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ANALYTICAL SUMMARY

NSSM 125: U.S. Oceans Policy

I. INTRODUCTION

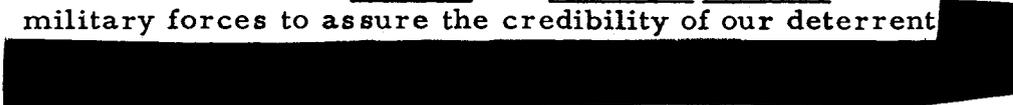
NSSM 125 requested that a study be undertaken on measures for the achievement of U.S. ocean policy objectives as outlined in NSDM 62 and the President's statement of May 23, 1970.

A study has now been completed by the Interagency Law of the Sea Task Force chaired by State. It is summarized below with our own comments in brackets.

If you have time to read any portion of the actual NSSM response, we suggest you read the section dealing with issues and options (pages 44-70), with particular reference to the options for substantive proposals. (pages 57-68). The options for decision are dealt with in this summary from page 16 onwards.

II. OUR OCEANS POLICY OBJECTIVES

[These have been most succinctly stated in a separate draft prepared by DOD. Our objectives are:

- To insure sufficient tactical and strategic mobility of our military forces to assure the credibility of our deterrent


- To protect and enhance the economic and environmental interests of U.S. investments, U.S. labor, and U.S. consumers regarding the exploration, development, and marketing of ocean products, including petroleum, minerals, living resources, transportation, communication, and recreation.

- To avoid political and armed conflict over rights to use ocean space.]

III. PRESENT U.S. LAW OF THE SEA PROPOSALS

NSDM 62 and the President's statement of May 23, 1970, outlined the following U.S. Oceans Policy:

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1. Territorial Sea: We proposed agreement on a 12 mile breadth of sea, the narrowest breadth on which we believe multilateral agreement can be reached.
2. Straits: We proposed a new right of free transit through international straits, which would include aircraft and submerged submarines. This would eliminate the old criterion of "innocent passage" which gives the coastal state some discretionary authority with respect to transiting foreign vessels. The right of free transit is essential to our strategic mobility since a 12 mile territorial sea would eliminate all free high seas in straits less than 24 miles wide, including Gibraltar.
3. Fisheries: We proposed accommodating interests of coastal states in fisheries beyond the territorial sea by giving them carefully defined preferential rights. [Our present fisheries position is apparently a non-starter. Few people understand it; and agencies even disagree as to what it is. The proposal is in the form of a draft fisheries article we have informally circulated bilaterally. This NSSM exercise is in large measure due to the need for a new and better defined fisheries position.]
4. Seabeds: We proposed a seaward boundary for the legal continental shelf where the high seas reach a depth of two hundred meters. Beyond the two hundred meter limit, we proposed a new international regime for the seabeds under which the coastal state would license exploitation and exploration of seabed resources in a trusteeship zone extending from the depth of 200 meters seaward to embrace the remainder of the continental margin. Beyond the trusteeship zone, a new international organization would itself license exploration and exploitation of seabed resources. Pursuant to NSDM 62, a detailed draft convention was submitted by the U.S. to the UN Seabeds Committee as a working paper in August 1970.
5. Pollution: Our draft Seabeds Convention contains strict and comprehensive provisions designed to prevent pollution from seabed exploration or exploitation. The Law of the Sea Task Force is consulting CEQ, EPA, and other experts regarding other aspects of marine pollution that might usefully be dealt with at the Law of the Sea Conference.
6. Scientific Research: Although not specifically mentioned, we support the maximum freedom for scientific research.

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IV. THE LAW OF THE SEA CONFERENCE

The UNGA has decided to convene in 1973 a comprehensive Conference on the Law of the Sea. This results from the following three factors:

- A U.S. /Soviet decision in 1967 to explore the possibility of a new conference limited to establishing the maximum breadth of the territorial sea, guaranteeing free transit through and over straits and providing preferential fishing rights for coastal states on the high seas.
- The simultaneous establishment of a UN Seabed Committee to deal with the possibility of a new international regime for the seabeds, with an equitable sharing of benefits.
- Interest by many newly independent countries in questioning traditional law of the sea which was developed without their participation and which they feel is heavily weighted in the interests of traditional maritime powers.

