law of December 21, 1936; Rout, *ibid.*, p. 143, 147—149.

Since there was no Bolivian trained personnel nor equipment to run the oilfields and since StO had immediately withdrawn their personnel and equipment, a contest between Argentina and Brazil to take over the oil operations began. In fact, the U.S. State Department had evidence that Bolivia was receiving assistance from Argentina in the expropriated oilfields even before the Bolivian Supreme Court had rendered its final decision rejecting StO's appeal against the expropriation on March 8, 1939⁴. Yet, until 1945 the daily production of the former StO properties had dropped to 950 tons.

The Tin Mines

During the years from 1952 until 1956 and from 1960 until 1964, Victor Paz Estenssoro served as President of the Revolutionary Government of Bolivia. In an effort to improve the economic situation of his country, he proceeded to nationalize the tin empires of Simon Patino, Hochschildt, and Aramajor in 1952. The problem was, however, that American trained mining personnel left the country promptly, and as already experienced in the case of Standard Oil of Bolivia, the Government had no equivalent Bolivian technicians available who could take over the vacant jobs in the mines. Also, the mines were in poor condition, and tin prices soon dropped sharply on the world market⁵. Furthermore, Bolivia had no tin smelters and depended upon smelters in England and the United States which were mostly owned by the expropriated former owners of the Bolivian mines⁶. Thus, the expropriation of the tin mines did not have the positive effect on the Bolivian economy which President Estenssoro had hoped for. It did, however, relieve the country of the powerful political and economic machine which the tin empires had developed⁷.

A New Petroleum Code

Since nationalization of the tin mines did not bring the expected results, the Government decided to encourage the search for, and the exploitation of, the already known petroleum deposits. Private companies were to be encouraged once more to return to Bolivia. In 1955 a new petroleum code was enacted and President Estenssoro turned to the United States for economic assistance⁸. The International Cooperation Administration, which operated as part of the U.S. Department of State, sent a three-man Financial Mission under the Point IV Program to Bolivia to work out a stabilization plan which was all the more essential since it had been apparent that \$ 60 million of American foreign aid to Bolivia had "gone

⁴ Rout, *ibid.*, p. 154 fn. 36: U. S. Archives RG 59, Decimal File 824, 6363 ST-2/298 attached Memorandum, undated, 1939, p. I.

⁵ Tin prices on the world market dropped from \$1.42 per lb. to 62c. Under government management the annual production soon decreased from 27,000 tons to 2,000 tons annually and a deficit of \$ 12 million accumulated (Pierre Dronin, "La Dragee Haute", *Le Monde* March 24, 1971). "Only since the mine leaders were jailed in 1965 and 1966 have the state-owned mines shown profits after the 1952 revolution", *New York Times*, Jan 26, 1970: "Bolivia still poor and confused". The larger, nationalized tin mines are operated by the state-owned COMIBOL.

⁶ Kai Hermann, "Das Wort Hunger neu erfunden", *Der Spiegel*, Bonn, Nr. 37, 1970, p. 164: Bolivia meanwhile ordered its own tin smelters to be built in Bolivia by the German concern Klöckner-Humboldt-Deutz.

⁷ George Jackson Eder, Former Executive Director, National Monetary Stabilization Council of Bolivia, address before the American Foreign Law Association, New York, November 22, 1957, member circular, p. 3 (Radmann, Materials on International Private, Public, and Comparative Law, Intern. Affairs, Vol. I p. 83 — unpublished).

⁸ Bolivian Petroleum Code, signed by Victor Paz Estenssoro, President of Bolivia, October 26, 1955, in La Paz, published in "La Nacion" October 27, 1955; unofficial translation in English available courtesy of Gulf Oil Company; pursuant regulations issued on January 24, 1956.

down the drain". American financial assistance came in the amount of a \$ 7,5 million loan from the International Monetary Fund, a loan of \$7,5 million from the U.S. Treasury, and a \$10 million loan from I.C.A. on the condition that the Bolivian Government enacted the necessary legislation for the stabilization program. As a result of this 50-step program, foreign capital began to enter Bolivia on an unprecedeted scale. Gulf Oil, Shell, and Tennessee Gas went hard to work⁹.

Gulf Oil Investments

Under the new petroleum code initiated by President Estenssoro, Gulf Oil of Bolivia was formed in 1956 and obtained a 40-year lease from the Bolivian Government. After four years of exploration, a series of dry holes, and nearly \$35 million in expenditure, Bolivian Gulf brought in their first well in Caranda, Eastern Bolivia. Further oil strikes occurred in 1961 in Calpa, and in 1964 in Tatarenda. The next step was to complete a 600-mile pipeline system across the Andes to the Chilean port of Arica on the Pacific. A portion of this pipeline system was constructed by Bolivian Gulf and a portion by YPFB at a cost of \$24 million for Gulf's portion alone. Bolivian Gulf then advanced YPFB another \$10 million so that they could complete their portion. In September 1966, the pipeline was completed and the first Gulf Oil tanker left Arica to take Bolivian crude oil for refining to California¹⁰.

From 1960 until 1969, Gulf Oil of Bolivia expanded their operations considerably. In 1969 the daily production of crude oil amounted to 32,000 barrels of which 10,000 barrels were sold locally to YPFB and the balance of 22,000 barrels was exported to California¹¹. The company employed a total of 176 employees, 26 of whom were expatriates. Bolivians held several managerial positions. Other local employees were in the process of being trained for management positions in both administrative and technical operations¹².

Gulf Oil investments in Bolivia included:¹³

Exploration costs, wildcat drilling, field development	\$ 103,800,000.
Crude Oil Pipeline	\$ 24,000,000.
Loans to YPFB towards their share of pipeline ¹⁴	
less repaid \$ 1,4 million	\$ 8,600,000.
Condensate pipeline (Rio Grande — Santa Cruz)	\$ 700,000.
Natural gas pipeline	\$ 11,200,000.
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Total	\$ 148,300,000.

Gulf assets in Bolivia included 153 wells producing or capable of producing; a 225,000 barrel tank farm at Santa Cruz; gathering systems tying three fields to the tank farm; a gas condensate cycling facility capable of producing 12,000 barrels per day at Rio Grande; a natural gas repressing facility at Caranda. Total

9 Eder, *ibid.*, p. 6, 7.

10 Thomas D. Lumpkin, President, Gulf Oil Latin America, "Gulf Oil's Experience in Bolivia", address at Bates College of Law, University of Houston, Symposium on Recent Trends Affecting Trade and Investment in Latin America, April 30-May 1, 1970, published in *Houston Law Review*, Vol. 8, No. 3, January 1971, p. 473-474; Mr. Lumpkin was kind enough to review the first draft of this paper and to give valuable suggestions and corrections. Rout, *ibid.*, p. 237-230.

11 Press Release, Gulf Oil Corporation, Public Relations Department, Pittsburgh, dated October 30, 1969. See also "Introductory Note" on nationalization of Gulf Oil in 10, *International Legal Materials*, 173 (1971).

12 Gulf Oil Press Release, *ibid.*; Lumpkin, *ibid.*

13 Fact Sheet, issued by Gulf Oil Corporation, Department of Public Relations, Pittsburgh, undated.

14 Gulf Oil Press Release, *ibid.*

estimated ultimate recoverable reserves in seven fields are: crude oil and condensate 170,270,000 barrels; natural gas 2.25 trillion cubic feet.

