Confidential

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28/2/83

Dear John,

We spoke and I agreed to send you an unofficial copy of this paper so that you could judge whether or not it needs shortening before submission to the Prime Minister.

The key paragraphs are 20 - 22 but the rest of it is relevant if the argumentation is to be described in full.

Yours ever

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Confidential

EXTENSION OF THE FALKLAND ISLANDS TERRITORIAL SEA

Note by Officials

Introduction

1. At present the breadth of the territorial sea around the Falkland Islands, as around the United Kingdom and all other dependent territories, is 3 nautical miles. This paper examines the advantages and disadvantages of extending the Falkland Islands territorial sea to 12 nautical miles.*

2. a. Annex A explains the concept of the territorial sea and its legal implications.

b. Annex B, which is an updated version of MISC 19(82) 9 explains in detail the background to the question of extending United Kingdom territorial sea and the options now facing us in relation to that subject.

c. Annex C describes the particular problems of Gibraltar.

d. Annex D provides details of the historic fishing rights which might be affected by an extension to 12 miles around the United Kingdom.

e. Annex E gives a list of countries (125) who have already extended their territorial seas beyond 3 nautical miles and those still retaining a 3 mile limit.

Falkland Islands Aspects

3. These can be divided into five categories -

a. defence
b. pollution
c. economic
d. relations with Argentina
e. policing.

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*(All subsequent references to "miles" should be read as meaning "nautical miles".)

4. As regards defence, whether or not the existing 150 mile protection zone continues, an extension of the territorial sea around the Falkland Islands would give limited powers to constrain the activities of foreign ships, submarines and aircraft in the 3-12 mile belt (see Annex A for details of these powers). But ships, including warships and submarines on the surface are entitled to pass in "innocent passage" through the territorial sea. This right can only be suspended temporarily. Thus we could not generally prevent foreign vessels from making visual observations or sending or receiving radio signals within the territorial sea. (There is no evidence at present that foreign vessels, eg Polish trawlers, are gathering intelligence in the 3-12 mile belt of a nature which they would not be able to gather if it were declared territorial sea.) We would be legally entitled to force foreign submarines to pass through the 3-12 mile belt on the surface and showing their flag; and all overflights by foreign aircraft, civil or military, would require our permission which is not the case at present. But any action against passing ships would have to be justified on the basis of illegal action by the ships or within the strict rules of the international right of self defence, and it seems unlikely that these could be invoked against any ships other than Argentine ships. (The above assumes that we would want to interpret "innocent passage" very carefully in order to avoid setting precedents which might be used against us in contexts other than the Falklands.) However, so long as the Argentine position remains unclear and we maintain a protection or exclusion zone around the Falkland Islands, it is possible to obtain the same (indeed greater) advantages in the field of defence without extending the territorial sea; and if the cost of maintaining a wide exclusion zone of 150 miles (as at present) became prohibitive, it would be possible to reduce it and obtain the defence advantages which extension of the territorial sea to 12 miles would offer, without actually having to alter the territorial sea limits.

5. On the other hand there would be some defence advantage in going over to a system of straight baselines and bay closing lines, from which the territorial sea is measured, as illustrated in Chart A. Although such a system would not produce so great an area of sovereignty as a 12 mile territorial sea

measured, as at present, from the coastline and assumed bay closing lines, it would cause the 3 mile territorial seas to be displaced seawards. It would also cause some sensitive areas close to the coast to be designated as internal waters (for example, Falkland Sound and the islands fringing West Falkland): but under the 1958 Territorial Sea Convention it is necessary to concede a right of innocent passage in areas previously High Seas or Territorial Sea which are to be enclosed for the first time by straight baselines. Such innocent passage may be suspended temporarily except in straits used for international navigation. A right of innocent passage does not however exist in waters enclosed by bay closing lines. Consideration is being given urgently to how passage can be best controlled, temporarily or permanently, within a systen of straight base lines or bay closing lines. The method chosen will depend upon the frequency of present use of the Sound by foreign shipping and upon the existence of similar baselines elsewhere.

6. As regards pollution, extension to 12 miles could involve an extension of certain powers to cover the 3-12 mile belt, namely powers -

a. to prosecute foreign vessels when they arrive at a United Kingdom-controlled port for offences committed;

b. to give directions to foreign citizens in this belt in the event of marine casualties;

c. to prevent trans-shipment of oil during tanker lightening operations;

d. to make casualty enquiries relating to incidents involving foreign vessels in this belt.

7. But in the Falkland Islands, pollution by passing foreign vessels is not at present a problem and there is no significant advantage to be obtained from the extension of such powers.

8. As regards economic advantages, the territorial sea does incidentally confer certain powers over the resources contained within its limits as explained in Annex A. But as to fisheries, it would be simpler to obtain the economic advantages in the 3-12 mile belt by imposing exclusive fishing limits. In his 1982 report Lord Shackleton has advocated declaring a 200 mile exclusive fishing zone around the Falkland Islands; this - or a fishing zone of any other breadth up to 200 miles - could be declared at any time without having to alter the breadth of territorial sea. (This subject is being studied separately as part of the follow-up to Lord Shackleton's Report.) In any case shellfish exploitation if it were developed, would be likely to take place both inside and outside the 12 mile limit. A 12-mile territorial sea would not therefore offer a complete guarantee for the protection of such fisheries. Our understanding is that salmon ranching, which has more potential benefit than other fisheries, would not benefit to a significant degree from an extension to 12 miles, since it is carried on mostly within the existing 3 mile limit.

9. As regards offshore minerals, including oil and gas, we already have a right to control the mineral resources of the continental shelf around the Falkland Islands, irrespective of the breadth of territorial sea. This right is based on our sovereignty over the islands themselves. Extension of the territorial sea around the Falkland Islands would therefore have no economic advantages which could not be obtained by other means.

10. Extension of the territorial sea around the Falkland Islands would be likely to provoke a protest from Argentina. This would itself not damage our interests except in so far as it attracted support from other Latin American countries (eg in the United Nations). It is doubtful however whether such a protest would lead to a practical challenge to the extension, at least so long as there is a sizeable United Kingdom naval presence around the Falkland Islands.

11. The policing of an extended territorial sea around the Falkland Islands is not likely to be a practical, as opposed to a theoretical, requirement, except with regard to enforcing any fisheries regime that may be established (see paragraph 8 above).

Implications for wider United Kingdom interests

12. Extension of the territorial sea around the Falkland Islands could not be kept separate from extension around the United Kingdom and other dependent territories. There is already strong pressure for an extension around the United Kingdom on the grounds that it would give us increased powers to combat marine pollution (see paragraph 6 above); and it would add to existing pressure from the Isle of Man for an extension. Similarly, the Channel Islands and other dependencies (especially in the Caribbean) are watching the situation closely. Three wider aspects therefore need to be considered -

a. United Kingdom navigational rights in other countries' territorial seas, especially as regards international straits covered by territorial sea claims and innocent passage of warships in the territorial sea;

b. historic fishing rights enjoyed by EC Member States off the United Kingdom coast;

c. Greco-Turkish relations in the Aegean.