Developments thus far have not given rise to serious negotiations:

- Our seabeds proposal has been neglected by most countries.
 - It lacks appeal to some countries, notably the Latin Americans who are engaged in delaying tactics to enhance their own 200-mile thesis.
 - States without maritime or naval interests may perceive our policy as not meeting the desire of coastal state control over ocean space as a future source of income.
 - Neither we nor others have officially presented a fisheries proposal to accommodate the conflicting concerns of coastal and distant-water fishing states.
 - The UN Committee preparing for the Law of the Sea Conference is divided into blocs. African and Asian countries, in order to maintain developing country solidarity, frequently support the Latin position. Meanwhile, developed countries themselves are divided by virtue of their diverse interests and geographic locations.
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V. U.S. INTERESTS IN THE LAW OF THE SEA

Generally, the U.S. has three types of interests with respect to the oceans:

- High seas
- Coastal
- International

The focal point for satisfaction or dissatisfaction with the current law of the sea is the doctrine of the freedom of the high seas, which permits each nation to conduct activities on the high seas freely with "reasonable regard" for the interests of others. The classic method for regulating the high seas is to enter into treaties on specific subjects (e. g., oil pollution) which must have the adherence of the users to be effective.

Coastal interests are best served by the broadest possible territorial sea or coastal state control for a specialized purpose (e. g., Continental Shelf minerals). Depending on their concern, states may be interested in exclusive control of fisheries or seabed resources, in preventing pollution near their shores, or in expanding national territory for essentially the same reasons as on land.

International interests relate to concern for regulating the ocean as a whole for one or more purposes such as standardization of ship construction, universal observation of minimum standards with respect to pollution or fisheries conservation, and prevention of conflict between states with coastal interests and high seas interests or between coastal states in the same region.

More specifically, U.S. interests with respect to the oceans are:

- U.S. National Security Interests. The major U.S. military [redacted] [redacted] interest in the seas is a maximum mobility for our operations, free of interference by others. Our mobility depends on freedom to navigate on and under the high seas and to fly over them. If navigation and overflight fall under broadly extended coastal state jurisdiction, only in the North Atlantic and northeastern Pacific could we be reasonably assured of coastal state acquiescence in our military use of the area at all.

Our seaborne nuclear deterrent is also dependent on secrecy and, in the absence of a new rule regarding straits, even a

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modest extension of the territorial sea from 3 to 12 miles would force us to choose in many international straits, including Gibraltar, between operating illegally or striking the best possible bilateral bargain for consent to transit submerged. Also, our ASW operations involve surface and air units that cannot conduct such operations in foreign territorial seas without consent.

Expansion of coastal state control over important ocean areas increases the geopolitical importance of the state concerned, such as the case of states bordering strategic straits. The possibility of international conflict increases as more states believe they have the right to close important ocean areas - as the UAR did in the Strait of Tiran.

Just as the U.S. has an interest in preventing unilateral coastal state claims of jurisdiction over the oceans that can lead to controls over navigation and overflight, its military interest is served by seeking to solve the economic and environmental problems that lead other countries, particularly developing ones, to make such claims.

-- U.S. Economic Interests. These fall into a number of categories:

Trade and Commerce: About 80 percent of U.S. foreign trade moves by ship. We have an interest in maximum freedom of movement at minimum possible cost.

Oil and Gas: Continental margins around the world (submerged extensions of the continents) probably contain more petroleum and gas than exist on land. The margin off the U.S. is 8 percent of the world total. The U.S. has a coastal interest in the exclusive right to oil and gas of the continental margin off its coast. We also have an interest in the access of U.S. oil companies to the continental margins off other countries' coasts. Our petroleum and gas industry, has been opposed to our seabed proposal for a trusteeship zone and international machinery beyond that zone. It would also prefer to leave companies to bargain on their own with other coastal countries for access to their continental margins. [This question was thrashed out extensively in the deliberations leading

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to NSDM 62. There is occasional pressure to reopen that decision from industry sources, though perhaps less now than before. Sensitivities to these pressures are variously and occasionally reflected within the USG. It was understood as a part of this NSSM exercise, however, that our intention was not to reopen any element of NSDM 62.]

- U.S. Fisheries Interests: The U.S. has coastal, high seas, and international interests in fisheries.

The largest interest is coastal, particularly off Alaska and New England. Our coastal fisherman - just like Brazil's, for example - desire the most exclusive rights possible to fish off our coastal waters.

Our highly modernized tuna and shrimp fishermen, on the other hand, have a high seas interest in the closest possible access to the coastal waters of other states (e.g., Chile, Ecuador, Peru, Brazil).

