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SEP 4 1964

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MEMORANDUM FOR MR. BROMLEY SMITH
THE WHITE HOUSE

Through: Mr. McGeorge Bundy

Subject: The Sunda Strait

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Develop. File

In accordance with your request, there is attached a background memorandum on the Sunda Strait in Indonesia.

The memorandum points out that there is under international law a right of innocent passage through the Sunda Strait because it is a strait used for international navigation between two parts of the high seas. The memorandum also indicates, however, that Indonesia undoubtedly would dispute the existence of such a right since it does not consider the waters within the Indonesian archipelago as "high seas" but instead claims them as internal waters. The United States does not recognize Indonesia's claim.

It has been our practice in recent years to inform Indonesia on a Navy to Navy level of the intended passage of American Naval vessels through waters claimed by Indonesia. We have done this not in the form of a request or of a required notification but rather as a courtesy to a friendly nation.

RMMoose Jr
Benjamin H. Hood
Executive Secretary

Enclosure:

Memorandum dated
September 4, 1964.

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SEP 4 1964

A true copy *of* signed original

L:L/FE:CFSalans/ejs 9/4/64

- L - Mr. Kearney (draft)
- FE - Mr. Bundy (draft)
- FE/RA - Capt. Miller (draft)
- INR/RES/GE - Dr. Hodgson (draft)
- G/PM - Mr. Freshman (draft)

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Document No. _____
Review of this document by CIA has determined that

- CIA has no objection to declass
- It contains information of CIA interest that must remain classified at **TS S C**
- Authority: **NR 70-2**
- It contains nothing of CIA interest

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THE SUNDA STRAIT

The Sunda Strait separates Java from Sumatra and connects the Java Sea with the Indian Ocean. At its narrowest point, the Strait is approximately 13.6 nautical miles wide. There are a number of small islands scattered throughout the Strait. Given a three-mile territorial sea for each of these islands and for Java and Sumatra, the waters of the Strait are all Indonesian territorial waters at the narrowest point.

Straits Under International Law

International law recognizes a right of innocent passage for warships and merchantmen through straits which are used for international traffic between two parts of the high seas. This is so even if the strait is wholly within the territorial waters of a single state. This rule was recently codified in Article 16(4) of the Geneva Convention on the Territorial Sea and the Contiguous Zone:

"There shall be no suspension of the innocent passage of foreign ships 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."

The Convention defines passage as "innocent" "so long as it is not prejudicial to the peace, good order or security of the coastal State." The United States, the United Kingdom and the Soviet Union, among others, are parties to the Convention, which enters into force September 10, 1964. Indonesia has not signed this Convention.

But the general rule is part of international law quite apart from the Convention. For example, in 1949 the International Court of Justice, in a case between the United Kingdom and Albania involving the Corfu Channel, ruled that states have a right in peacetime to send their warships through straits used for international navigation between two parts of the high seas without the previous authorization of the coastal state, provided passage is innocent. The Court held that unless otherwise prescribed by an international convention, there is no right for a coastal State to prohibit such passage.

Indonesia's Claims

Indonesia has drawn straight baselines around the entire Indonesian archipelago connecting the outermost points on the low water mark of the outer islands of the archipelago. Under this

CONFIDENTIAL

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-2-

so-called "archipelago theory", it considers as "internal waters" all waters lying within those baselines. There is no right of passage by foreign vessels through internal waters or through a strait leading to internal waters under international law.

Indonesia claims a twelve-mile territorial sea extending seaward from the line which it has drawn around the archipelago.

The United States does not recognize Indonesia's archipelago theory and therefore does not consider the waters within the Indonesian archipelago as internal waters. Instead our position is that each of Indonesia's constituent islands has a three-mile territorial sea and that all other inter-island waters in the archipelago are part of the high seas. There is little support in international law and practice for the archipelago theory. (Indonesia, the Philippines and Ecuador have made claims based on the archipelago theory.)

When the Netherlands had sovereignty over Indonesia, the Dutch claimed only a three-mile territorial sea around each of the islands in the archipelago, the remainder of the waters being considered high seas. Under Dutch laws and regulations, therefore, the Sunda Strait would have been treated as a strait connecting two parts of the high seas through which there was a right of innocent passage.

Transit Through Sunda Strait

According to the Navy Department, an average of two or three United States Navy vessels a year since 1960 have transited the Java Sea en route from the Philippines to Australia. The Navy cannot determine at this time how many of these ships have actually passed through the Sunda Strait. In most but not all of these instances, the Navy, through ALUSMA Djakarta, informed the Indonesian Navy that such passage would take place. This was done not as a required notification or as a request, but as a courtesy gesture to authorities of a friendly nation.

In connection with the recent passage of the Concord Squadron through the Malacca Strait, Ambassador Jones informed President Sukarno on a confidential basis that such passage would take place. However, the Malacca Strait should be distinguished from the Sunda Strait in that Indonesia recognizes Malacca as an international strait through which there is a right of innocent passage.

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-3-



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United Kingdom Navy informs the Indonesian Government of prospective warship passage through the Sunda Strait.

With respect to merchantmen, the "Sailing Directions" for the Sunda Strait published by the United States Naval Oceanographic Office state only that

"Peaceful navigation in the Indonesian territorial sea and internal water is open to foreign water borne vehicles, subject to government regulation."

The Navy estimates that an average of 10 to 20 merchant ships a day transit the Sunda Strait of which a considerable number probably are British flag vessels. We are not aware of any Indonesian interference with the passage of such merchantmen.

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