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THE WHITE HOUSE  
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SYSTEM II  
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NATIONAL SECURITY DECISION  
DIRECTIVE NUMBER 265

March 16, 1987

FREEDOM OF NAVIGATION PROGRAM

~~(S)~~

Since March 1979, the United States has successfully conducted a Freedom of Navigation (FON) program to protect U.S. navigation, overflight, and related interests on and over the seas against excessive maritime claims. ~~(S)~~

Policy

In July 1982, the United States announced that it would not sign the Law of the Sea Convention because of several problems in the Convention's deep seabed mining provisions. The United States does, however, support the provisions of the Law of the Sea Convention governing traditional uses of the oceans which generally confirm existing maritime law and practice and fairly balance the interests of all states. ~~(S)~~

General U.S. policy on the Law of the Sea is contained in NSDD-83 (U.S. Oceans Policy, Law of the Sea, and Exclusive Economic Zone) and the public Presidential statement of March 10, 1983. Two important aspects of those documents pertain to U.S. policy on freedom of navigation and are reflected below. ~~(S)~~

First, the United States is prepared to accept and act in accordance with the balance of interests relating to traditional uses of the oceans -- such as navigation and overflight. In this respect, the United States will recognize the rights of other states in the waters off their coasts, as reflected in the Convention, so long as the rights and freedoms of the United States and others under international law are recognized by such coastal states. ~~(S)~~

Second, the United States will exercise and assert its navigation and overflight rights and freedoms on a worldwide basis in a manner that is consistent with the balance of interests reflected in the Convention. The United States will not, however, acquiesce in unilateral acts of other states designed to restrict the rights and freedoms of the international community in navigation and overflight and other related high seas uses. ~~(S)~~

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Partially Declassified/Released on 8/10/92  
under provisions of E.O. 12356  
by S. Tilley, National Security Council

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Categories of Excessive Maritime Claims

U.S. interests are to be protected against the following categories of excessive maritime claims:

1. Those historic bay/historic water claims not recognized by the United States. ~~HA~~
2. Those territorial sea baseline claims not drawn in conformance with the customary international law reflected in the Law of the Sea (LOS) Convention. ~~HA~~
3. Those territorial sea claims not exceeding twelve nautical miles in breadth that:
  - a. overlap straits used for international navigation and do not permit transit passage in conformance with the customary international law reflected in the LOS Convention, including submerged transit of submarines, overflight of military aircraft, and surface transit of warships/naval auxiliaries, without prior notification or authorization, and including transit in a manner of deployment consistent with the security of the forces involved; or
  - b. contain requirements for advance notification or authorization for innocent passage of warships/naval auxiliaries or apply discriminatory requirements to such vessels; or
  - c. apply special requirements, not recognized by international law, for innocent passage of nuclear-powered warships (NPW) or warships/naval auxiliaries carrying nuclear weapons or specific cargoes. ~~HA~~
4. Territorial sea claims in excess of twelve nautical miles. (U)
5. Other claims to jurisdiction over maritime areas in excess of twelve nautical miles, such as security zones, that purport to restrict non-resource related high seas freedoms. ~~HA~~
6. Those archipelagic claims that either:
  - a. do not permit archipelagic sea lanes passage in conformance with the customary international law reflected in the LOS Convention, including submerged passage of submarines, overflight of military aircraft, and surface transit of

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warships/naval auxiliaries, without prior notification or authorization, and including transit in a manner of deployment consistent with the security of the forces involved; or

b. are otherwise not in conformance with the customary international law reflected in the LOS Convention. ~~DA~~

#### Program Guidance

The Department of Defense will plan and administer the program under the following procedures:

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[REDACTED] (b)(1)  
(c)

U.S. rights against the following categories of excessive claims: unrecognized historic claims (paragraph 1 above), nonconforming baselines (paragraph 2 above), and territorial sea claims of twelve nautical miles or less which contain special requirements not recognized by international law (paragraphs 3.b and 3.c above).

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[REDACTED] (b)(1)  
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International straits (paragraph 3.a. above) and archipelagic sea lanes (paragraph 6.a. above) will be used by both military ships and aircraft freely and frequently as directed by the Department of Defense.



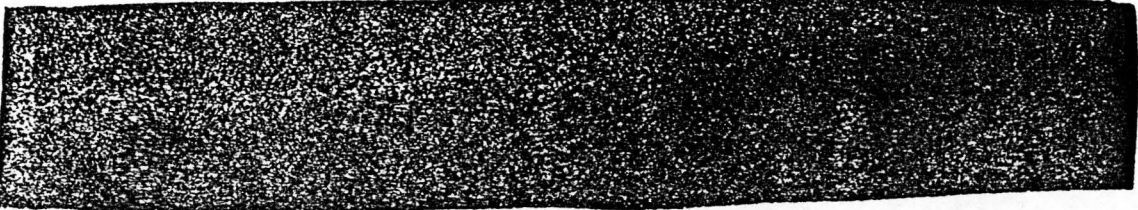
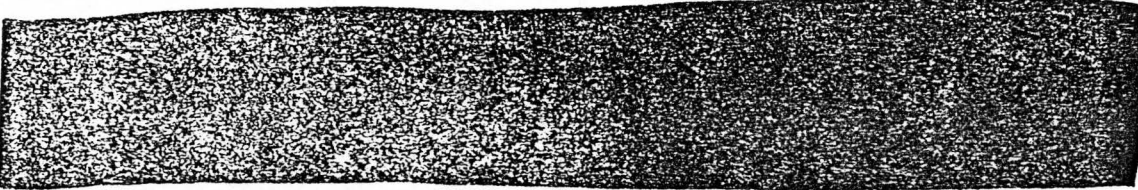

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- o The Department of Defense will routinely assert U.S. rights against territorial sea claims, other claims to jurisdiction over maritime areas in excess of twelve nautical miles, and archipelagic claims not in conformance with the LOS Convention, (paragraphs 4, 5, and 6.b. above).  (b)(1)  
(c)  

- o A Table summarizing the above guidance is attached as Tab 1 to this NSDD. ~~(S)~~
- o  (b)(1)  
(c)
- o The Department of State will continue to protest in diplomatic channels the excessive claims of littoral countries. ~~(S)~~
- o  (b)(1)  
(c)
- o Where possible, we should strive for a balanced challenge program which contests the excessive claims or illegal regimes of allied or friendly states, inimical powers, and neutral states alike.  (b)(1)  
(c)
- o Special emphasis should be given to challenging claims which have no record of prior challenge. ~~(S)~~

Attachment  
Tab 1 - Table

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Table Denied in full

(b)(1)

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