- U.S. Environmental Interests. Our coastal interest is to protect our coastline from pollution. Our international interest stems from the difficulty of localizing the effects of ocean pollution.

Three international forums are, or will be, concerned with various aspects of ocean pollution:

- The 1972 Stockholm Conference on the Human Environment,
- An IMCO Conference on Marine Pollution in 1973,
- The Law of the Sea Conference.

Different aspects of ocean pollution (e.g., dumping, oil spills, pollution from seabed exploration, effluents from rivers, etc.) can, and in some cases will, continue to be dealt with in different forums. However, any comprehensive international machinery to deal with these problems could better be considered in the context of the law of the sea negotiations, if establishing such machinery is the course we or other nations eventually elect to pursue. [Our own bureaucracy first has to rationalize which elements of our own government should deal with the

problem. At the moment, lines of authority within our own government are unclear.]

- U.S. Scientific Interests rest with the broadest possible freedom of scientific research in the oceans.
- Conflict Resolution Interests: A traditional source of conflict over the oceans has concerned navigation. Expanding competition for fisheries, and the lure of petroleum and mineral wealth from the seabed, are expanding the potential for conflict. As a major military and economic power with allies, commitments and interests around the world, we have an international interest in the resolution of conflict over the oceans. The East and South China Sea, the Gulf of Venezuela, and the Plate River estuary are examples of areas where maritime boundary issues have a serious potential of conflict.
- U.S. Bilateral and Regional Foreign Relations Interests: When a country makes a claim or takes a position that is contrary to our interests, we are consistently faced with a choice between undesirable alternatives. The more vigorously we defend our oceans interests, the more we endanger our relations with the country concerned. On the other hand, the more relaxed our response, the more we prejudice our interests with respect to other countries that may follow its example. Bilateral negotiation with the country concerned may simply persuade others that claims can be made without undesirable consequences. A very widely accepted law of the sea treaty or treaties would eliminate or substantially reduce the potential for conflict with these countries as well as with others.

VI. THE PROBLEM OF UNILATERAL CLAIMS

-- High Seas Interests and Coastal State Claims:

Only developed countries generally perceive that they have important high seas interests which must greatly influence their decisions.

All perceive navigational interests. Only the U.S., U.K., and the USSR are likely to give greatest attention to high seas security interests. Japan, the USSR, the U.K., and West Germany have important high seas fisheries interests. (Distant-water fisheries are vitally important sources of protein for Japan and the USSR.)

Unilateral claims protect one or more coastal interests. The most comprehensive of these are absolute claims of sovereignty - claims of internal waters or territorial seas. Coastal states may make lesser claims of jurisdiction for a variety of reasons. They may, for example, have high seas interests they want to protect. Thus in 1945 the U.S. unilaterally claimed the resources of the continental shelf off its coast, explicitly stating that it was not claiming the waters above in order to protect U.S. high seas, security, navigational, and fishing interests off the coasts of other countries.

Another reason for making a claim short of full sovereignty is to bolster the respectability of their claims and lay the foundation for broader assertions at a later time.

-- Territorial Sea Claims:

These are the most adverse to U.S. interests. At best, U.S. vessels on the surface - not aircraft or submerged submarines - have a right of "innocent passage" through such waters.

In 1930, the majority of states adhered to the traditional 3-mile limit for the territorial sea. Today, 51 countries claim a 12-mile territorial sea, and an additional 14 claim over 12 miles and up to 200 miles. Great Britain, while adhering to the 3-mile rule, no longer protests 12-mile claims. The U.S. continues the practice of protesting any territorial claim beyond 3 miles.

We have refused to accept the move to 12 miles for two basic reasons:

- If we admit the validity of any unilateral change from three miles, it is difficult to oppose claims beyond even 12 miles.
- More importantly, with a three mile territorial sea, straits wider than six miles have free high seas running through them. A 12-mile territorial sea would overlap straits less than 24 miles wide and over 100 straits would be affected, including Gibraltar.

Territorial sea claims beyond 12 miles would merely compound these problems. A 200-mile territorial sea would encompass 25 percent of the oceans, and close the major seas of the world, including the Mediterranean and Caribbean, to all but innocent passage.

