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DECLASSIFIED
Authority EO 12958
By NARA Date 10/21

DECLASSIFIED
PA/HO Department of State
E.O. 12958, as amended
July 12, 2005

~~CONFIDENTIAL~~ (GDS)

DEPARTMENT OF STATE
WASHINGTON

August 29, 1972

MEMORANDUM FOR THE PRESIDENT

Subject: Fisheries Dispute with Ecuador: Waiver of the Foreign Military Sales Act Suspension

Problem

Section 3 (b) of the Foreign Military Sales Act as amended, automatically suspends for one year sales, credits or guaranties under the Act to any country which seizes, takes into custody or fines an American fishing vessel for fishing more than twelve miles from the coast of that country. The suspension is at present in effect for Ecuador. Ecuador has taken the position that it will not resume negotiations to end seizures while the suspension is in effect. The Act provides that you may waive the suspension when you receive reasonable assurances from Ecuador that future violations will not occur, and promptly so report to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate. Ecuador, for obvious domestic political reasons, is not able to set aside the enforcement of its laws and therefore has not been able to give explicit assurances that there will be no seizures should you waive the FMS suspension. This has been the situation since January 1971.

In the judgment of the Department of State, it is possible to identify the elements of an arrangement which could prevent seizures for the remainder of 1972 and which, in the absence of explicit assurances, nonetheless constitute reasonable assurances that there will be no seizures within the meaning of the Act. If you agree that the scenario outlined below, which is supported by the Departments of State, Commerce and Defense does provide reasonable assurances within the meaning of the Act, I recommend that you exercise your waiver authority and additionally, authorize the Department of State to initiate necessary discussions. As premature disclosure of this scenario would jeopardize its chances of success, I recommend that the attached waiver be classified.

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The Department of State believes the following scenario would prevent seizures in 1972 and would make it possible to return to formal negotiations with Ecuador and to develop a longer-term solution for the problem.

1. The United States would lift the Foreign Military Sales suspension and United States representatives would confirm the scenario before the public announcement of the lifting.

2. The United States would notify Ecuador of the names and other pertinent information of all U.S. flag vessels likely to fish in waters off Ecuador for the remainder of 1972.

3. In turn, Ecuador would issue appropriate documents for those vessels which it would consider licenses.

4. Ecuador would expect the United States to pay a flat sum of money for 1972 based on an estimate of the expected United States fishing in the area. The U.S. would interpret this payment as a contribution for the privilege of fishing within 12 miles of Ecuador's shore and of using port facilities otherwise unavailable. This sum would be payable at the end of 1972 or the payment time would be re-negotiated. We anticipate that the amount would be approximately $150,000. Any binding legal obligation to pay such a sum would, of course, be subject to Congressional authorization and appropriation of funds.

In the next phase of the scenario, both Governments would meet in the fall to try to work out the terms of a formal agreement, which we would hope to obtain in the form of a treaty. If the negotiations were successful, the agreement would be of approximately two years' duration, or until the end of 1974, in order to cover the estimated period for the United Nations Law of the Sea negotiations.

Conclusion:

The principal risk is, of course, that the initiative will falter. We have concluded that taking this risk is acceptable given the opportunity to negotiate an end to the tunaboat seizure problem, in the course of which we also will have opportunities to restore our military ties with the Ecuadorean Government, to remove an irritant in our relations with Ecuador that is complicating the atmosphere of petroleum negotiations, to demonstrate to Latin America that we are prepared to take the necessary

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steps to negotiate differences, and to substantially improve the negotiating atmosphere for the Law of the Sea Conference scheduled for 1973 by defusing this long-standing dispute.

Disclosure of this memorandum would seriously jeopardize the chances of success in the negotiations.

Law of the Sea Aspects

The proposed area of application for the arrangements in the scenario for 1972 and the longer agreement would be based, from the United States point of view, on the conservation lines established by the Inter-American Tropical Tuna Commission. These lines are hundreds of miles off-shore and do not remotely resemble the 200-mile assertions of Ecuador. Ecuador would interpret the area of application as coinciding with its claimed territorial sea.

With respect to the oral understanding for 1972, the United States would view the monies paid as compensation for services rendered in connection with the implementation of a bilateral fisheries conservation scheme. Ecuador would regard the funds transferred as license fees. In the written agreement, a formula would have to be devised to leave this question ambiguous.

With careful negotiation and draftsmanship similar to that utilized in the Brazil Shrimp Agreement, the United States would be able to protect its juridical position for the 1973 Law of the Sea Conference. Further, if an acceptable interim accord were reached with Ecuador on fisheries (and then perhaps with Peru and Chile), it is anticipated that their dogged opposition to the United States at the Law of the Sea Conference could be substantially reduced, thereby presenting an opportunity for successful achievement of United States overall objectives.

Recommendations:

1. That you sign the attached waiver of Foreign Military Sales Act suspension.

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2. That you authorize the Department of State to work out the details and timing of an arrangement with Ecuador for 1972 and to set the stage for formal negotiations this fall.

John N. Irwin II
Acting Secretary

Attachment:

Waiver of FMS suspension