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SECRETARY OF DEFENSE

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DEPARTMENT OF STATE  
WASHINGTON

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April 1, 1977

Dear Charles:

Thank you for your letter of March 2, 1977, to Secretary Vance regarding the possible effects on U.S. national security interests of the recognition in a comprehensive Law of the Sea Treaty (LOS Treaty) of a 200-mile Exclusive Economic Zone (Economic Zone). You specifically raise the issue of the effect of the creation of the Economic Zone on the exercise of traditional "high seas" freedoms beyond the territorial sea.

The United States has supported the creation of an Economic Zone because of the importance we attach to national control of the living and non-living resources within such a zone. As you know, U.S. legislation which became effective on March 1, 1977, unilaterally creates a 200-mile zone off our shores for fisheries purposes, and we have, since 1945, claimed a right to exploit mineral resources underlying our continental shelf. In the context of the LOS negotiations we have been at pains, however, to delimit carefully the rights and obligations of coastal States in the administration of resources within the Economic Zone. In so doing we have sought to make clear the preservation, within the Economic Zone, of high seas freedoms and other reasonable uses as provided in the 1958 Convention on the High Seas, except as certain non-military freedoms may be specifically modified by the Treaty. As you are aware, the Treaty will endow coastal States with certain authority with respect to the conduct of scientific research and to protect the marine environment in the Economic Zone, as well as grant rights to control exploitation of fisheries and mineral resources.

The Honorable  
Charles W. Duncan, Jr.,  
Deputy Secretary of Defense,  
Washington, D.C.

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Specific, relevant objectives agreed to by the Department of Defense and sought by U.S. negotiators with regard to the Economic Zone, in accordance with Presidential instruction (see NSDM 288, March 24, 1975), have included:

- "1) Freedom of navigation and;
- 2) Freedom to lay and maintain submarine cables and pipelines, subject to accommodation of coastal State seabed resources and environmental interests;
- 3) Specified coastal State jurisdiction which does not place residual rights in the coastal State over uses other than those specifically enumerated in the instructions as being subject to coastal State jurisdiction."

We recognize that before these objectives can be said to have been achieved in unambiguous terms, pertinent draft articles of the current Revised Single Negotiating Text will have to be amended. To this end representatives of the State and Defense Departments have been working in close coordination, not just with each other, but also with representatives of other major maritime powers. It is my belief that continued, close intra-governmental and international cooperation on the important issue of high seas freedoms in the Economic Zone can result in the adoption of treaty language which protects vital U.S. national security interests. In this effort, we would propose to continue to strengthen and clarify treaty language regarding the rights and duties of coastal and other States in the Economic Zone. Working together, we should be able to achieve unambiguous treaty language which preserves appropriate high seas freedoms in the Economic Zone.

I agree with you that the final text of the LOS Treaty must be assessed in its entirety on this issue. Applicable articles must be evaluated together. The nature and history of the negotiating process in the U.N. Conference on Law of the Sea is such that no single article or phrase can be said to determine whether our national security interests will have been preserved. In this regard, I also assume that we must

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evaluate any final LOS Treaty text as a whole, and not just issue by issue, before determining whether or not, on balance, it enhances or detracts from the nation's security. Such an analysis must, of course, take into account not only the articles which deal with rights and obligations of States within the Economic Zone, but also other provisions which can affect vital national security interests. Especially important in this regard, I am sure you will agree, are Treaty provisions guaranteeing unimpeded transit through international straits.

I appreciate receiving your views on this important subject. Ambassador Richardson assures me that he and his staff value greatly their continued close working relationship with the Department of Defense and that he expects that this relationship will assure agreement upon negotiable approaches to the Economic Zone issue which will protect U.S. security interests.

With warm regards,

Sincerely,

*Warren*

Warren Christopher  
Acting

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