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Collection Name BARR, WILLIAM: FILES

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File Folder LAW OF THE SEA (06/18/1982-06/23/1982)

FOIA S17-8440 SYSTEMATIC

Box Number 9

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ID	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
225842	REPORT	TREASURY REPORT POSITIONS ON LOS ISSUES	2	6/18/1982	B1
225843	MEMO	WILLIAM SCHNEIDER TO JAMES BUCKLEY, RE: OMB POSITIONS ON LAW OF THE SEA ISSUES	1	6/18/1982	B1
225845	MEMO	J. HUNTER CHILES TO OTHO E. ESKIN, RE: SIG MEETING ON THE LAW OF THE SEA	2	6/18/1982	B1
225846	MEMO	JAMES MALONE THRU MR. BUCKLEY TO THE SECRETARY, RE: LOS: AGENCY COMMENTS ON RECOMMENDATIONS TO THE PRESIDENT	2	6/14/1982	B1
225847	MEMO	JOHN STANFORD TO OTHO ESKIN, RE: SIG MEETING ON LAW OF THE SEA	3	6/17/1982	B1
225848	REPORT	DEPARTMENT OF COMMERCE COMMENTS ON INTERAGENCY REPORT ON THE LAW OF THE SEA	3	6/15/1982	B1

Freedom of Information Act - [5 U.S.C. 552(b)]

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~~Confidential~~

June 18, 1982

Admiral Thomas B. Hayward, USN

Dear Tom:

Thank you for sending me a copy of Bruce Harlow's proposal of June 2, 1982 - LOS Milestones. The proposal is focussed principally upon Navy goals, and what actions the Joint Chiefs might take to protect our military navigation and overflight rights. A major fault of the proposal is that it does not indicate, or treats only secondarily, some of the other essential ocean interests and goals we have, and the strategies for reaching them. These goals include:

-- access to seabed minerals, when and if needed;

-- control over pollution in coastal waters;

-- control over fisheries in coastal waters;

-- continuation of tuna and salmon fisheries positions;

-- freedom for scientific research beyond the limits of territorial waters, except for resource-related research on foreign continental shelves;

-- maintenance of rights to the resources of the Continental Shelf of the United States;

-- maintenance of rights of military navigation and overflight:

+ through territorial waters
+ through international straits
+ through archipelagic waters
+ through seas beyond territorial waters
(assuming U.S. acceptance of expanded territorial limits and of the archipelagic waters concept);

-- maintenance of rights of civil navigation and overflight:

+ through territorial waters
+ through international straits
+ through archipelagic waters
+ through seas beyond territorial waters
(assuming U.S. acceptance of expanded territorial limits and of the archipelagic waters concept).

With respect to possible strategies for achieving essential ocean goals, the proposal does not suggest, for example, what steps might be taken by DOD/JCS to persuade our industrial allies, or developing countries with which we have good military relations, not to sign the LOS treaty. Neither is the need indicated for a well-enunciated DOD/JCS policy for strategic seabed minerals. (Point IV of the proposal does contain the statement that

domestic legislation should be provided to protect the claims of our ocean miners against the world. However, this is a misleading statement, as has been argued many times with Bruce Harlow. What is realistic are arrangements to protect the claims of our ocean miners against potential competitors in the principal industrial nations.)

Although we are still at the policy-forming stage, and have not yet fully defined all of the issues, let me give you my views on two of the issues which would be of direct interest to you.

Issue: The need to establish a coherent and agressive policy of assertion of U.S. rights related to security interests in the ocean.

U.S. policy towards assertion of its military navigation and overflight rights is applied fitfully and inconsistently, due to essentially foreign policy considerations. If we are to retain crucial military-related rights in the oceans, then our insistence on these rights must be both agressive and consistent with our stated legal positions. That is, we must have an effective diplomatic and operational program of countering and challenging those foreign claims to jurisdiction, existing or anticipated, which we do not or would not recognize and which are inimical to our security interests.(Bruce's proposal addresses only a few minor details of this issue.) Moreover, current U.S. laws affecting ocean uses and jurisdiction are not consistent either with general international practice or with many of the LOS treaty provisions. The kinds of policy questions which this issue gives rise to include:

-- Should the United States retain a three-mile territorial sea or claim 12 miles in accordance with general state practice and the LOS Convention?

-- If the U.S. decides to claim and recognize 12-mile territorial seas, how do we protect our straits passage interests as a non-party to the LOS Convention (e.g., in cases where the extension of territorial seas from three to 12 miles in critical choke points could lead to the attempted imposition of the restrictive regime of innocent passage, instead of free passage as provided in the LOS Convention)?

-- Should the U.S. establish a 200-mile economic zone (i.e., a zone with competence extending beyond that already claimed with regard to fisheries and marine pollution)?

-- As a non-party to the LOS Convention, how should the U.S. protect its interests in the preservation of marine environment off its and other coasts, and its interests in maximum freedom of marine research, both scientific and military?

-- How should the U.S. protect commercial navigation interests as a non-party to the LOS Convention?

Issue: The need to assure continued investment by U.S. companies in seabed mineral development.

The following agreements are needed to achieve a viable U.S. ocean-mining industry:

-- an interim Reciprocating States Agreement (RSA) to assure the orderly resolution of mine site conflicts among potential operators of key western industrialized countries (UK, FRG, Belgium, Netherlands, and if possible, France and Japan);

-- a full RSA to provide for mutual recognition of exploration applications and authorizations among some or all of these key countries;

-- a seabed "mini-treaty" to provide a permanent alternative regime among key western and other countries for advanced exploration and commercial recovery.