13. As regards United Kingdom navigational interests, it is important that if we extend the territorial sea around the Falklands, we should not set any precedents which could prejudice our freedom of passage elsewhere. The main problems relate to inter-nationally used straits between 6 and 24 miles wide which are covered by territorial sea claims; and the passage of warships through the 3 to 12 mile belt off the coasts of countries which have claimed 12 mile territorial seas. About 100 straits fall into the category described, including Gibraltar, Hormuz and Malacca (see Chart B); and 12 mile territorial sea claims cover large areas used by our navy and merchant navy. Extension to 12 miles could have serious implications for our ability to reinforce Gibraltar in an emergency (see Annex C).

14. Even though there are no internationally used straits between 6 and 24 miles wide in the Falkland Islands, an extension to 12 miles would put at issue our attitude to all such straits, which are covered by territorial sea claims.

Hitherto, we have refused to recognise formally any territorial sea claims beyond 3 miles in keeping with our own claim, although we do not protest against claims of up to 12 miles. An extension to 12 miles around any British territory would make it impossible to hold this formal position which is still useful to us in ignoring certain 12 miles claims, particularly those which have the effect of "closing" international straits (eg around Gibraltar, as explained in Annex C). Although rights of "innocent passage" are allowed in the territorial sea, they are inferior to "high seas" rights. In particular, submarines must travel on the surface showing their flag and overflights by both civil and military aircraft have to be approved in advance by the coastal state concerned unless they fall within existing civil aviation agreements.

15. The navigational regime envisaged in the 1982 UN Law of the Sea Convention would offer a solution to this problem by allowing foreign ships, submarines and aircraft special "transit passage" rights in international straits in exchange for recognising the validity of 12 mile territorial sea claims. These rights would allow submarines to travel submerged and overflights to take place without prior approval. HMG publicly supported this package when it was negotiated and it was our hope that it would be possible to extend the United Kingdom territorial sea in the context of a generally agreed UNLOSC Convention which would institute such a regime. However, UNLOSC has now finished without achieving a generally agreed result, and HMG have not felt able to commit themselves to signature of the Convention, let alone to ratification.

16. In these circumstances it is extremely doubtful whether the "transit passage regime" would offer a solution to our problem. We could extend the territorial sea around the United Kingdom or any of our dependencies without relying on the UN Convention, but it would be difficult to claim transit passage rights in other countries' territorial seas, since such rights are not yet part of customary international law - no state has instituted a transit passage regime in any strait. Both Spain and Oman are opposed to the transit passage regime and have not signed the Convention. Annex B describes in detail various possibilities which might help us to get round this problem, but none of them are without serious objections. Meanwhile a major

difficulty would remain as regards Gibraltar, where, as explained in Annex C, our ability to reinforce the colony in times of tension would be adversely affected, if we had only the right of innocent passage to rely on in the face of a Spanish 12-mile claim which we could not dispute.

17. As regards innocent passage of warships through the territorial sea, many states claim that foreign warships should not be allowed to enter their territorial seas without prior authorisation or at least notification. Although an amendment reflecting this view was defeated in the UNLOSC negotiations, and although present international law upholds the right of innocent passage for warships in foreign territorial seas, it may be difficult in practice to exercise such rights in the 3-12 belt if we ourselves extend to 12 miles. For instance, naval intervention in the Gulf could become more difficult. Provided we stick to a 3 mile territorial sea limit around the United Kingdom and dependencies, we will have a better chance of maintaining flexibility of deployment for our warships in the 3-12 mile belt. (Countries which have signed the UN Convention, eg the USSR, will be in a better position to send warships through this belt without prior authorisation because they could point to their attitude towards the Convention.)

18. With regard to historic fishing rights, now that the main elements of the CFP have been settled, MAFF believe it would be possible to extend the baselines in the five small areas described in Annex D without causing major complications. It is relevant that the French have already extended their territorial sea to 12 miles. They have also already accepted the possibility of our extending our baselines in connection with the recent delimitation of the Continental Shelf in the Channel.

19. Any extension of 12 miles by the United Kingdom either round the United Kingdom itself or its dependencies, could provoke a reaction from the Turks because of the situation in the Aegean. At present Greece claims a 6 mile territorial sea and signed the 1982 Convention which will permit them to claim 12 miles. Turkey sees this provision of the Convention as a means whereby the Greeks could turn the Aegean into a Greek lake and have therefore refused to sign the Convention. They are likely to see any United Kingdom extension beyond 6 miles as affording the Greeks additional support in their case for extending the Greek territorial sea in the Aegean.

Conclusions

20. An extension of the territorial sea around the Falkland Islands would confer no particular defence advantages, and any economic advantages could be obtained by other means (eg declaring fishing limits). Moreover, any such extension would be likely to affect our interests in other parts of the world and should be considered in the context of United Kingdom policy on the law of the sea as a whole. Although it would be legally possible to extend the territorial sea around the Falklands without extending it around the United Kingdom or any other dependent territory, politically this would be difficult to justify, especially as the advantages to be gained from an extension around the Falklands are so limited. There is, in any event, a political need not to be seen to be giving the Falkland Islands any different status from other British territories.

21. However none of these difficulties would arise if it were decided to establish a system of straight baselines and bay closing lines as illustrated in Chart A. This would be permitted by Articles 4 and 7 of the 1958 Territorial Sea Convention and would reflect the practice of many countries, including the United Kingdom around West Scotland. Under the 1958 Convention it would be necessary to publish the system of straight baselines, and make legislative provision either through Order in Council or by an Instrument of the Falkland Islands Government. This would be advantageous from the defence point of view. It would not have the difficult repercussions of extending the breadth of the Territorial Sea itself; but would have a similar effect of pushing seaward the outer limit of the Territorial Sea. In addition it would give greater possibilities of control over some sensitive stretches of sea close to land than would be achieved by a simple extension of the Territorial Sea.

22. It would be preferable not to extend the territorial sea around the Falklands until the question of extending the United Kingdom territorial sea has been settled. But if the United Kingdom territorial sea were extended, the objections to extending around the Falkland Islands would largely disappear.

ANNEX A

THE CONCEPT OF THE TERRITORIAL SEA AND ITS LEGAL IMPLICATIONS

A The territorial sea and other maritime zones

1. The territorial sea is only one of several kinds of maritime zones which can be claimed by coastal states (see Chart D). These are -

a. the territorial sea (extending to 3 or, according to most countries, 12 miles) where the coastal state enjoys sovereignty in respect of the seabed and the airspace over it;

b. the contiguous zone (lying outside the territorial sea, to a limit of 12 miles from the baselines of the territorial sea under the 1958 Convention and 24 miles from those baselines under the 1982 Convention) where the coastal state has powers to take action to prevent infringements of customs, fiscal, immigration or sanitary regulations within the territorial sea;

c. the exclusive economic zone (now often extending to 200 miles from the coast) where the coastal state has power to control the exploitation of living resources, eg fish, but should not interfere with navigation; some states take only a fishery zone of the same width;

d. the continental shelf (the seabed adjacent to the coast extending to 200 miles or in favourable geological circumstances even further) where the coastal state has control of mineral resources eg oil/gas on or underneath the seabed.

2. Thus, as regards the exploitation of living resources of the sea (fish), it is accepted that coastal states can establish fishing zones or 'exclusive economic zones' up to 200 miles from their coast while maintaining their territorial sea limits at only 3 or 12 miles. The resources of the seabed (eg oil and gas) can be exploited on the basis of the continental shelf concept, stretching often many miles off shore, without extending their territorial

sea. The United Kingdom has only a 3 mile territorial sea but has claimed a fishing limit of 200 miles from its coast; and the majority of our off shore oil wells are located about 100 miles from it. In sum, there is no need to extend the territorial sea in order to encourage fishing or secure mineral rights.

