

September 18, 2014

UNCLASSIFIED

## **ACTION MEMO FOR THE SECRETARY**

FROM: Henry Kissinger

SUBJECT: The border dispute with Canada over Machias Seal Island

### **Recommendation**

That you meet with Foreign Minister John Baird to convince him to agree to a joint submission for arbitration to the International Court of Justice (ICJ).

Approve \_\_\_\_\_ Disapprove \_\_\_\_\_

### **Background**

Machias Seal Island is a 20-acre virtually unvegetated lump that sits 10 miles from Maine and 12 miles from New Brunswick. It lies within a 277 square mile "Gray Zone" of overlapping Canadian-American maritime claims. The dispute arises from ambiguous historical delimitation documents. While the 1783 Treaty of Paris assigned to the US all islands within 70 miles of the US coast, it excluded any island that has ever been part of Nova Scotia. Canada points to a 1621 British land grant that it claims prove that the island was indeed part of historical Nova Scotia. The US rejects this claim.

Canada has historically maintained a stronger presence on the island, having spent millions on capital improvements, the maintenance of a wildlife sanctuary, and the staffing of an 1832 British lighthouse. This long-term presence is surprisingly what Canadians believe to be the stronger part of their case. The US, in accordance with past ICJ rulings, has pointed out that such activities do not grant a nation sovereignty over an island.

The economic and strategic value of Machias is minimal, however, the livelihoods of private tour operators and fishermen depend on its surrounding waters. Sparks have been exchanged over the years. American lobstermen have complained about Canada's less stringent catch regulations, while American tour companies have expressed concern that the dispute may disturb their operations.

The US and Canada have submitted proposals to the ICJ regarding the Gulf of Maine in 1984. They chose, however, not to include the Gray Zone in the proposal. Canada has prior to that refused US arbitration proposals, claiming that

to agree to arbitration would compromise the legitimacy of their claim. Neither side wants to lose face in ceding sovereignty—to simply “give away” land. Canada especially doesn’t want to be seen as being pushed around by their neighbor.

## **Current Situation**

We want to foster good relations with Canada, as it is our largest trading partner and strategic ally. We believe the Canadians are ready to support our proposal for arbitration. This is not the 1970s. In this era of globalization and border porosity, Canada is now more mindful of maintaining a good relationship with the US. Stephen Harper has recently come under fire from his domestic critics for his flimsy relationship with Obama. Like us, Canada has pledged to help resolve many, much more critical international issues, including ISIS and Ebola.

This is a ripe time to deal with the issue precisely because nothing new has arisen to complicate the issue. We don’t want to wait until someone discovers some valuable resource on the island. The lobster disputes also have the potential to escalate dramatically, especially if it’s taken up by the US media. We may soon begin to hear about how the government is not protecting small business interests.

Submitting this to an internationally recognized third party will remove political labels on the issue. This will placate nationalists on both sides. It would set a poor example to our other allies—especially those in volatile regions—to assert dominance over our strongest ally. Moreover, the historical precedence of the Gulf of Maine case has shown that we can resolve border disputes peacefully.

We have a strong case for the ICJ. Canada has no conclusive evidence that Machias was ever part of Nova Scotia, and according to a 1986 State Department memo it is not completely unwilling to admit this. It just needs a nudge in the right direction. Only once we solve the issue of delimitation can we begin to figure out stable measures for bilateral resource exploitation.

## **Conclusion**

You should immediately convince Baird to submit this dispute to the ICJ for third party arbitration in order to prevent potential economic and political ramifications. You can suggest the establishment of a joint committee to investigate effective mechanisms for resource sharing prior to the ICJ ruling. This will motivate Baird to accept. Recent clashes in the East and South China Sea have shown how suddenly minor border disputes can ignite nationalistic tensions. Resolving the issue now, rather than let it fester as it has for centuries, will allow us to focus on more pressing issues in Eastern Europe and the Middle East, as well as the more productive elements of our bilateral relationship.