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From a national security point of view, the U.S. could not merely live with 200-mile territorial seas. In certain areas, we would be forced to negotiate, at a high potential price, rights for navigation and overflight. Should navigation in practice become a matter of coastal state consent, both the U.S. and its rivals might be expected not only to engage in a campaign to secure consent for themselves but to assure that consent is denied or restricted for the other. Sooner or later, we or another major power would face a critical situation in which consent is denied or too high a price is demanded.

-- Archipelago Claims:

The Philippines and Indonesia have elected unilaterally to enclose their islands by drawing straight lines which connect the outermost points of the islands and to declare the waters inside to be internal. Indonesia recognizes a right of innocent passage through such waters by warships subject to prior notification. The Philippines recognizes no right of innocent passage for warships.

We have drafted our proposal on free transit through and over international straits in such a way that archipelago nations could accept it if they are willing to provide for free passage through some of the straits between their islands. Thus far no such state has indicated willingness to accept our proposal although it is possible that the promise of recognition of some type of archipelago claim might move some island nations toward support of a version of our straits proposal.

-- Claims of Special Jurisdiction Affecting Navigation:

These are the most potentially dangerous limited jurisdiction claims. Recently Canada has claimed a 100 mile exclusive pollution zone over Arctic waters. Most attention has thus far been devoted to oil tankers; but there are clear warning signals that nuclear-powered vessels and vessels carrying nuclear materials and weapons are next on the horizon. In the worst of circumstances, coastal states could use their pollution control jurisdiction as the equivalent of a consent requirement.

-- Claims to Resources:

The most important reason for U.S. opposition to unilateral claims limited to natural resources of the seas and seabeds

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relates to the assumption that unilateral claims of jurisdiction for one purpose tend to expand into, stimulate, or provide a justification for claims for other purposes. This phenomenon is known as "creeping jurisdiction."

[In our judgment, the ultimate success of our law of the sea strategy will rest on the reconciliation of other states' coastal interests, particularly for resources, with the high seas interests of the U.S. and other major maritime powers. The real question is at what point can developing countries' coastal state interests really be satisfied. Are they just interested in resources, or are they interested in complete sovereignty affecting freedom of navigation as well?

One could make a plausible case that total jurisdictional claims, such as those of Brazil, are tactically designed to elicit resource concessions from the maritime powers in exchange for ultimately granting navigational freedom beyond 12 miles. Pursuing this logic, a plausible, and by no means undesirable from our point of view, outcome of the Law of the Sea Conference would be the granting of exclusive resource jurisdiction to coastal states up to, say, 200 miles, in exchange for acceptance of a 12-mile territorial sea.

The question then arises as to why we don't offer an exclusive resource package of this kind now to preclude further unwelcome territorial claims in the interim, to avoid hardening of positions already taken, and to isolate proponents of full 200 mile territorial jurisdiction from other more reasonable states.

Believers in the phenomenon of creeping jurisdiction would argue that for the U.S. to advance such a position now would stimulate rather than preclude large territorial claims and that as a tactical matter we should avoid laying all our cards on the table at this stage.]

VII. THE LATIN AMERICAN PROBLEM

Brazil, Chile, Ecuador, Peru, and several other Latin American nations have claimed either territorial seas or exclusive fisheries zones of 200 miles. Enforcement of such claims against our fishermen creates political difficulties; it also represents a severe threat to the continued mobility of our sea and air forces.

Peru prohibits overflight in her 200 mile zone by foreign military aircraft without her prior permission.

Brazil has recently promulgated regulations which restrict the passage of nuclear-powered vessels in her claimed 200 mile territorial sea and is now considering new regulations which would control all navigation and impair the traditional right of freedom of innocent passage.

Ecuador has enacted but does not enforce legislation which impairs the right of innocent passage.

All Latin American countries which have made broad claims say that they will be generous with U.S. military interests and that they would not wish to impair our strategic mobility. However, our security cannot be allowed to depend on the generosity of coastal states. The hard line Latins will probably not be satisfied with any result from a Law of the Sea Conference which doesn't recognize their jurisdictional competence, at least for resources, out to 200 miles. Ecuador, Peru, and Brazil have all indicated they might be willing to bargain over military uses within the 200 mile area.

To the extent that these countries' expansive claims are designed to protect interests in fisheries or offshore mineral exploitation, U.S. oceans policy will accommodate many of their interests. The value of any new fisheries proposal expanding coastal states rights lies in getting support from Africans, Asians, and moderate Latin Americans and isolating or bringing along the hard line Latin Americans.