B Legal Implications of the Territorial Sea

3. A state enjoys sovereignty in the territorial sea. This implies a right to control to a large extent what happens in the territorial sea, eg warlike operations must not be carried out in a neutral territorial sea, and no other state can carry out military operations eg manoeuves there. The major limitation on coastal states' sovereignty is the obligation to grant innocent passage (see paragraph 5 below). Sovereignty also implies exclusive control over economic resources in or under the sea, but this is not the purpose or main interest of the zone, which has always been security. Indeed access to the resources may be governed by agreements giving, frequently for historical reasons, rights to other states.

4. The breadth of territorial sea now claimed by states varies widely. The traditional breadth was 3 nautical miles, based on the maximum range of cannon shot in the eighteenth century. But this limit was not universally accepted as part of international law. About 125 countries now claim more than 3 miles (see Annex E).

5. The regime of the territorial sea involves the following navigational rights and obligations -

a. on the surface of the territorial sea foreign vessels enjoy the right of innocent passage; this means navigation for the purpose of either traversing the territorial sea without entering internal waters, or proceeding to internal waters, or making for the high seas from internal waters. Passage includes stopping and anchoring, but only in so far as they are incidental to ordinary navigation or are rendered necessary by force majeure or by distress. Passage is deemed innocent so long as it is not prejudicial to the peace, good order or security of the coastal state. A state may, without discrimination amongst foreign ships,

suspend the right of innocent passage temporarily in specified areas of its territorial sea if such suspension is essential for the protection of its security; but, under the 1958 Convention, there can be no suspension of innocent passage through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign state. (Under the 1982 Convention a special regime of transit passage would apply in straits used for international navigation between one part of the high seas or an EEZ and another part of the high seas or an EEZ.) No charges may be levied on foreign ships passing through the territorial sea except in payment for specific services. Nor can the criminal jurisdiction of the coastal state be exercised on board a foreign ship unless the consequences of a crime extend to the coastal state or the crime is of a kind to disturb its peace and good order or exercise of jurisdiction is necessary for the suppression of drug trafficking;

b. under the surface of the territorial sea: foreign submarines are not allowed to travel submerged; they must navigate on the surface and show their flag;

c. in the airspace above the territorial sea: all overflights (by both military and civil aircraft) must be cleared with the authorities of the coastal state in advance, unless they fall within general civil aviation agreements.

ANNEX B

EXTENSION OF THE UNITED KINGDOM TERRITORIAL SEA

Note by Officials

Introduction

1. OD agreed in principle in July 1980 that the United Kingdom territorial sea should be extended from 3 to 12 nautical miles, but that this decision should remain confidential and that MISC 19 should submit further recommendations in the light of developments at UNLOSC.

2. In February 1981, MISC 19 agreed that work should be carried out on preparing legislation for an extension. It was subsequently agreed that an announcement should be made in Parliament. Mr Hurd accordingly stated in reply to an inspired PQ on 15 June 1981 that:

> "The Government support the provision in the draft Convention on the Law of the Sea which envisages an extension of the territorial sea up to 12 nautical miles. The Government have set in hand the necessary preparations for United Kingdom legislation for such an extension. It is hoped that it will be possible to introduce this legislation in the context of the results emerging from the United Nations Conference on the Law of the Sea".

3. In January 1982, ODO(S) reported to MISC 19 on the preparatory work carried out so far and MISC 19 agreed that the Foreign and Commonwealth Office should bid for a place in the government's legislative programme for the 1982/83 Parliamentary Session for a bill to extend the territorial sea. Officials were also instructed to continue the legislative preparations and report back with recommendations on the timing and form of legislation in the light of developments at UNLOSC and in the Common Fisheries Policy (CFP) negotiations. Since then, the bid for a bill to be included in the 1982/83 legislative programme has been turned down for lack of space but a bid has been entered for the 1983/84 programme.

4. MISC 19 considered an earlier version of this note on 9 November 1982, but put off discussion to a later date granted that it had earlier decided to defer a decison on whether the United Kingdom should sign the Convention itself (MISC 19(82) 2nd Meeting). The final session of UNLOSC took place in December 1982. 124 delegations have now signed the Convention, with the notable exception of the USA, UK, FRG, Italy, Belgium and two important straits states, Spain and Oman. Subsequently there have been further PQs from Lord Kennet asking whether the United Kingdom will be extending its territorial sea in the light of Mr Hurd's statement of June 1981. Dutch and German officials say that legislation will be introduced to extend Dutch and German territorial waters to 12 miles, although in the German case this concerns only a small part of the German coastline near Hamburg where there is a high risk of pollution.

Argument

5. United Kingdom objectives as regards the extension of the territorial sea are as follows -

a) that the Government should be seen to be taking every available measure to combat marine pollution;

b) that such measures should not however jeopardise our commercial, defence and fishing interests.

Because of objective (a), it would be desirable to extend the United Kingdom territorial sea from 3 to 12 miles along the whole of our coastline soon. (Some Dependent Territories' administrations are also keen for such an extension for the same reason.) But such an extension would apply also in the three straits round the United Kingdom which are used for international navigation ie the Dover Strait, the North Channel (between Northern Ireland and Scotland) and the Fair Isle Gap (between Orkney and Shetland). All these straits are less than 24 miles wide. If our territorial sea is extended to 12 miles in these straits, the high seas passage which at present exists throught those straits as a result of our three mile territorial sea would be eliminated;

and we would not be able to question the validity of similar claims to 12 mile territorial seas made in other very important straits round the world, notably at Gibraltar, Hormuz and Malacca. (Hitherto by sticking to a three mile claim ourselves, we have been in a position to maintain that a high seas passage exists in all those straits, which are between 6 and 24 miles wide, although the weight of state practice in favour of 12 mile claims makes it doubtful whether we could in fact challenge such claims under existing international law.)

6. Under the 1982 UNLOSC Convention, claims to territorial seas up to 12 nautical miles would be considered valid; and in any straits used for international navigation where as a result of such claims no high seas passage would exist, a special regime of transit passage would be applicable in the territorial sea, notably in that -

i) submarines would not be required to navigate on the surface showing their flag, and

ii) overflights by aircraft could take place without authorisation from the coastal states concerned.

Our commercial and defence interests make it strongly desirable that we should try to have such rights in straits abroad such as Gibraltar, Hormuz and Malacca.

7. It is for consideration therefore whether in the Dover Strait, the North channel and the Fair Isle Gap, we should establish the transit passage regime envisaged in UNLOSC, even if it is not yet decided whether we will sign, still less ratify, the Convention, and the Convention itself has not yet entered into force.

8. It might be argued that the introduction of a transit passage regime would assist us to claim the right of submerged passage for submarines and unannounced overflights through straits less than 24 miles wide where the coastal States have claimed a 12 mile territorial sea, such as the Straits of Gibraltar. However, to introduce transit passage unilaterally would not

strengthen our hand significantly. Since the transit passage regime does not form part of general international law, it would be easy for the other States concerned to refuse to grant the substance of transit passage to us on the grounds that, until the UNLOSC Convention has been signed and ratified by the United Kingdom and the other State concerned, there was no obligation to grant anything more than innocent passage, which does not include submerged passage or unannounced overflights.

