

THE WHITE HOUSE

WASHINGTON

~~SECRET/EXDIS~~

ACTION

August 9, 1971

MEMORANDUM FOR: THE PRESIDENT

FROM: HENRY A. KISSINGER *HK*

SUBJECT: Lifting of Foreign Military Sales Act (FMS)
Suspension and Resumption of Fishing Negotiations with Ecuador, Peru and Chile

Attached at Tab A is a memo to you from Secretary Rogers which reports that the Government of Ecuador has indicated its willingness to resume negotiations with us on the fisheries question if we first lift our "sanctions". Ecuador will further seek concurrence from the other CEP powers (Chile and Peru) to resume quadripartite negotiations with us on the fisheries dispute. Should the other CEP powers fail to agree, Ecuador will negotiate bilaterally with us.

There are indications that the CEP powers are now willing to consider a major modification to their present claim of unlimited sovereignty over adjacent waters to a distance of 200 miles, and settle for a formula containing the following elements:

- full sovereignty over adjacent waters for a narrow distance (e. g., 12 miles);
- exclusive or preferential access to natural resources out to a distance of 200 miles;
- guarantee to all nations of free passage on, in or over seas beyond the narrow distance over which sovereignty is exercised.

The willingness of Ecuador and the other CEP powers to reconsider their classic position in favor of territorial waters to a distance of 200 miles, and to substitute a resource-oriented approach would constitute a major breakthrough both for our Law of the Sea negotiations and our efforts to solve fishing disputes with the Latin Americans.

This breakthrough would come at an opportune moment when the Preparatory Conference on the Law of the Sea is being held at Geneva, and also when Brazil is attempting to assert its leadership of the 200 mile club and

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act as its spokesman at the Geneva conference. The willingness of the CEP powers to negotiate separately gives us a chance to isolate and neutralize Brazil.

However, there is a problem which must be eliminated before we can move to take advantage of this opportunity. Ecuador will not negotiate while the Foreign Military Sales Act suspension we imposed last January continues in force. They consider the FMS suspension to be a "sanction". Under the terms of the FMS Act, you may waive the suspension if you receive assurances that ". . . future violations (seizures) will not occur . . ." While the Government of Ecuador has already told us that no further seizures will take place through September 30, and indicated that it is willing to negotiate, it feels it cannot provide public assurances that no seizures will take place since this would be tantamount to promising not to enforce its own laws.

State, Defense and Commerce have agreed on the following proposed scenario for getting out of this procedural box and moving towards our major Law of the Sea goals:

- if the Government of Ecuador confirms privately that it is willing to go to negotiations with us and that no further fishing boat seizures will take place pending or during negotiations;
- State will brief key Congressmen and we will announce that the FMS suspension has been lifted;
- the Government of Ecuador then announces that in view of the FMS suspension's being lifted, it is considered appropriate to resume negotiations with the US, and that any arrangement made with the US is not intended to prejudice the Law of the Sea position of either party;
- the Government of Ecuador would also make a public statement that it appreciates the importance of the right of free navigation in and over ocean space beyond a narrow distance from the shore;
- The US and Ecuador would agree to work towards a constructive resource-oriented solution to Law of the Sea problems within the context of the Law of the Sea Conference scheduled for 1973.

An ancillary problem is posed by Peru, which seized one US fishing vessel this year. While we did not formally impose the FMS suspension on

Peru, we did suspend military sales in fact. If Peru concurs in quadripartite talks, and provides appropriate assurances on seizures, I recommend we interpret your waiver of FMS suspension as applying to Peru as well as Ecuador and resume sales programs there.

RECOMMENDATION:

That you approve the scenario for returning to fisheries negotiations with Ecuador, and possibly Peru and Chile, including agreement to waive the provisions of Section 3 (b) at the appropriate time permitting a resumption of sales, credits, or guarantees to Ecuador and Peru under the Foreign Military Sales Act.

Approve *h* / Disapprove _____

Attachment:

Tab I @ Memo from Secretary Rogers

in form
Tomally

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