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 E.O. 12958, Sec.3.5
 NW 21242
 By PA/HRM Date 1/23/04



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DEPARTMENT OF STATE

Washington, D.C. 20520

September 3, 1969

MEMORANDUM

TO : The Secretary

FROM : L - John R. Stevenson *JRS*

SUBJECT : Relationship between Seabed Disarmament and
 U. S. - Soviet Law of Sea Project

The United States and U.S.S.R. are engaged in a cooperative effort to hold a new Law of the Sea Conference to establish a maximum of 12 miles for territorial sea and exclusive fishing zone claims, provide a right of free passage through and overflight of international straits, and provide for certain preferential fishing rights for coastal States beyond 12 miles. The entire world knows of this effort; we have given draft articles to approximately 30 countries; the Soviets also have begun to canvass other countries.

I believe that acceptance now of a 12-mile band for the seabed arms control treaty would not prejudice either our chances of obtaining broad international agreement to the U.S.-U.S.S.R. law of the sea articles or our position that we need not recognize territorial sea claims exceeding 3 miles. I also believe our refusal to accept a 12-mile band in the arms control context could produce undesirable consequences for the broader law of the sea project. My reasons are as follows:

a) All other maritime nations who claim 3-mile territorial seas (e.g. U.K., Japan, France, Germany) are willing to accept 12 miles in the arms control area; as their interests are similar to ours, our refusal to accept 12 miles will be considered as unreasonable or

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as a subterfuge to scuttle an arms control agreement.

b) Our legal argument, recently supported by the International Court of Justice, is that customary international law does not sanction territorial sea claims in excess of 3 miles as long as the States most concerned do not accept such a rule. As we have already accepted a 12-mile fisheries zone and a 12-mile contiguous zone, acceptance of a 12-mile zone of exemption from the arms control treaty will not weaken our legal position on the territorial sea if we and the other concerned maritime nations reaffirm this position.

c) The 3-mile figure for the arms control treaty cannot be negotiated. Nations that have publicly called for a seabed arms control agreement probably will not be encouraged to support our law of the sea articles if they conclude we require such support as the price for the arms control agreement. Their concerns are as much political as they are practical.

d) An open dispute with the Soviets in the arms control contest involves some risk to our continued cooperation in the Law of the Sea effort.

e) We are engaged in several oceans-related activities which we want to keep separate -- seabed boundary and regime issues, seabed arms control, the law of the sea articles, settlement of our problems with Chile, Ecuador and Peru, and adoption of procedures to facilitate research. Their combination in one big conference would dissipate our bargaining strengths. We will better be able to keep these matters separate if we make steady progress in each forum.

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