Gulf Oil Corporation claim that during the entire period of their operations in Bolivia, no overall operating profits were made. Merely in 1968, modest profits occurred of which the Bolivian Government was paid 46 % in taxes which amounted to \$ 3,880,000. (total of \$8,392,000.), as well as royalties and other payments for 1968 amounting to \$2,871,000. For the entire period of operations, the Bolivian

Government received from Gulf Oil Bolivia:

Royalties	\$ 7,583,600.
Income Taxes	\$ 7,095,700.
Surface Taxes	\$ 2,619,200.
Other Payments	\$ 417,200.
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Total	\$ 17,715,700.

In addition, Gulf Oil had previously advanced the equivalent of approximately \$3 million in crude oil to the Bolivian Government which was to be recovered through credits against their income tax liability. Of this, Gulf recovered only \$1,5 million and deferred the balance to assist the Bolivian Government in a period of economic crisis. Boliviān Gulf also agreed to supply without charge at the wellhead for a period of 10 years a quantity of 20 million cubic feet per day of natural gas to Bolivian domestic consumption.

In January 1968, negotiations had begun between Bolivian Gulf Oil and YPFB to form a joint venture company to build a natural gas pipeline from Santa Cruz to a place near the town of Yacuiba at the Argentine border to be linked up with the Argentine gas pipeline system. The pipeline would extend over some 335 miles in Bolivia and be of 24-inch diameter size pipes. Construction was to be carried out by Willbrosud, a subsidiary of Williams Brothers, an American company, and to be completed by mid-1970. Total costs were estimated at about \$46 million and to be financed by the World Bank and the New York State Common Retirement Fund each of which had granted loans of \$23,5 million to YABOG, the joint venture company which was owned jointly and equally by Bolivian Gulf Oil and YPFB. A natural gas sales agreement between Bolivian Gulf and YPFB on the one hand and Gas Del Estado, the state-owned Argentine company, on the other hand was signed in Buenos Aires on July 23, 1968. Over the entire contract period of 20 years, the total gross revenue for Bolivia from this transaction would have amounted to about \$312 million¹⁵.

¹⁵ Lumpkin, *ibid.* p. 473—474; Goshko, John M., "New President May Bring Bolivia Gulf Issue to Head", *Washington Post*, May 13, 1969; "Le gouvernement est soumis aux pressions de sociétés et de banques américaines", *Le Monde* November 18, 1969; according to *Le Monde* the pipes were to be made in Argentina and West-Germany. See also *Le Monde* December 13, 1969, article by Philippe Labreveux; Text of agreement translated into English in 10, *International Legal Materials* 94, 1971; Bolivian Supreme Decree No. 08416, authorizing the Bolivian state-owned YPFB to enter into the gas sales agreement, 10 *International Legal Materials* 115, 1971; Argentine and Bolivian governmental export and import authorizations, 10 *Intern. Legal Materials* 119, 1971; The agreement to form Compañía Yacibol BOGOC Transportadores (YABOG) provides in clause IV that during the first seven years of its operation a quantity of 4 million cubic meters = 141,261 MCF and during the following 13 years a quantity of 4,5 million cubic meters = 158,919 MCF shall be delivered annually. According to clause V, the pipeline system should be ready for operation within 24 months after ratification of the agreement. Payment for gas deliveries shall be effected by Gas Del Estado in US-dollars at a New York bank to be deposited to a joint account of Bolivian Gulf (BOGOC) and YPFB (clause XI). Clause XIII provides for arbitration of all disputes arising out of this agreement. Each party appoints one arbitrator and the two arbitrators together appoint a third one. If there is no agreement as to the third arbitrator, appointment should be made by a) the President of PEMEX (Petroleos Mexicanos) or in case of failure by b) the President of the French Petroleum Institute, or if this fails by c) the American Arbitration Association.

Gulf Oil Corporation had negotiated in good faith with all the various governments of Bolivia since the first concessions were granted in 1955. In the course of these negotiations, a number of changes of the terms originally agreed upon were put into effect in favor of the Bolivian Government. Gulf started paying income tax to the Central Government in 1967 instead of in 1973 as provided by the original agreement. Later, royalty payments for crude oil on basis of wellhead value were computed at \$2. instead of \$1,69 per barrel, and a commission of 4 % on border price of gas sold to Argentina was to be paid the Central Government. In 1968, Gulf Oil gave up their depletion allowance which increased annual tax payments from about \$6 million to \$8 million¹⁶. During the same year a decree was enacted which forbade new concessions to be issued under the 1955—1956 petroleum legislation and urged the Government to seek new agreements on existing concessions in order to increase further government participation.

The political climate

On account of a military coup in November 1964 and subsequent political events during 1965 and 1966, René Barrientos Ortuño emerged as new President of Bolivia from presidential elections in July 1966. Luis Adolfo Siles Salinas became Vice-President. General Alfredo Ovando Candia, who had been Chief of the Armed Forces in 1964 and was responsible for President Estenssoro's resignation in November of that year, became once more Chief of the Bolivian Armed Forces and devoted temporarily most of his attention to the campaign to defeat the guerilla forces fighting in the country under the leadership of "Che" Guevara.

While Gulf Oil's extensive activities in Bolivia had long been a source of irritation and resentment of Bolivian nationalists, President Barrientos had always favored the company's continued operations and stated publicly that Bolivian Gulf could not be touched because they were operating legally within the framework of agreements made with previous Bolivian governments¹⁷. Unfortunately, President Barrientos was killed in a helicopter accident on April 27, 1969. Vice-President Siles Salinas succeeded Barrientos as President of Bolivia. When inaugurated he declared that the constitutional order was guaranteed by the armed forces (headed by General Ovando!). When in turn General Ovando was asked in May 1969 if he thought that President Siles Salinas had a chance to finish his term of office without unconstitutional interference, he answered smilingly: "I guess so — however, this country is extremely dynamic¹⁸" It seems that from the very beginning Dr. Siles Salinas had very little chance of serving out his term of office, and General Ovando was almost expected to take over the Presidency sooner or later.

How tense the political situation in Bolivia was in 1969, one can see from Mr. Nelson D. Rockefeller's experience during his trip as President Nixon's personal envoy to Latin America. In the course of that fact-finding tour, Mr. Rockefeller was to have stayed in La Paz an entire day. In view of indications of adverse public opinion and planned demonstrations by students and workers, the visit in La Paz was shortened to a two-hour meeting with President Siles Salinas at the closely guarded airport. During the same day, explosions were reported near the American Embassy and the American-Bolivian Center in La Paz. President Siles

16 Goshko, *ibid.*

17 Goshko, *ibid.*

18 "Le General Alfredo Ovando Candia: un militaire ambitieux et résolu", *Le Monde* September 29, 1969.

Salinas declared later about this meeting that it was "frank and straight forward" and that he had suggested to Mr. Rockefeller "concrete measures to avoid creating 240 million 'desperados' in Latin America¹⁹".

In September 1969, time was running out for President Siles Salinas. On August 26, rumors that General Ovando was planning a coup d'état were still denied by the general. When he was shortly thereafter accused of having accepted a sum of \$600,000. from Bolivian Gulf Oil for his election campaign for the forthcoming (1970) presidential elections, he swiftly submitted his resignation as Chief of the Armed Forces to President Siles Salinas who promptly declined to accept it²⁰. Then, during the night from September 25th to 26th, 1969, when President Siles Salinas was in Santa Cruz, Ovando led a bloodless military coup d'état and was sworn in as President of Bolivia.

