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NSC/Southern's to Smith 09/06/2002

By Date 02/13/07

NATIONAL SECURITY COUNCIL
Washington, D.C. 20506

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July 22, 1971

National Security Decision Memorandum 122

TO: The Secretary of State
 The Secretary of Defense
 The Secretary of the Interior
 The Secretary of Commerce
 The Secretary of Transportation
 The Director, Central Intelligence Agency

SUBJECT: U.S. Oceans Policy

The President has reviewed the discussion and options set forth in the response to NSSM 125. He has made the following decisions with respect to positions to be taken by the U.S. Delegation to the Preparatory U.N. Law of the Sea session at Geneva beginning July 19.

1. Territorial Sea and Straits Proposals

The United States Representative will formally introduce draft Articles 1 and 2 with respect to a 12-mile territorial sea and free transit through and over international straits. These articles will be introduced in the form in which they have been previously discussed bilaterally with a number of countries. In introducing these proposals the U.S. Representative will make clear that they constitute basic elements of the Oceans' policy announced by the President in May 1970 and that any treaty to which the United States could be expected to become a party would have to accommodate these objectives. The Delegation should indicate in discussions with other Delegations that U.S. willingness to accommodate other states' resources interests will depend on their willingness to accommodate these U.S. objectives.

2. Seabeds Proposals

The Delegation will pursue the previously established positions, but will have authority to make alterations in our proposed treaty in response to points made by other nations and various other domestic interests that do not go to the substance of our position.

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The Delegation will indicate our belief that this session of the committee should be devoted to determining the regime to be applied within the trusteeship zone and the area beyond, and that this can be done without determining the outer boundary. The United States will not at the outset of the meeting initiate or support any proposal for any change in the formulation of the outer boundary for the trusteeship area, but could indicate that the United States is not committed to the method of delineating the outer boundary of the trusteeship zone suggested in our draft treaty. If it appears necessary in the course of the negotiations, the Delegation may, with the approval of a majority of the Agencies represented on the Delegation, initiate or support a mileage definition of the outer limit of the seabeds trusteeship zone. Such a definition might, at the discretion of the Delegation, be couched either in general terms, or in specific terms of a 200-mile breadth. No mileage definition, however, should restrict the jurisdiction of coastal states over seabed resources shoreward of the 200-meter isobath. The Delegation should report its decision to take such action to Washington for final review prior to implementation.

3. Fisheries

The U.S. Representative will introduce the present Article 3 as modified in accordance with Fisheries Option 1 and with such further changes, not going to its substance, as the Delegation may approve. However, in introducing this Article the U.S. Representative will state that our consultations have indicated a need for further accommodation of coastal states by distant water fishing states. Our Delegation will express the view that an appropriate provision with respect to historical rights should be negotiated between the coastal and distant water states, and will invite other states to submit reasonable fisheries proposals, stressing that to be acceptable to the United States, they should be formulated in such a way as to avoid encroachment by coastal states on freedom of navigation beyond a 12-mile territorial sea. In plenary sessions or discussions with other Delegations, the Delegation is authorized to discuss modifications of the principle of absolute protection for traditional distant water fisheries including reasonable licensing proposals. Should another delegation raise the issue of widely migratory species, the Delegation is authorized to explore proposals for accommodation, including reasonable licensing arrangements, but should not take any affirmative position without referral to Washington. In its discussions of fisheries the Delegation should stress the importance of a substantive trusteeship proposal limiting coastal state control and the necessity of any agreed solution having sufficient international elements to avoid expansion of coastal state jurisdiction.

With regard to general option 2 of the NSSM 125 response, the President does not believe pressures of this kind should be applied at a time when we are seeking to enhance multilateral support for our oceans proposals. This option may, however, be reviewed at some future time if it appears that our negotiations for a law of the sea are not succeeding.

With regard to general option 3, the President has requested a study by the Ad Hoc Group of those situations in which the application of bilateral sanctions can be contemplated. The study should identify the countries, the possible sanctions, the probable consequences of taking such actions, and recommendations. Important differences should be clearly presented, and not submerged in the interest of a consensus. The study should be presented to the Chairman of the Senior Review Group not later than October 30.

With regard to general option 4, the President approves a high level diplomatic campaign in support of our law of the sea policy.

The Secretary of State is responsible for the implementation of this NSDM with appropriate interagency coordination through the Ad Hoc Group designated to prepare the response to NSSM 125. In addition to leading our negotiating Delegation, the chairman of the Ad Hoc Group is responsible for coordinating the substance of all public affairs guidance for interagency use in dealing with the press, the public, and Congress on matters affecting Law of the Sea negotiations.

The Ad Hoc Group is requested to forward a report to the Chairman of the Senior Review Group on the implementation of this NSDM and on progress of our Law of the Sea negotiations not later than three weeks after the return of our Delegation from the Preparatory Law of the Sea negotiations to be held in Geneva beginning July 19.

The Ad Hoc Group should also submit, not later than September 10, scenarios and negotiating positions for dealing with outstanding fisheries disputes with Brazil and West Coast South American countries which are consistent with the multilateral fisheries posture outlined above. The Secretary of State is authorized to establish a date for bilateral negotiations with Brazil subsequent to September 20, 1971.


Henry A. Kissinger

CC: The Chairman, Joint Chiefs of Staff