The interim RSA appears to be achievable among at least the U.S., UK, and FRG in the next several weeks (Belgium and Italy might well follow). A full RSA might be realized within the next four to six months. A mini-treaty might be obtained during 1983 or 1984. This assessment is premised upon:

-- an early strong Presidential effort to persuade the Prime Ministers of key nations not to sign or ratify the LOS treaty, but to join the U.S. in an alternative regime;

-- an immediate determined effort by State/DOD/JCS (assisted by U.S. industry leaders) to persuade key allies that they have important political, military, and economic interests in associating themselves with the U.S. outside of the LOS treaty, including participation in an interim RSA, followed by a full RSA and eventually a mini-treaty.

I believe the President will announce soon that he will not sign the LOS treaty. The question of how the U.S. should pursue its ocean interests outside of the LOS treaty must then be seriously addressed. We will attempt to answer this question. I will again help by serving as technical coordinator of an inter-agency analysis of the issues related to the development of a positive national oceans policy, and of the near-term and long-term approaches the U.S. might take to establish an alternative arrangement for protecting our deep seabed mining interests. This work will also include a "damage limitation" plan for the military, economic, political, and legal consequences on non-participation in the LOS treaty.

Admittedly, it will not be an easy task to achieve consensus among the Government agencies regarding actions which might be taken on ocean policy and seabed mining matters. The interagency review of the draft LOS treaty showed how difficult it could be to reach agreement on technical and policy matters. For many of the Government participants, the protection of parochial interests and bureaucratic turf were more important than a realistic assessment of treaty provisions prejudicial to national interests and principles. For the many lawyers who were participants in the review process and members of the U.S. Delegation, the decade-long LOS negotiation proceedings had become a sort of paradise, really an end in themselves. Their love of negotiating-for-the-sake-of-negotiation became apparent during the last turbulent week of the LOS Conference in New York when the majority of the

U.S. delegation voted to go along with a consensus on adopting the final treaty text; a position taken in the face of compelling evidence that the final treaty results showed little or no progress towards meeting our objectives. Their dedication to the multi-lateral process, regardless of the status of negotiations, is what we will be faced with in attempting to formulate strategy and tactics for seabed and non-seabed matters. Nevertheless, I believe we will succeed in developing a sound national oceans strategy.

With best wishes,

Robert B. Keating

R.B. Keating - 6/6/82

United States Goals for Ocean Policy

- Access to seabed minerals, when and if needed
- Control over pollution in coastal waters
- Control over fisheries in coastal waters
- Continuation of tuna and salmon fisheries positions
- Freedom for scientific research beyond the limits of territorial waters, except for resource-related research on foreign continental shelves
- Maintenance of rights to the resources of the Continental Shelf of the United States*
- Maintenance of rights of military navigation and overflight:
  - + through territorial waters
  - + through international straits**
  - + through archipelagic waters**
  - + through seas beyond territorial waters**
- Maintenance of rights of civil navigation and overflight:
  - + through territorial waters
  - + through international straits**
  - + through archipelagic waters**
  - + through seas beyond territorial waters**

---

* Under Truman Declaration, Geneva Convention on the Continental Shelf, and the OCS Lands Act, as amended

** Assuming U.S. acceptance of expanded territorial limits and of the archipelagic waters concept

Confidential

CONSEQUENCES

U.S. Withdrawal from LOS Treaty

MILITARY

- NAVIGATION RIGHTS
- OVERFLIGHT RIGHTS
- NATO ALLIANCES
- ANZUS
- BASING AGREEMENTS
- BILATERALS
- ZONES OF PEACE (Diego Garcia)

ECONOMIC

- COMMERCIAL NAVIGATION
- RECIPROCATING STATES
- SBM OPTIONS

POLITICAL

- G77 RELATIONS
- ADVERSE PRESS
- DEMARCHES TO SECRETARY OF STATE
- ADVERSE UNITED NATIONS RHETORIC
- CONGRESSIONAL REACTION
- REACTION IN UNCTAD, OAU, OAS, ASEAN, IMCO, OPEC, ICAO
- AALCC LEGAL ANALYSES

LEGAL

- UN MORATORIUM RESOLUTION
- GENERAL ASSEMBLY INQUIRY TO INTERNATIONAL COURT OF JUSTICE
- NATIONAL CLAIMS AGAINST U.S.
- PATRIMONIAL SEAS
- CONFLICTING CLAIMS FOR SBM ASSETS

R.B. Keating

BASIC PROBLEMS FOR United States SEABED MINING OPERATIONS

•+ Threat of United States becoming a party to the Convention at some time in the future.

•□+ State of the current metals market

•□+ General Economic Situation, and high money costs.

• Uncertainty of participation in the Convention on the part of major European and Japanese industrial countries -- in many cases, these are partners with United States concerns involved.

•+ Possibility of retaliation against other operations of the companies involved, in third world countries who object to unilateral or multinational exploitation.

•□+ Technological hurdles still to be overcome, and the resultant uncertainty of the economics of seabed mining, aside from the tax, fee, and revenue sharing questions.

•□+ Lengthy regulatory processes forecast in the on-shore side of the total seabed mining system, including the environmental controls over processing plants and waste disposal

•□+ Uncertainties in the forecasts of metals needs during the coming, say, fifty years -- necessary for lead time and adequate production time for a viable mining operation.

