

ORIGIN/ACT  
L-3  
RM/R REP AF  
1 1

DEPARTMENT OF STATE  
**AIRGRAM**

POL 33-4 ARG  
XR POL 33-5 ARG  
FOR RM USE ONLY

ARA	EUR	FE
4		
NEA	CU	INR
		5
E	P	IO
4	1	2
L	FBO	AID
		12
	u/fw	s/p
	2	1
AGR	COM	FRB
	10	
INT	LAB	TAR
7		
TR	XMB	AIR
2		
ARMY	CIA	NAVY
5	10	3
OSD	USIA	NSA
19	8	3
		usc
		6

A-214 LIMITED OFFICIAL USE  
X NO. HANDLING INDICATOR

TO : DEPARTMENT OF STATE  
SEP 2 AM 7 12  
ANALYSIS & DISTRIBUTION BRANCH  
GCH/H Ogm  
GCH/H 10/1/64

FROM : Amembassy BUENOS AIRES DATE: August 29, 1964

SUBJECT : Territorial Seas and Continental Shelf; Illia Administration Submits Draft Law to Congress

REF :

As reported in Joint Weeka No. 32 of August 8, 1964, the ILLIA Administration released on August 1 the text of a draft law submitted to the Congress which would consolidate into a single legal provision pre-existing decrees, laws and policy declarations dealing with the width of the territorial seas, the continental shelf and the "Argentine" epicontinental sea.

The salient features of the draft law are:

1. Extension of Argentine territorial waters from three to six (nautical) miles.
2. Statutory definition of the continental shelf and a declaration of Argentine sovereignty thereon and under.
3. Statutory definition of the Argentine epicontinental seas and a declaration of sovereignty therein.

The executive bill would appear to be a rather poor piece of legal draftsmanship unless portions of it are intentionally meant to be vague and subject to whatever interpretation the Argentine Government may wish subsequently to place upon it, particularly in the face of possible reactions from other powers.

Exempted from automatic decontrol  
By C. A. Gendreau

1964 SEP 2 AM 11 59  
COPYFLO-FGR

FORM 4-62 DS-323 LIMITED OFFICIAL USE FOR DEPT. USE ONLY  
 In  Out

Drafted by: POL: CAGendreau: dp August 25, 1964 Contents and Classification Approved by: POL: EMRabenold. GCH

Clearances: DCM: CWAdair

LIMITED OFFICIAL USENo. A-214

Page 2

BUENOS AIRES

Following current international usage, the law would fix the outward extent of the continental shelf to the 200-meter (approximately 100 fathoms) water depth line in seas adjacent to the Argentine coast but beyond the territorial sea. It seems, nevertheless, to lay claim (as forming part of its continental shelf beyond the 200-meter line) to that part of the ocean bed where the depths of the waters adjoining, but beyond, the 200-meter demarcation permit the exploration and exploitation of the natural resources therein contained. Equally uncertain, therefore, is the definition of the "Argentine Epicontinental Seas" which the law purports to define as the waters overlying the continental shelf.

While the geographic limits of either or both the shelf and the epicontinental seas are, perhaps, subject to further clarification through executive statements, legislative history or the law's application, a more significant problem resides in the imprecise manner in which the draft law purports to formulate the exercise of Argentine sovereignty in and upon the waters lying above the continental shelf (the epicontinental sea).

Neither the provisions of the draft law or of the accompanying message lack assertions of Argentina's sovereignty over the epicontinental sea. Yet, a thorough reading of both suggests that the exercise of such sovereignty is not unlimited: Argentine "sovereignty" will not affect the freedom of navigation in the epicontinental seas nor will it restrict circulation in the corresponding airspace. Included in the same law, moreover, is the limitation of the territorial seas to a belt not exceeding six marine miles. Since the sovereignty and attendant jurisdiction of a riparian state over its territorial waters is identical to that attaching to its land territory (save, perhaps, for the right of innocent passage), the Argentine Government may, by differentiating between its territorial waters and epicontinental seas, also differentiate between the extent to which it chooses to exercise its sovereignty over them. Examination of Article 5 of the draft law suggests that Argentina seeks to apply a kind of selective sovereignty on the seas above the continental shelf in that the terms of the article are tantamount to an assertion of a (rather sweeping) right of general protective jurisdiction beyond territorial waters not dissimilar in some respects to the U.S. concept of customs waters which evolved in connection with the National Prohibition Act.

