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PA/HO Department of State

E.O. 12958, as amended

July 12, 2005

THE SECRETARY OF STATE

WASHINGTON

S/S 7111640

31173

August 4, 1971

~~SECRET/EXDIS~~

MEMORANDUM FOR THE PRESIDENT

Subject: Lifting of Foreign Military Sales Act
Suspension and Resumption of Fishing
Negotiations with Ecuador, Peru and
Chile

The Government of Ecuador, in conversations here between the Ecuadorean Ambassador and Assistant Secretary Meyer, and in Quito between Ambassador Burns and the Foreign Ministry, has made it clear that it is prepared to resume negotiations on fisheries with the United States if a way can be found to lift the Foreign Military Sales Act sanction applied to Ecuador on January 11. The Government of Ecuador is further prepared to seek the concurrence of Chile and Peru to resume the quadripartite negotiations. If Peru and Chile do not concur, Ecuador is ready to consider bilateral negotiations with the United States. There are indications that the Government of Ecuador (as well as Peru and Chile) may have a considerably more flexible negotiating position on substantive issues than they had during the last quadripartite talks in Buenos Aires in September 1970. President Velasco of Ecuador has unilaterally ordered a moratorium on vessel seizures through September 30 in order to create a proper atmosphere for resolution of the problem.

The Departments of State, Defense and Commerce have agreed on a proposed scenario for a return to negotiations with Ecuador, beginning with the lifting of the Foreign Military Sales Act suspension.

Proposed Scenario

The Departments concerned wish to move quickly through the following scenario in order to obtain an early public

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commitment to negotiations from Ecuador, and possibly Peru and Chile. For reasons associated with our Law of the Sea negotiations, we want to be able to announce negotiations with Ecuador, Peru and Chile before our offer to negotiate with Brazil is announced. Since we told the Brazilians in June that they may announce the negotiations, we are not able to control completely the timing of such an announcement.

If you agree, I propose the following course of action, subject to changes which may be required as we proceed but which would, of course, be concurred in by all three Departments:

1. We will seek the firm concurrence of the Government of Ecuador in a scenario involving the U.S. lifting the Foreign Military Sales Act suspension and a prompt GOE response in the form of a commitment to negotiate on fishery matters. Ecuador will give assurances that it will conduct bilateral negotiations with the U.S. if Chile and Peru do not agree to do so. The GOE will announce that in view of the fact that the ban on FMS is lifted, it is considered appropriate to resume discussions concerning the fisheries and related vessel seizure problem off Ecuador's coast. Any arrangement resulting from such discussions would not be intended to prejudice the juridical position of either party or either party's position in negotiations leading to the 1973 Law of the Sea Conference.

2. Upon confirmation of the GOE's willingness to proceed, we will brief key members of Congress on the plan.

3. We will lift the suspension just before the first weekend after completion of all arrangements in order to take full advantage of the weekend to minimize publicity.

4. Ambassador Burns will be instructed to emphasize that the United States is prepared to proceed in this fashion on the basis that it is mutually understood that:

- a. There will be no seizures pending or during negotiations;

- b. Before negotiations begin the GOE will make known publicly its appreciation of the importance to many

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nations of the right of free navigation in and over ocean space beyond a narrow distance from shore.

c. The United States and Ecuador will both work toward a constructive resource-oriented solution to LOS problems in the context of the Law of the Sea Conference.

Foreign Military Sales Act

The scenario requires that you waive suspension of Ecuador from eligibility for sales and credits under the Foreign Military Sales Act. This suspension was imposed on January 11, 1971, following seizure of U.S. tuna vessels by Ecuador. Section 3(b) of the Act provides for a mandatory 12 months suspension, which you may waive either on a finding that the waiver is required in the interests of national security or that we have received reasonable assurance from the seizing government that there will be no further seizures. In our judgment, an agreement by the Government of Ecuador to the scenario above would be a reasonable assurance "from the country involved that future violations (seizures) will not occur...." On this basis, you could, therefore, waive the provisions of Section 3(b) of the Foreign Military Sales Act.

Brazil and Peru

As I have indicated, this course of action with respect to Ecuador and possibly Peru and Chile will be closely coordinated with our negotiations with Brazil.

Peru seized a U.S. fishing vessel on March 30; the only Peruvian seizure this year. In accordance with instructions to defer application of any sanctions against Peru, we have not yet applied the suspension of FMS eligibility called for in the statute. Neither has it been formally waived. However, we have held up processing any new FMS cases for Peru. If Peru cooperates in the resumption of quadripartite fisheries negotiations, I will propose that this be construed as reasonable assurance against further vessel seizures and request that you waive application of the sanction to Peru as of that date.

Recommendations:

1. That you approve the initiation of steps to return to negotiations with Ecuador and possibly Peru and Chile;

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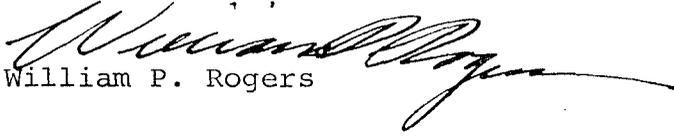
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2. That you agree to waive the provisions of Section 3(b) at the appropriate time under the scenario, permitting the resumption of sales, credits or guaranties to Ecuador and Peru under the Foreign Military Sales Act.


William P. Rogers

Attachment:

Text of Section 3(b) FMS Act.

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