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

Authority **NND 969000**
By **AB** NARA Date **6/25/04**



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Department of State
TELEGRAM

103520

INDICATE:

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24 JUN 69 20 54Z

DISTRIBUTION

ACTION:

ALL AMERICAN REPUBLIC POSTS

STATE:

SUBJ : Law of the Sea

1. By Presidential decree of May 16, 1969, Uruguay has extended its territorial sea to 12 miles, its contiguous zone from 12 to 18 miles, and its exclusive fisheries zone to waters superjacent to its continental shelf (the Government of Uruguay presently considers its continental shelf to end at 200 meters but it could expand under the "exploitability" criterion of Article 1 of the Continental Shelf Convention. The 200 meter figure produces an exclusive fisheries zone of from approximately 90 to 120 miles from shore). There is presently pending in Colombia legislation that would extend the territorial sea to 200 miles. Brazil has recently extended its territorial sea to 12 miles and, from time to time, has also considered whether to join other LA countries in]

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DRAFTED BY: <i>gmc</i> L:L/SPA:G Carter:edk	DRAFTING DATE 6/23/69	TEL. EXT. 5568	APPROVED BY: <i>RF</i> L - Richard A. Frank
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CLEARANCES:

Interior - Mr. Wilson *lc* ARA - Mr. Crimmins *lc*
 DOD/GC - Mr. Ratiner *lc* L/ARA - Mr. Feldman *lc*
 S/FW - Mr. Britting *lc* ARA/APU - Mr. Krieg *lc*
 ARA/BR - Mr. Lippincott *lc*

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asserting territorial seas or exclusive fishing rights out to 200 miles (the US does not recognize territorial sea claims in excess of 3 miles or claims to fisheries zones in excess of 12 miles). FonMin Valdes of Chile recently told Ambassador Korry that all LA coastal nations with exception of Venezuela were adopting 200 miles (without specifying between territorial sea and fisheries jurisdiction) and that Colombia would do so very soon. We view the prospect of further LA assertions of territorial seas or exclusive fisheries zones along the lines of the recent COU claims with great concern. This concern stems not only from our traditional views about the law of the sea, but also from our belief that great harm to the efforts discussed below could flow from a new round of Latin American claims. On the plus side however we note that, in addition to Venezuela, Colombia, Dominican Republic, Haiti, Mexico, Trinidad and

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Brazil have ratified the Geneva Conventions.

2. FYI. NOFORN. Since July 1968 the United States has been engaged in talks with the Soviet Union looking toward a Third Law of the Sea Conference. We have reached agreement in large measure with the Soviets on three draft articles which provide in essence as follows:

- a) There shall be a maximum of 12 miles for territorial sea and exclusive fisheries zone claims.
- b) There shall be a right of free passage through and overflight of all international straits.
- c) Coastal States shall have certain preferential fishing rights beyond 12 miles; these preferences depend upon investments made by the coastal State in increasing a stock of fish or upon the economic importance to the coastal State, or a region thereof, of the continued catch by its small coastal fishing vessels of a portion of a

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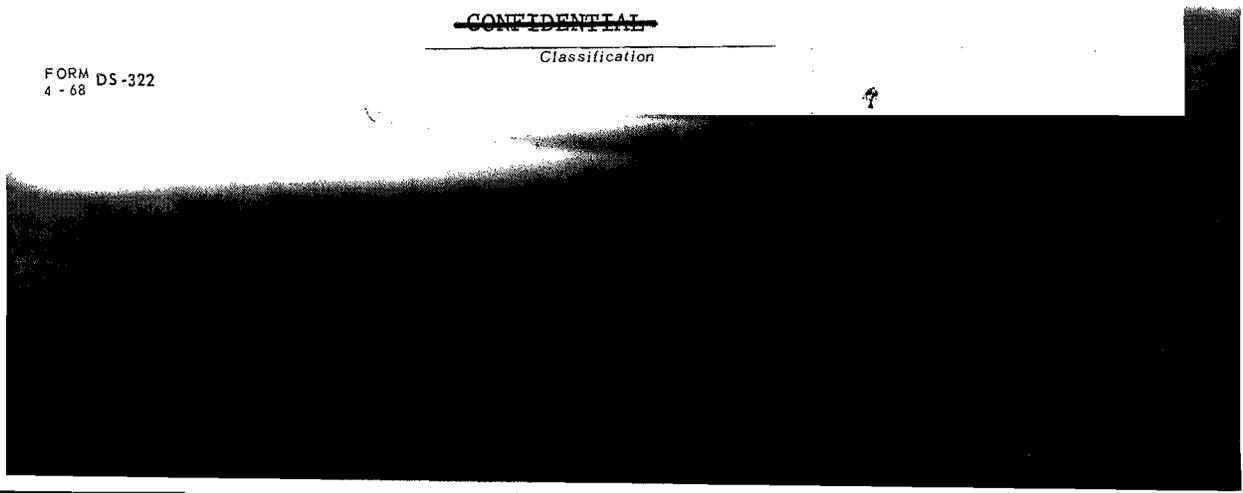
DISTRIBUTION	ACTION: ALL LATIN AMERICAN POSTS	PAGE 4	7
<p>stock of fish.</p> <p>We have discussed these articles with our European allies, Spain, Japan and Australia. In addition, the articles have been given to New Zealand, Sweden and the Philippines. We expect shortly to engage in further discussions with the Soviets to reach final agreement on detailed texts for the articles. As soon as such agreement is reached we intend to undertake with the Soviets a coordinated canvass, covering most nations of the world, to ascertain whether these articles can provide the basis for a successful Law of the Sea Conference. Unified opposition from the Latin Americans would go far to defeat a new conference. We do not expect support from those countries presently claiming 200 miles territorial sea or exclusive fisheries zone. We do, however, want to preserve</p>			

