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E.O. 12958, Sec.3.5

NW 21242

By PAJ/HRM Date 1/23/04~~CONFIDENTIAL~~

December 2, 1969

MEMORANDUM

TO: U - Mr. Stempel  
J - Mr. Baker  
S/FC - Mr. Bilchik  
ID/BNP - Mr. McIntyre ✓  
SCI/SE - Mr. Deigin  
E/ORP - Mr. Nichols  
S/PW - Mr. Sullivan  
INR/XR - Mr. Trainor

SUBJECT: State Sealed Paper

For your use and the use of your principals, I am attaching the sealed boundary paper Mr. Stevenson sent today to Under Secretary Train, Deputy Under Secretary Peacock, Assistant Secretary Rutter and Mr. Maehling.

Mr. Stevenson plans to meet personally with each of these officials in the near future to discuss our proposal.

*Tex*  
F. Allen Harris  
Special Assistant  
to the Legal Adviser

Attachment.

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State Department Proposal for a United  
States Government Position on  
Location of Seabed Boundaries

The Problem

The absence of a U. S. Government policy on the location of the boundary of the continental shelf increasingly jeopardizes the national interest, both domestically and internationally. Refinement of our principles and policies with respect to other aspects of exploration and exploitation of the mineral resources of the seabeds and constructive leadership are impeded by the lack of a position with respect to the boundary. We believe it is timely, essential, and possible to remove this disability, and this paper proposes a policy that would do so.

Discussion

It has been informally agreed, in response to Dr. Kissinger's memorandum of July 12, 1969, that the NSC Under Secretaries Committee consider what the position of the U.S. Government should be on the location of the boundary and the related matter of how the boundary is to be defined by the international community.

Domestically, the pressures for reaching a decision soon on the location of the boundary are strong. Senators Jackson, Pell, and Metcalf have each asked State specific questions concerning the location of the boundary.

Internationally, the absence of a decision within the Government on the location of the boundary makes it increasingly difficult for us to influence the development of discussion and possible events. Ambassador Pardo of Malta has, for example, suggested that seabed boundary

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negotiations begin at 200 miles. While it is agreed within the U. S. Government that this figure is excessive and unacceptable, our own inability to state where the boundary should be handicaps us. We have sought to dissuade various countries, including the United Kingdom, from unilaterally extending their national jurisdiction, but these countries naturally want to know where we think the boundary ought to lie.

We believe that while our policy of keeping options open served a useful purpose at one time, we have now reached the point where we should obtain an early decision within the U.S. Government on the location of the boundary and the authority to present this position publicly in ways best calculated to gain widespread international acceptance.

We appreciate the national security interest in a narrow boundary and the national resources development interest in a wide boundary. We believe that these various interests of the U.S. Government can be accommodated, as well as certain international community interests, by utilizing a variation of the intermediate zone concept first suggested by the Commission on Marine Science, Engineering and Resources.

Within the intermediate zone as proposed by the Commission only the coastal nation or its licensees, which might or might not be its nationals, would be allowed to explore or exploit the area. In all other respects exploration and exploitation of the intermediate zone would be governed by the international regime for the area of the deep sea. This would include an obligation to pay an agreed small portion of the value of the production for international community purposes, as well as to agree internationally to pollution control measures and other similar international standards, and the application of an international registry machinery.

This proposal has been criticized as in effect subjecting the exploitation of the resources of the

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intermediate zone to two administrations -- that of the coastal state in the first instance and an international regime as well.

The variation of this proposal which we propose would more adequately insure the coastal states' jurisdiction over the natural resources of the intermediate zone by eliminating any international administration or machinery from the intermediate zone and providing in effect that the exploration and exploitation of the resources of the intermediate zone would be subject to the exclusive jurisdiction and administration of the coastal state subject to the obligation of the coastal state to pay an agreed small royalty payment to a designated international agency for international development purposes and to enforce certain international standards.