□ Impact of International Seabed Authority fees and revenue sharing, and rules and regulations, under Convention

□ Potential tenure limits imposed by Convention Review Conference

□ Domestic tax treatment of fees and revenues to the International Seabed Authority

□ Costs of Technology Transfer, and concommitant training programs

• --- United States not Party to Convention

□ --- United States Party to Convention

+ --- Effective Reciprocating States Agreement, US Not Party

18 June 82

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225842	REPORT TREASURY REPORT POSITIONS ON LOS ISSUES	2	6/18/1982	B1

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225843	MEMO WILLIAM SCHNEIDER TO JAMES BUCKLEY, RE: OMB POSITIONS ON LAW OF THE SEA ISSUES	1	6/18/1982	B1

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225845	MEMO J. HUNTER CHILES TO OTHO E. ESKIN, RE: SIG MEETING ON THE LAW OF THE SEA	2	6/18/1982	B1

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225846	MEMO JAMES MALONE THRU MR. BUCKLEY TO THE SECRETARY, RE: LOS: AGENCY COMMENTS ON RECOMMENDATIONS TO THE PRESIDENT	2	6/14/1982	B1

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DEPARTMENT OF THE INTERIOR

ASSISTANT SECRETARY -- ENERGY AND MINERALS
Washington, D.C. 20240

June 21, 1982

Mr. Bill Barr
Office of Policy Development
The White House
Washington, D.C. 20500

Dear Mr. Barr:

Thought this summary of the problem areas might be of use. The situation is often confusing, and depends so much upon which scenario is being assumed.

Alexander Holser

Atchmt

BASIC PROBLEMS FOR United States SEABED MINING OPERATIONS

• + Threat of United States becoming a party to the Convention at some time in the future.

•□+ State of the current metals market

•□+ General Economic Situation, and high money costs.

• Uncertainty of participation in the Convention on the part of major European and Japanese industrial countries -- in many cases, these are partners with United States concerns involved.

• + Possibility of retaliation against other operations of the companies involved, in third world countries who object to unilateral or multinational exploitation.

•□+ Technological hurdles still to be overcome, and the resultant uncertainty of the economics of seabed mining, aside from the tax, fee, and revenue sharing questions.

•□+ Lengthy regulatory processes forecast in the on-shore side of the total seabed mining system, including the environmental controls over processing plants and waste disposal

•□+ Uncertainties in the forecasts of metals needs during the coming, say, fifty years -- necessary for lead time and adequate production time for a viable mining operation.

□ Impact of International Seabed Authority fees and revenue sharing, and rules and regulations, under Convention

□ Potential tenure limits imposed by Convention Review Conference

□ Domestic tax treatment of fees and revenues to the International Seabed Authority

□ Costs of Technology Transfer, and concommitant training programs

• --- United States not Party to Convention
□ --- United States Party to Convention
+ --- Effective Reciprocating States Agreement, US Not Party

A. F. Holser 18 June 82

DEPARTMENT OF STATE

Washington, D.C. 20520

June 21, 1982

UNCLASSIFIED
(~~SECRET~~ Attachments)

TO: OES - Amb Malone

THROUGH: OES/O - Mr. Kronmiller

FROM: OES/OLP - Otho E. Eskin

SUBJECT: Agency Comments on SIG Paper

We have now received comments on the SIG paper from most of the agencies. I do not have Transportation or NSF positions and we do not yet have the Commerce position in writing. The written positions we have received are attached at Tab A.

I recommend you send a brief information memorandum to the Secretary summarizing the results. I attach a draft (Tab B).

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United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUN 18 1982

Memorandum

To: Director, Office of Ocean Law and Policy
Bureau of Oceans and International Environmental and Scientific Affairs
Department of State

From: Deputy Assistant Secretary--Energy and Minerals

Subject: Department of the Interior Positions on Presidential Issues on the Law of the Sea

Specific Positions:

Issue 1: Should the United States decide to sign the LOS Convention as adopted by the Conference?

+ Interior opposes signature of the Convention.

Issue 2: Should a decision on signing be made now or be deferred?

+ Interior supports an early decision, and announcement of that decision.

Issue 3: Should the U.S. discontinue all further participation in the Law of the Sea Conference process; i.e., take part in the Drafting Committee, the Informal Plenary (September), and the final session in Caracas (December)?

+ Interior supports withdrawal of the U.S. from further participation in the process of the Conference, and does not believe that the minor benefits achievable with such participation outweigh the costs inherent in such participation.

Issue 4: Should the U.S. sign the Final Act at Caracas, and participate in the Preparatory Commission?

+ Interior opposes the signature of the Final Act by the U.S., and U.S. participation in the Preparatory Commission, as the Final Act contains the resolutions of the Conference on national liberation movements, the Preparatory Investment Protection program, and the formulation and charter of the Preparatory Commission -- signature is not merely a procedural act, but is the only formalization of these resolutions.

General Comments:

On the basis of discussions in the Senior Interagency Group on June 15, Interior believes that all members of the staffs of concerned agencies be advised that they are not to encourage, nor to participate in discussions with representatives of other governments, on the question of possible improvements in the text adopted by vote of the Conference on April 30; any overtures in this respect must be referred to Ambassador Malone, only.

The President should be provided the opportunity to initiate a major effort by the country to influence our allies to refrain from participation in the Convention, in order that they may join with us in a regime, or may undertake seabed mining activity parallel to our efforts.