9. There is a second difficulty. The international law rules of innocent passage are applied in English law without any statutory enactment because they are part of established international law. We interpret and apply all existing statutes in a manner consistent with international law. Thus, when the United Kingdom ratified the 1958 Geneva Conventions on the High Seas and on the Territorial Sea, it was not thought necessary to pass any legislation since the Convention rules concerning innocent passage and activities on the high seas, which were declaratory of general international law, could be applied without more ado. Therefore the natural way to give effect to the transit passage regime would be, <u>if</u> we ratified the Convention, to make clear that in the same way as we gave effect to innocent passage as part of general international law, so in future we would give effect to transit passage in straits relating to coastal waters, as from the date when the Convention came into force for the United Kingdom. But this approach will not work if we are trying to put in transit passage <u>before</u> the Convention comes into force and at a time when we cannot say that it is part of general international law.

10. Particularly since the rules of innocent passage are nowhere described in our legislation, it is very difficult to translate rules of transit passage into our legislation. As to overflight, the natural way would be to amend the Air Navigation Order; as to submarines, there is at present no prohibition on submerged passage, so nothing need be done.

11. If it was decided not to establish a regime of transit passage, it would be necesary to answer questions in Parliament about this matter. The natural reply would be along the following lines: in application of statutes in the extended territorial sea, in straits as elsewhere, we will conform to the rules of general international law. We will apply transit passage if it is decided to ratify the Convention and it comes into force for the United Kingdom. If asked, we would have to add that we did not think it possible to apply it in advance while it did not form part of general international law; if necessary, we could add that we did not consider that to do so would give any significant advantage in discussion with other countries, as long as we did not have the contractual relationship which would result from our ratification of UNLOSC.

12. An advantage of not applying transit passage at this stage is that it would avoid the difficulties which might arise in the North Channel if transit passage were applied. A transit passage regime in the North Channel would affect our defence interests there adversely in that -

a) Warsaw Pact submarines would be able to travel submerged in between the three mile limit and the base-line across the entrance to the Firth of Clyde, where at present they would not be permitted to do so under international law, since that is part of our territorial sea; similarly Warsaw Pact aircraft would be able to overfly that piece of water without authorisation from us. This would give them legally a marginally greater ability to monitor the passage of United States and United Kingdom nuclear submarines to and from their bases in the Firth of Clyde;

b) the terms of the transit passage regime envisaged in UNLOSC are such that the exercise of our powers of search in the North Channel might be challenged, which could affect our ability to intercept gun-running to Northern Ireland. (Although Article 42.1 (d) of the UNLOSC Convention gives states bordering straits the right to adopt laws and regulations in respect of the "loading or unloading of any commodity, currency or person in contravention of the customs, fiscal, immigration or security laws and regulations of states bordering straits", too zealous exercise by us of this right could provide grounds for states bordering straits abroad

which we wish to pass through to interfere with our ships and aircraft to the detriment of our commercial and defence interests. Iran, for instance, might stop all ships and aircraft trying to pass through the Straits of Hormuz and use our action in the North Channel as an excuse to do so.)

13. In order to avoid these disadvantages, it would be possible not to extend the territorial sea from three to 12 miles in the North Channel, thereby preserving our more extensive territorial sea powers in the waters within the three mile limit. There are precedents for extending the territorial sea in some places but not in others, where it does not suit the coastal state concerned. For instance, Japan and Sweden have both, in extending their territorial waters to 12 miles, exempted straits where they considered that it was not in their interests to do so. In the Swedish case, this move was particularly designed to avoid offering advantage to the Warsaw Pact, for which there could be no quid pro quo. But if we were to introduce a Bill extending the territorial sea to 12 miles everywhere round the United Kingdom coast, except in the North Channel, this might be interpreted by the Republic of Ireland to mean that we accepted their view that the territorial sea round Northern Ireland belonged to the Irish Republic, which only claims a three mile territorial sea. This would clearly be undesirable, although, since the North Channel does not extend as far as the borders of Northern Ireland in either direction, it would not be difficult to refute any Irish mis-representations by pointing to the fact that we were extending to 12 miles along some parts of the Northern Ireland coastline, notably in areas adjacent to the border with the Republic. The situation could change if the Republic itself extended its territorial sea to 12 miles. But it has at present shown no signs of doing so, probably out of inertia, but possibly because it would then have to deal with, and probably reiterate, its claim that the territorial sea round Northern Ireland also belonged to the Republic, a claim which causes less trouble while both territorial seas are in practice the same breadth. There is also the point that non-extension in the North Channel would not give us greater powers to combat pollution in that area. The communities on both sides of the Channel could justifiably claim that they were being discriminated against by comparison with the rest of the United Kingdom where extension to 12 miles would improve the chances of avoiding marine pollution.

14. As regards fisheries, the extension of the territorial sea would not in general affect fishery limits, which are regulated on the basis of six-mile, 12-mile and 200-mile zones. But it would enable us to claim as base points for measuring the territorial sea and fishing zones, points which we were not able to use so long as our territorial sea remained at three miles This would have the effect of pushing out our fishing limits for small distances at five points on the coastline; in the Thames Estuary, at the Goodwin Sands, off the Scilly Isles (two areas) and off the Firth of Forth. Some fishing, mainly by French and Belgian vessels, takes place in four of these areas. Since the extension would deprive Member States, and especially the French, of access to these areas, there will be EC implications. It is relevant that in another area (the Goodwin Sands) the French have already signed a Continental Shelf delimitation agreement with the United Kingdom, drawing a median line which takes account of some of these new base points. These considerations do not however affect the question whether transit passage should be applied or not, especially now that the CFP has been settled (see also Annex D). Baselines would also be pushed further out on the West coast of Scotland, including the Firth of Clyde, but this would only marginally alleviate the problem described in paragraph 12(a) above.

Conclusions

15. The following options are open to us -

a) not to extend the territorial sea at present;

b) to extend, but make no provision for transit passage through the straits;

c) to extend, applying transit passage in straits.

16. Not to extend United Kingdom territorial sea would be unsatisfactory in that:

a) the Government would not be seen to be taking every available measure to combat marine pollution; and if there was a serious incident, the Government would come under strong attack for not having extended;

b) we are already committed to considering legislation in the context of the results emerging from UNLOSC. It would be difficult to explain politically why we were still holding back, now that UNLOSC has ended, even if one could argue that the results of the Conference are not generally agreed.

17. To extend the United Kingdom territorial sea to 12 miles would involve accepting formally 12 mile claims made by other coastal states, including those in a number of important international straits. But it would be difficult anyway to challenge such claims under existing international law, given the degree of support provided by state practice for 12 mile claims. Application of a transit passage regime in United Kingdom straits would have little weight in bolstering any claim we made to similar rights in other straits if, at the same time, we could be accused of trying to obtain benefits from the UNLOSC Convention before its entry into force and without signing or ratifying it. If we had not signed the Convention when we extended our territorial sea, applying a transit passage regime might provoke challenges to our ability to pass through foreign straits covered by 12 mile territorial sea claims. If we had signed the Convention, the argument that application of a transit passage regime in our straits would have no weight would be slightly reduced, because we could not be acused of picking and choosing which parts of the Convention we wished to enjoy. But even so, we would soon run up against the argument that if we really wished to enjoy transit passage rights in other peoples' straits, then we should ratify the Convention forthwith; and in the absence of ratification, we would again be in danger of being regarded as trying to enjoy transit passage without making any commitment on deep sea mining.

