

Mr Laing
MAED

*R/see copy this & my notes of 14 May to Mr Stunt (RID)
Then see speak about the responsibility we shall have to do.*

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POSSIBLE EXTENSION OF THE TERRITORIAL SEA

1. I agree that we will have to go into this matter in preparation for the extension of territorial waters to 12 miles whenever this takes place.
2. There are two identifiable problems.
3. First, there is the theoretical Irish claim that, because of the terms of the relevant British legislation, Northern Ireland has no territorial waters. Though the Irish Republic have never abandoned it, it is not in our interest to high-light it. The claim is so obviously unreasonable that they can make little of it internationally. Equally, while we could almost certainly show that their conduct of their own fishery legislation, limits, charts etc. was not consistent with this claim, again it is not worth making detailed points on this theoretical argument, which can only exacerbate relations.
4. Nevertheless, on this point we shall have to have defensive material well prepared in preparation for the possibility that it comes up in public or Parliamentary debate when we extend.
5. Secondly, there is the much more important real problem of the lateral lines between Northern Irish and Southern Irish territorial sea. This again divides into two separate elements.
6. First, the limit in Lough Foyle and Lough Carlingford must be considered because the end of that line is the starting point for any line sea-ward.
7. Secondly, there is the lie of the line where in the territorial sea as extended, in particular, whether we should claim that the line follows the Thalweg (i.e. the line of the deepest channel running out of the Lough) which runs in fact closer to Southern Ireland than the line.
8. I doubt if it will be possible to solve either of these questions in agreement with the Irish, both because of the traditional difficulties and because any agreement over the lateral territorial sea line would require the Republic to abandon its theoretical argument that Northern Ireland has no territorial waters. While they may not insist on that argument and may acquiesce in arrangements which ignore it, I doubt if the Southern Irish will be willing to abandon it by reaching an agreement with us.
9. But again, on these points we must have defensive material and we must know our own position so that we can draw on it if there is public discussion at the time of an extension.
10. At the time of the Fisheries Limits Act 1976, we avoided the issue by starting the 200 mile limit only at a distance beyond 12 miles, because there was already a 12 mile fishery zone.
11. I should be grateful if MAED and RID would try to assemble the necessary material so that we can inform ourselves on this matter.

/12. Mr Anderson

CONFIDENTIAL

12. Mr Anderson has said that in about 1975 there was a decision in the Northern Ireland Courts, by a Catholic Judge, in favour of the thesis that Northern Ireland had no territorial sea; I have a vague memory that he was reversed on appeal.

13. There is a long minute by Mr Bickford, Legal Advisers, dated 19 October 1976 to Mr Goulty (RID), entitled "Draft Fishery Limits Bill", which discusses the two Loughs and their back history in some length.

14. There was also correspondence in 1976 on "Possible Fishery Limits Bill", which may have been entered with MAED, between Moran (Legislative Draughtsman, Belfast) and Sellers (Parliamentary Counsel, London) at the end of October 1976 and vice versa.

15. I think it would be useful to get out any references to Northern Irish territorial waters which are disclosed in the General Indexes, Mr Bickford's minute gives a number of references.

MAED + RID
Library

HG Darwin

H G Darwin

21 May 1979

cc: Mr F D Berman
Legal Advisers