Towards expropriation of Bolivian Gulf Oil

Still under the administration of President Salinas, a survey of the terms of oil concessions entered into with foreign private companies by a number of oil producing countries had been carried out. According to Dr. Salinas, this survey revealed that the concession issued by the Government of Bolivia in 1955—56 were the most unfavorable to the host country. In any case, he said, fundamental re-negotiation had been indicated for quite some time²¹. These indications were then given considerably more reality by his successor, President Ovando.

President Ovando's first statement was "all I want to do is to bring peace and tranquillity to the country". His first official act was to invalidate Bolivia's petroleum laws²². He said "We hope to have friendly relations with all countries, and we are not closing the door to any, provided they respect our sovereignty". About Bolivia's ties with the United States, General Ovando said: "We are deeply appreciative of aid from the United States which is really aid from the American people themselves . . . We feel that the most serious problems have arisen as the result of a lack of comprehension on the part of the United States of the grassroot problems of Latin America . . . We have great confidence in President Nixon, who has shown great comprehension." He added that "We are not enemies of private industry but it will be necessary for private companies to accomodate their thinking to the needs of Bolivia". With respect to Peru he said: "Fundamentally our revolution is the same as Peru's.²³" About Bolivian Gulf Oil, President Ovando declared on September 29, 1969, that his government would not nationalize the assets of the company. New legislation would, however, be enacted requiring the company to pay more taxes²⁴.

19 "M. Nelson Rockefeller écourté son passage en Bolivie et annule sa visite au Venezuela" *Le Monde*, June 3, 1969; Dr. Siles Salinas confirmed these reports during his address in Houston — see below fn. 21.

20 "Nationalism et Populisme", editorial, *Le Monde* September 29, 1969; "Deux coups d'état militaires en cinq ans", *Le Monde* ibid. and "Les accords pétroliers avec les Etats-Unis sont remis en cause" *Le Monde*, ibid.

21 Luis Adolfo Siles Salinas, former President of Bolivia, address to College of Business, University of Houston, February 19, 1970; Dr. Siles stated that this may have been partly caused by the fact that the Bolivian concession agreement was drawn up by New York lawyers. A similar statement was made publicly by General Ovando: ". . . not written by Bolivians for Bolivians but by foreign lawyers and to the advantage of foreign concerns", *Le Monde* September 29, 1969; Mr. Lumpkin — see fn. 10 above — explained that Bolivians had always been employing various New York law firms in their international business operations so that in the natural course of events these concession agreements had also been drawn up by the New York law firms.

22 UPI September 27, 1969 "New Petroleum Laws Promised in Bolivia".

23 Malcom W. Browne, "Bolivia is Willing to Recognize Cuba" *New York Times* September 29, 1969; *Le Monde* October 9, 1969.

24 AP September 30, 1969 "New Bolivia leader says Gulf won't be nationalized"; also UPI, Reuter of same

Negotiations between the Bolivian Government and Gulf Oil to revise the existing concession agreement began on October 6, 1969. Meetings in good faith between Gulf Oil and the Bolivian Government took place as late as October 15, 1969, and a new proposal was to be presented to the Bolivian Government on October 21, 1969, by Gulf Oil. This proposal should have been accompanied by the final agreement for a joint venture company with YPFB to explore jointly acreage located in the Altiplano. Bolivian Gulf was to have paid all costs of exploration under this agreement, and both companies were to share the profits equally. As late as the morning of October 17, 1969, the Bolivian Minister of Mines and Petroleum, Marcello Quiroga, told Gulf Oil representatives that he knew nothing of pending nationalization procedures²⁵.

They "Day of National Dignity"

In the afternoon of October 17, 1969, police and army units occupied the offices of Bolivian Gulf Oil in La Paz and the oilfield installations in Santa Cruz. President Ovando announced in a broadcast to the nation that Bolivia was dissatisfied with the modest fiscal share received by the Government as compared to the large profits made by Gulf Oil. He said that Bolivia was "tired of being cheated and fleeced by international blackmail". At a press conference the same day, he read the nationalization decree issued after a cabinet meeting held earlier that day. Marcello Quiroga explained that representatives of Gulf Oil had offered a 5 % increase of the Government's participation in the profits which would have amounted to \$ 1 million in state revenue. He termed this offer unacceptable and said that "the Government cannot negotiate with a private company, it must simply make the decisions and carry them out".

A special committee under Quiroga was set up to study the question of compensation for Gulf Oil. October 20, 1969, was declared "Day of National Dignity". Demonstrations and speeches denouncing Gulf Oil as "imperialistic octopus" and "exploiter of Bolivian resources" filled the day. On October 22, all banking activities were suspended in order to prevent capital from leaving the country²⁶.

The expropriated oil producing installations were taken over by YPFB which experienced immediate difficulties in finding a way to take the crude oil to the markets since Gulf Oil tankers were no longer available at Arica. To overcome this

date; further AP, AFP, Reuter, October 8, 1969 reporting Ovando's appeal to foreign capital; see E. D. Brockett, Chairman of the Board, Gulf Oil Corporation, Statement, released October 30, 1969; — however Le Monde September 29, 1969; "Les accords pétroliers avec les Etats-Unis sont remis en cause" which points out that the new petroleum policy implies future nationalization.

25 Fact Sheet, *ibid.*; Lumpkin, *ibid.* p. 473, 475.

26 New York Times, October 18, 1969 "Bolivians complain of Gulf Oil Profits; Seizure is Defended"; NYT Oct 20, 1969; NYT Oct 22, 1969; AP Oct 19, 1969; AP November 16, 1969; Goshko, Washington Post, Oct 21, 1969; Le Monde Oct 19, 1969; Le Monde Oct 20, 1969; The offices of Parker Drilling Company of Tulsa, Oklahoma, were also temporarily occupied. This company had been carrying out drilling operations for Gulf Oil in Bolivia since 1959. They were now told by the Bolivian Government that they were free to leave the country. A translation of Revolutionary Mandate No. 2, October 16, 1969, in 10, Intern. Legal Materials 174 (1971): ". . . to recover the natural resources alienated under conditions detrimental to the national interest and facing the foreign and anti-national plot unleashed to stop the continuation of the revolutionary process . . ." Spanish text of the Supreme Decree No. 08956 Decree No. 22 of the Revolutionary Government published in Gaceta Oficial, October 20, 1969; U. S. State Department English translation in 8, Intern. Legal Materials 1163, 1969, and a Gulf Oil translation in 10, Intern. Legal Materials 175, 1971. The preamble stated that "No concession or contract may confer the ownership of the hydrocarbon deposits. The exploration, exportation, commercialization and transportation of the hydrocarbons and their derivatives correspond to the State . . . All enterprise established for exploitation, utilization or business in the country shall be considered National . . .". "That the concern Bolivian Gulf Oil Company has become a new Super State, having an economic and political power superior to that of the Bolivian State, incompatible with the principle and practice of the national sovereignty". According to Art. 3, Gulf Oil installations were to be taken over immediately by YPFB. Art. 4, established the indemnification commission.

problem, the Bolivian Government tried to negotiate with Gulf Oil through the Argentine Government as intermediary. However, shipments of crude oil to California discontinued promptly and Gulf Oil tankers en route to Arica were ordered to call on other ports. Even repeated statements by spokesmen of the Government confirming that compensation would be paid did not change this situation. In December 1969, it was reported, though, that the Peruvian Government had placed several tankers at the disposal of the Bolivians²⁷.