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their support, if possible, and the opportunity to obtain the support of other LA countries which have traditionally taken a position regarding law of the sea issues much closer to our own. We anticipate beginning our canvass in Latin America as soon as possible (perhaps by the end of July). Most countries will be approached through Embassies. We may, however, send experts to hold discussions with key countries.

3. FYI. NOFORN. One further complication arises from the GOU decree in that the claimed exclusive fisheries zone is linked to the continental shelf. Under the Continental Shelf Convention coastal States have exclusive jurisdiction only over the "natural resources" of the seabed; while this includes some living resources it does not include animals that swim. Other nations around the world with strong local fishing interests, for example, Canada and Iceland, have long considered establishment of exclusive

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fisheries zones above their continental shelves. If a trend develops for coastal States to assert such fisheries zones, it may be impossible to keep separate the law of sea discussions discussed in paragraph 2 above and the seabed discussions which are presently going on in the United Nations Seabed Committee. With all issues being discussed in one forum, we believe our chances of getting acceptable resolutions of all issues important to the U.S. will be greatly reduced. In addition to the arguments we normally make as to why exclusive fishing zones beyond 12 miles are contrary to international law, GOU's claim can be attacked on the theory that it is directly contrary to Article 3 of the Continental Shelf Convention, which states that the rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas, because this article together with

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Article II of the High Seas Convention clearly recognizes that other nations are to retain their right to fish the superjacent waters. END FYI NOFORN.

4. FOR MONTEVIDEO. Embassy requested to deliver note in paragraph 7 below to GOU at high level and to express deep US disappointment over GOU Decree of May 16 and sincere hope that decision will not lead to difficulties with GOU similar to those US has experienced with west coast LA countries.

5. FOR RIO: Embassy requested to deliver note in paragraph 8 below to GOB.

6. Other posts should not initiate Law of Sea discussions with host governments but are requested to report any activities indicating movement toward adoption new Law of Sea positions or indicating attitudes towards issues discussed in paragraphs 2 and 3. If Law of Sea questions

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FORM DS-322
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are raised by host government posts authorized to inform them of fact and content of US protests to GOU and GOB. If question raised concerning fact or content Law of Sea matters described paras 2 and 3, these should be referred to Department.

7. FOR MONTEVIDEO. (NOTE to be delivered to GOU).

"The United States Embassy has the honor to refer to Presidential Decree of May 16, 1969, reported in Press Release No. 662/69, which asserts a claim by the Government of Uruguay to a territorial sea of twelve miles, a six-mile contiguous zone which begins at the outer limit of the territorial sea, and a zone of exclusive fisheries jurisdiction extending from the outer limit of such territorial sea to the outer limit of the continental shelf of Uruguay.

It is the understanding of the Government of the United States that the Government of Uruguay presently claims as

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its continental shelf the submarine areas adjacent to its coast to a depth of 200 meters, that it does not now claim any area as continental shelf beyond that point, and that such 200 meter line is considerably farther than 12 miles from the coast of Uruguay, ~~XXXXXXXXXXXXXXXXXXXX~~
~~XXXXXX~~

The Government of the United States wishes to inform the Government of Uruguay that, for the reasons given below, it does not recognize the territorial sea claim, the contiguous zone claim or the exclusive fisheries zone claim contained in the May 16, 1969 Uruguayan Presidential Decree.