SECRET

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Washington, D.C. 20230

THE ADMINISTRATOR

June 21, 1982

TO : L. Paul Bremer, III
Executive Secretary
Department of State

FROM: John V. Byrne

In accordance with your memorandum of June 16, 1982, I am attaching, on behalf of the Department of Commerce, positions and comments on the issues raised in the Interagency Report on the Law of the Sea dated June 15, 1982.

The Department's positions and comments have been developed with, and cleared by, the Department's Law of the Sea Task Force. They have also been discussed in detail with Secretary Baldrige.

Attachment

UNCLASSIFIED UPON REMOVAL OF CLASSIFIED ATTACHMENT

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DRAFT MEMO

TO: Dr. John Byrne

FROM: OES - James L. Malone

SUBJECT: Law of the Sea

I have reviewed your memorandum dated June 21, 1982 providing Commerce Department positions on the Law of the Sea. I find it difficult to comprehend the result which you advocate in relation to Issue 5. I believe that your analysis accords neither with the facts, nor the logic, of the situation.

There is no possibility of achieving a satisfactory LOS Treaty. There is a reasonable possibility of achieving an alternative seabed mining regime. As you are aware, the U.S. has sought for many years to negotiate an acceptable result with respect to Part XI of the LOS Convention. Unfortunately, under the previous administration, Third World expectations were raised for U.S. adherence to a Convention which reflected very little departure from L.78. The exhaustive review carried out by the Reagan Administration revealed that Part XI was incompatible with U.S. interests in six, specifically identified ways. A maximum effort to correct the deficiencies of the text during the last negotiating session of the Conference failed to accommodate

even one of the President's stated objectives.

There is absolutely no persuasive evidence that the U.S. could achieve any significant improvement of the Convention in further negotiations. Indications to the contrary from various sources are based either upon demonstrably erroneous reports, or upon a deliberately misleading effort calculated to deter a timely decision by the U.S. against the Convention and to impede a potentially successful strategy by the U.S. to draw its allies out of the global regime and into an alternative. Moreover, it would be exceedingly naive to hope that the Convention could be made acceptable through hasty efforts over a few weeks, when well planned negotiations over many months and years have failed.

On the other hand, as you should be aware, the establishment of an alternative regime is not foreclosed. Key seabed mining states are prepared to enter into an interim RSA, pending their decision whether to sign the Convention or to proceed on a different basis. The most recent discussions with these states revealed that an early Presidential effort to persuade key Heads of State to stay outside of the Convention and to join the U.S. in an alternative seabed mining regime could succeed. Entrenched, pro-treaty elements in certain key foreign governments are

attempting to preempt such an effort by obtaining political-level decisions in favor of signature. Any delay of a Presidential decision to stay outside the Convention while efforts are made to improve it would very likely render ineffective any subsequent Presidential intervention with those key states to pursue the alternative. Complete isolation of the U.S. outside the Convention could easily result.

The U.S. is not, contrary to your assertion, in the worst conceivable position with respect to its identified deep seabed interests. The worst result is one which will be virtually assured by a surely vain effort to improve the treaty and by the consequent delay in a no-sign decision and implementation of the alternative strategy by the President.

It has surprised me for some considerable period of time that the Department of Commerce, which has statutory authority with respect to deep ocean mining, should find itself in difficulty to contribute constructively either to the development of Law of the Sea policy which accords with the principles of the Reagan Administration or to assist in the establishment of a post-Conference strategy to assure the existence of a U.S. flag-mining industry.

I wish to emphasize that there is no chance whatever of achieving an acceptable LOS Convention. There is, however, a distinct possibility of achieving an alternative regime which will permit U.S. flag mining to proceed on a viable economic basis, if and only if the U.S. completely abandons the Conference process now and makes an immediate, determined effort at the highest level to bring its allies outside of the Convention and into an agreement with us.

I could go into considerable detail concerning the defects of specific aspects of your analysis related to Issue 5. However, I believe that it would be more useful for you and I to discuss this matter further.

DEPARTMENT OF STATE

Washington, D.C. 20520

June 22, 1982

TO: LOS IG
FROM: Frayda Levin 632-4825

Attached for your clearance is a copy of Ambassador Malone's testimony which he will give tomorrow before the House Foreign Affairs Committee. If I do not hear from you by 7:00 pm today, I will assume you have no comments. Sorry for the rush on this.

Frayda Levin 632-4825

Draft

Testimony
by

James L. Malone
Assistant Secretary of State for
Oceans and International Environmental
and Scientific Affairs

and

The President's Special Representative
for the Law of the Sea Conference

June 23, 1982

Mr. Chairman, Members of the Committee:

It is a pleasure to appear before you today to review the results of the Eleventh Session of the Law of the Sea Conference.

I had hoped to be able to give you a different report today--one in which I could have informed you that the President's objectives had been met and that I would be recommending to him that the United States sign the Law of the Sea Convention and submit it to the Senate for advise and consent. Unfortunately, I am unable to do that.

I wish to note at the outset that, following the conclusion of the LOS Conference, the government agencies concerned with law of the sea have been engaged in an intensive review of the results of the Conference and the alternatives open to the US and are preparing their recommendations for the President.

The elements of this review are classified as they touch on sensitive US ocean and national security issues.

Mr. Chairman, I am sure you will appreciate that, under these circumstances, it will not be possible for me to discuss the report to the President or the positions of the various agencies.

Further, it would serve no useful purpose and also be potentially prejudicial to the President's position, to speculate on contingencies and on planning for a reciprocating states agreement or on other alternative deep seabed mining arrangements.

