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E.O. 12958, Sec.3.5
NW 21242
By PRJ/HR-M Date 1/23/04

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

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DEPARTMENT OF STATE
THE LEGAL ADVISER

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L/SAA

MEMORANDUM

MAR 18 1969

TO : J - Ambassador Johnson
THROUGH: S/S *[Handwritten initials]*
FROM : L - Murray J. Belman *[Handwritten initials]*
SUBJECT: Law of the Sea: NATO Consultation -
ACTION MEMORANDUM

BACKGROUND:

In the summer of 1967 the Soviet Union approached the United States, among other countries, soliciting views on the possibility of a new Law of the Sea Conference to establish general acceptance of a 12-mile territorial sea limit. We responded that our position on 12 miles would depend upon whether we could assure adequate protection of the right of passage through and overflight of international straits. We also stated we would participate in expert talks on this subject.

Bilateral talks held in July 1968 produced ad referendum agreement to draft articles which (1) establish a maximum of 12 miles for territorial sea and exclusive fishing jurisdiction claims and (2) provide for a right of passage through and overflight of international straits. The talks considered but did not produce agreement on a fisheries article. Further talks were scheduled for September, but were cancelled following the invasion of Czechoslovakia, and finally held in December 1968 pursuant to the Soviets' request. These talks produced agreement ad referendum on a fisheries article which provides limited carefully defined preferential rights for the coastal state beyond the 12-mile limit. It has been our view consistently that some preferential fishing rights for coastal states would be necessary in order to secure a sufficient majority to adopt Articles I and II. The Soviets accepted this view only at the December talks. The three articles are attached at Tab A. At Tab^B is a more detailed explanation of the Soviet talks and the three articles.

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Since December two developments have occurred: First, we determined not to respond to the Soviets concerning the acceptability of Article III or go on with a broad canvass of countries until consultations could be held with our European allies, and a small number of other maritime nations, to determine their views on whether Articles I, II and III would constitute a satisfactory basis for a new Law of the Sea Conference. We have since given a briefing in the NAC and initiated bilateral consultations in capitals. (At Tab C are the airgrams containing instructions for such consultations.) Second, in January the Soviets suggested various amendments to Article III. Those suggestions and our response are at Tab D.

To date, only about one-half of the countries consulted have indicated their views on Articles I, II and III. With minor suggestions regarding technical aspects of Article II, all responses are agreeable to Articles I and II. Norway and Australia have indicated tentative agreement to Article III. Iceland and Canada have indicated that Article III does not provide sufficient preferential rights for coastal states. The U.K. has stated that Article III goes much too far in granting preferential rights to coastal states. Italy has stated that she agrees with the U.K.: addition of fisheries to territorial sea issues "complicated the latter beyond redemption." Other countries have indicated concern about Article III but suggest that they could probably accept it if all three articles receive wide agreement.

Further Consultations:

In the relatively near future we must decide how to respond to the Soviet Union concerning Article III and what further steps we should take in preparation for a new Law of the Sea Conference. News of U.S.-Soviet agreement on law of the sea matters is beginning to spread. We should begin a worldwide canvass on the basis of these three articles within

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the near future if we are to retain the option of holding a conference in 1970. Before taking any further steps, however, we believe that it is necessary to complete our consultations with our European allies. In view of the shortness of time, the apparent divergence of opinion among our allies, and their present familiarity with Articles I, II and III, I believe such consultations should be held on a multilateral basis by experts. To this end, we hope to arrange for consultations in the NAC as soon as practicable. Ambassador Cleveland has advised that the week of April 14 would be the earliest convenient time for such consultations.

DOD has expressed a preference for consultations in capitals by a team of experts from Washington. Logistical considerations dictate against this course; and DOD has agreed to accept NAC consultations provided they are held in the latter part of March. While we probably cannot meet this condition entirely, I believe consultation in the week of April 14 may be acceptable to DOD.

S/FW does not concur with the proposal as outlined above. Therefore, they have not cleared the draft telegram. It is their opinion that we should:

1. Take immediate steps to obtain a definitive response from the USSR;
2. Commence a worldwide canvass immediately on the basis of the articles as they are now written, and
3. Carry out our talks with our European allies as part of the worldwide canvass on a bilateral basis, as preferred by DOD, rather than through the NAC forum.

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Recommendation:

You approve further multilateral consultations
in the NAC with experts from NATO capitals.

Approve _____

MAR 20 1969

Disapprove _____

Clearance:

EUR - Mr. Springsteen
(initials on blue)

Suggest we consider whether we should not make simultaneous approaches to other selected countries such as Japan & some ARA State

S/FW - Amb. Donald McKernan

Notation by Ambassador Johnson reads as follows:
(Suggest we consider whether we should not make Simultaneous approaches to other selected countries such as Japan and some ARA State. UAJohnson)

Enclosures:

- Tab A - Articles I, II and III.
- Tab B - Explanation of Soviet Talks.
- Tab C - Airgrams containing instructions.
- Tab D - Soviet suggested changes and our response.
- Tab E - S/FW Memorandum of March 11, 1969.

L/SPA:JGCarter/L:MJBelman:mjb :edk
3/18/69

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