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PA/HO Department of State

E.O. 12958, as amended

July 12, 2005

DEPARTMENT OF STATE
WASHINGTON

January 6, 1972

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MEMORANDUM FOR MR. HENRY A. KISSINGER
THE WHITE HOUSE

SUBJECT: Fisheries Dispute with Ecuador, Peru
and Chile -- NSDM 147

Assistant Secretary Meyer, Legal Adviser Stevenson and the Coordinator of Ocean Affairs McKernan have reviewed at length with me the position which the high level negotiating team returning to Ecuador is directed to present.

It is their unanimous conclusion that obtaining, as a quid pro quo from the Ecuadoreans, a commitment to make public a statement of support for freedom of transit through international straits (subparagraph 5a) has little chance of success. The specific question was raised by the team on several occasions in the course of the December 10-15 mission with the Foreign Minister who stated each time that he did not regard the Ecuadorean position on straits as an appropriate subject for interim agreement. He regarded his country's position on straits as negotiable only in connection with satisfaction of Ecuadorean objectives at the 1973 Law of the Sea Conference. The Foreign Minister was clear and explicit on this point.

Messrs. Meyer, Stevenson and McKernan believe the Foreign Minister will continue to reject any attempt to link the interim settlement to the straits question.

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It is their view that for the second mission to return to Ecuador and have the mission founder on this issue would be highly prejudicial to the possibility of damping down mutual escalation resulting from seizures in the event of no agreement. They also believe a failure of a second mission will reduce the possibility of obtaining positive Congressional action in the event of a determination to proceed unilaterally because of the severe prejudice to both our hemispheric relations and law of the sea position resulting from the seizure retaliation cycle.

Finally, they believe that there is virtually no possibility of the Peruvian Government giving an assurance on the straits question at this time in view of its public support of Spain at last summer's Geneva meeting, at least until the U.S. is in a position publicly to indicate further accommodation of the Peruvian position with respect to resources jurisdiction beyond 12 miles.

Although the Department of Defense accepts and prefers the position laid down by NSDM 147, our judgment continues to be that, aside from other important foreign policy reasons for seeking an interim solution to the fishing problem, the risk to our overall law of the sea position at the 1973 conference is greater if no interim agreement is reached with Ecuador than if an agreement is reached without a commitment for support of our straits position. This is the critical issue. We also believe that an interim agreement, although not conditioned on obtaining a commitment at this time to support our straits position, would in fact facilitate such support at a later date.

Accordingly, we recommend that the mission be authorized not to insist upon subparagraph 5a in the event the negotiation cannot otherwise succeed and request

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that this authorization be granted before the mission departs. We are presently planning to make arrangements for the mission to leave late Sunday, January 9.

The mission would, of course, stress in the strongest terms the importance of obtaining Ecuadorean support for freedom of transit through international straits. In this connection it would in our view facilitate the achievement of an Ecuadorean commitment to make a public statement on straits if the Ecuadorean statement could be conditioned on accommodation at the 1973 Law of the Sea Conference of their objectives with respect to coastal state jurisdiction over resources of the sea.

In view of the restraint that the Peruvian Government has shown throughout 1971 in which it made only one seizure, we recommend that we be authorized to inform the Peruvians that we are prepared to lift the de facto Peruvian FMS suspension without any preconditions other than an indication that the Peruvian policy of restraint will be continued in the future. We recognize that this would result in different treatment of Peru and Ecuador, but we believe such differentiation is merited by the different policy that Ecuador and Peru have followed with respect to seizures throughout the last year.



John N. Irwin II
Under Secretary

JD
Drafted by: U:JNirwin/L:JStevenson:jd 1/6/72

Concurrences: ARA - Mr. Meyer *MD*
S/FW - Amb. McKernan *MD*

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