It would, however, be very useful for the Executive Branch to have any comments and suggestions the Committee may have on law of the sea issues and on what steps the United States should be taking to protect its law of the sea interests.

Mr. Chairman, I would like at this point to give you some background on the LOS negotiations.

As you were aware, an exhaustive review of the draft Law of the Sea Treaty was carried out in 1981. As this is the first time I have appeared before this Committee since the US policy review ended, I would like to summarize briefly the results of that review.

An interagency group, with representatives of concerned agencies, carefully analyzed all aspects of the many articles

and annexes of the Draft Convention. During the review period, key industry leaders and public interest groups were consulted, as were members of Congress and their staffs, and several hearings and numerous informal briefings were held.

As a result of this review, the Law of the Sea Senior Interagency Group concluded that, in the context of an overall acceptable treaty, navigation and overflight provisions, though imperfect, conformed generally with US interests, and that the other non-seabed areas, with certain exceptions, were acceptable. However, the deep seabed mining regime in the text contained major elements contrary to US interests. The objections to the seabed mining provisions were both philosophical and practical. It was clear from comments by representatives of consortia involved in deep seabed mining that the treaty presented major practical and commercial problems for seabed miners. Indeed, there was major concern that the treaty might prevent any mining from taking place.

On January 29, the President announced that the United States would return to the Conference to seek a treaty that:

-- would not deter development of any deep seabed mineral resources to meet national and world demand;

-- would assure national access to these resources by current and future qualified entities to enhance US security of supply, to avoid monopolization of the

resources by the operating arm of the International Authority, and to promote the economic development of the resources;

-- would provide a decision-making role in the deep seabed regime that fairly reflected and effectively protected the political and economic interests and financial contributions of participating states;

-- would not allow for amendments to come into force without approval of the participating states, including in our case the advice and consent of the Senate;

-- would not set other undesirable precedents for international organizations; and

-- would be likely to receive the advice and consent of the Senate. In this regard, the convention should not contain provisions for the mandatory transfer of private technology and participation by, and funding for, national liberation movements.

Following the President's statement, the US delegation was instructed to return to the Conference and to seek changes in the Draft Convention which would satisfy the President's six objectives.

During an intersessional meeting, February 24-March 2, the US circulated a comprehensive paper outlining its major concerns and suggesting alternative solutions. The paper

marked the intended culmination of a process to inform Conference participants about the specific US concerns. The core issues presented in the paper were few in number and ones with which all delegations were, by then, familiar.

However, the G-77, leadership expressed concern that the US proposals were not in the form of specific treaty language and insisted that no considered response could be expected from them unless specific language was forthcoming. Although the US would have preferred to have left its proposals in their existing, more flexible, negotiating format, the US delegation complied with the G-77 request and, on March 11, the US presented its book of specific amendments, referred to as the "Green Book". In presenting the "Green Book", the US made clear that the proposed amendments constituted only one possible set of solutions.

The G-77, however, continued to resist negotiating on our concerns. Their resistance prompted a group of eleven countries (namely, Australia, Austria, Canada, Denmark, Finland, Iceland, Ireland, New Zealand, Norway, Sweden and Switzerland) to draw up their own set of amendments which they believed would serve as a basis for negotiations between the US and the G-77. After careful analysis the US delegation concluded that certain elements of the G-11 proposals provided bases for addressing US concerns (e.g., contract approval,

technology transfer and separation of powers), but that other elements fell considerably short of the US objectives (e.g., review conference and Council composition). More importantly, several of the US concerns were not addressed at all by the G-11 paper (e.g., production limitation, decision-making and participation in the Convention by national liberation groups).

The G-77 insisted that the US and its allies accept the G-11 proposals as an exhaustive negotiating agenda. The US delegation, however, could not agree to this.

Plenary sessions were held from March 29 through April 1, at which delegations made official presentations of their positions. In setting forth the US position, I emphasized the US continuing desire for substantive negotiations to take place on the President's objectives.

When it became clear that negotiations were deadlocked, we sought--as a further attempt to encourage negotiations and to take into account the views of other--to modify our instructions to reflect some additional flexibility in two areas: the US would not insist on complete elimination of the production limitation nor on affirmative voting power for the US and a few of its closest allies regarding the adoption of rules, regulations and procedures by the Council of the International Seabed Authority.

However, substantive negotiations still did not take place. The US made yet another attempt to improve the atmosphere by agreeing to the inclusion in the treaty text of a reference to a compensation fund whose sources would be recommended by the Economic Planning Commission of the Seabed Authority--a provision sought by the African Group. Despite these efforts the G-77 refused to attempt to solve the problems with the Part XI.

On April 13, thirty-one sets of amendments were tabled. The most significant amendments were those sponsored by the US and six of its closest supporters, and those put forward by the G-11. The US amendments covered Part XI, the Annexes, and the resolutions on Preparatory Investment Protection and the Preparatory Commission. These amendments drew upon the G-11 proposals, while tailoring them in such a way as to make them consistent with the President's objectives.

The number and breadth of the amendments which various delegations submitted caused concern that voting could lead to adverse, far-reaching changes in the Draft Convention, and to the unravelling of the delicate compromises embodied in the non-seabeds provisions of the text. Consequently, the Conference leadership attempted to induce sponsors to withdraw their amendments or to agree not to press them to a vote. On April 26, the day voting was to be held, the leader-

ship succeeded in avoiding votes on all but three amendments dealing with non-seabed mining provisions, each of which was defeated. The US and our co-sponsors did not want to see the treaty unravel and so decided not to press for a vote on our amendments. It was expected that substantive negotiations on US concerns with Part XI of the treaty text would immediately ensue.

