

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

MEMORANDUM

6431

THE WHITE HOUSE  
WASHINGTON

THE PRESIDENT HAS SEEN [Signature]

ACTION

October 24, 1972

~~CONFIDENTIAL (GDS)~~

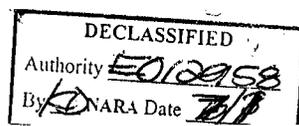
MEMORANDUM FOR: THE PRESIDENT  
FROM: HENRY A. KISSINGER [Signature]  
SUBJECT: Fisheries Dispute with Ecuador

As you know, we have had a long-standing dispute with Ecuador caused by their periodic seizures of U. S. fishing boats operating within what they regard as their territorial waters (in the 200-mile limit), and what we regard as the high seas. The most recent seizure was in February 1972. We, in turn, are obligated under the Foreign Military Sales Act to suspend sales or credits for one year to a country that seizes our boats outside the 12-mile limit. Ecuador has regarded this suspension as insulting and unfair. I believe we have now found a way out of this impasse.

In secret talks with the Ecuador Government, we have found a strong inclination on their part to reach a compromise. It will require concessions on both sides. The attached memo from the Department of State (Tab A) sets forth a scenario for meeting the problem. It calls for:

1. The U. S. to lift the FMS suspension;
2. The U. S. to notify Ecuador of the names and other details of U. S. fishing boats likely to be fishing in waters off Ecuador for the rest of 1972;
3. Ecuador to issue appropriate documents for the boats and agree not to seize boats with proper documentation;
4. The U. S. to pay a flat fee to Ecuador--which we would regard as a conservation fee and Ecuador would consider a licensing fee. We estimate this will come to about \$150,000 for the year;
5. At an appropriate point, we would issue a statement (jointly with Ecuador if possible) that a solution of the fishing dispute had been reached without prejudice to the Law of the Sea position of either party;
6. Once this interim arrangement had been agreed upon, we would enter into negotiations aimed at working out a more formal agreement to cover the next two years, or until the end of 1974. (This would cover the estimated period of UN Law of the Sea negotiations.)

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Compensation: Details of the proposed payment to Ecuador will have to be worked out. We are assured by State that this will not have to be resolved before the end of the year. We could seek authorization and appropriations in connection with the submission of the formal agreement with Ecuador to the Congress for its approval. We are exploring whether the Foreign Assistance Act already contains the requisite authority. In any event, if other methods fail, the Department of State has assured us that it can raise the necessary payment, in unvouchered funds if necessary.

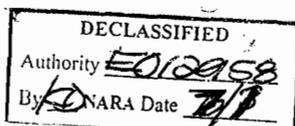
Congressional Considerations: We will have to inform Congress of a waiver of suspension. Prudence also argues that we keep Congress generally informed of developments on this matter. However, because of the sensitivity of the proposed arrangement, we would inform the leadership and a few most deeply involved Congressmen by means of a classified waiver and similarly classified explanation of what we are doing. Advance consultation with those most involved (the staffs of the House Merchant Marine and Fisheries Committee, Senate Commerce Committee, and Senate Foreign Relations Committee--as well as the affected U. S. fishing industry) has produced favorable reactions.

Position of the Secretary of Defense: In commenting on the original State Department proposal, Secretary Laird raised several reservations (see Laird memo at Tab B). He was mainly concerned about any possible watering down of our Law of the Sea position. [ In a separate comment (Tab C) the Office of Management and Budget called attention to two considerations: the problem of financing the payments to Ecuador, and the obstacles to early renewal of military sales to Ecuador given existing arrearages owed to us. But OMB offered no comments or objections to the proposed scenario.]

Secretary Laird's concerns are valid and they can and should be accommodated by specifically instructing State to make clear to the Ecuadoreans that:

- our willingness to reach an interim arrangement on fishing rights is without prejudice to our juridical position on the Law of the Sea;
- the U. S. does not recognize any coastal state preference over highly migratory fish, such as tuna;
- we will interpret the interim fees to be paid to Ecuador as conservation fees (though we know they will regard them as licensing fees);
- our waiver of FMS sales suspension is without prejudice to our position on obstacles that will have to be overcome before military assistance or credit sales to Ecuador can be resumed. (Note: They still owe us for past sales.)

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Political Considerations: Bill Timmons is rightly concerned that we avoid or minimize any unfavorable Congressional or public reaction. He is prepared to go along with the proposed scenario provided (1) the waiver of suspension of FMS be classified and (2) that notification to Congress be made no earlier than October 15. Both of these conditions will be met. In addition, I propose that no official public statement on our agreement with Ecuador be made before November 7. We will encourage the Ecuadoreans to do likewise.

Conclusions: I believe we should go forward with this proposal as revised. There are risks, but with the provisos taking account of Defense concerns and of the political aspects, those risks are minimal. The risks of not moving are considerably greater. The tuna could be moving into waters off Ecuador at any time. The fishing boats of our country and others will follow immediately. The risk of a new series of seizures will be great. In terms of our own interests--and of improving relations with Ecuador and the rest of Latin America--an early solution to this problem would be most advantageous. We solved a similar problem recently with Brazil (the shrimp agreement). If we can bring Ecuador into line, chances are good for a similar settlement with Peru.

Bill Timmons concurs.

RECOMMENDATIONS:

1. That you sign the proposed Presidential Determination, which waives the suspension of military sales, credits and guarantees to Ecuador, at Tab I.
2. That you approve the proposed National Security Decision Memorandum at Tab II, which authorizes the proposed course of action in negotiating an interim fisheries agreement with Ecuador--including the specific caveats noted above.

Approve 

Disapprove \_\_\_\_\_

Attachments:

- Tab I -- Presidential Determination (for signature)
- Tab II-- Proposed NSDM (for Presidential approval)
- Tab A -- State memo of Aug. 29 to President
- Tab B -- Defense memo of Sept. 15 re State's memo
- Tab C -- OMB memo of Sept. 22 re State's memo

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