The intermediate zone proposal of the Marine Commission is based on the legal theory that the source of authority for granting exclusive authority to the coastal state for the exploitation of the mineral resources in the intermediate zone is the international regime itself. We do not accept the Commission approach because we consider that the recognition of coastal state authority with respect to exclusive jurisdiction over resources is a preferable basis to receiving that authority from an international regime which has not yet been formulated even conceptually. We feel it is possible to build international elements (royalties and international standards) into our proposal which would provide assurance that the national and international interests of the United States would be adequately protected.

The National Petroleum Council has taken the view that under the Continental Shelf Convention the United States now has exclusive jurisdiction over the natural resources of the submerged continental mass seaward to where the submerged portion of that mass meets the abyssal ocean floor and that the United States should declare its

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rights accordingly. The National Petroleum Council position fails to give sufficient attention to the problem of protecting the right of all states to conduct other legitimate activities, including scientific research and military activities in the area of the intermediate zone.

We have also not accepted Senator Pell's proposal that the outer boundary of the continental shelf is limited to the 550 meter isobath or to a distance of 50 miles from the baseline from which the breadth of the territorial sea is measured, whichever results in a greater area for the coastal state. We believe it is unrealistic to limit the preferential right of coastal states to seabed resources off their coasts to this narrow boundary.

#### Proposal

We propose the following statement of what the U.S. Government position should be on the location of the boundary of the continental shelf, to be incorporated in a new international treaty. Attached is an analysis we have prepared of the major elements of this proposal:

1. The coastal State has sovereign rights in respect of the seabed's natural resources up to a depth of 200 meters from the coast.

2. With respect to the seabed area beyond a water depth of 200 meters and to the seaward edge of the geologic continental rise\* (herein referred to as the "intermediate zone"), the coastal State does not have any sovereign rights in respect of the seabed's mineral resources or for any other purpose but has jurisdiction to authorize exploration and exploitation pursuant to its own laws and regulations (including those governing licensing fees, taxes, and royalties) subject to agreed international standards as follows:

a. These jurisdictional rights of the coastal State do not affect the rights of other States to conduct

\* In areas where no rise exists, to the edge of the continental margin.

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activities other than exploration and exploitation of mineral resources in the seabed and subsoil of the intermediate zone (including the right to conduct military activities). The coastal State has no jurisdiction over such other activities.

b. The right to conduct scientific research in the intermediate zone free of control by the coastal State will be protected. "Exploration" will be defined so as to assure freedom for legitimate scientific research.

c. All uses of the intermediate zone, including exploration and exploitation, must be exercised with reasonable regard to the interests of other users of the seabed and the superjacent waters in their exercise of the freedom of the high seas. The treaty will specify certain standards which the coastal State must observe and enforce regarding exploration and exploitation of the mineral resources of the intermediate zone. These standards include safeguards against pollution and hazards to navigation, avoidance of interference with fisheries and other uses of the ocean, and notice of the nature, location, and duration of activity it authorizes.

d. Every coastal State will be obligated to pay an agreed small portion of the value of all mineral production from the intermediate zone into an existing fund for international development purposes. For example, the treaty might provide an option for the payment to be made to the IBRD/IDA or the UNDP. The treaty would fix the percentage of the value of the production, the means of computing the amount, and related procedures.

e. In order to protect the international community's interest in revenue from the intermediate zone, the coastal State would undertake not to revoke exploitation concessions prior to termination except for failure to comply with the conditions on which such concessions have been

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granted, and not to take the equipment of licensees except in connection with justifiable revocation on termination of licenses and on payment of adequate compensation. A provision would be included for obligatory reference of disputes to the International Court of Justice or the IBRD's International Centre for the Settlement of Investment Disputes.

3. The exploration and exploitation of the resources of the seabed beyond the intermediate zone will be governed by an international regime. The nature of the international regime which we seek is set forth in Circular Airgram 4439 (Tab B).

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