To take care of the technical problems of producing crude oil, Bolivia began immediately to look around for help. Diplomatic relations with Roumania were established, and negotiations with respect to the technical aspects of producing oil were initiated. In early December 1969, diplomatic relations were also established with the U.S.S.R. A Russian offer to buy 30,000 barrels of Bolivian crude oil daily at \$ 2.42 per barrel came in January 1970²⁸. A trade agreement was signed in August 1970, followed two months later by a loan of \$27.5 million to Bolivia. Diplomatic relations with Poland which had been interrupted since 1939, as well as with Hungary, Yugoslavia, and Czechoslovakia, were established in due course²⁹. Meanwhile Argentina had increased oil imports from Bolivia to 12,000 barrels daily, and Petrobras, the state-owned Brazilian company, as well as Mexico and Chile were reported to compete in offering to buy Bolivian oil³⁰. In any case, President Ovando announced in a radio talk on November 22, 1969, that the sale of Bolivian oil was assured.

The nationalization included also Gulf Oil's share in YABOG which caused the World Bank to let Bolivia know that any agreement with Gulf Oil needed the World Bank's approval. Ovando described this as "Imperialistic pressure" to which Bolivia would "not give in a millimeter"³¹.

The United States recognized the Ovando regime in due course inspite of unsuccessful efforts to obtain assurances from President Ovando concerning the protection of Gulf Oil interests. Foreign aid to Bolivia amounted to \$8.6 million in 1968, to about \$10 million in 1969 and reached \$15.3 million in 1970. In view of the adverse results achieved by threats to apply the Hickenlooper Amendment^{31a} against Peru in connection with the take-over of I.P.C. assets by the Peruvian Government one year earlier, the U. S. Government did not threaten at all to invoke the amendment against Bolivia.

27 Goshko, *ibid.*; Philippe Labreveux, *Le Monde* Oct 27, 1969; AP Oct 26, 1969; Labreveux, *Le Monde* December 13, 1969.

28 A technical mission from the USSR to advise COMIBOL in latest tin production techniques had arrived in mid-November.

29 UPI December 3, 1969; AP Jan 6, 1970; Reuter (*Le Monde*) November 10, 1969; AFP February 27, 1970, August 19, 1970.

30 H. J. Maidenber, *NYT* Dec 14, 1969; Reuter Jan 24, 1970; Lebreveux, *ibid.*; In January 1970 when inaugurating a new highway connecting their countries, President Frei of Chile and President Onganía of Argentina discussed the possibility of helping Bolivian oil exports: *Platt's Oilgram News Service*, McGraw-Hill, New York, Vol. 48, No. 8 p. 1.

31 New York Times (Reuter) Oct 18, 1969; in September the Bolivian Finance Minister had expressly assured Mr. Horst Stuckmeyer, a representative of the International Monetary Fund, that the new economic policy would not impair the stability of the country's currency — *NYT* Malcom W. Brown, Sep 29, 1969. Supreme Decree 08956, *ibid.*, Art. 5; The actual transfer of Gulf Oil's shares in YABOG was effected by Supreme Decree 08981, Decree No. 47 of the Revolutionary Government, Art. 1, of which provided that the totality of the shares of Bolivian Gulf Oil in YABOG be registered in the name of the Bolivian State in the respective Stockholder's Ledger of the Company; the Decree was published in *GACETA OFICIAL*, October 20, 1969; English translation in 10, *Intern. Legal Materials* 179, 1971; The gas sales agreement with Argentina was amended on April 9, 1970 — see English translation in 10, *Intern. Legal Materials* 121, 1971; according to Art. 3 of that amendment all rights and obligations originally corresponding to YPFB and Gulf Oil jointly and severally shall now be exercised and fulfilled only by YPFB. Furthermore, Art. 6 modified the payment terms to use Argentine rather than New York banking facilities. The date for the beginning of deliveries of gas to Argentina was revised to provide for a delay of one year.

31a An amendment to the foreign aid legislation introduced in 1962 by Senator Bourke B. Hickenlooper requires, immune from Presidential waiver, that United States aid be cut off if United States property is seized without prompt and just compensation.

To protect their interests as best as possible, Gulf Oil brought court action against the Bolivian Government and YPFB in Argentine courts to block shipments of gas and oilfield equipment in transit to Bolivia. Similar efforts undertaken by Gulf Oil in Chile failed³². Mr. Quiroga sharply criticized Gulf Oil for this move and labeled it "scandalous interference in the internal affairs of Bolivia".

Whatever the indignation of Gulf Oil Company may have been, their representative felt later that it was not the U.S. Government to which private industry should look for protection. It was the government of the country in which these industries operated which must provide it. Without this kind of protection, he felt, there could be no mutual forging ahead. Without this, there could be no keeping up which the fast-paced progress that this new technological age has placed like an infant child at our doorstep. He said that the governments of the host countries and the international industry should act as guardians of that huge challenge. "We must reason together." We must search for formulas which permit private enterprise to operate at a reasonable profit with confidence and comfort in the knowledge that its efforts are as valued as they are needed³³.

The scope of negotiations

The negotiations leading to an eventual settlement of the oil and gas issue proceeded in three different directions and were concluded at different times. The question of indemnification for Gulf Oil was negotiated directly between the Bolivian Government, YPFB, and Gulf Oil. Assistance in operating the nationalized oil fields and in marketing the Bolivian crude oil production was sought by exploring a Spanish offer which entailed negotiations between the Spanish and Bolivian Governments, YPFB and Gulf Oil as well as in the background the U.S. State Department. Efforts to resume construction of the gas pipeline to the Argentine border involved besides the Bolivian Government, the Argentine and Spanish Governments, the International Bank for Reconstruction and Development, the Inter-American Development Bank, and the New York State Common Retirement Fund as well as Gulf Oil Company.

The indemnification settlement

Immediately after the expropriation, a series of three informal meetings took place in La Paz between representatives of Gulf Oil and the Bolivian Government, and a

³² Reuter (Le Monde) November 18, 22, 1969; Labreveux, *ibid.*; The Chilean Supreme Court in its opinion of December 10, 1970, restraining lower court from hearing Gulf Oil request for judicial sanctions against transit of machinery en route to Bolivia — see text in 10, Intern. Legal Materials 1, 1971 — found that "any precautionary measure which may have been issued by the lower court must be voided and any procedural steps taken in this case must be cancelled" because the courts lacked jurisdiction and competence to hear such matters. The opinion was based on Art. 6, Treaty of Peace, Friendship and Commerce between Chile and Bolivia, signed in Santiago October 20, 1904, ratified March 10, 1905 and promulgated as law on March 21, 1905; Art. 1, Art. 4 (d) Convention on Transit, signed by Chile and Bolivia on August 16, 1937, ratified July 9, 1942; Art. 1 Declaration of Arica, signed by Chile and Bolivia January 25, 1953; "All types of cargo . . . shall be subject to the exclusive jurisdiction and competence of Bolivian customs authorities . . . Any location where the cargo may be deposited shall be considered to be a Bolivian customs location" and Art. 2 of same Declaration: "Consequently, any problems of any nature that may arise relevant to this cargo may only be heard and resolved by the Bolivian authorities, and no administrative, customs, or judicial authority of the Republic of Chile shall have or exercise any kind of jurisdiction or competence over it".