Article 5 gives somewhat greater precision, moreover, to the expression of concern found in the accompanying message which speaks of the habitual presence of foreign fishing fleets "in our epicontinental seas" since that article would extend Argentine sovereign (protective) jurisdiction to those seas by means of the enforcement therein of its domestic fishing laws. Taken together, then, the law and message appear to constitute a rather vague unilateral declaration of protective jurisdiction with regard to fisheries based on the asserted need for conservation and protection of fishery resources. The Argentine Government may have in mind a similar if not identical United States Government declaration of September, 1945 which proclaimed the establishment of conservation zones in areas of the high seas contiguous to the coasts of the U.S. unaccompanied, however, by assertions of

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

No. A-214

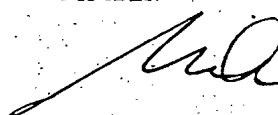
Page 3

BUENOS AIRES

exclusive national sovereignty.

The executive message does not overlook the fortuitous fact that the 200-meter water depth line (100 fathoms) encompasses the Malvinas Islands and it not surprisingly states that the declaration of national sovereignty over the continental shelf serves to reiterate Argentine rights over those islands.

MARTIN



Enclosures: *Att*

1. Executive Message
2. Draft Law

Copy sent to:

ARA/APU/A - Mr. Bartch

LIMITED OFFICIAL USE

UNCLASSIFIEDPage 1 of 3  
Enclosure 1  
BUENOS AIRES A- 214

(UNOFFICIAL TRANSLATION)

EXECUTIVE MESSAGE

Article 2.340, Paragraph 1 of the Civil Code delimits the territorial sea and contiguous zone, establishing that the seas adjacent to the territory of the Republic are the public property of the general State or of the individual States out to a distance of one marine league measured from the line of the lowest tide: but the police power related to the security of the country and its fiscal laws extends to a distance of four marine leagues measured in the same manner.

The National Constitution prescribes in Article 67, Paragraph 14, that it is the function of the Congress of the Nation to set the limits of the national territory. Reasons of a political, economic and juridical order induce the conviction that dispositions currently in effect under the Law of the Sea do not adequately protect the sovereignty of the Nation over the continental shelf and the epicontinental sea. The activities of foreign fishing boats in waters close to our coasts determine the imperious necessity of considering in an up-to-date manner the problem of the extension of the territorial sea and the limits of the fisheries, adopting the dispositions essential to the essence of our sovereignty and which shape an Argentine foreign policy respecting the Law of the Sea.

The fundamental outlines (of such a policy) have been given in a message to this Honorable Congress when it was expressed: "We are prepared to carry the limits of our maritime jurisdiction to the limits necessary to cover the security of the national patrimony, considering that the epicontinental sea and the continental shelf go beyond the narrow jurisdictions (now) exercised."

In this order of ideas, the Foreign Minister sets forth the position of the Government in its economic aspect when he declared: "We have achieved a complete coincidence (of views) with Brazil, Uruguay, Chile and Peru, and I believe that this is a concept that should have been formulated some time ago: that of defending the ichthyological riches that are not within the traditional jurisdiction of three marine miles".

In the juridical aspect, the norms of international law that govern the matter are, in great part, customary, that is, nonconventional. The Geneva conventions of 1958 are not applicable to our country because they have not been ratified.

Some countries have concluded agreements among themselves on a common policy respecting the Law of the Sea. Such is the case of Chile, Peru and Ecuador which have adopted the accords of the nations of the South Pacific. Although treaties of this type have juridical validity only for the signatory States, the effective exercise of the rights proclaimed have achieved, in fact, the respect of the international community.

UNCLASSIFIED

UNCLASSIFIEDPage 2 of 3  
Enclosure 1  
BUENOS AIRES A-214

The validity of customary law subsists until it is modified by other and different practices that are accepted by the generality of the States which constitute the international community. The Executive Power considers it necessary to combine into a single body of law the measures that regulate the juridical regime of the various maritime spaces over which the Nation exercises sovereignty. It believes, moreover, that it is of urgent necessity to bring up to date the norms existing in this matter, following the evolution produced in recent times by the Law of the Sea.