In responding to Latin American claims, we have never used force to protect our rights - as we see them - nor have we entered into agreements implying acceptance of coastal state rights - as certain coastal states see them.

III. OTHER FOREIGN INTERESTS AND ATTITUDES

1. States Bordering on Straits:

Except for Singapore, France, the U. K., and the USSR, straits states reaction to our proposal for free transit for vessels and aircraft varies from unhappiness (e. g., Greece) to active and vigorous opposition (e. g., Spain).

A. Spain: In March the Spanish representative at the LOS Committee took issue publicly with all of the objectives behind the

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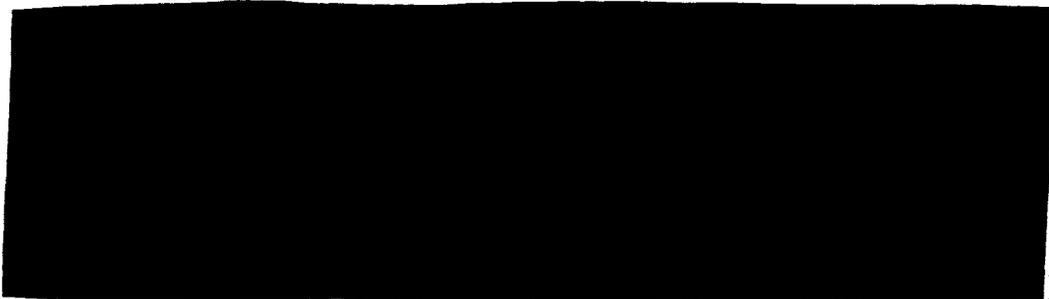
U.S. proposal for free transit through and over international straits and he supported many Latin American positions. Spain can be expected to continue her efforts in opposition to the U.S. straits proposal so long as she feels it will gain her other political goals without directly endangering U.S. / Spanish relations. Convincing Spain of the importance of the straits proposal to the U.S. and the possible adverse effect of continued Spanish opposition to it on U.S. / Spanish relations is a paramount goal in the near future.

B. Denmark, Greece, and Italy:

Denmark has so far rejected our straits proposal primarily because she is concerned by traffic safety and pollution hazards in the Danish straits. She does not wish to deny free transit to the U.S.; she does, however, have a fear of submerged transit by Soviet submarines - a fear which the NSSM paper considers unfounded because the straits are so shallow.

Greece and Italy are opposed to free transit. The paper adds, however, that Greece may ultimately be satisfied by whatever accommodation we make with the Philippines and Indonesia. If Greece and Denmark ultimately accept our position, then it is doubtful Italy will want to stand alone in NATO in opposition.

C.



The study judges that public rejection of our straits proposal by Japan, a close ally, would place that proposal in jeopardy.

2. Landlocked States

Landlocked states have an interest in access to the sea. To the extent they achieve such access, they have an interest in:

- High seas with the narrowed possible limits of the territorial sea and jurisdiction over fisheries.

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-- A narrow limit of national jurisdiction over seabeds, thus sharing in revenues and participating in an international organization that regulates the broadest possible area of the seabeds subject to an international regime.

3. Shelf-Locked States

There are 23 states that cannot expand their jurisdiction over the seabeds beyond 200 meters, usually because they border on enclosed or semi-closed seas that are less than 200 meters deep. Austria and Singapore are trying to organize a bloc of landlocked and shelf-locked states, basically in support of U. S. proposals. Such a bloc would have close to 1/3 voting strength at a conference and would be of concern to the Latin American states.

4. States with Broad Continental Shelves are likely to favor depth of the sea or geological criteria for determining the limits of national jurisdiction over the seabeds.

5. Coastal States with Narrow Continental Shelves

Such states are likely to oppose the use of depth or geological criteria for determining the limits of national jurisdiction over the seabeds and would prefer the use of a fixed distance from shore - either for the shelf, the trusteeship zone, or both.

6. The USSR and Eastern Europe

This group will most vigorously support classic high seas interests across the board. It favors a 12 mile territorial sea, free transit through straits, and the minimum possible concessions to coastal state interests in fisheries beyond 12 miles. It can be expected to regard the U. S. seabeds as far too international and too specifically geared to insure Western domination of the area.

7. Western Europe, Canada, Australia, New Zealand, and Japan

All these states agree on support for a maximum limit of 12 miles for the territorial sea.