³³ Lumpkin, *ibid.*, p. 476, 477; Mr. E. D. Brockett, Chairman of the Board of Gulf Oil, stated earlier, however, that he had urged the State Department to have the Hickelooper Amendment applied to Bolivia — NYT Jan 23, 1970. — Mr. Brockett retired as Chairman and Chief Executive effective Dec 31, 1971 after negotiations with the Bolivian Government had been successfully concluded in that indemnification was agreed upon. He had been President 1960—65 when he was elected to this office. At that time Mr. B. R. Dorsey became President. He has succeeded Mr. Brockett as Chief Executive. Gulf will not have an official Chairman of the Board under new arrangements. Mr. Dorsey will chair the board meetings, Oilgram Vol. 49 No. 207 p. 3.

first formal meeting followed in November, 1969. In the middle of December, a group of high level officers of Gulf Oil arrived in La Paz for the second formal meeting which ended in proposing another meeting for early January 1970. This meeting did, however, not materialize³⁴. During the month of February the Bolivian Government engaged the French consulting and engineering concern Geopetrol to audit the accounts of Bolivian Gulf Oil for the purpose of establishing the amount of indemnification. In early March, 1970, Mr. Quiroga sent a letter to Gulf Oil in which he complained that Gulf Oil did not continue negotiations. There was no immediate reply to this letter. Perhaps Gulf Oil delayed these negotiations in view of the beginning of negotiations between the Spaniards and the Bolivians at that time. In June 1970, Thomas Lumpkin, J. A. Gasque, and P. J. McNulty, of Gulf Oil, went to La Paz in order to resume negotiations. Talks continued until early July. Another Gulf delegation, headed by Mr. Lumpkin arrived in La Paz in early August when the preliminary audit report prepared by Geopetrol was available. On the basis of this report, the Bolivian Indemnity Commission which was established pursuant to Art. 4 of Supreme Decree No. 08956 of October 20, 1969, confirmed that the books were in good order. The final, revised version of the audit report was submitted at the beginning of September 1970. It showed that Gulf Oil had invested \$169,330,305.61 in their operations in Bolivia. Subtracting losses on surrendered acreage, this amounted to \$ 115,109,960.11 and the net of depreciation and amortization of unrecovered investments to \$ 101,098,981.11. A compensation agreement with Gulf Oil was reached on September 11, 1970³⁵. This agreement was temporarily in question, however, when President Ovando resigned and General Juan José Torres took over Government in the course of another military coup on October 6, 1970. The Torres Government initially refused to accept the indemnification terms and renewed old claims concerning Bolivian Gulf's social security payments for their employees which were believed to have already been settled within that agreement. Gulf Oil thereupon raised a number of counter-claims and on February 18, 1971, an agreement was reached between the Torres Government, YPFB, Gulf Oil, and BOGOC, settling these differences³⁶.

Supreme Decree No. 09381, No. 448 of the Revolutionary Government, dated September 10, 1970³⁷, established the indemnification amount and the manner of payment to Gulf Oil. It provided that Gulf Oil would receive through a trustee approved by the Government of Bolivia in successive payments a total of

³⁴ Labreux, *ibid.*; Maidenberg, *NYT* *ibid.* The Gulf Oil delegation consisted of Thomas D. Lumpkin, Vice President Gulf Oil Latin America, H. R. Martin, Gulf World Coordinator, J. A. Gasque, Gulf representative in Argentina; Oilgram Mar 2, 1970, Vol. 48 No. 41 p. 1.

³⁵ Oilgram Feb 26 70, Vol. 48, No. 39 p. 1; Jun 15, 1970, Vol. 48 No. 114 p. 2; Aug 7, 1970, Vol. 48 No. 152 p. 1; Aug 24, 1970 Vol. 48 No. 163 p. 1; Sep 10, 1970 Vol. 48 No. 175 p. 1; Sep 14, Vol. 48 No. 177 p. 4; Gulf representatives had termed the settlement "fair and equitable" even though they had expected \$118 million compensation; negotiations were "cordial and constructive at all times", Oilgram Jan 11, 1971 Vol. 49 No. 6 p. 4; Jan 15, 1971 Vol. 49 No. 10 p. 2; In May 1970, President Ovando ordered several changes in his cabinet and YPFB which seemed not to have affected the oil policy and pending negotiations. The Ministry of Mines and Petroleum was renamed into Ministry of Energy and Hydrocarbones. Mr. Quiroga resigned as head of that ministry and was replaced by Roberto Capriles Gutierrez, AP May 19, 1970. Quiroga's resignation was caused by differences with Ovando over his intention to assume the presidency over YPFB to which he was apparently entitled as minister of that area while Ovando preferred José Patina Ayoroca. YPFB's general manager Rolando Prado also resigned under Ovando but was later reinstated by the Torres Government — Oilgram Mar 15, 1970 Vol. 48 No. 94 p. 1; May 22, 1970 Vol. 48 No. 99 p. 1; May 25, 1970 Vol. 48 No. 100 p. 4; Jun 2 1970 Vol. 48 No. 105 p. 1; after resignation Ovando was ambassador to Madrid but relieved of that post and any other governmental functions on April 16, 1971.

³⁶ Public Document No. 61, dated March 12, 1971, as modified by another agreement dated March 25, 1971 — see 10, Intern. Legal Materials 1130, 1971.

³⁷ 10, Intern. Legal Materials, 1113—1114, 1971. Other legislation concerning nationalization of Bolivian Gulf Oil (BOGOC) see 10, Intern. Legal Materials 1201—1223, 1971.

\$ 101,098,961.11 less 22 % Bolivian taxes leaving a balance of \$ 78,622,171.44. This amount was to be paid from 25 % of certain hydrocarbon proceeds (natural gas and crude oil) from the Caranda, Colpa, and Rio Grande fields which are referred to in the various agreements as "Export Proceeds". The remaining 75 % of these export proceeds were to cover requirements and obligations of YPFB as well as the Bolivian Government.

These terms were incorporated in the agreement between the Bolivian Government and Gulf Oil of September 11, 1970. It provided further that Gulf Oil accept transfer of property ownership of nationalized assets and extend guarantees for:

1. credits necessary to complete the Colpa and Rio Grande plants;
2. shipments to Bolivia of all materials for the Santa Cruz—Yacuiba gas pipeline system;
3. credits to complete the gas pipeline if credits obtained from IBRD and New York State Common Retirement Fund should not be sufficient;
4. credits accepted by YPFB to pay its obligations to BOGOC;
5. credits granted by NYSCRF to YABOG.

Gulf Oil was held to purchase all volumes of crude oil available for export through Arica whether through the Spanish backed Camba, S.A., or directly from YPFB. Payments to Gulf Oil were to begin January 1, 1973, or three months after the date of the first export of gas to Argentina.

Spain offers assistance: The "CAMBA" intermezzo

In early January 1970, the U.S. State Department proposed to the Spanish Government to offer Bolivia to assume responsibility for operating the expropriated oil fields in Bolivia. The proposal was made to the Spanish foreign minister Gregorio Lopez Bravo through the U.S. Embassy in Madrid. Meetings took place in the Spanish Foreign Ministry in Madrid between Spanish governmental officials, U.S. diplomats, and representatives of Gulf Oil. The U.S. State Department suggested that the state-controlled Hispanoil Co. step in. According to Mr. Lumpkin, Mr. Quiroga was approached by the Spanish ambassador in La Paz, Victor Sanchez Mesas, who conveyed to him the proposal to commercialize gas and oil and to have the gas pipeline constructed under the responsibility of the Spanish company.