However, the PIP negotiations dominated the final weeks of the session and, thus, virtually no time was left for negotiations on Part XI itself. In the last week, Conference President Koh established himself as an arbiter between the US and the G-77. During a day and a half of intensive discussions, negotiators representing the US, the G-77 and the Soviet Union put their cases to each other and to President Koh. These discussions constituted the sole substantive discussions on the important seabed mining provisions during the entire Conference session.

President Koh subsequently issued two reports which, he felt incorporated those changes that would offer a better prospect than did the existing text for adoption of the treaty by consensus. These reports contained changes that modified the composition of the Council of the Seabed Authority by guaranteeing a seat to the largest consumer of seabed minerals (a change intended to meet the US concern for a

guaranteed seat), introduced a more pro-production policy objective in the article on policies relating to activities in the Area, and raised from two-thirds to three-fourths the majority needed for treaty amendments to enter into force at the Review Conference.

On April 29, it became clear that the changes to the seabed mining provisions of the text failed to meet any of the US objectives, thus preventing the US from being able to agree to the adoption of the text by consensus.

Mr. Chairman, I would like at this point to say a few words about the Resolution on Preparatory Investment Protection, the so-called PIP Resolution. The PIP issue was one of the issues designated after the August session as remaining to be negotiated. The purpose of the PIP Resolution was to offer protection for those who made investments in deep seabed mining prior to entry into force of the LOS Treaty. During the intersessional period, Conference President Koh asked for a specific proposal from the US and other industrialized countries with deep seabed mining interests. Consequently, during the intersessional meeting and during the Conference session itself, the US, UK, FRG, France and Japan engaged in intense negotiations to develop a PIP proposal. The major issues in these negotiations included Japan's concerns over mine site size and its "second tier" status in the process

of mine site conflict resolution, France's concern that PIP be limited to a specified group of entities, the size and number of pioneer mine sites, a requirement that a prospected site equal in value to the applicant's mine site be made available to the PrepCom by such applicant, and the Soviet Union's concerns with what it viewed as the "preferred" status of those countries with existing multinational mining firms.

On March 16, 1982, the US, UK, FRG and Japan put forward their PIP proposal, which in turn provoked a counterproposal from the G-77. The G-77 proposal was significant, however, for its recognition that pioneer miners warranted special treatment and that conflict resolution was a responsibility of prospective certifying States. However, in other respects, the G-77 proposal imposed onerous burdens on prospective investors.

The G-11 countries, as they had in the case of the "Green Book", attempted to narrow the gap between the industrialized countries and the G-77 by producing a compromise draft proposal on PIP. All three PIP proposals were used by Conference President Koh to form the basis of his own proposal.

During the negotiations that followed, the G-77 insisted that pioneer investors not be allowed to exploit the seabed minerals until after entry into force of the Convention, that

pioneer investors be subject to the Treaty's production limitation, and that pioneer investors be required to submit a plan of work for exploration and exploitation to the International Seabed Authority for approval. The G-77 also demanded that the provisions of the text relating to the reserved area apply to pioneer investors and that each pioneer investor be obligated to respond to requests by the Preparatory Commission to explore the reserved area it had proposed. The US and the co-sponsors resisted these demands, arguing that pioneer investors should receive production authorizations prior to any new entrant, plans of work should be automatically approved upon certification of the applicants' qualifications by the sponsoring State, and only one reserved area need be fully explored.

The final PIP Resolution adopted on April 30 creates three categories of pioneer investors: (1) four countries (France, Japan, India and USSR); (2) four consortia (nationals of Belgium, Canada, FRG, Italy, Japan, Netherlands, UK and US); and (3) developing countries.

The resolution also sets forth certain obligations, including the following:

- Certifying States must ensure that overlapping claims are resolved prior to registration with the PrepCom.

- Each application must cover an area sufficient for two mining operations.

- The pioneer investor must relinquish to the Enterprise at least 50% of his 150,000 square kilometer exploration area within eight years after allocation.

- Certain financial obligations, such as:

  ° $250,000 on registration by the PrepCom;

  ° the accrual of a one million dollar annual fee payable upon approval of a plan of work when the Convention enters into force.

  ° $250,000 for processing a plan of work; and

  ° diligence requirements to be established by the PrepCom.

- Other obligations for pioneer investors include:

  ° exploration of the reserved area (on a reimbursable basis) at the request of the PrepCom;

  ° training for personnel designated by the PrepCom; and

  ° transfer of technology prior to entering into force of the treaty.

The PIP resolution also sets forth certain rights of pioneer investors:

- Registration as pioneer investor, if certified by a signatory to the Convention.

- One pioneer area of 150,000 square kilometers.

- Production authorization after entry into force with priority over all other applicants except the Enterprise.

Negotiations on PIP were fruitful and the PIP resolution provides certain benefits for prospective seabed miners. However, the resolution does not slolv the basic defects in the mining regime. It does not assure access nor does it eliminate the other impediments to mining. Further, it does not provide for prospective seabed miners who may enter the field after January 1, 1983 - so-called new entrants.