A. Straits

Denmark, Italy, Spain, Greece, Japan, and probably Canada oppose our straits proposal. The rest of the group can be expected to support it, some very vigorously.

B. Fisheries

Iceland, Canada, and Australia are interested in broad coastal states rights for fisheries. France is willing to concede such rights. Japan is interested in the narrowest possible rights for coastal states because of the vital role distant-water fishing plays in supplying protein to the Japanese people.

The U.K., the FRG, and other continental countries can be expected to oppose a U.S. move to broaden coastal state rights beyond our current approach.

C. Seabeds

Our seabeds proposal has support from the U.K. and some continental Western European countries. Canada and Norway prefer broader limits on national jurisdiction. France supports broad coastal state jurisdiction over the seabeds - probably to 200 miles - and a weak international regime and machinery for the area beyond. France is more willing to yield to Latin American pressure for broad limits than to Afro-Asian pressure for a strong regime and machinery.

8. Latin America

In preparatory negotiations thus far, the group has been highly disciplined and dominated by the nine 200-mile states. Mexico and Venezuela support a 12-mile territorial sea, but broad coastal state rights over seabed resources and fisheries. Among the 200-mile states, Chile also tells us privately that it could support a 12-mile territorial sea coupled with a 200-mile exclusive resource (or if forced to, a trusteeship) zone.

Brazil, Ecuador, and Peru support a 200-mile territorial sea, with a possibility of flexibility in Peru's or Ecuador's position on navigation and overflight if its symbolic "sovereignty" over a 200-mile zone is confirmed. Chile (were it willing to take an active position different from that of Peru and Ecuador) could probably muster the support of the other 200-milers for its more "moderate" position if it is willing to break with Peru and Ecuador, its Andean Group partners. Argentina desires jurisdiction over its extremely broad continental margin even beyond 200 miles.

Because of their fears of interference with navigation and overflight by their northern neighbors, Chile and Argentina might be willing

to move quite far (provided the symbolic figure of 200 miles is used) toward a compromise with the U.S., and could conceivably carry the entire Latin American group except Brazil, Peru, and perhaps Ecuador. The 200-mile states are currently supporting a very extreme international regime for the seabeds beyond 200 miles, not out of conviction, but as a tactic to radicalize the demands of the Afro-Asians beyond the point where the U.S. would be able to come to terms with them. However, the Latin Americans - while maintaining a leadership role - have been unable to get solid developing country support for their procedural maneuvers since the U.S. presented its seabeds proposal.

9. Asia

There is general support for a 12-mile territorial sea.

Most Asian nations are impressed by our seabeds proposal and appear at least prepared to negotiate on its basis.

In addition to the particular straits situation with respect to Indonesia, the Philippines, and Japan referred to earlier, some states such as India, Ceylon, and Pakistan have ideological difficulties with supporting the free movement of warships.

The PRC, in its propaganda, supports the 200-mile claim of Latin American countries but has been quite careful in not asserting the 200-mile claim for itself.

10. Africa

The UAR is likely to support a 12-mile territorial sea and moderate coastal state fishing rights. Its position on straits will be determined by its decisions regarding the Strait of Tiran and its reaction to Soviet pressure to support free transit through straits.

Sub-Saharan Africa frequently in league with Trinidad, Jamaica, Guyana, and Barbados has an ideological approach to the Law of the Sea which is the antithesis of the Soviet position.

It is black Africa that most desires a strong international regime for the seabeds, and most demands more equitable treatment for developing country interests. There is also widespread support for extensive coastal state rights over fisheries.

IX. ISSUES AND OPTIONS

The paper offers five general options which could be pursued separately or in combination. It then offers sub-options for substantive initiatives. Only Options 1 and 5 are mutually exclusive. The options are:

Option 1: Hold firm at this summer's session to our position as already stated and indicate that we will make no important new proposals or changes in our position unless other countries indicate a willingness to support positions that are important to us.

Pro: New substantive proposals by the U. S. could involve the risk of complicating and possibly delaying the Conference by causing other countries to delay serious negotiations until they are convinced the U. S. has revealed as much of its position as it will before negotiations begin.

Con: This option risks encouraging further unilateral claims by failing to convince coastal developing countries that they can achieve protection of their resource interests through multilateral negotiation. The hard line Latin Americans can be expected to exploit the situation in their efforts to halt progress towards a Law of the Sea and to encourage unilateral claims.

Option 2: Exercise our rights of navigation and overflight by military units on the high seas, including international straits wider than six miles, in accordance with freedom of the seas.

