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THE WHITE HOUSE
WASHINGTON

20527

October 12, 1990

NATIONAL SECURITY DIRECTIVE 49

MEMORANDUM FOR THE VICE PRESIDENT
THE SECRETARY OF STATE
THE SECRETARY OF DEFENSE
THE SECRETARY OF TRANSPORTATION
THE CHIEF OF STAFF TO THE PRESIDENT
THE ASSISTANT TO THE PRESIDENT FOR NATIONAL
SECURITY AFFAIRS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF

SUBJECT: Freedom of Navigation Program (U)

United States security and commerce depend upon the internationally recognized freedoms of navigation and overflight of the seas. Since 1979, the United States has successfully conducted a Freedom of Navigation (FON) Program to protect U.S. navigation, overflight, and related interests on, under, and over the seas against excessive maritime claims. The purpose of the FON program is to preserve the global mobility of U.S. forces by avoiding acquiescence in excessive maritime claims of other nations. (U)

This directive provides current guidance for the management and organization of the FON program and supersedes National Security Decision Directive 265. (C)

Policy

While not a signatory to the 1982 Convention on the Law of the Sea (LOS Convention), the United States considers the Convention to accurately reflect the customary rules of international law concerning maritime navigation and overflight freedoms. (U)

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 President's Oceans Policy statement of March 10, 1983. (C)

This policy provides that the United States will respect those maritime claims that are consistent with the navigational

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provisions of the LOS Convention. Additionally, the United States will exercise and assert its navigation and overflight rights on a worldwide basis in a manner consistent with the LOS Convention. The United States will not acquiesce in unilateral acts of other states designed to restrict the rights and freedoms of the international community in navigation and overflight and other traditional uses of the high seas. (U)

The Freedom of Navigation Program combines diplomatic action and operational assertions of our navigation and overflight rights to encourage modification of, and to demonstrate nonacquiescence in, maritime claims that are inconsistent with the customary rules of international law pertaining to maritime navigation and overflight freedoms. (U)

Categories of Excessive Maritime Claims

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

1. Historic bay/historic water claims not recognized by the United States. (U)
2. Territorial sea baseline claims not drawn in conformance with the customary international law reflected in the LOS Convention. (U)
3. 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 all vessels, including warships/naval auxiliaries, or apply discriminatory requirements to such vessels; or
 - c. apply special requirements, not recognized by international law, for innocent passage based on means of propulsion, armament, or cargo. (U)

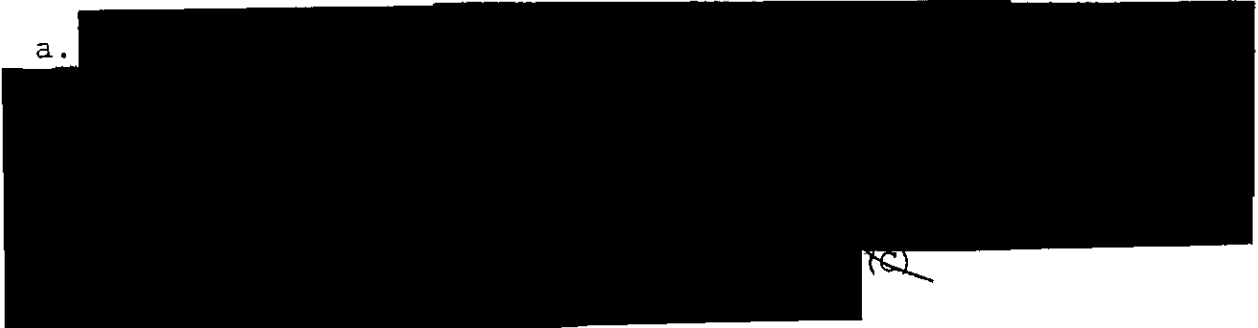
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4. Territorial sea claims in excess of twelve nautical miles. (U)
5. Other claims to jurisdiction over maritime areas in excess of twelve nautical miles, such as security zones, that purport to restrict non-resource related high seas freedoms. (U)
6. Archipelagic claims that either:
 - a. do not permit archipelagic sea lanes passage in conformance with customary international law reflected in the LOS Convention, including submerged passage 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. are otherwise not in conformance with customary international law reflected in the LOS Convention. (U)

Program Guidance

1. The Department of State shall act assertively to preserve U.S. navigation and overflight rights under international law. The Department of State shall use its facilities, here and abroad, to encourage each state with excessive maritime claims to conform its laws and/or conduct with customary international law concerning maritime navigation and overflight freedoms. The Department of State shall protest excessive maritime claims to avoid legal acquiescence. (U)
2. The Department of Defense will plan and administer the operational assertion portion of the FON Program under the following procedures:
 - a.  (U)

1.5
(d)

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Criteria for the selection of an excessive maritime claim for the annual list will include, but are not limited to, the following:

[REDACTED]

1.5
(a) +
(d)

b. Categories of excessive claims to be submitted for coordination include:

-- unrecognized historic bay/historic water claims (paragraph 1, above);

-- excessive straight baseline claims (paragraph 2, above);

-- territorial sea claims (of 12 nautical miles or less) that include: unlawful restrictions or requirements relating to innocent passage (paragraph 3b, above); or that apply unlawful discriminatory restrictions or requirements based on means of propulsion, armament, or cargo (paragraph 3c, above);

-- territorial sea claims in excess of twelve nautical miles (paragraph 4, above)

[REDACTED]

1.5
(a)

-- 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 (paragraph 5, above)

[REDACTED]

1.5
(a)

3.

[REDACTED]

1.5
(d)

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5

[REDACTED]

1.5(a) +
(d)

(C)

4.

[REDACTED]

1.5(a)

(C)

5.

[REDACTED]

1.5
(a) +
(d)

(C)

6. Military ships and aircraft will use international straits (paragraph 3a, above) and archipelagic sea lanes (paragraph 6a, above) freely and frequently

1.5(a)
+ (d)

[REDACTED]

7. Military ships and aircraft will routinely assert U.S. rights against territorial sea claims and other claims to jurisdiction over maritime areas in excess of twelve nautical miles that purport to restrict nonresource related high seas freedoms, and archipelagic claims not in conformance with the LOS Convention (paragraphs 4, 5, and 6b, above).

1.5(a)
+ (d)

[REDACTED]

(C)

8.

[REDACTED]

1.5
(d)

(C)

9.

[REDACTED]

1.5
(a) + (d)

10.

[REDACTED]

1.5(d)

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1.5
(d)

11. The Department of Defense will provide to the Department of State and the National Security Advisor a semiannual list of operational assertions conducted under the FON Program. The Department of State shall, when appropriate, use the semiannual list of operational assertions in its diplomatic efforts to preserve United States navigation and overflight rights under international law. The Department of State will publish an annual unclassified summary of the diplomatic activities under the FON Program. (U)

12. On an annual basis, the Department of Defense will incorporate into an already existing report an unclassified listing of FON operational assertions conducted during the previous year. The listing will specify the country and excessive claim, but not the date or frequency of the assertion. Assertions specified in the annual list will become unclassified upon incorporation into the report. (U)