A second issue left unresolved after the August 1981 Conference session was the composition and functioning of the Preparatory Commission. The function of the PrepCom is to prepare for the establishment of the International Seabed Authority and its various organs, including the Enterprise. Rules and regulations for deep seabed mining set by the Preparatory Commission will permit the Seabed Authority and the Enterprise to commence their functions upon entry into force of the Convention. These rules and regulations may be changed when the Convention enters into force, subject to the rule of consensus in the Council of the Seabed Authority.

The negotiations on the Preparatory Commission were based on a revised version of a draft resolution submitted to the Conference by President Koh and First Committee Chairman Paul Engo at the August session last year. Additional

provisions were later introduced by the Conference Collegium as a result of formal amendments submitted by delegations on April 13. Two major additions were the establishment of a special commission to study the problems of the landbased mineral producers likely to be most seriously affected by the seabed production and the ability of certain national "liberation movements" to participate in the Commission as observers.

Membership and participation in the Preparatory Commission is limited to those states and other entities, such as associated states, which sign the Convention. States which have not signed or acceded to the Convention and other entities which were observers at the Conference may participate as observers but may not participate in voting. The Collegium took this position on membership over the objections of the US and other industrialized states which had pressed for signature of the Final Act as the qualification for membership.

The US proposed that the Preparatory Commission's decisions on matters of substance be taken by a two-thirds majority of 36 States, to be elected by the Conference according to the system used for the compositon of the Council. The proposal suggested by the Collegium and later adopted was that the Conference's rules of procedure (that is, consensus decision-making) apply to the adoption of the Commission's

rules and that, thereafter, the Commission determine its own rules for decision-making.

Conference President Koh conducted a number of informal Plenary sessions to complete work on the question of what entities could participate in the Convention--the third and final issue formally designated as remaining to be negotiated after the August 1981 session. Debate focussed on three separate categories of potential participants: intergovernmental organizations (primarily integrated economic organizations); associated states and territories which enjoy full internal self-government; and certain "national liberation movements" which are recognized by the Organization of African Unity or League of Arab States and which were observers at the Conference. Negotiations at previous sessions of the Conference had brought the questions of intergovernmental organizations and associated states and territories to near-completion. Only a few aspects of these questions were left to be resolved at the final Conference session.

The negotiated solution that was finally adopted permits international intergovernmental organizations, such as the European Economic Community, and associated states and territories that enjoy full internal self-government recognized by the United Nations to be signatories of the Convention. In addition, the Convention is subject to formal confirmation

by the international organizations or ratification by the associated states and territories, and will be open for accession by each of these entities. Finally, all signatories of the Final Act may participate in the deliberations of the PrepCom as observers.

The question of participation by "liberation movements" was a major focus of the final consultations. Conference President Koh chaired a number of small group consultations on this subject and the provision eventually adopted allows those "liberation movements", which have been participating in the Conference, to sign the Final Act in their capacity as observers; they may not sign, ratify or accede to the Convention. Observers who have signed the Final Act, but who are not referred to in Article 305 on Signature have the right to participate in the International Seabed Authority as observers. This provision opens the possibility that such organizations could receive funds from the authority. In fact, if the U.S. were to participate in the treaty, it would be put in the position of having constantly to block such proposals.

Committee II, which was responsible for navigation and related issues, held three informal sessions and one formal meeting during this final session of the Conference. Many old issues were revived, but most of the debate centered on only a few proposals, including a suggestion to amend Article

21 to require prior authorization or notification for warships entering the territorial sea. The proposal was strongly opposed on the merits by a number of delegations, including the US and other major maritime states.

As part of his overall efforts to minimize the number of votes on substantive issues, Conference President Koh conducted intensive consultations concerning withdrawal of the amendments proposed to Article 21. The sponsors of most of the amendments eventually agreed not to press the amendments to a vote.

Although there was no direct reference to the straits articles in the Committee II debates, Spain submitted four formal amendments concerning straits and pressed two of them to a vote. Neither was adopted.

The UK proposed an amendment to Article 60(3) which modified the requirement that abandoned installations in the exclusive economic zone and on the continental shelf be entirely removed. This was adopted.

An effort also was made at this session of the Conference to encourage increased cooperation for the conservation of "straddling stocks" by incorporating a change in Article 63; however, a formal amendment on this issue proposed by eight states was not pressed to a vote.

Mr. Chairman, I would make the following general assessment regarding the Law of the Sea Convention as it was finally

adopted on April 30, 1982.

No harmful changes were made to the navigation and overflight provisions and these portions of the treaty, taken as a whole, are acceptable, though they are imperfect.

In regard to Part XI, however, no improvements were made and none of the US objectives was achieved. The Law of the Sea Treaty is seriously flawed. The regime it would create would:

-- Discourage private investment in deep seabed mineral production. It would not provide assured access. There will be a fundamental lack of certainty in regard to the granting of mining contracts, mandatory technology transfer requirements, and burdensome financial requirements. The rules and regulations to be developed will not cure these defects.

-- A privileged competitor will be created -- the Enterprise -- whose advantages could make it extremely difficult, if not impossible, for private ventures -- absent national subsidies -- to compete. A supranational monopoly over deep seabed mineral production could thus result. This could, in effect, destroy the parallel system.

-- The decision-making system would be so structured that US and other potential deep seabed mineral producers and consumers would be unable effectively to influence important policy and operational decisions.

-- The treaty provides for a review conference which, after five years of negotiations, may adopt amendments to the deep seabed mining regime that would automatically enter into force for the US upon approval by three-fourths of the States Parties and effectively by-pass Senate advice and consent. Our only recourse would be denunciation of the Convention.

-- It would allow funding for liberation groups.

