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THE DEPUTY SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

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Authority: EO 13526
Chief, Records & Declass Div, WHS
Date: SEP 02 2015

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Honorable Zbigniew Brzezinski
Assistant to the President for
National Security Affairs
The White House
Washington, D.C. 20500

Office of the Secretary of Defense
Chief, RDD, ESD, WHS
Date: ~~02 SEP 2015~~ Authority: EO 13526
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Reason: _____
MDR: 15-M-0579

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Dear Mr. Brzezinski:

As you know, the Department of Defense has been concerned for some time with the continuing erosion of high seas freedoms through unilateral claims by coastal states. These claims, if embedded into law and international practice, pose a real threat to the unimpeded movement of U.S. forces on, under and over the oceans of the world. We are hopeful, of course, that the UN Law of the Sea Conference will produce a comprehensive treaty which will serve as a widely accepted legal basis for the protection of essential high seas rights. Even if an acceptable treaty is concluded eventually, however, it probably will be three or four years before it becomes effective. In the meantime, a new body of customary international law claims could become so widespread and forceful as to clearly be incompatible with basic U.S. security interests. Indeed, some countries now take the position that expanded territorial sea claims already have become valid as a matter of customary law. It therefore is now imperative that the U.S. actively assert its position on high seas rights lest they erode by default.

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The Navigation and Overflight Policy paper which you approved on 20 March 1979 provides clear guidance on this matter with regard to diplomatic protests and the assertion of rights. Accordingly, and in response to your memoranda of both 20 March and 2 July 1979, DOD has embarked upon a comprehensive plan of action which will bolster our general posture and legal position by dispelling any impression that we have in practice acquiesced in excessive and illegal claims. To the best of my knowledge, however, with the exception of delivery of a long-pending note to France, there have been no diplomatic protests issued since the Navigation and Overflight Policy Paper was approved on 20 March of this year.

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I am convinced that effective implementation of this important policy will require a more vigorous program of authoritative diplomatic initiatives. Informal consultation with other states typically results in no more than pro-forma consideration of U.S. Law of the Sea concerns and does little to resolve basic problems. Further delay of formal protests, or diplomatic action of equivalent and immediate effectiveness, means that the effect of coordinated DOD action vis-a-vis a given state to strengthen our general posture against these excessive claims will be weakened.

In keeping with the spirit and intent of the Navigation and Overflight Policy Paper and using the criteria outlined in that paper, DOD has compiled a list of coastal states whose claims are illegal and unquestionably excessive and which pose a significant challenge to U.S. security interests. I have attached this list for the earliest possible consideration by the Law of the Sea Contingency Planning Group on Navigation and Overflight in the hope that the claims involved will become the subjects of formal diplomatic protests, or diplomatic action of equivalent and immediate effectiveness, in the near future.

It is recognized, of course, that in a certain few instances there may be compelling reasons for delaying action. For the most part, however, I would envision that this initiative reasonably could be completed with regard to most of the countries listed over a period of the next twelve months. Moreover, consideration could be given to the use of a circular note as appropriate which sets forth maritime claims which the United States recognizes and which reserves our rights and those of our nationals in the premises.

I cannot over-emphasize the importance which DOD places upon timely implementation of our Navigation and Overflight Policy. You have assurance of our full support in this regard.

Sincerely,

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W. Graham Claytor, Jr.
W. Graham Claytor, Jr.

Enclosure

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Territorial Sea Limits Greater than 12 Nautical Miles

Angola - 20 miles	Gabon - 100 miles
Nigeria - 30 miles	Senegal - 150 miles
Togo - 30 miles	Benin - 200 miles
Cameroon - 50 miles	Congo - 200 miles
The Gambia - 50 miles	Ghana - 200 miles
Madagascar - 50 miles	Guinea - 200 miles
Tanzania - 50 miles	Peru - 200 miles
Mauritania - 70 miles	Somalia - 200 miles

Archipelago Claims

Cape Verde	Philippines
Fiji	Mauritius
Indonesia	Solomon Islands
Sao Tome & Principe	

Baseline, Historic and Internal Waters Claims

Burma (222 mile line closes Gulf of Martaban)
Libya (300 mile line closes Gulf of Sidra)
Guinea (120 mile single baseline)
Panama (Gulf of Panama claimed as historic bay and its waters internal)
Madagascar (123 mile baseline)
Argentina/Uruguay (closing line across mouth of Rio de la Plata)

States Requiring Prior Permission or Notification for Warships to Enter their Territorial Seas

Algeria	Indonesia
Bangladesh	Maldives
Barbados	Mauritius
Brazil	Mauritania
Bulgaria	Pakistan
Burma	Somalia
China (PRC)	Soviet Union
Ecuador	Sri Lanka
German Dem. Rep.	Sudan
India	Yemen (Aden)

Attachment

Page determined to be Unclassified
Reviewed Chief, RDD, WHS
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Date SEP 02 2015

MEMORANDUM

NATIONAL SECURITY COUNCIL

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October 31, 1979

ACTION

MEMORANDUM FOR: DAVID AARON
 THRU: TOM THORNTON
 FROM: ROBERT PASTOR
 SUBJECT: Provoking the Latins on the Territorial
 Sea Issue

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I would like to raise a series of specific and a more general objection to DOD's plan to send U.S. ships and planes within the 200 mile territorial limit claimed by various governments as a clear statement of disagreement with that position. (e)

The General Problem

The one kind of issue that unites all the Latins instantly against the U.S. is a sovereignty-related issue in which the U.S. is asserting its military predominance. Regardless of ideological coloration, all the Latins from Chile to Cuba protested vehemently last August when our "navigational freedom" program was publicized. I was in Quito at Roldos' inauguration at the time, and Vance made clear our position. They protested, but they also understood our position. (e)

I am concerned that if we continue these military exercises, we may be injecting an unnecessary irritant in our relationship every six months or so. There's no question that the irritation will build to a level where the Latins will decide that they're going to stop dealing with us on issues -- like Cuba, Caribbean, Central America -- which we care about. I also fear that we may unwittingly be welding an anti-U.S. coalition together, which could only serve the interests of the Cubans. (e)

I am not suggesting that we renounce our position on the 12-mile limit, nor do I think that even the Latins are asking for that. They know what our position is; they just don't like it when we rub their noses in it every six months. I believe the historical record of our position is clear; and if we really need to send warships within 200 miles of the continent, no country in Latin America will stop us. On the other hand, if we

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keep provoking them by these exercises, by the time we really need their cooperation, we may not have it. Let's antagonize the Latins for good reason, not for no reason. (e)

Specific Problems

I therefore hope you will reconsider this program. But even if you decide that we should continue to go ahead with it, I would strongly recommend that you reconsider the exercise as it relates to Peru, Ecuador, and El Salvador at this time. Until the vote on the UN Security Council seat is resolved, it would be best not to give Cuba an issue that it could use to attract the Latins. Zbig decided not to go ahead with the exercise around Cuba for that reason, and I hope that we can similarly postpone the exercise to Peru and Ecuador until the vote is finalized. (e)

With regard to El Salvador, it seems to me that we want to find issues that strengthen both the junta and its relationship with the U.S. in a way which would permit it to withdraw popular support from the extreme left. One thing we might want to consider is a port call, if the junta requested it. The last thing we would want to do now is challenge their sovereignty, as this exercise would do. The left would have a field day, and the junta would find itself in an extremely awkward position protesting our challenge to their sovereignty while at the same time accepting military assistance from us quietly. I hope we can postpone this exercise for a while. (e)

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