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Authority *EG 12958*

By *AR* NARA Date *10/27*

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THE WHITE HOUSE

WASHINGTON

THE PRESIDENT HAS SEEN... 29832

ACTION

July 6, 1971

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MEMORANDUM FOR: THE PRESIDENT
FROM: HENRY A. KISSINGER *Haq fw*
SUBJECT: Brazilian Territorial Sea Claims and
Related Fisheries Problems

We have received separate memos from Secretary of State Rogers and Deputy Secretary of Defense Packard taking opposing views on our fisheries dispute with Brazil (Tabs A and B). The issue is whether we should enter into immediate negotiations with the Brazilians or whether we should negotiate only in the fall following completion of the Geneva Law of the Sea Preparatory Negotiations which begin on July 19. In raising this issue, Secretary Rogers reopens a question decided by NSDM 111 (Tab C) which determined that we should negotiate with Brazil only in the fall.

Secretary Rogers strongly favors immediate negotiations on grounds that:

- American fishermen off Brazil are being subjected to harrassment by Brazilian Naval and Air Forces and, though serious incidents have not thus far occurred, such incidents are possible.
- The adverse reaction in Congress has already imperiled the International Coffee Agreement (which affects 61 countries besides Brazil), and may lead to other attempts by the Congress to bring pressure to bear on Brazil by means of sanctions.
- Some countries (including France) have already begun negotiations with Brazil or are about to do so.

Secretary Rogers believes our first objective should be to try to obtain necessary assurances that Brazil will exercise the restraint necessary to avoid confrontation. He sees two options:

- That we begin immediate negotiations contingent on Brazilian commitment that restraint will be exercised while negotiations are in process.

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- That we enter into immediate negotiations even in the absence of a commitment to restraint with the understanding that negotiations will be broken off if a serious incident occurs.

In either case, our initial discussions would be merely exploratory. Secretary Rogers favors the second option. The Department of Commerce shares his position.

The Department of Defense argues strongly against immediate negotiations on the grounds that:

- 0- Brazil has not asked for immediate negotiations and did not demur when we offered negotiations in the fall.
- We have not yet taken soundings with other nations affected by Brazil's regulations as required by NSDM 111. (It is not clear why these soundings have not been taken since NSDM 111 was issued May 29, 1971).
- We do not have a negotiating position yet.
- Brazil may interpret an offer of immediate negotiations, coming unsolicited and on the heels of a Presidential Mission and an offer to negotiate in the fall, as a sign of weakness on our part.
- It is unlikely that Brazil will seek a confrontation before the UN Law of the Sea Preparatory Conference on July 19.
- Thus far Brazil has been able to pursue its oceans policy without serious consideration to its effects for its other interests and there may be some value in allowing Brazil to contemplate this dilemma for several months.
- There is a fissure in the facade of the 200-mile club in the form of Ecuador's willingness to consider a revision of its basic position on Law of the Sea. Exploitation of this fissure is more promising than immediate negotiations with Brazil.

The difference between State and DOD's positions arises from the fact that they are addressing different goals. State is concerned primarily

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about the possibility that our bilateral relationship with Brazil will be seriously and adversely affected over the next several months if we do not enter into negotiations now. DOD is primarily interested in maintaining the viability of our overall oceans policy.

The problem with the State proposal is that there is no reason to believe that it will achieve the objectives State is principally concerned about. The Brazilians have told us that they intend to treat fishing vessels from countries which negotiate no differently than they treat fishing vessels from countries which do not negotiate. Brazil might agree not to seize fishing vessels as part of a substantive agreement on fisheries, but as Secretary Rogers' memo concedes, we have not yet determined our own position and hence could not reach a substantive agreement. It is difficult to see, therefore, how an offer to enter into exploratory negotiations now would either reduce the risk of incidents occurring or result in any more assurances from the GOB which would give the Congress a basis for shaking loose the International Coffee Agreement.

I recommend, therefore, that we continue to take no initiative to enter into negotiations with Brazil (beyond our already-expressed willingness to talk this fall) until (a) we have completed our review of NSSM 125, which should lead to the establishment of a multilateral fisheries position which would provide a viable basis for bilateral negotiations in the fall, and (b) we have tried out our multilateral approach in the UN Preparatory Conference on Law of the Sea in Geneva later this month. In any event, Secretary Rogers' proposal should be discussed more appropriately at the end of the Senior Review Group Meeting on NSSM 125, which is scheduled for July 14 in San Clemente.

RECOMMENDATION:

That you defer action on Secretary Rogers' recommendation to offer immediate negotiations with Brazil for a fisheries agreement pending SRG review of NSSM 125 (U.S. Ocean Policy).

Approve  Disapprove _____

Attachments:

- Tab A - Memo from Secretary of State
- Tab B - Memo from Deputy Secretary of Defense
- Tab C - NSDM 111
- Tab D - NSSM 125

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