-- It would artificially limit deep seabed mineral production and provide for discretion and discrimination if there is competition for limited production allocations.

The PIP Resolution does not in any way cure the defects of the Treaty itself. This Resolution might have been more acceptable had the negotiations on the seabeds provisions of the treaty text led to significant improvements. However, those provisions were so little changed that the Resolution, with all of its linkages to Part XI and the relevant Annexes, continues to impose unacceptable risks, burdens and limits on seabed miners. Mining by private entities might well never take place under the treaty, unless heavy subsidies were assured.

It was for these reasons that the US could not agree to the adoption of the final text by consensus. Instead, we asked for a vote and, on April 30, voted against the Treaty's adoption.

As you may be aware, three other states voted against the treaty's adoption - Israel, Turkey and Venezuela - and 17 states abstained, including the UK, FRG, Benelux, Italy, Spain, Thailand and the Soviet Union and other Eastern European nations except for Romania.

There are three stages of the Conference remaining. First, the Drafting Committee will meet in Geneva for five weeks in July and August to complete its review of the text.

Second, an informal Plenary will meet in New York on September 22-24 to adopt the final drafting committee changes. Finally, the Final Act will be opened for signature in Caracas in early December.

The Convention will enter into force one year after 60 states have ratified it. We expect that most developing states and many developed states will sign early and in large numbers. Many are speculating on which countries, especially which countries with mining capabilities will sign the treaty. Such speculation is merely guesswork. Each country, like the US, is evaluating the long-term prospects and costs under the treaty regime as well as evaluating its alternatives are.

The Interagency Group on Law of the Sea has completed a report to the President on the Conference and on further steps to be taken to further our oceans interests. This report was submitted on June 16 and a decision by the President has not yet been made on the recommendations made in the report. As I have already stated, I cannot go into detail with regard to these recommendations or speculate on the eventual decision of the President. I would only note that the report deals with the questions of what approach the US should take toward the remaining Conference process and toward the Convention itself and, on a broader basis, what steps the US should take to protect it's law of the sea interests.

Some have suggested that we should have agreed to the treaty because it is the only means of assured access for the US to seabed minerals. As I have noted earlier, the treaty does not in fact provide assured access. The procedures for granting contracts are not automatic and there is no way that a company or a nation could be certain that it would have authorization by the International Seabed Authority to mine.

Further, even if the treaty were perfect in this respect, it would not constitute the only means of access. We categorically reject the propositions that all nations of the world are bound by the provisions of the seabed text of the LOS treaty whether or not they have signed the treaty.

In conclusion, I would like to emphasize that the United States went to the Conference prepared to work and negotiate with other countries to find mutually acceptable solutions that not only would have satisfied our objectives but, also, would have provided a fair and balanced system promoting the development of deep seabed resources to the benefit all countries. In a spirit of compromise and conciliation, we made several attempts to find common ground and satisfactory solutions, including the revision of our proposed amendments to take into account views expressed by other delegations. Unfortunately, we often did not ourselves experience such a willingness to negotiate on the part of certain other key

delegations. In effect, despite repeated assurances, there was no meaningful negotiation on any major issue of concern to the United States except for the PIP Resolution.

I cannot, of course, say what the results might have been had such negotiations taken place. It is possible that the final outcome would have been the same. I think, however, that had the opportunity been given, the majority of delegations would have recognized that the United States did not seek to change the basic structure of the draft treaty. Even if all of our proposed changes had been accepted, there would still have been an international regulatory system for the deep seabeds and a functioning Enterprise. We did not try to destroy the system; rather, we sought to make it work to the benefit of all nations by enhancing seabed resource development.

The decision to call for a vote and to cast our vote against the treaty was not taken lightly. We recognize full well the labor that went into the development of the text. The United States was closely involved in this process at every stage since its inception and it was not easy to turn away from these efforts, particularly when many provisions of the final text were satisfactory to us. We did not easily dismiss the personal commitment and dedication of delegates who had worked for years for this agreement, even when many of them, in the end, opposed us.

It has been suggested that important countries have indicated a willingness to adopt further changes to the treaty. The US has seen not evidence of such willingness. To return to negotiations under these conditions would create the false expectation that the US is no longer committed to achieving the President's six objectives. Returning under such conditions could only stir up ill-will against the US.

It has been suggested that we have sacrificed commercial interests in the deep seabed for some goal of ideological purity. This misrepresents the aims of this Administration. In the first place, we dealt mostly with very concrete issues. The treaty creates very real practical problems for deep seabed mining which have nothing to do with ideology.

Secondly, there are matters of principle involved--but these are not important just to us but to other nations as well. It does no good to dismiss these concerns as insignificant. The technology transfer issue is a case in point. These issues of principle were of great imporatance to many members of the G-77, as relevant to other North-South negotiations. Other delegations recognized that basic questions of principle were involved and based their negotiating strategy, on this. Indeed, most participants had very little direct interest in seabed mining. It was the United States which was concerned with the pragmatic problems of attempting to

create conditions for seabed mining. Unfortunately, the great majority of delegations were concerned with ideology. It would have been foolish to have pretended it was not true.

The United States could not accept a treaty that so clearly thwarted many important oceans interests. In my opinion, to have done other than to vote against the treaty would have been an act of bad faith. I do not believe that the treaty which was adopted on April 30 had any chance of receiving approval by the Senate.

We had hoped to obtain an acceptable treaty when we went to the eleventh session. Instead a final text was adopted by the Conference on April 30 that we believe is unacceptable.