In the case of the continental shelf, it was the interest in the exclusive exploitation of petroleum deposits situated in it that brought forth the first declarations of sovereignty over it. In the face of numerous coincident declarations, international doctrine elaborated the theory of "inherent right" which the Geneva Conference consecrated by recognizing the rights of sovereignty over the continental shelf. This doctrine takes into account the prevalent interest of the riparian State and its projection over the zone of the sea linked organically with the coast, without thereby seeking to diminish freedom of navigation, and established the rights of riparian States over the epicontinental sea as a consequence of their sovereignty over the soil and subsoil of the continental shelf.

The declaration of the sovereignty of the Nation over the continental shelf and the epicontinental sea serves to reiterate Argentine rights over the Malvinas Islands since those islands are found within the 200-meter isobath, the line which constitutes the minimum universally accepted external delimitation of such zones. Reasons of an economic order contribute, moreover, to the necessity of declaring sovereignty over the epicontinental sea. From the point of view of fisheries, the waters of the continental shelf are divided into: (a) coastal fishing area: (b) deep-sea areas subdivided into the Bonarenses, Patagonic and Foguino areas. Within our economy, both areas are complementary even though the destination of their production may be different since the first area is employed principally in the preparation of canned products while the second produces for the fresh market. To date, intensive fishing characterizes the coastal area while deep-sea fishing is undertaken preferentially in the Bonarenses area and outside of jurisdictional waters to the edge of the continental slope. The habituality of fishing by foreign fleets in our epicontinental sea signifies the progressive but certain reduction of fishing resources and the gradual destruction of one of the most important wellsprings of our economy since the displacement of migratory species is not always produced within the limits of coastal fishing zones.

The sovereign right over the epicontinental sea, reasonable and just, carries with it the consequence of an assured defense of interests vital to the national economy.

Nevertheless, consideration owing to commerce and international communications makes it desirable to insure that the measures that are adopted do not impose restrictions on navigation to the extent these may be compatible with the previously announced ends.

UNCLASSIFIED

UNCLASSIFIED

Page 3 of 3  
Enclosure 1  
BUENOS AIRES A-214

With respect to the territorial sea, international law in its modern orientation recognizes the right of maritime States to extend it with the consequent advantages that this presupposes. In the criteria of the Executive Power, the considerations that are herein expounded are decisive and will surely carry over into the spirit of the Honorable Congress the conviction that the attached bill should be urgently approved.

UNCLASSIFIED

UNCLASSIFIED

Page 1 of 1  
Enclosure 2  
BUENOS AIRES A-214

(UNOFFICIAL TRANSLATION)

DRAFT LAW

Article 1 - The Argentine Nation exercises its exclusive sovereignty over the continental shelf and upon the epicontinental sea corresponding to national territory.

Article 2 - Insofar as they apply to the present law, the expression "Argentine Continental Shelf" designates the bed of the sea and (its) subsoil of the maritime zones adjacent to the coasts but situated beyond the zone of the territorial sea out to the 200-meter isobath or beyond this limit, to where the depths of the superadjacent waters permit the exploration and exploitation of the natural resources of said zones.

Article 3 - It is understood that "Argentine Epicontinental Sea" signifies the waters of the sea that cover the Argentine continental shelf.

Article 4 - The exercise of the Nation's sovereignty in the epicontinental sea, and in the Argentine continental shelf shall include the exclusive exploration and exploitation of its natural resources.

Article 5 - By virtue of its sovereignty over the epicontinental sea, the Argentine Nation shall exercise jurisdiction to the ends of effective control of compliance (with) and of prevention and repression of infractions of its police, customs, fiscal immigration, sanitary, defense and fishing laws which might be committed or produce that effect therein, in the territorial sea or in Argentine territory.

Article 6 - The sovereignty of the Nation over the Argentine epicontinental sea shall not affect freedom of navigation in those waters nor circulation in the corresponding airspace.

Article 7 - The width of the territorial sea measured from the line of the greatest low tides, is extended to six miles.

Article 8 - There is hereby modified Article 2340, Paragraph 1 of the Civil Code in the manner established by this present law, which derogates all other norms contrary to it.

UNCLASSIFIED