One might raise the question why did the U.S. Government and Gulf Oil decide to approach the Spaniards to serve as intermediary in their expropriation conflict. The answer is most likely that while the Bolivians would not be too eager to negotiate through one or the other of their Latin American neighbors — for example Argentina in view of the involvement in the pipeline project — because it might lead to political interference, Spain was less likely to take a political interest and was outside the Western Hemisphere while speaking the same language and being culturally related to Bolivia. Besides, U.S. — Spanish relations were undisturbed while there were perhaps more problems with some of the Latin American countries considering their history of nationalizations or their politically uncertain future. Also, if a Spanish company would be acceptable as trustee, this would reasonably assure continuity in long term arrangements and planning. In case Bolivia needed assistance in producing and marketing of oil, this assistance could be given through the Spanish company which could — if need be — even count on Gulf Oil backing. In this latter context, the only other available alternative would have been the Communist countries upon which the Bolivians were after all

apparently not very anxious to rely. Since Gulf Oil was interested in negotiations in order to obtain indemnification and since Bolivia was equally interested to negotiate in order to be provided with the financial and material help to complete her share of the oil pipeline system for gas deliveries to Argentina, it appears that to employ Spanish services was the convenient solution to achieve these ends.

After having studied the Spanish offer, Mr. Quiroga promptly requested more details from the Spanish Government. Bolivia was willing to accept Spanish mediation provided that instead of Hispanoil which according to unsubstantiated reports was believed by the Bolivians to be partly owned by a private consortium in which Gulf Oil was supposedly participating and jointly with whom Gulf Oil was said to be carrying out several operations in Spain, it should be the Instituto Nacional Industria (I.N.I.), a holding company owned by the Spanish Government, which should step in. The Spanish Government accepted Bolivia's request and replaced Hispanoil by I.N.I. in their proposal. Mario Alvarez Garcillan, of I.N.I., was given the "go ahead" by the Spanish Government. The Bolivians made clear, though, that there should not be any question of transferring title to any oil or gas rights to the Spanish company since YPFB was to be the exclusive titleholder.

After some of the fundamental problems of the proposal had been cleared up, a Bolivian delegation arrived in Madrid on February 16, 1970, for the talks which lasted until February 22³⁸. A second meeting was held in La Paz from March 11, until March 19, and a tentative agreement was reached on March 23, 1970³⁹. This agreement provided that Spain establish jointly with YPFB a new oil company under control of I.N.I. which was to serve as clearinghouse for all economic, technical, and financial affairs connected with Bolivian gas and oil involving international backing. This Spanish company would be responsible for making loan interest, amortization, and indemnification payments out of oil and gas export revenues. It would be called CAMBA, S.A. after an Indian tribe in the Santa Cruz gas production area. A mixed committee of 2 Spaniards and 2 Bolivians was to supervise Camba-YPFB relations. The chairman would be a Bolivian. Camba, S.A. would set up the marketing organization for 25,000 barrels per day of crude oil at a price of \$2.25. No market was to be excluded which indicated the possibility of shipping oil again to the U.S. West Coast⁴⁰.

In May, 1970, the Spanish Council of Ministers reviewed the agreement and so did the Bolivian Government. This resulted in mutual requests for modifications. The Spaniards indicated that they would prefer setting up a private company to fill the "Technical deficiencies" of YPFB. It should operate separately of, and independently from YPFB operations and without participation of the Bolivian Government. On the other hand, Bolivia's new ambassador in Madrid, Osvaldo Monasterio, had instructions to request that Camba should not be a joint venture

³⁸ Oilgram 23 Jan 70, Vol. 48 No. 16 p. 1; Loren Jenkins, Washington Post, 2 Jan 70; NYT 23 Jan 70; Marcel Niedergang, Le Monde 13 May 70; Oilgram 27 Jan 70, Vol. 48 No. 40 p. 4; 28 Jan 70, Vol. 48 No. 19 p. 1; 29 Jan 70, Vol. 48 No. 20 p. 3; The Bolivian delegation consisted of Marcelo Quiroga Santa Cruz, Minister of Energy and Hydrocarbons, Gabriel Arana, Director General of Oil, Rolando Prada, General Manager of YPFB, Enrique Mariaca, member of the Bolivian Advisory Council on Oil — Oilgram 19 Feb 70, Vol. 48 No. 35 p. 4; UPI 21 Feb 70.

³⁹ The Spanish delegation consisted of Mario Alvarez Garcillan, representative of I. N. I., Carlos Robles Piquer, diplomat, Garrido Taboada, I. N. I. lawyer, and Miquel Angel Cavanilla, I. N. I. geologist — Oilgram 9 Mar 70, Vol. 48 No. 46 p. 2; at the time of this meeting in La Paz, demonstrations took place against the visit of Mr. Charles Meyer, US Under-Secretary of State for Latin American Affairs. He said that his visit had no connection with the Gulf Oil issue — AFP 16 Mar 70; Oilgram 24 Mar 70, Vol. 48 No. 57 p. 5.

⁴⁰ Oilgram 24 Mar 70, Vol. 48 No. 57 p. 5; 25 Mar 70, Vol. 48 No. 58 p. 1; it seems, however, that buying crude oil from Bolivia would mean for Gulf Oil to finance BOGOC's own compensation! Oilgram 17 Sep 70, Vol. 48 No. 180 p. 2/3.

with YPFB but fully owned by the Spanish Government. Later during the month of June, the Bolivians proposed that Spain stand by the terms of the original agreement signed in March.

At the beginning of July, the Spanish Council of Ministers officially approved Camba's charter and constituted the company by decree as an agent for technical aid and marketing — but the Bolivians were still worried about several changes in the wording of the agreement which the Spaniards had made and which would open the door for private participation in managing the oil operations. The Bolivians also objected to the fixed commission fee provision on exported crude oil and natural gas regardless of selling price under which Camba would have been paid between \$ 600,000, and \$ 900,000. Last not least, the Bolivian Government did concede that Hispanoil was not partly owned by Gulf Oil as they had contended in January but continued to express concern over the close relationship which Gulf Oil maintained with the Spanish Government. It became apparent that the Bolivians had changed their mind about the Camba agreement and were trying to back out of it.

A new agreement was reached in early August 1970. The involvement of Camba was considerably diminished. Camba was no longer to serve as exclusive marketing agent. YPFB retained the right to sell crude oil to any buyer who would pay more than \$2.25 per barrel at Arica. While the original agreement had provided for a contract period of 20 years for Camba's oil and gas sales participation, this was now reduced to only 5 years. Technical assistance was limited to 3 years. The commission system was abandoned and replaced by a flat fee of \$400,000. a year for the first three years and reduced fees after that. Finally, towards the end of September, the Bolivians were engaged in "discret" negotiations with Gulf Oil to sell crude oil directly to them and remove Camba completely as marketing agent which meant to limit Camba to the area of technical assistance and therefore function only in a token capacity. Eventually, under the Torres Government, and since the compensation agreement with Gulf Oil had been signed. Camba's role was only to back the pipeline project internationally while YPFB took care of oil field operations, marketing of crude oil, and pipeline construction in their own responsibility⁴¹.