It is the position of the United States that under international law there is no justification for unilateral action extending territorial sea claims beyond 3 nautical miles. As the International Court of Justice stated in the Anglo-Norwegian Fisheries case, the status of the seas]

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adjacent to a nation's coast cannot be dependent upon the will of the coastal State as expressed in its municipal law since the validity of that status with regard to other States depends upon international law. And, as that Court recently stressed in the North Sea cases while discussing the issue whether Article 6 of the Continental Shelf Convention had become a part of customary international law, "an indispensable requirement" for a proposition to become a part of customary international law "would be that State practice, including that of States whose interests are specially affected, should have been both extensive and virtually uniform in the sense of the provision involved; -- and should moreover have occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved." (See paragraphs 73 and 74 of the opinion of the Court.) Since a substantial J

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number of major maritime nations claim and recognize only three-mile territorial seas, it is clear that no nation is required by international law to recognize territorial sea claims in excess of three nautical miles.

Regarding the Government of Uruguay's claim of a contiguous zone of six miles beyond the claimed territorial sea of twelve miles, the Government of the United States wishes to emphasize that, as recognized in Article 24.2 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, which expresses customary international law in this regard, 'the contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured'.

With respect to the Decree's assertion of exclusive fisheries jurisdiction over the waters superjacent to the Uruguayan continental shelf, the United States considers

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that there is no sound basis in international law for the extension of the exclusive fisheries jurisdiction of a coastal State beyond twelve nautical miles from the base-lines from which the breadth of the territorial sea is measured. It is particularly inappropriate for a coastal State to claim an exclusive fisheries zone that is coterminous with the continental shelf because, as recognized in Article 3 of the 1958 Convention on the Continental Shelf, 'the rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas'. As recognized in Article 2 of the 1958 Convention on the High Seas, freedom of fishing is one of the traditional freedoms of the high seas.

The Government of the United States is pleased to note that paragraph III of the Preamble to the Decree of May 16, 1969 states, with regard to the claimed exclusive

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fisheries zone, that 'these rights obviously do not affect and cannot affect free navigation in these waters.' The United States trusts that the Government of Uruguay shares its view that freedom of navigation is vital to the security of the hemisphere and to the continued use of the worlds' oceans to facilitate commerce and trade.

The Government of the United States appreciates the legitimate interests of Uruguay and other coastal States in their coastal fisheries. However, the Government of the United States believes that these interests should be recognized by international agreements which also recognize the legitimate interests of other States who may be engaged in distant water fisheries beyond twelve miles from the coastal State, and that these interests cannot lawfully be furthered by unilateral declarations of rights beyond

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this twelve-mile zone.

Accordingly, the Government of the United States reserves its rights and the rights of its nationals in the areas of the high seas embraced by the Uruguayan claims set forth in the Decree of May 16, 1969."

8. FOR RIO: (NOTE to be delivered to GOB)

"The United States Embassy has the honor to refer to Decree Law No. 533 of April 25, 1969, which asserts a claim by the Government of Brazil to a territorial sea of twelve nautical miles.

The Government of the United States wishes to inform the Government of Brazil that, for the reasons given below, it does not recognize the territorial sea claim contained in the April 25, 1969 Decree Law.

It is the position of the United States that under international law there is no justification for unilateral

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action extending territorial sea claims beyond three nautical miles. As the International Court of Justice stated in the Anglo-Norwegian Fisheries case, the status of the seas adjacent to a nation's coast cannot be dependent upon the will of the coastal State as expressed in its municipal law since the validity of that status with regard to other States depends upon international law. And, as that Court recently stressed in the North Sea cases while discussing the issue whether Article 6 of the Continental Shelf Convention had become a part of customary international law, 'an indispensable requirement' for a proposition to become a part of customary international law 'would be that State practice, including that of States whose interests are specially affected, should have been both extensive and virtually uniform in the sense of the provision involved; -- and should

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moreover have occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved.' (See paragraphs 73 and 74 of the opinion of the Court.) Since a substantial number of major maritime nations claim and recognize only three-mile territorial seas, it is clear that no nation is required by international law to recognize territorial sea claims in excess of three nautical miles.

Accordingly, the Government of the United States reserves its rights and the rights of its nationals in the areas of the high seas beyond three nautical miles from the coast of Brazil."

ROGERS

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