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CABINET
DEFENCE AND OVERSEA POLICY COMMITTEE

EXTENSION OF THE UNITED KINGDOM TERRITORIAL SEA

Memorandum by the Secretary of State for Trade

I am circulating this paper in my capacity as Chairman of the Ministerial Group on Maritime Affairs (MISC 19).

2. One uncontroversial provision in the draft United Nations Convention on the Law of the Sea permits the extension of individual countries' territorial sea to a limit of 12 nautical miles from appropriate baselines. The Government will need to decide whether to take advantage of this provision and colleagues may wish to consider anticipating the conclusion of the United Nations Law of the Sea Conference on this point, as a majority of countries have done already.

3. We have two distinct ranges of interest. On the one hand the Royal Navy and our merchant fleet want the maximum freedom of navigation and an internationally agreed set of rules enshrining this. The draft Convention, if adopted, would provide these, whether or not we took advantage of the option to extend our own territorial sea. But we also have an interest in obtaining maximum authority to control the activities of vessels passing close to our shores, especially as regards safety and pollution. This argues for extending our own limits. There is general agreement among departments that, for these reasons, we should extend. The one substantial snag is that by extending our territory we should be extending the area over which European Community competence applies; this could add to our problems in defending the requirement that hydrocarbons from the UK continental shelf be landed in the UK. MISC 19 concluded that, on balance, the risks were acceptable but that OD should be aware that they exist.

4. The countries which have not already claimed a territorial sea of 12 miles or more are now in a small minority. There are no domestic reasons for delaying a decision to extend. The difficulties are two-fold. First, the United States have told us that they are strongly opposed to an extension by the UK. They fear that such a move by a major maritime power would set a dangerous example of unilateralism and, particularly, since it would complete the enclosure of the Channel within United Kingdom and French territorial waters, would risk the unravelling of the draft Convention text establishing the new concept of "transit passage". While there are many issues, like that of

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transit passage, on which the United States have interests identical to our own, on other points we rely crucially on the United States' support to maintain our own interests in the UNLOSC. There are therefore substantial risks in incurring US displeasure, though it is difficult to assess how much this would be reflected in negotiations. Second, purely from a negotiating point of view, we shall have a difficult task in restraining the UNLOSC from resorting to voting procedures to settle the outstanding issues at the Conference (in which we would be in a small minority). Given the importance of these issues to us, we should clearly be extremely cautious over any step which could increase our difficulties.

5. On the other hand, the Government is under considerable pressure in Parliament to extend, in order to increase the area over which we could apply our powers to reduce the risk of collisions and pollution, and to bring offenders to book. The Government would be severely criticised if there were to be a major pollution disaster in the 3 to 12 mile zone round the UK coast which might have been avoided or mitigated by the acquisition of these extra powers. Even if the powers were not of immediate relevance we would be accused of not having taken all possible steps to protect the UK coastline. Unfortunately it has not proved possible to devise a way of extending our territorial waters which would avoid affecting the question of passage rights.

6. One possible solution to the political problem would be to announce our intention to extend our territorial waters and our preference for doing so in the context of a successful UNLOSC. We have however established that the United States would regard such a step as being almost as unsatisfactory as actual extension. An announcement would reduce parliamentary pressure for a decision while inevitably raising the question of early legislation. That in turn could present a problem: although provision has been made in the 1980-81 legislative programme for a contingency Bill to incorporate a UN Convention on the Law of the Sea into UK law, we should need a separate decision to include a programme Bill to extend the territorial sea. The likelihood is that such a Bill could not be introduced until the 1981-82 Session.

CONCLUSIONS

7. The Ministerial Group concluded that the likely benefits of extension of the UK territorial sea were such as to justify detailed examination of the legislative changes that would be required. Work on this is therefore going ahead on a confidential basis. In due course we shall need to consult our allies and the countries with waters adjacent to our own. But it would be premature to do this, because of repercussions at UNLOSC, at least until after the forthcoming round of negotiations. For the reasons described above it would also be premature to make any announcement at this stage. But the Ministerial Group agreed that we should need to look again at this question in September. Meanwhile, I invite my colleagues to:

- i) decide that, in principle, the United Kingdom territorial sea should be extended to 12 miles;
- ii) agree that no announcement of our intention should be made for the time being;
- iii) invite the Ministerial Group on Maritime Affairs to consider further, in the light of the outcome of the Ninth Session of UNLOSC, the question of extending unilaterally the UK territorial sea; and to report again to the Committee.

Department of Trade
30 June 1980

J. N.