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THE JOINT CHIEFS OF STAFF
WASHINGTON, D.C. 20301

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JCSM-353-74
16 August 1974

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MEMORANDUM FOR THE SECRETARY OF DEFENSE

Subject: Reassessment of US Position on Archipelagos (U)

1. (U) Reference is made to:

a. A memorandum by the Staff Director, NSC Under Secretaries Committee, NSC-U/SM-137C (J-5 USC 23-74), dated 27 March 1974, subject: "Draft Recommended Instructions for the Law of the Sea Conference (U)."

b. JCSM-113-74, dated 2 April 1974, subject: "Draft Recommended Instructions for the Law of the Sea Conference (U)."

c. National Security Decision Memorandum No. 260, dated 24 June 1974.

2. (S) The Joint Chiefs of Staff have completed a reassessment of the US Government position with respect to the archipelago issue in Law of the Sea (LOS) negotiations, in the light of experience gained recently through discussions with archipelagic claimants. This reassessment has led to the conclusion that certain changes should be made in the US position which was recommended in reference 1a, accepted by the Joint Chiefs of Staff in reference 1b, and approved in reference 1c. The changes recommended herein are based on the belief that they would not only obtain the active support of archipelagic states but also would facilitate an acceptable accommodation with such claimants. As such, the changes should be key factors in the achievement of the straits and high seas goals vital to US national security.

3. (S) The Joint Chiefs of Staff recommend that the US Government position on archipelagos, as set forth in the instructions contained in reference 1a, be modified in the following specific ways:

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SCHEDULE OF EXECUTIVE ORDER 11652
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a. Width of Archipelagic Passage Area. The US Delegation to the LOS Conference should be authorized to accept a fallback to a formulation providing that archipelagic passage would apply to 75 percent of the area between the nearest points of land or 50 nm, whichever is less, of the waters between main islands.

b. Measurement of Territorial Sea from Archipelagic Baselines. The US Delegation should be authorized to accept a formulation which would allow archipelagic states to measure their territorial sea from archipelagic construction lines, provided that the treaty explicitly recognizes that the jurisdiction over archipelagic waters conferred by the treaty on the archipelagic state is subject to, and limited by, the right of archipelagic passage through and over archipelagic waters and territorial seas, from high seas to high seas.

c. Overflight Lanes Noncoincident or Offset from Archipelagic Passage Areas. The US Delegation should be authorized to accept provisions which would allow an archipelagic state to designate overflight lanes for archipelagic passage which could be non-coincident or offset from archipelagic passage areas in the sea. However, the treaty would have to insure that the right to overfly both through straits and across archipelagic waters is firmly established on its own merit. The treaty could then further provide for designation of overflight corridors in which this right could be utilized. The danger to be avoided is any implication that the right of overflight exists solely because of designation of corridors. Additionally, the following must be adequately provided for in the treaty:

(1) It would be necessary for the convention to assure adequacy of both numbers and alignment/direction of corridors. Designation of corridors could not be within the sole discretion of archipelagic states.

(2) Air corridors would include the airspace over 75 percent of the area between the nearest points of land or 50 nm, whichever is less, to allow for potential navigational difficulties. Deviations outside the corridors may at times be required for such reasons as safety of flight or force majeure.

(3) The right to operate shipborne aircraft during normal transit throughout the airspace above archipelagic passage areas of the sea must be preserved, designation of noncoincident overflight corridors notwithstanding. This right is consistent with the US position that ships in archipelagic passage may take such measures as are normal for their safety and self-defense.

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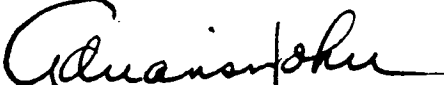
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d. Notification by Ships Leaving Archipelagic Passage Areas. The US Delegation should not be authorized to accept a requirement that ships notify the coastal state if it became necessary to leave archipelagic passage areas and enter archipelagic waters during transit. Such a notification requirement for passage into archipelagic waters would establish an unacceptable precedent with respect to innocent passage in the territorial seas, which does not now require notification, and could be extended to a regime of unimpeded transit through international straits.

e. Objective Definition of Archipelagic State. The US Delegation should be authorized to accept a straight maximum water-to-land ratio of 10 to 1 rather than the present 5 to 1 ratio which allows waters in atolls to count as land area.

4. (S) The above recommendations are not intended to alter any of the other elements included in the instructions to the US Delegation for possible accommodation with archipelagic states. Moreover, the Joint Chiefs of Staff strongly reaffirm their position that any accommodation, based on these elements, must result in the key archipelagic claimant, Indonesia, giving its active support for the straits and other navigational objectives of the United States.

For the Joint Chiefs of Staff:


ADRIAN ST JOHN
Major General, USA
Vice Director
Joint Staff

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