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C.(52) 255

COPY NO. 68

22ND JULY, 1952

CABINET

TERRITORIAL WATERS

Joint Memorandum by the Secretary of State
for the Co-ordination of Transport, Fuel and Power,
the First Lord of the Admiralty and the Minister
of Transport

The Secretary of State for Foreign Affairs invites the Cabinet to decide now to change the way in which the territorial waters round the United Kingdom are delimited. He recommends application to our coasts of the principles enunciated by the International Court in the case of Norway.

- 2. We strongly oppose this recommendation.
- 3. Application of the Norwegian principles necessarily means reduction in the area of the high seas. Internal waters would thereby be greatly extended and the belt of territorial waters pushed out seawards. The adoption of these principles throughout the world would be a most unwelcome development.
- 4. Our interests as a great naval and maritime power demand the greatest possible freedom of movement for shipping in peace and the widest freedom for the exercise of belligerent rights in war. The following are the principal disadvantages which would follow from the general adoption of extensive internal and territorial waters:-

- (a) The Royal Navy would be hampered in war, because it is not normally entitled to take offensive action or to exercise belligerent rights in neutral territorial waters. Extension of these waters would make it harder to keep potentially hostile coasts under observation. Conversely, the advantage to an enemy on the defensive would be correspondingly increased since neutrals cannot control their internal and territorial waters effectively if these become very large.
- (b) Over internal waters the jurisdiction of the coastal state, even in peace, is complete and foreign shipping can only use them on sufferance.

- (c) Extension of internal and territorial waters may interfere with the use of straits (e.g. Egyptian interference with the EMPIRE ROACH bound for Agaba) and channels close to the shore (e.g. Londonderry), and waters in archipelagos (e.g. Indonesia, Greece). The area of sea under foreign jurisdiction in which our merchant ships may be boarded and delayed and searched without justification will be enlarged. The risks of abuse by foreign States have increased in recent years.
- (d) The further territorial waters lie off the coast and the more they are measured from artificial baselines, the more difficult it is for the navigator to know whether, or not, he is inside foreign waters and, consequently, the greater is the danger of awkward incidents involving British ships.
- (e) The assumption of sovereignty over the sea carries with it equal sovereignty over the air above that sea.
- (f) Our deep sea fishing fleets take 90 per cent of the British catch. Any general scramble to increase the area of exclusive jurisdiction over the high seas would probably lead to the exclusion of our deep sea trawlers from some of their present fishing grounds.

5. No country is obliged to apply the Norwegian principles, and ideally the broader interests of the United Kingdom would best be served if there were no general adoption of those principles. Even assuming this is too much to hope, the next best outcome of the judgment would be a very moderate application of its principles which are subjective and open to wide differences of interpretation.

6. The main purpose of the proposal to adopt the baseline method for United Kingdom waters is to enable the Moray Firth to be closed against foreign trawlers. But for the pressure from Scottish inshore fishermen, there would be no reason for Her Majesty's Government to change their practice at the present time. Now the Moray Firth is 78 miles wide, and for the United Kingdom to adopt a baseline of this length would surely kill any hope of influencing international opinion towards moderate applications of the Norwegian principles. On the contrary, by drawing a baseline 78 miles long, the United Kingdom would be giving a highly immoderate lead to the rest of the world. This step could not fail to be interpreted as a significant departure from Her Majesty's Government's traditional maintenance of the freedom of the seas and from their determination to contest unjustifiable claims to jurisdiction over British shipping.

7. On the other hand, Her Majesty's Government need not be by any means alone in attempting to restrict to the minimum the effect of the Hague Court judgment on existing practices. Belgium, Holland, Denmark and even France and Sweden are all interested to a greater or lesser extent in limiting inroads into the high seas. Above all, there is evidence that the United States' administration takes a similar view to ours on this question. There is also some reason to hope that the International Law Commission

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itself may eventually favour moderation. The preliminary report by its rapporteur asks the Commission to consider a rule limiting base-lines across bays to a maximum length of 10 miles. This would be in accordance with our present practice and is a suggestion that we would certainly favour. A declaration by several leading maritime powers on the importance of restricting national jurisdiction over the sea would constitute weighty evidence which the Commission would be bound to take into account in drawing up its report.

8. We urge that the attitude of Her Majesty's Government on this subject should reflect the confidence of a world power whose policy looks to far horizons. We suggest it would be difficult to defend legislation which subordinated our wide naval, maritime, aviation and fisheries affairs to the narrower interests of a section of Scottish opinion, however much we may sympathise with the motives inspiring that opinion. In any event it would be premature to legislate to change our long-established policy before we have seen what support we can rally. We propose that at present the United Kingdom should reserve its own position in order to strengthen its influence in attempting to secure internationally the narrowest possible interpretation of the new Hague Court principles and the shortest possible base-lines.

9. We accordingly recommend -

- (i) that the Cabinet should decide not to accept in principle the use of base-lines by the United Kingdom, at least until everything possible, including suitable approaches to governments with similar views, has been done to influence international opinion towards moderation;
- (ii) that Professor Lauterpacht, the British member of the International Law Commission, should be given further guidance to the effect that Her Majesty's Government would wish to see the shortest possible base-lines adopted;
- (iii) that the Departments principally concerned should consider the best means of pursuing the object described in the second part of recommendation (i) above.

L.
J.P.L.T.
A.L-B.

22nd July, 1952