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CMA - Mr. Osborne

November 3, 1958

HD - Mr. Noble

Clearance with Foreign Governments of Reports of Conversations with Foreign Officials prior to Publication in "Foreign Relations of the United States"

Your memorandum to me of September 22, 1958 raises the broad question of Department policy regarding clearance of records of conversations with foreign officials, not just the clearance of a specific "Foreign Relations" volume or the clearance of papers with countries relations with which are within the responsibility of the ARA area. As indicated in my memorandum of September 15, 1958 to MID - Mr. Blanchard I feel that such an extension of our clearance practices as you recommend would be most unfortunate in circumscribing the freedom of our Government to publish its official records. I am therefore offering the following comments on some of the points you raised:

1. You cite three cases as illustrations of embarrassments that can be caused if reports on conversations by our diplomatic representatives with foreign officials are not cleared with the respective foreign governments. It is interesting that none of the three cases mentioned in paragraph (1) on the first page of your memorandum of September 22 regarding the reluctance of Mexican officials to have records of their conversations published are properly connected with "Foreign Relations." You state that Mexican officials are reluctant to confide in our representatives, "knowing, as they inevitably do, that records of their conversation may be published by the United States at will." This generalization scarcely applies, however, to such accounts as appear years later in the "Foreign Relations" volumes as part of the official record of United States diplomacy. Comments on the three cases cited follow:

(a) Mr. Crockett's memorandum of September 9, 1957 (not October 4, 1957) referred to apprehensions by a Mexican official resulting from a report that United States backing was involved in his candidacy for President. This report was originally mentioned in a private publication which was discussed in Congressional hearings. Mr. Crockett appropriately pointed out that there was a confusion of "Foreign Relations"

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with the publication of Congressional hearings on current matters, and that the report which gave rise to the official's apprehensions was entirely unrelated to the "Foreign Relations" series. Such confusion is unfortunate but is hardly a reason for changing policy as to publishing "Foreign Relations."

(b) The second case mentioned refers to a memorandum by the Ambassador in Mexico on a conversation of January 29, 1958 with the Mexican Finance Minister regarding a claims case. The Finance Minister remarked that he might have a memorandum of a previous conversation although he did not like to make memoranda of conversations and he did not usually do so. In this case his secretary produced a memorandum which recorded what an American official had told him, but not his own part in the conversation. No mention was made of "Foreign Relations" or any other publication.

(c) The case reported in Report No. 664, September 29, 1949 involved a meeting in which Mexican and United States officials took part to discuss stationing customs inspectors at the Mexico City airport. A Mexican Foreign Office official made certain changes in the language of a record of a previous conversation, eliminating certain statements that he preferred not to have in writing. The reason is not given, but it could as well have been hesitation to give officially certain commitments regarding customs inspection as fear of publication some years later. No mention of publication in "Foreign Relations" or elsewhere was made.

2. You suggest that there is an inconsistency in our practice of clearing with foreign government papers originating with these governments and not clearing with them the records made by our diplomatic officials of conversations with officials of such foreign governments. The fact is, however, that documents received from and originating with a foreign government are in an entirely different category as far as responsibility for publication is concerned, from reports by American officials on conversations with officials of foreign governments. The former represent in most cases official government statements for which the originating government must assume responsibility. It is entirely proper therefore that clearance from the originating government should be obtained. The report by an American official of a conversation

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with a foreign official is our own document for which the other government need assume no responsibility. The foreign official may have been speaking on his own, not presenting an official government view. Also, in case the issue is raised, it can be said that the report is merely the interpretation of the American officer reporting.

3. It is suggested that foreign officials will not talk frankly for fear a report of the conversation may be published some fifteen or more years hence. This concern seems to be exaggerated, but if the danger exists it is doubtful that foreign government clearance would be a real remedy. Permission to print is requested not from the individual whose conversation is reported but from foreign office officials at the time of clearance. It might be fully as damaging to put the report in the hands of an official in the foreign office as to publish it. At least, if it becomes known through publication in Foreign Relations it will be in a proper context.

4. Clearance with foreign governments of reports of conversation would often put us in the dilemma of presenting small items of conversation out of context or presenting the entire document containing the reported statements along with additional comment by the American official. In effect, that would often give a right of censorship to the foreign government over the entire document, in cases where the real objection might well be to comments of the American official rather than to what the foreign official is reported to have said. In objecting to clearance this would not need to be stated. In many cases it would not be feasible to cut out what the foreign official is reported to have said without omitting the entire document or at least an important portion of the document.

5. The suggestion is made that documents reporting conversations could be presented for clearance, but that if a government objected merely because it had no record of the conversation or because its records differ "we should have to inform it that we could not defer publication for these reasons". This does not seem to be practical. To submit a document to a foreign government and then to publish it over such governments objections would certainly cause far more resentment than to publish it without asking for clearance.

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6. Although we may sometimes anticipate difficulties in obtaining clearance for these documents from foreign governments, it does not follow that publication by us without such clearance would necessarily be contrary to the wishes of these foreign governments. There is a real difference between giving consent to publication and having no objection to publication if done entirely on the responsibility of another government. It is also probably true that in many foreign offices there are timid officials who would hesitate to give approval to publication in the vague fear that there might be some repercussion for which they would be held responsible.

7. There may, of course, be exceptions to this long-standing rule that reports by our officials on conversations with foreign officials are not normally submitted to foreign governments for clearance. For example, when such reports contain significant and apparently damaging quoted passages from statements of foreign officials, these reports may, in general, be submitted for clearance. A distinction can appropriately be made between documents which report conversations in direct quotation and those which merely report the substance of conversations. In the case of direct quotations the implication is that stenographic notes were made and that the statements are quoted just as stated, though in fact this may not be the case. It is difficult for the person quoted to deny responsibility. Most reports of conversations, however, are written some time after the conversation and they paraphrase only the substance of the conversation, giving the writer's interpretation. These are quite different from direct quotations and may generally be published on our own responsibility.

8. In exceptional cases, also, merely paraphrased reports may be submitted for clearance. If, for example, such a report is in the nature of an agreed minute of a conference discussion, it should be submitted. Conceivably there may be other cases when shrewd judgement would require such reports to be submitted for clearance, or possibly for information.

9. In cases of this kind no hard and fast line can be drawn. In the last resort tough-minded judgment is called for to determine whether a given set of facts can justify the exclusion of a document of substantive importance from the published record of our diplomacy. It seems clear, however, that to require that all documents reporting on conversations with foreign officials be submitted to foreign governments for clearance would not only be contrary to long-established practice, but it would frequently cause unnecessary embarrassments in our relations with such governments, and would also vastly complicate the over-all problem of editing and publishing the "Foreign Relations" volumes.

P:ED:ERPerkins:pvr