18. Application of a transit passage regime in United Kingdom straits also involves problems posed by the North Channel, described in paragraphs 12 and 13 above.

19. If now, or at some later stage, Ministers decide to extend the United Kingdom territorial sea to 12 miles, it would be desirable to consult -

a) the United States, who share our defence and commercial interests in obtaining transit passage through straits abroad and also have a direct interest in the North Channel because of their nuclear submarine base at Holy Loch. They have recently made it clear that they would not challenge 12 mile claims provided they accord with UNLOSC and allow transit passage. They would be likely to press us to declare transit passage in the Straits of Dover if we told them we intended to extend.

b) the French, with whom it makes sense to co-ordinate anti-pollution measures in the Dover Channel and who raised the possibility of consultations when our Parliamentary announcement was made in June 1981. France has signed the UNLOSC Convention but may not ratify it;

c) the Dependent Territories' administrations: although the extension would apply in the first instance to the United Kingdom alone, it would be useful to know, before we are committed to legislation, what the Dependent Territories might wish to do in the event of a United Kingdom extension. Preliminary research suggests that a number of Dependent Territories would be able to extend without major difficulties. But there may be problems about straits in Dependent Territories; and in some cases it may be undesirable to alter the status quo for local reasons eg at Gibraltar because of Spain and at Hong Kong because of China. Consultations would also need to include the Channel Islands and the Isle of Man.

20. Meanwhile, legislative preparations for a Bill to extend the territorial sea continue. The Foreign and Commonwealth Office has submitted a bid for a contingency Bill, to be included in the legislative programme for the 1983/84 Parliamentary Session although it now seems unlikely that time for it will be found in the programme.

ANNEX C

PROBLEMS OF GIBRALTAR

1. The colony of Gibraltar lies to the east of the Straits of Gibraltar; these are more than 6, but less than 24 miles wide; Spain claims a 12 mile territorial sea extending both from the northern shore of the Straits and from the Spanish enclave of Ceuta on the North African coast; this means that claimed Spanish territorial waters stretch across the whole width of the Straits just to the west of Gibraltar (see Chart E).

2. This situation presents a problem should we wish to send reinforcements to Gibraltar in the face of any pressure over the colony short of armed hostilities. The problem is not serious so long as we can continue our present policy of refusing to recognise any claim beyond 3 miles. But if we extend to 12 miles ourselves, the problem will be seriously aggravated, since it would be impossible not to recognise the Spanish territorial sea claims.

3. The problem would be less severe if we had signed and ratified the 1982 UN Convention on the Law of the Sea, because we could then answer any Spanish objections, eg to unannounced overflight of the straits, by reference to the provision in the Convention on transit passage. This would be the case whether or not Spain was a party to the Convention if we could show that the Convention was also widely accepted by other states as well as the United Kingdom. But if we extend to 12 miles and do not sign and ratify the Convention, we can neither dispute Spanish 12 mile claims nor invoke transit passage rights. In that case, certain important forms of reinforcement, eg involving overflight of the straits, could only be undertaken with Spanish consent unless we were prepared to risk an international incident. Even though the Spaniards might challenge our overflights if we maintained a 3 mile limit on the grounds that 12 mile territorial seas are widely recognised, we would be on stronger legal ground if we had not extended to 12 miles ourselves.

ANNEX D

EXTENSION OF THE TERRITORIAL SEA

NOTE ON FOREIGN FISHING PATTERNS IN AREAS AFFECTED BY BASELINE CHANGES

1.	Bell Rock:	There are no foreign fishing rights within the 12 mile limit in this area. Our sightings records show that there is no foreign fishing near this area.
2.	Long Sand Head:	Since the CFP settlement, only France (all species) and Belgium (demersal) have historic rights to fish within the 6-12 mile belt here.
3.	Goodwin Sands:	As for Long Sand Head except that Belgium, Germany and the Netherlands also have historic rights to fish for herring here.
4.	and Wolf Rock:	France has historic rights in
5.	Seven Stones Rock:	the 6-12 mile belt in these areas for lobster, crawfish and demersal species (plus escallops at Wolf Rock) and Belgium has rights to demersal species in both areas.

Likely effect of changes

1. Areas 2 and 3: All foreign fishing would be excluded from a circular area (radium 6 miles) where it is at present permitted. This would probably have a small effect on demersal and pelagic (herring) fishing in this area.

2. Areas 4 and 5: Would exclude French and Belgian fishing from part of the demersal and shellfish grounds within the 6-12 mile belt and push out the 12 mile boundary outside which foreign pelagic (mackerel) fishing takes place.

Note: Our sightings data only gives us a guide to fishing activity in these areas according to the grid reference, the smallest identifiable area covering a square approximately 15 miles across. On this scale, the relative size of the adjustments is small and its practical effect limited. We have no data on the value of the catches involved in economic terms. This will doubtless be much lower than the political value, especially to the French.

ANNEX E

LIST OF COUNTRIES CLAIMING TERRITORIAL SEAS OVER 3 MILES (as at 14/2/83) AND THOSE STILL MAINTAINING 3 MILE TERRITORIAL SEAS

Albania	15
Algeria	12
Angola	20
Antigua	12
Argentina	200
Bahrain	12
Bangladesh	12
Barbados	12
Benin	200
Brazil	200
Bulgaria	12
Burma	12
Cameroon	50
Cambodia	12
Canada	12
Cape Verde	12
Chile	200 (still 3 miles in Civil Code)
(PR) China	12
Colombia	12
Comoros	12
Congo	200
Cook Islands	12
Costa Rica (200 Territorial Sea announced in 1970 but not yet implemented	12
Cuba	12
Cyprus	12
Djibouti	12
Dominica	12
Dominican Republic	6
Ecuador	200
Egypt	12
El Salvador	200
Equatorial Guinea	12
Ethiopia	12
Fiji	12
Finland	4
France	12
French Guiana	12
French Polynesia	12
Fujairah (UAE)	12
Gabon	100
Gambia	200
Ghana	200
Greece	6
Grenada	12
Guatemala	12
Guinea	200
Guinea-Bissau	12
Guyana	12
Haiti	12

Honduras	12	Monaco	12
Iceland	12	Morocco	12
India	12	Mozambique	12
Indonesia	12	Namibia	12
Iran	12	Nauru	12
Iraq	12	New Zealand	12
Israel	6	Nigeria	30
Italy	12	Niue	12
Ivory Coast	12	Norway	4
Jamaica	12	Oman	12
Japan	12	Pakistan	12
Kenya	12	Panama	200
Korea (N)	12	Papua/New Guinea	12
Korea (S)	12	Peru	200
Kuwait	12	Poland	12
Lebanon	6	Portugal	12
Liberia	200	Romania	12
Libya	12	Saudia Arabia	12
Madagascar (Malagasy) Republic)	50	Sao Tome and Principe	6
		Senegal	150
Malaysia	12	Seychelles	12
Maldives	12	Sierra Leone	200
Malta	12	Solomon Islands	12
Mauritania	70	Somalia	200
Mauritius	12	South Africa	12
Mexico	12	Spain	12
Micronesia (Fed States)	12	Sri Lanka	12
		Sudan	12