[This option was included at Defense insistence. In working level inter-agency consultations, we stressed that while this was clearly an option available to us, we could not visualize its application except on a case-by-case basis. We, therefore, suggested illustrative examples for consideration. They are discussed below.

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E.O. 12958, as amended
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Option 3: Exert positive and negative pressure by Executive Branch action bilaterally on countries that make or may make claims that are contrary to our interests.

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Examples of the type of pressure that would be employed are the extension or withholding of trade and tariff preferences, the granting or cessation of military sales and aid loans and the reversal of a decision to offer to supply a country such as Brazil with naval vessels that could be used to patrol her 200-mile zone.

Pros: This would cause affected countries to moderate their position and seek accommodation in earnest at LOS negotiations.

Cons: Pressures of these kinds could harden LOS attitudes and could have adverse effects on our bilateral relations. Other U.S. interests (investments, etc.) could be adversely affected in some countries. A uniform policy of pressure might not work in all cases; a selective policy would open us to charges of discrimination.

[Application of such pressures is not unthinkable and at some point might be a useful negotiating lever. We do not, however, believe such tactics should be considered now. We must first appraise the substantive flexibility in our LOS position and decide what, if any, substantive initiatives we wish to take. To decide on the use of pressure tactics before we have decided and refined our LOS negotiating strategy is putting the cart before the horse.]

Option 4: Undertake a high level diplomatic offensive to demonstrate to other governments the importance to the United States of the President's Oceans Policy.

[This is essentially a tactical and non-controversial option.]

Option 5: Take new substantive initiatives at this summer's meeting of the LOS Preparatory Conference calculated to appeal to the developing countries and the developed countries that seek greater coastal state jurisdiction, either by making proposals ourselves or actively seeking to persuade someone else to make such proposals.

[This is the guts of this exercise. The substantive options are summarized and discussed below.]

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Substantive Proposal Option 1: Propose a 200-mile limit for the seabeds trusteeship zone

Our draft treaty now defines the outer limit of the seabed trusteeship zone by a complex geological formula whereby a line is drawn at that point beyond the continental slope where the downward inclination of the surface of the seabed declines to an as yet unspecified gradient. This proposed change would not appreciably affect the net extent of U.S. jurisdiction with respect to area and resources off U.S. coasts.

Pro: A 200-mile limit for the seabeds trusteeship zone would be a strong psychological signal of U.S. willingness to accommodate other interests. The formula is less complex than our present proposal, and therefore a more appealing basis for negotiation. Developing countries, including moderate Latin Americans, would see that we are not engaged in rigid, symbolic opposition to the 200-mile figure per se. What concerns us is rights with respect to various oceans activities within that limit.

Con: Such a move by the U.S. might be interpreted as the first move toward broader rights out to 200 miles on the seabed or in the waters. Extreme Latin American states would probably urge this interpretation and counsel inflexibility.

Substantive Proposal Option 2: Fisheries

There are three fisheries options. The first is intended to be used with a standfast position. The other two would involve the introduction of new substantive proposals containing major concessions to coastal states' fisheries control.

Fisheries Option 1: This option would refine our current fisheries proposal to eliminate certain cumbersome restrictions on coastal states' preferential rights over fisheries stocks adjacent to coastal areas. Coastal state preference would be based on the amount of fish it can utilize rather than on the criteria of economic need and degree of investment in the coastal fishing industry now included in our fisheries proposal. The option would, however, continue explicit protection for distant water fisheries, i. e., the provision that the coastal state reservation may not include the percentage of stock historically taken by distant-water fishermen.

Pro: This would be the most expected next move from the U.S. by coastal states. We would retain maximum flexibility

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for moving to Fisheries Option 2 or 3. If combined with a move to a 200-mile seabed limit, it might provide sufficient political and psychological momentum towards fruitful LOS negotiations.

Con: Coastal states would probably not regard this as enough. They may view it as taking insufficient account of their views and opt for unilateral extension of jurisdiction as a result. It would probably not be a sufficient step to drive a wedge between the hard line and moderate Latin Americans.

