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INFORMATION

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July 22, 1969

MEMORANDUM FOR DR. KISSINGER

FROM: Robert E. Osgood

SUBJECT: Progress report of the law of the sea treaty  
and related issues

In a memorandum to Richardson dated July 12 you suggested that the Under Secretaries Committee review coordination of U. S. policy on the law of the sea treaty with U. S. policies on (a) a resolution of the Peruvian fishing rights dispute, (b) a definition of the boundary between the continental shelf and the deep seabeds, and (c) a seabeds arms control agreement. This memorandum is to bring you up to date on these matters.

A. Peruvian Fisheries Dispute

The most complicated and urgent set of issues related to the law of the sea treaty arise with respect to the forthcoming quadripartite negotiations with the CEP countries (Chile, Ecuador, Peru) on fisheries. According to those interested primarily in the law of the sea treaty, as opposed to those interested primarily in fishing rights or good relations with Latin America, your memorandum to Richardson is solely responsible for the fact that the ad hoc committee charged with formulating the U. S. negotiating position has made a genuine effort not to jeopardize the chance of achieving a law of the sea treaty, since the chairman of the committee (Assistant Secretary of State for Wildlife and Fisheries) and the representative of the Under Secretary of State sitting as an observer have been determined to keep the issue out of the Under Secretaries Committee.

The remaining points in disagreement have now been submitted to a drafting committee, which will probably succeed in formulating positions acceptable to the committee as a whole. If not, the DOD representative will probably request or threaten to request referral of the matter to the Under Secretaries Committee. But since the negotiating delegation leaves for Buenos Aires on July 28, it is questionable whether the Committee can be assembled.

B. Definition of the Continental Shelf

No less important or urgent but somewhat less complicated is the relationship of the present UN discussions on a definition of the continental shelf to the law of the sea treaty.

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1. Should the U.S. reaffirm its previous position in favor of an internationally agreed boundary in order to hold open the option of reaching a narrow definition of the continental shelf?
2. Should the U.S. propose a moratorium on shelf claims in order to hold open the option of an international agreement on the boundary?
3. Should the U.S. bilaterally protest or contest such claims when they go beyond the present Geneva Convention and our interpretation of that Convention?

So far, because of disagreements on these questions between DOD, Interior, and State (but principally the first two agencies), the U.S. has taken no position on any of these issues. Meanwhile, other nations are rapidly stating claims to the seabeds which will preclude an international agreement consistent with DOD's view of U.S. military interests or the State Department's view of our general interest in the orderly use of the sea and seabeds. Senator Pell recently strongly criticized the State Department for not protesting these claims.

DOD is now so engrossed in the Peruvian fishing-rights crisis that it is unlikely to get these issues before the Under Secretaries Committee.

C. Seabed Arms Control Agreement

The Under Secretaries Committee was asked to review this matter because of DOD's fear that our agreement to a 12-mile instead of a 3-mile exclusion boundary in the arms control agreement would undermine the U.S. bargaining lever for obtaining agreement to the provision for use of narrow straits in the prospective law of the sea treaty. It is now apparent that some of those equally concerned with obtaining a law of the sea treaty differ with this estimate. They contend that by publicly and explicitly confining the 12-mile zone to arms control provisions the U.S. could avoid the implication that it had conceded a 12-mile zone so far as the law of the sea treaty is concerned. Moreover, they point out that such a concession could quickly gain our arms control agreement, whereas we shall not know whether a law of the sea treaty is obtainable until 1971.

At present, these conflicting positions are in deadlock.

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