Surinam	12	Sharjah(UAE)	12
Sweden	12	USSR	12
Syria	35	Uraguay	200
Taiwan	12	Vanuatu	12
Tanzania	50	Venezuela	12
Thailand	12	Vietnam	12
Togo	30	Western Samoa	12
Tokelau	12	Yemen Arab Republic	12
Tonga	12	Yemen Peoples Democratic Republic	12
Trinidad and Tobago	12	Yugoslavia	12
Tunisia	12	Zaire	12
Turkey	6 (Aegean) 12 (Black Sea and Mediterranean outside the Aegean)		

Countries still maintaining 3 mile territorial seas

UK and Dependent Territories

USA

FRG (though considering extension to 12 miles in one area)

Netherlands (including Dutch Antilles)(though considering extension to 12 miles)

Belgium

Belize

Australia

Denmark (including Faroe Islands and Greenland)

German Democratic Republic

Irish Republic

Jordan

Kiribati

Nicaragua

Qatar

Singapore

St Christopher Nevis/St Lucia/St Vincent

Tuvalu

CHARTS

Chart A	-	Falkland Islands with 3 nautical mile limits marked, measured from a possible straight baseline system.
Chart B	-	Important Straits around the world and their minimum breadth.
Chart C	-	Effect of claiming 12 mile territorial sea claims in international straits less than 24 miles wide.
Chart D	-	Maritime Zones
Chart E	-	Straits of Gibraltar with current territorial sea claims.

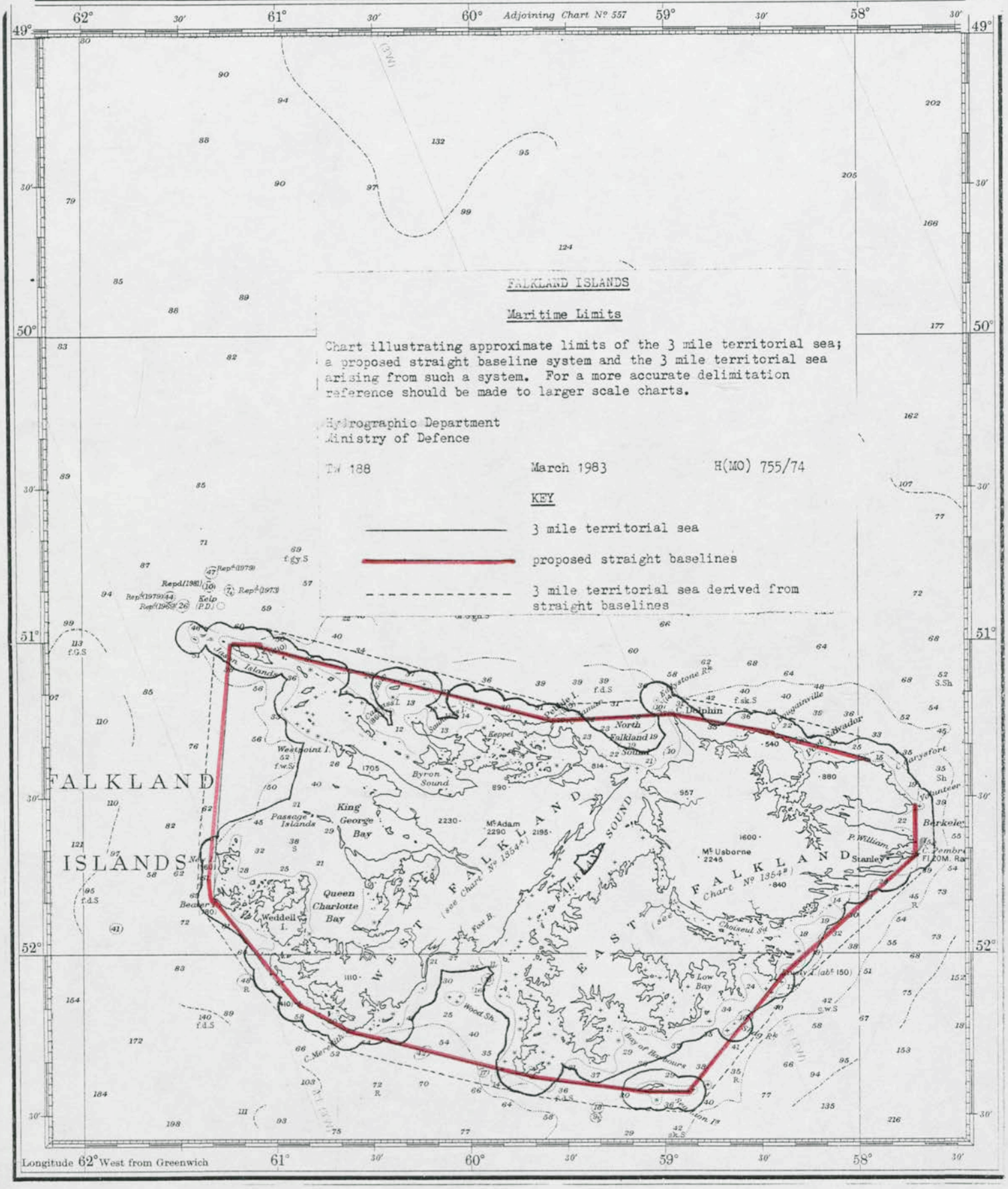
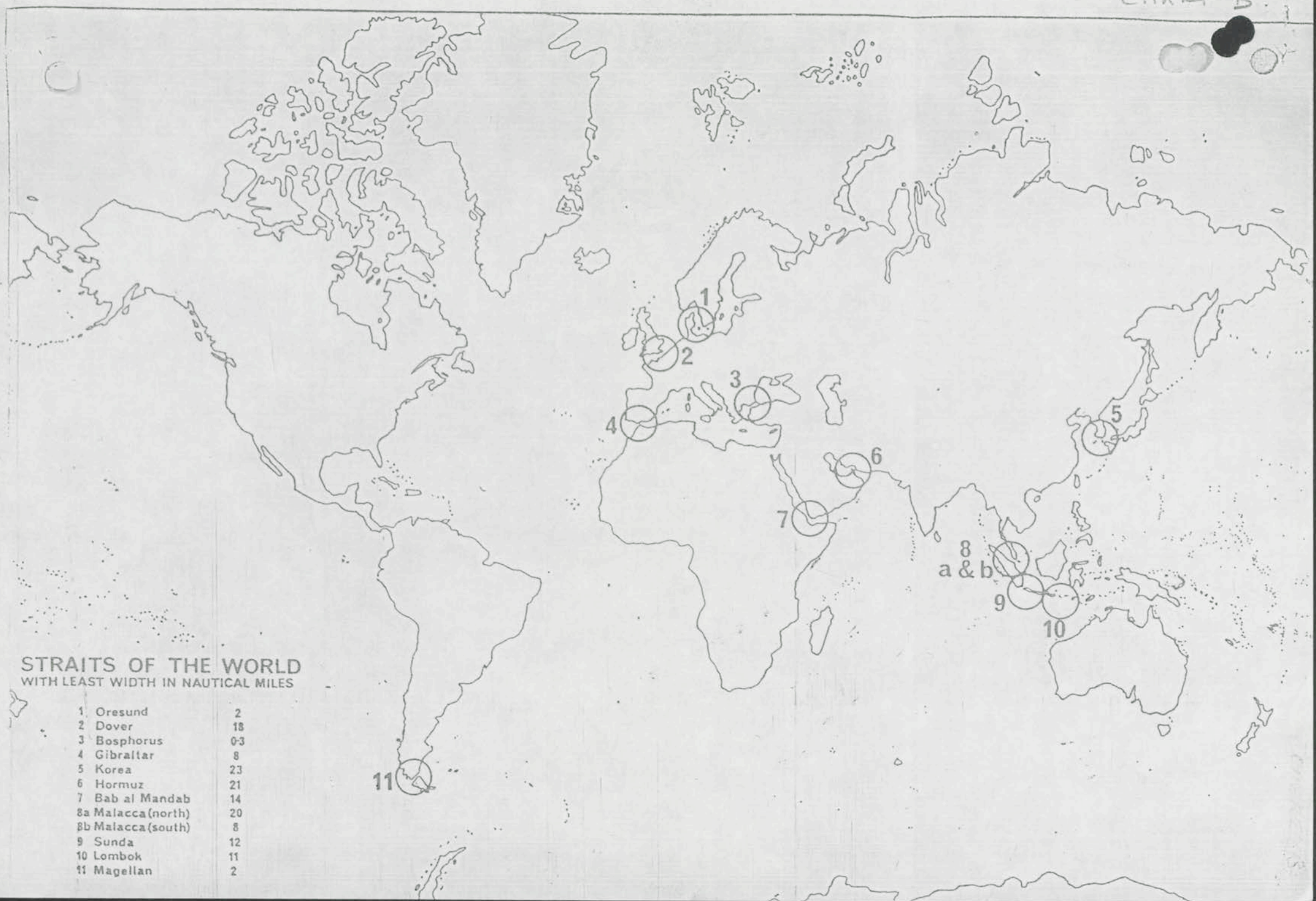