Fisheries Option 2: Revise our present proposal to grant greater economic preferences for the coastal state and give the coastal state control for management (e. g., conservation control) purposes of stocks in adjacent waters. Exercise of management control would be limited geographically by the distribution of the stocks rather than by arbitrary outer limits. In reserving fisheries for their own use, coastal states would have to take into account historic distant-water fisheries. This language with respect to historic fisheries is purposely vague and imprecise. The idea, however, would be to safeguard existing distant-water fishing interests as much as possible with the framework of coastal state preferences. Coastal states would have no preference over migratory stocks (tuna, herring, mackerel, and some others).

Pro: This option is tailored to fit the problem based on biological and technical complexities rather than artificial geographic boundaries. It is responsive to developing countries' desire for control over coastal fish stocks and accommodates U.S. fishing interests except distant-water shrimp operations. Since it does not involve a specific mileage limit, it provides a less obvious basis for extension of coastal state jurisdiction.

Con: Distant-water fishing states, particularly the USSR and Japan, would object because too much preference would be given to the coastal state. Some coastal states would object because it doesn't give them total jurisdiction over the high seas migratory species which they want. The proposal is too complex to gain acceptance among many developing countries. This proposal could lead to demand for exclusive coastal state jurisdiction over fisheries.

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Fisheries Option 3: Establish a 200-mile trusteeship zone in which control would be exercised through regional and international organizations in which coastal states and distant-water states participate. The emphasis would be on regional rather than central organization, and the coastal state would have preferences and allocation roughly similar to Option 2. Special arrangements would be made for migratory species. Coastal states would have authority to exercise conservation unilaterally in the absence of regional organizations and would license fishing in the trusteeship zone.

Pro: A successful conference will necessarily give coastal states very substantial fishing rights to a great distance from the shore. By eliminating the symbolic fight over 200 miles, we can better encourage negotiation on the real substantive issue, which is a balance of coastal and international rights between 12 and 200 miles. The trusteeship concept is specifically designed to avert pressure for exclusive jurisdiction and, unless we move soon, it will be far more difficult to negotiate restraints on coastal states' rights.

Con: Such a zone would be arbitrary and bears no relationship to characteristics of fish. It would represent a significant change in direction on our part and would antagonize conservative fishing states - e. g., Japan, the USSR, and the U. K. Using the 200-mile figure in connection with uses of the waters at this early stage of the negotiation creates too great a risk of creeping jurisdiction.

Fisheries Option 4: In the event Fisheries Option 2 or 3 is adopted, provide absolute protection for traditional distant-water fisheries subject to reasonable license fees.

[This option is designed to achieve what may be impossible - e. g., to retrieve for the distant-water fishing states what they might lose under Option 2 or 3. Its purpose would be to assuage Japan, the U. K., and the USSR, who have the most to lose in

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expanding coastal states fishing rights, and to retain their interest in negotiating a multilateral law of the sea. Developing coastal states' opposition to protection for distant-water fishing would, according to the rationale of this option, be mollified by the provision for reasonable license fees.

The problem with the option as phrased is that absolute guarantees would likely be a red flag for many developing coastal countries even if the sweetener of license fees is thrown in. We do not think this option should be so rigidly phrased. It may be more appropriate to talk of reasonable safeguards for existing distant-water fisheries subject to reasonable licensing arrangement. By presenting the problem in this fashion we would be signalling our willingness to respect historic distant-water fisheries off our own coast - which is important to countries like the USSR and Japan - and we would expect other coastal states to do the same.

Discussions with DOD officials who are interested in this option subsequent to the submission of the NSSM response indicate that they might be prepared to go along with the modified language outlined above.]

Substantive Proposal Option 3: Straits

This section simply states we will maintain our present position on straits. It does not, therefore, involve any policy decision.

Substantive Proposal Option 4: A comprehensive approach to ocean resources by adopting Seabeds Option 1 and Fisheries Option 3 simultaneously, both containing a 200-mile trusteeship zone

State favors this option - and it is clearly one of the serious choices before us, the other being selection of the seabeds option and Fisheries Option 1 or 2.

Pro: This proposal should capture the imagination of other countries, disarm the Latin Americans, and would lead to an agreement that protects our vital security interests because coastal states would be offered means to satisfy their interest in resources off their coast without resorting to unilateral assertions of territorial jurisdiction.

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Con: The cons separately advanced previously for these options would apply. In essence, the argument against is that it would be too much too soon. It could lead other states to conclude we were prepared to conclude agreements containing wide coastal state jurisdictional limits on other issues before the Committee - e.g., pollution and scientific research; and it would be a dramatic step without yet having a true appreciation of the extent of international support for our present U.S. seabed trusteeship proposal.

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