

PRIORITY

(Security Classification)

FOREIGN SERVICE DESPATCH

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FROM : Amembassy, MEXICO, D. F.

726
DESP. NO.

TO : THE DEPARTMENT OF STATE, WASHINGTON.

February 10, 1959
DATE

REF : CG-364, January 19, 1959

E-7 IO-4 OIC-1 (RC-8)

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	REC'D		OTHER	RM/A-2	REP-1	ANA-4	U/FW-2
	2/14			CIA-10	M-7	COM-10	TR-3

SUBJECT: Exchange of Views Regarding Law of the Sea
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NAVY-3 OSD-4
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It is noted from reference circular a team of U. S. representatives will visit certain Latin American countries in the month of February in connection with preparations for the Second Law of the Sea Conference to be held in Geneva during March-April, 1960; also, that Mexico is not one of the countries to be visited at this time, but the recommendation of the Embassy may be made as to the desirability of consulting with Mexico either in connection with the present tour or later on.

The Embassy believes that consultation with Mexico is desirable. The position of Mexico on the question is well known, namely, that Mexico asserts a jurisdiction over a nine-mile limit as the Mexican territorial sea, based on Mexico's interpretation of the U.S.-Mexican Treaty of Guadalupe Hidalgo of 1848 and Mexican legislation in effect (Ley General de Bienes Nacionales, 1941, Article No. 17). It is also well known that Mexico has firmly adhered to this position as the minimum acceptable to Mexico in the Conference on the Law of the Sea at Geneva, February-April, 1958; that, in fact, as reported by the United States Delegation, the Mexican Delegation was the leader of the Latin American bloc in opposition to the compromise formula proposed by the United States. In this sense, it was probably more responsible than any other Latin American delegation for the failure of the Conference to reach agreement on this issue.

Nevertheless (and indeed perhaps for these very reasons) Mexico should be considered as a very important objective in the proposed preparations. The possibility of Mexican compromise on a territorial sea of less than nine miles may appear to be relatively remote, but should not be automatically excluded.

The Mexican position is not well founded in international law, being derived originally from Mexico's unilateral interpretation of the treaty; the validity of this interpretation has never been conceded but rather has been consistently denied by the United States. The Mexican position, assertedly based on the Treaty of 1848, was not formally asserted in Mexican legislation until 1941, almost 100 years later. It has likewise been clouded by other legislation, which has granted rights for offshore drilling to a distance of

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From Mexico, D. F.

five kilometers, or approximately three miles. Legally and juridically, Mexico's claim is not impressively defensible, and in the opinion of the Embassy, should not be regarded as an irreducible or irremovable obstacle, however often such is asserted by Mexican representatives.

The current dispute between Mexico and Guatemala over the machinegunning of Mexican fishing boats by Guatemalan Air Force planes, resulting in a break in diplomatic relations between the two governments, may be considered a factor of possible influence in Mexican reconsideration of its previous position. While it is a fact that Mexico has not questioned the extent of the Guatemalan jurisdiction of the territorial sea (having merely asserted that the Mexican fishing boats were not in Guatemalan territorial waters, without specification of the traditional three-mile limit or Guatemala's claimed 12-mile limit), the very fact of the incident, with its serious repercussions, may underline the desirability of uniformity of international agreement on the breadth of the territorial sea, as well as definite agreements on fishing rights which would necessarily be related thereto. Inasmuch as Mexico has built up a substantial fleet of fishing boats on both the Gulf and Pacific coasts, an economic need will be presented in the coming years to assure unmolested operations of these vessels. Food needs, rapidly increasing, are an added factor impelling Mexico to look to nearby waters for adequate supply of diet for its population. The Mexican waters themselves may not be adequate for this purpose, in view of shifting patterns of shrimp and fish habitation (D-659, Jan. 21, 1959). In the circumstances, it should be clearly to Mexico's advantage to settle the issue of the territorial sea and the concomitant problem of both fishing rights and conservation.

The traditional Mexican position of seeking pacific solutions for international disputes has thus far been successfully tested in the Guatemalan incident, and is further supported by Mexico's continued adherence to a kind of understanding with the United States on Gulf fishing, since 1956. From this viewpoint, some flexibility in Mexico's position might be hoped for, in that a reasonable compromise between fixed positions on many sides of the question is obviously the only practical solution, if further disturbing incidents between nations are to be avoided.

It may also be considered that the change of administration in Mexico on December 1, 1958, with the termination of Lic. Padilla Nervo as Minister of Foreign Relations and the appointment of Ambassador Manuel Tello in his place, may permit a fresh approach and more reasonable treatment of this problem. Foreign Minister Padilla Nervo was well-known for his unyielding position on the territorial sea, climaxed by his assertions in Geneva at the end of the 1958 Conference. On the other hand, the present Foreign Minister, with his six-year experience as Mexico's Ambassador in Washington and wide knowledge of the viewpoints of the U.S. and its allies on problems of defense and security,

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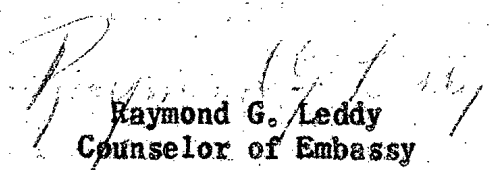
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may be found less disposed to an absolute and rigid assertion, without constructive alternatives.

The foregoing considerations, while individually of small moment, may in combination offer an opportunity for a useful approach to Mexico. The timing of such approach would best be some time after the United States team returns from its tour of South and Central America and Cuba, the results of which conversations might also be persuasive in influencing Mexico's attitude.

For the Ambassador:


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Counselor of Embassy

cc: ARA/CMA
Buenos Aires (for Mr. Arthur Richardson)

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