62° 30′ 61° 30′ 60° Adjoining Chart No 557 59° 30′ 58° 30′
49°
50°
51°
52°
FALKLAND ISLANDS
Maritime Limits
Chart illustrating approximate limits of the 3 mile territorial sea; a proposed straight baseline system and the 3 mile territorial sea arising from such a system. For a more accurate delimitation reference should be made to larger scale charts.
Hydrographic Department
Ministry of Defence
TM 188
March 1983
H(MO) 755/74
KEY
3 mile territorial sea
proposed straight baselines
3 mile territorial sea derived from straight baselines
Jason Islands
Keppel I.
North Falkland Sound
Dolphin
Westpoint I.
Byron Sound
King George Bay
Passage Islands
Queen Charlotte Bay
Weddell I.
Becher
Mt Adam
Mt Usborne
Stanley
Berkeley
Choiseul Sd
Low Bay
Wood Sh.
Bay of Harbours
Port Howard
WEST FALKLAND
EAST FALKLAND
FALKLAND SOUND
(see Chart No 1354)
Longitude 62° West from Greenwich

CHART B.

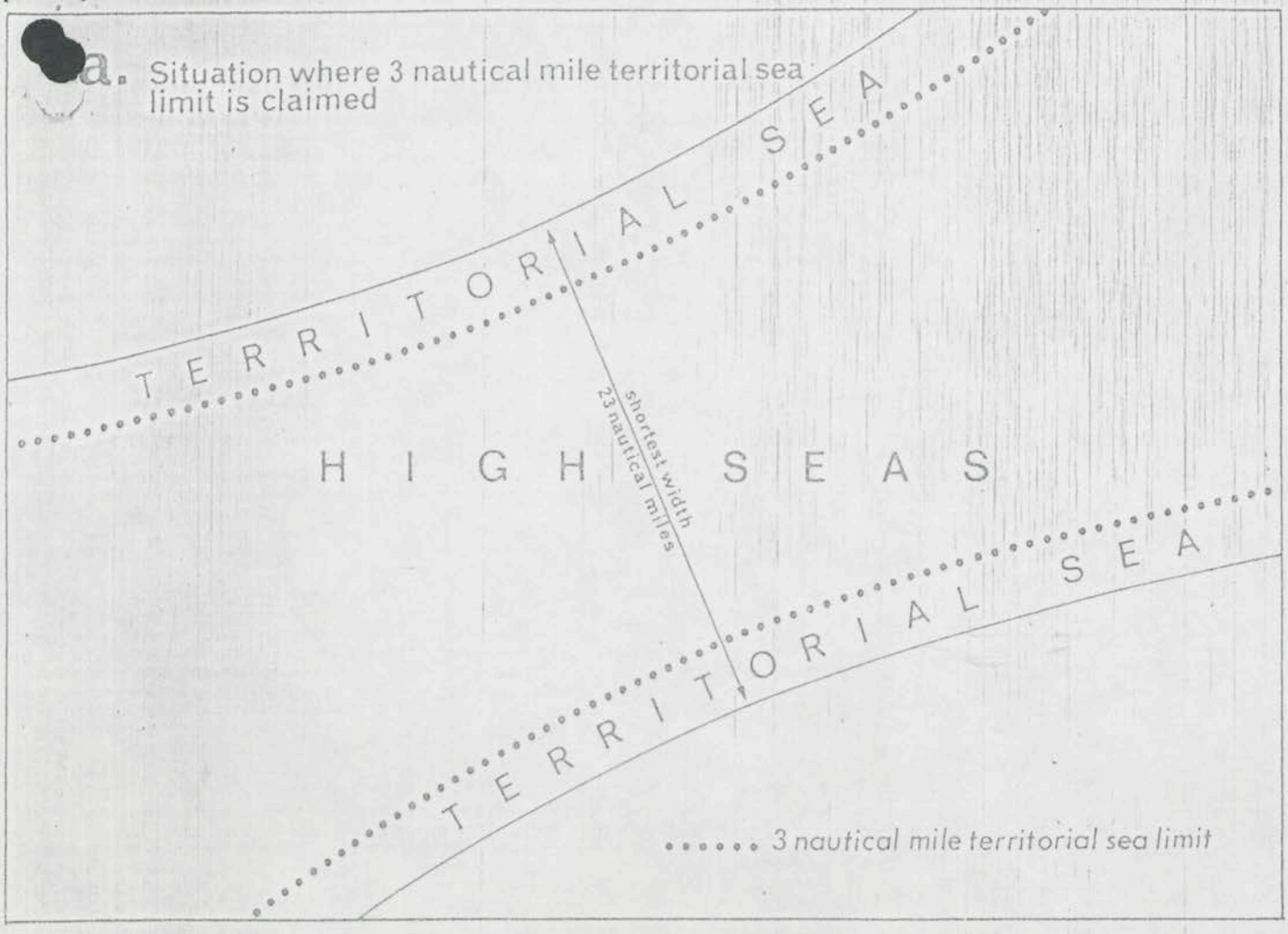


STRAITS OF THE WORLD
WITH LEAST WIDTH IN NAUTICAL MILES

1	Oresund	2
2	Dover	18
3	Bosphorus	0·3
4	Gibraltar	8
5	Korea	23
6	Hormuz	21
7	Bab al Mandab	14
8a	Malacca (north)	20
8b	Malacca (south)	8
9	Sunda	12
10	Lombok	11
11	Magellan	2