The natural gas pipeline project

It was the original intention of negotiations with the Spanish Government to have Camba also take control of constructing the remaining two thirds of the gas pipeline to Argentina without, however, having Spain guarantee the I.B.R.D. loan granted to YABOG. Argentina, in turn, had already offered a guarantee on December 5, 1969, but talks with the Bolivian Government were complex and not conducted with great vigor by the Bolivians. When talks with the Spanish delegation in March 1970 in La Paz seemed to be making good progress, President Ovando requested a joint meeting with officials of the I.B.R.D. and the Argentine Government. The Argentine delegation arrived there on March 22. The tentative

⁴¹ Oilgram 11 May 70, Vol. 48 No. 90 p. 2; 10 Jun 70, Vol. 48 No. 111 p. 1; 15 Jun 70, Vol. 48 No. 114 p. 2; 16 Jun 70, Vol. 48 No. 117 p. 1; 29 Jun 70, Vol. 48 No. 124 p. 2; 1 Jul 70, Vol. 48 No. 126 p. 1; 2 Jul 70, Vol. 48 No. 127 p. 3; 6 Jul 70, Vol. 48 No. 127 p. 3; 8 Jul 70, Vol. 48 No. 130 p. 1; 13 Jul 70, Vol. 48 No. 139 p. 3; 10 Sep 70, Vol. 48 No. 175 p. 1; Le Monde 11 Sep 70; Oilgram 1 Oct 70, Vol. 48 No. 190 p. 1; 9 Dec 70, Vol. 48 No. 237 p. 2; Spaniards have accepted change "Chivalrously but painfully".

agreement between the Spanish and the Bolivian Governments of March 24, reflects the outcome of these negotiations. Camba was to manage the construction and financing, the I.B.R.D. reinstated the original credit line for YABOG, and the Argentine Government was to guarantee this loan. Between late April and September 1970, several more meetings with the World Bank and other finance institutions including Gulf Oil Corporation took place until a solution acceptable to all concerned was found. Since the cost of constructing the pipeline had gone up to nearly \$56 million, the necessary additional loan of \$19 million was granted by the Inter-American Development Bank in Washington. The New York State Common Retirement Fund loan was reduced to funds already advanced. In July 1971, a new contract with Williams Bros. was signed by YABOG so that work could now be completed. Gas deliveries are expected to begin in 1972. Camba's part in this arrangement was practically reduced to a token involvement and YPFB emerged solely responsible for the project⁴².

Financing indemnification and pipeline construction: The Trust Agreements

The financial mechanism for paying indemnity to Gulf Oil and repaying the loans granted to YABOG for construction of the pipeline are contained in the following agreements:

1. The Bolivian Crude Oil Trust Agreement
2. The Lenders Trust Agreement
3. The Indemnity Trust Agreement

A flow diagram of these trustee agreements is given on page 293⁴³.

The Bolivian Crude Oil Trust Agreement

This agreement between YPFB and the First National City Bank of New York, dated September 23, 1971, provides that YPFB assigns, transfers, and sets over to the Trustee all its rights, title, and interests in 100% of all proceeds from the sale of "Export Crude Oil" (= from the Caranda, Colpa, and Rio Grande oil fields) — Sec.1 —. The Trustee, First National City Bank, shall establish a trust account to be known as "The Bolivian Crude Oil Trust Account", the beneficiaries of which shall be the "Crude Oil Proceeds Trust Account" and the "BOGOC (Bolivian Gulf Oil) Indemnity Trust Account" in the proportions of 75% for the former and 25% for the latter account — Sec. 3 —. Payments over to the Bolivian Crude Oil Trust Account will amount to 100% until indemnification payments to BOGOC commence (January 1, 1973, or three months after initiation of gas deliveries to Argentina) — 75% while payments are being made on the indemnification, and 100%, again, once this obligation is covered—Sec. 4 —⁴⁴.

The Lenders Trust Agreement

This agreement between YPFB, First National City Bank, Inter-American Development Bank, International Bank for Reconstruction and Development, New

⁴² Oilgram 23 Jan 70, Vol. 48 No. 16 p. 3; 2 Mar 70, Vol. 48 No. 41 p. 1; 19 Mar 70, Vol. 48 No. 54 p. 4; 23 Mar 70, Vol. 48 No. 56 p. 1; 24 Mar 70, Vol. 48 No. 57 p. 5; 25 Mar 70, Vol. 48 No. 58 p. 1; 21 Apr 70, Vol. 48 No. 76 p. 4; 14 Sep 70, Vol. 48 No. 117 p. 4; 17 Sep 70, Vol. 48 No. 180 p. 2; 28 Sep 70, Vol. 48 No. 187 p. 1; 1 Oct 70, Vol. 48 No. 190 p. 1; 11 Jan 71, Vol. 49 No. 6 p. 4; 22 Mar 71, Vol. 49 No. 55 p. 2; 26 Jul 71, Vol. 49 No. 142 p. 2. The agreement between the Bolivian and Argentine governments for the sale of natural gas was amended several times in order to permit extension of the original deadline for the beginning of gas deliveries.

⁴³ Courtesy Gulf Oil Corporation — Latin America, Comptroller Department, Los Angeles, California.

⁴⁴ 10 Intern. Legal Materials 1123, 1971; agreement contains detailed provisions as to mechanism, procedure and the various responsibilities of the parties. Disputes shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce and the award shall be final and not subject to any appeal in any national court or otherwise — Sec. 8 —. All payments to be made in fully convertible US-dollars.

York State Common Retirement Fund, Gulf Oil Corporation, and Banco Central de Bolivia, dated September 23, 1971, provides that the same procedure as described above for oil exports will also be applied to the proceeds from gas deliveries to Argentina, as soon as they begin — Sec. 1 —. The trustee will establish a Loan Debt Service Account for each of IDB, IBRD, and NYSCRF, as well as a Gulf Debt Service Trust Account besides several other trust accounts. These institutions shall be beneficiaries of the trust accounts in an arrangement adjusted to the repayment dates of their respective loans and the “BOGOC Participation Date” at which time payments to BOGOC for indemnification begin. Priorities are fixed according to a complicated schedule — Sec. 3 (a) — (d) —. The Gulf Debt Service Account will be serviced after payments to the other aforementioned accounts — Sec. 3 (e) —. Gas and Crude Oil Proceeds not required to meet monthly allocations, payments, and charges shall be deposited in the Gulf Debt Service Trust Account up to a certain amount, and if there are further proceeds available these shall be paid into the Central Bank of Bolivia Trust Account — Sec. 5 —⁴⁵.

The Indemnity Trust Agreement

This agreement between YPFB, First National City Bank (Trustee), Gulf Oil Corporation, and Bolivian Gulf Oil Corporation, dated September 23, 1971, provides that YPFB irrevocably assigns, transfers, and sets over to the Trustee, in trust, all rights, title and interest in 25% of all proceeds from exports paid into the Bolivian Crude Oil Trust Account and 25% of all proceeds to become due from the sale of gas exported and attributable to Caranda, Colpa, and Rio Grande fields from BOGOC Participation Date until satisfaction of the indemnity to be paid by the Bolivian Government — Sec. 1 —. Accordingly, the trustee is instructed to effect corresponding payments over to the BOGOC Indemnity Trust Account upon receipt of collected funds — Sec. 3 —. From the total amount of each indemnity payment to BOGOC, to be made out of funds derived from the sale of Export Hydrocarbons, the Trustee shall deduct 22% for the exclusive tax established by the Indemnity Decree — Sec. 4 (a) —. Successive payments in BOGOC’s favor shall be finally terminated 20 years after the first delivery of gas to Argentina — Sec. — 4 (b)⁴⁶.

The New Era

Since negotiations with Gulf Oil had resulted in a compensation agreement in September 1970, Gulf tankers were once more expected to ship crude oil from Africa to the U.S. West Coast. Roland Prada, the general manager of YPFB, hinted that the door was still open for Gulf Oil to operate again in Bolivia under the terms of the new oil legislation which was being drafted at that time and which was expected to be based on the service contract system open to any foreign company. It seemed, however, that Gulf Oil had no intentions to return to Bolivia. During the following months, YPFB intensified their search for new markets. In early 1971, an agreement was reached in Moscow to have a group of Russian

⁴⁵ 10 Intern. Legal Materials 1130, 1971; The arbitration regulations for this agreement follow the example of the Bolivian Crude Oil Trust Agreement section 8 — see sec. 12 of this agreement. Payments are to be effected in fully convertible US-dollars.