EFFECTS OF TERRITORIAL SEA CLAIMS ON STRAITS

CHART C



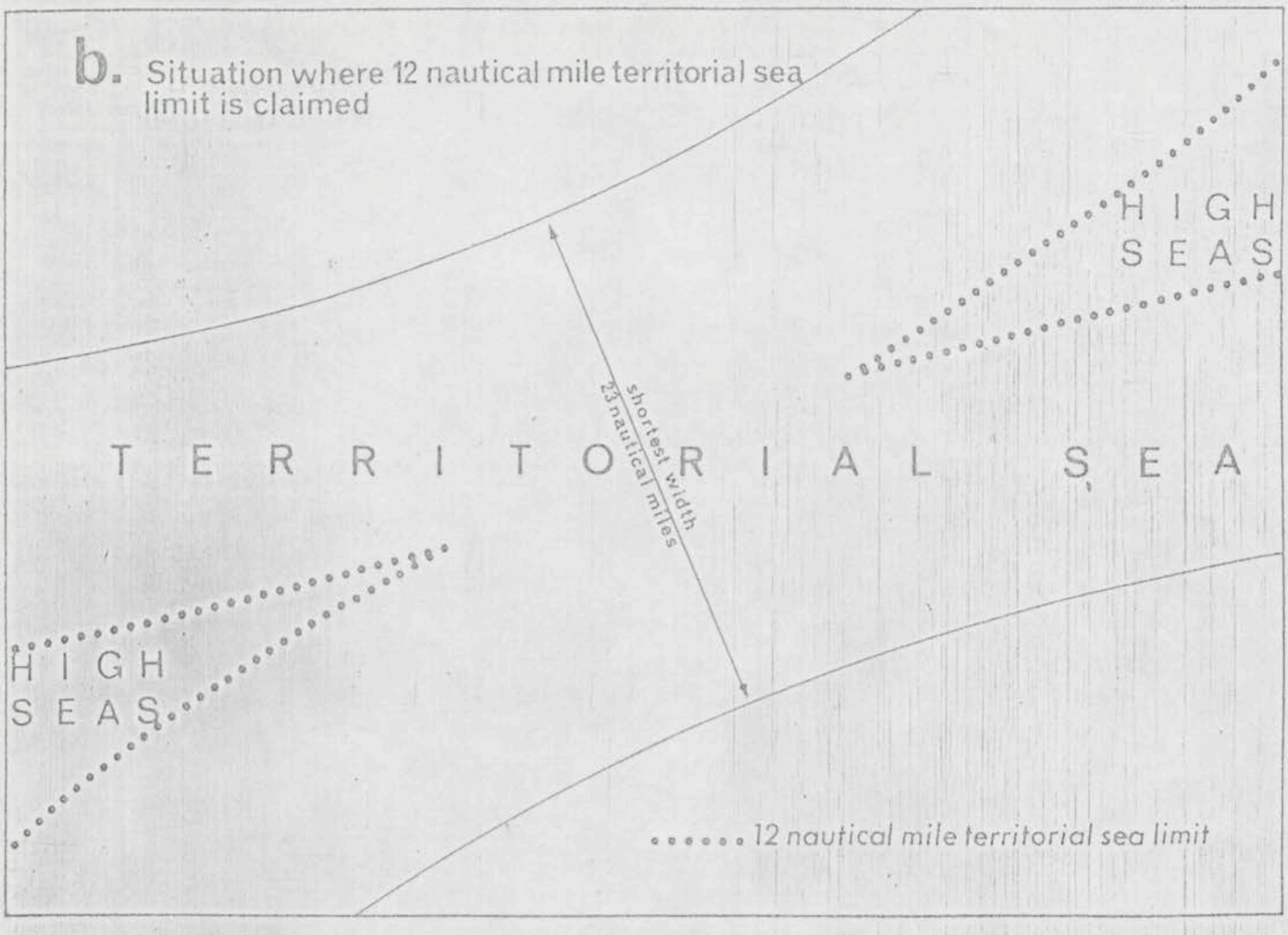
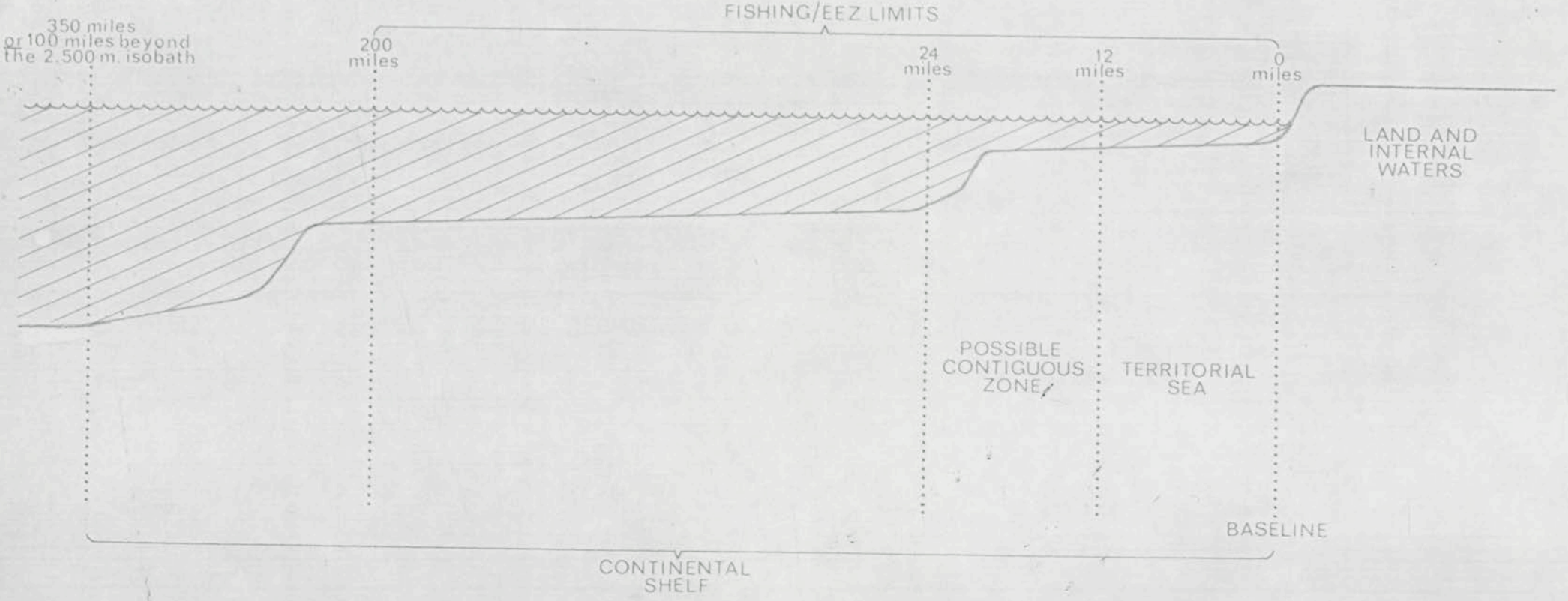


CHART D

DIAGRAM SHOWING MAXIMUM MARITIME ZONES



CONFIDENTIAL

CHART E