⁴⁶ 10 Intern. Legal Materials 1113, 1971. Arbitration procedure and payments as in the other two agreements — see sec. 8 —.

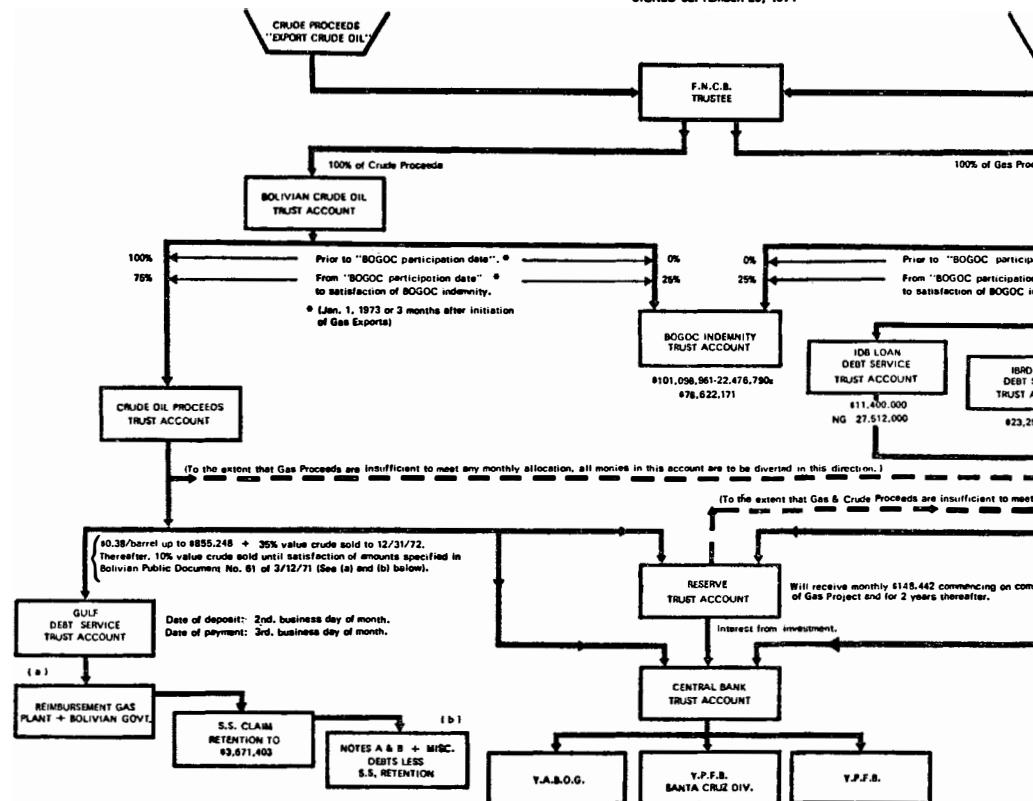
experts come to Bolivia to evaluate the possibility of exploring a crude oil zone in tropical Northeastern Bolivia near the Peruvian and Brazilian border in the Madre de Dios area. If hydrocarbons were found, the Russians would apparently be interested in exploration rights. There are indications though, that the Bolivian Government did not have in mind to give the Russians a free hand but rather intended to limit their activities to pre-exploration studies. Towards the end of 1970 the total production of crude oil reached 40,000 b/d of which about 10,000 b/d were used domestically, 15,000 b/d were exported to Argentina at apparently \$3. per barrel, 10,000 b/d to Peru at \$2.75 per barrel, and 5,000 b/d to Chile also at \$2.75 per barrel⁴⁷.

Deliberations on the new petroleum law conceived under the Ovando administration were continued under the Torres Government and later under his successor Hugo Banzer Suarez who came to power in August 1971. It is expected to be enacted in 1972. It is to reopen the country for hydrocarbon exploration to foreign private companies under the service contract system similar to the one used in Peru which leaves the exploration risks to the private company in return for half of the eventual production, the other half to be taken by YPFB. Rolando Prada explained: "We do not have sufficient resources to undertake exploration of such vast regions ourselves. A mistaken concept of nationalism was closing us off from all possibilities of finding cooperation in the West for this important task, while our neighbors are advancing rapidly in the exploration field and are establishing contacts that permit them to develop their petroleum industries.⁴⁸"

⁴⁷ Oilgram 17 Sep 70, Vol. 48 No. 180 p. 2/3; 18 Sep. 70, Vol. 48 No. 181 p. 1; 28 Sep 70, Vol. 48 No. 187 p. 1; 17 May 71, Vol. 49 No. 94 p. 3; 21 May 71, Vol. 49 No. 98 p. 2; 4 Jun 71, Vol. 49 No. 107 p. 3; 12 Jun 71, Vol. 49 No. 132 p. 4; 8 Sep 71, Vol. 49 No. 173 p. 1; 21 Dec 71, Vol. 49 No. 244 p. 2.

⁴⁸ Oilgram, September 8, 1971, Vol. 49 No. 173, p. 1.

**BOLIVIAN GULF OIL COMPANY
FLOW DIAGRAM OF TRUSTEE AGREEMENTS
SIGNED SEPTEMBER 23, 1971**



NOTE: The sources for this diagram, **Lenders Trust Agreement** and **Bolivian Crude Oil Trust Account Agreement**, should be consulted for further details.

Socialism in the Democratic People's Republic of Korea

By M. Y. CHO

Juche (Self-Identity) is a dynamic ideology developed by Kim Il-sung and constitutes the driving force of North Korean politics. An analysis of Kim's report to the Fifth Party Congress shows how this Juche-ideology has been applied in the economic field and both domestic and foreign policy during the past ten years. The supreme task and aim of this Juche politics has been and will be the reunification of Korea.

The author considers the recent North-South Korean agreement on peaceful relations and reunification a confirmation and victory of Juche-ideology.

Nationalizations in Bolivia: Gulf Oil Investments, Negotiation Patterns and Settlement Agreements

By WOLF RADMANN

This article is another attempt at providing the international practitioner with a case study in nationalizations which will hopefully contribute to the various recent efforts dedicated to designing a new and constructive approach to investments of industrial countries in developing economies. It describes a series of nationalizations in Bolivia carried out in 1936 when the installations of Standard Oil of New Jersey were taken over by Government, in 1952 when several tin empires were expropriated, and in 1969 when Gulf Oil assets were seized. It points out briefly that these decisions were taken each time by revolutionary governments trying to improve the economic situation of the country and to cope with domestic political pressures. Attention is focussed on the recent Gulf Oil experience which demonstrated once more that take-overs in Latin America are often staged practically overnight and in the midst of negotiations with the foreign investor. This case is of particular interest because of the negotiating techniques employed by the American investor and the host government both of which initially seemed to welcome, and be willing to use, the services of Spain as a third, European, Spanish speaking country in the role of mediator, manager, and clearing agent — only to eliminate Spanish involvement as soon as an agreement on indemnification could be reached by direct negotiations between host and investor — and as soon as sufficient financing was assured from financing institutions in the Western Hemisphere. By a series of trust agreements with a New York bank the clearing function originally assigned to a Spanish state-owned company to be set up in Bolivia was no longer required. The end was an obvious disengagement from the United States investor in the interest of economic independence and at the expense of both the investor and the host country — but eventually with an encouraging note supplied by surrounding Latin American economies and Western finance against the background of overtures from the socialist camp overseas. —