Ronald Reagan Presidential Library
Digital Library Collections

This is a PDF of a folder from our textual collections.

Collection: Barr, William: Files
Folder Title: Law of the Sea (08/13/1982-08/17/1982)
Box: 9

To see more digitized collections visit:
https://reaganlibrary.gov/archives/digital-library

To see all Ronald Reagan Presidential Library inventories visit:
https://reaganlibrary.gov/document-collection

Contact a reference archivist at: reagan.library@nara.gov

Citation Guidelines: https://reaganlibrary.gov/citing

National Archives Catalogue: https://catalog.archives.gov/

WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name BARR, WILLIAM: FILES

Withdrawer DLB 12/11/2018

File Folder LAW OF THE SEA (08/13/1982-08/17/1982)

FOIA S17-8440 SYSTEMATIC

Box Number 9

56

ID	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
225852	PAPER	DRAFT INSTRUCTIONS (SCOPE PAPER)	4	ND	B1
225853	PAPER	ISSUES PAPER - PROTECTION OF THE MARINE ENVIRONMENT	1	ND	B1
225854	PAPER	ISSUES PAPER: MARINE SCIENTIFIC RESEARCH	1	ND	B1

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

B-1 National security classified information [(b)(1) of the FOIA]
B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
B-3 Release would violate a Federal statute [(b)(3) of the FOIA]
B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

file LOS

The State Department people who have been most helpful and forthright in the IG process in advancing the President's LOS objectives have told me that:

o Bill Salmon, who is Jim Buckley's chief aide on LOS, influenced Buckley to oppose the IG action plan for implementing the President's decision to try to establish an alternative LOS regime.

o Salmon and Buckley together prevailed upon Under Secretary Eagleburger to recommend to Shultz that he oppose the action plan and instead support a low-key approach (the thrust of the August 5, 1982, Eagleburger memorandum)

o Eagleburger and Buckley were involved in the discussions with Secretary Shultz leading up to Shultz' memo on LOS, but at no time were the Bureau of Oceans, Environment, and Science (which had responsibility for LOS negotiations) and other strong anti-treaty people notified of these discussions or allowed to participate in them.

Moreover, the observation that State Department personnel continually arugued for the path of least resistance derives from direct personal observations during IG group meetings and drafting sessions.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 17, 1982

FOR: EDWIN L. HARPER

FROM: WILLIAM P. BARR

SUBJECT: Law of the Sea Strategy

The State Department is now recommending that we take a low profile/business-as-usual approach in our diplomatic efforts to wean our allies away from the LOS Treaty and into an alternative regime. This recommendation directly conflicts with the views of all other interested agencies; arises from intensive maneuvering by pro-Treaty bureaucrats at State Department; and, if adopted, would result in utter failure.

Aggressive, High-Level Diplomatic Action Is Essential

It was the consensus of the Interagency LOS Group that, though it would be difficult, we stood a fair chance of achieving an alternative regime if we made it a high priority and pursued it forcefully and at high level. Political appointees in the State Department's bureau directly involved in LOS negotiations agreed with this assessment. The IG recommended that (1) the President directly contact allied leaders and (2) send a special Presidential envoy (such as Donald Rumsfeld) to start discussions about an alternative regime with the allies.

This approach is considered essential for three reasons:

1. It will make it unambiguously clear to our allies that this is a high priority and of special importance to the President.

2. It will elevate the issue to the political level and out from the clutches of diplomatic bureaucracies that are hostile to the President's position. The professionals in allied Foreign Ministries (and, to an extent, in our own State Department) either support the Treaty or want to remain in the Treaty process. As long as we continue dealing at the agency-to-agency level, our allies will continue to drift toward the Treaty. The head of the British delegation told his U.S. counterpart that as long as the Foreign Ministry controlled the issue, Britain would accept the Treaty, but that, if President Reagan intervened directly with Thatcher, he expected that Britain would stay out. Businessmen in allied countries likewise tell us that their Foreign Ministries are trying to guide their government's policy inexorably toward the Treaty. We must act decisively and cut through this process.

3. It is the best way to engage the allies in discussions leading to an alternative regime. For weeks, State Department officials have been dealing with their counterparts and are getting nowhere. We must get the allies engaged in a planning process that leads to an alternative regime. We must get the hook in their mouth. A Presidential call and a visit by a special envoy are the best ways to get this started.

The State Department's Recommendation Is Without Merit

The State Department's recommendation to avoid high-level activity is based on three arguments: (1) that "too many other things are on the plate"; (2) that we should wait until we have fully developed an alternative; and (3) that "it won't work and it's not worth the cost". None of these arguments have merit.

1. The foreign policy plate is always full. This does not mean that we can stop forcefully pursuing important strategic interests. If we treat LOS as a low priority, as suggested by State, the President would become isolated from the rest of the world on this issue. This would not be politically good for the President nor strategically good for the nation. It is clear to me from direct observation that the bureaucrats who have been making the "full plate" argument within the State Department would like the U.S. to become isolated so that a future Administration will join the Treaty. We cannot let this happen. Constructing an alternative regime must become a high priority.

2. The argument that we should wait until we have every jot-and-tittle of the alternative worked out is totally off-the-mark. The fact is that we already have a good idea what kind of alternative regime we want. There is no need at this stage to fill all the gaps and set it into concrete. Just the opposite. The whole idea is to approach the allies with a flexible position so that they will become engaged in the development process itself. Once we get our allies in on the planning, we're half way there.

3. The assertion that "it won't work" is nonsense. It will be a challenge, but there is no evidence to support the contention that it would be futile. There is strong opposition to the Treaty in the private sector in allied countries. Our arguments are good, and there is every reason to believe they will be listened to by the responsible political leaders of allied countries.

One of our nation's greatest statesmen, Elihu Root, once said: "Every business is best managed by its friends; every undertaking is best prosecuted by those who have faith in it." The fact that the State Department is ready to concede defeat before the fight has been joined clearly demonstrates why the President and a special envoy must be involved in prosecuting this effort.

file LOS

DEPARTMENT OF STATE

Washington, D.C. 20520

UNCLASSIFIED UPON REMOVAL OF CLASSIFIED ENCLOSURE(S) dlb 12/11/2018

August 17, 1982

UNCLASSIFIED
(SECRET Attachments)

TO: IG

FROM: OES/OLP - Otho E. Eskin

SUBJECT: Action Plan

Attached are draft instructions (scope paper) and background material for the President's Emissary. Certain items are not included and will be forwarded shortly.

Please give your comments to Brian Hoyle (632-8232) by COB August 19.

Briefing Book
Table of Contents

Attachments:

NSDD 20 (January 29, 1982)
President's Statement (January 29, 1982)
NSDD 43 (July 9, 1982)
President's Statement (July 9, 1982)
Messages from the President to London, Bonn, Paris, The Hague, Rome, Tokyo and Brussels
Memorandum to the President (December 1981)
Memorandum to the President (June 1982)
Interim Agreement on Polymetallic Nodules
Draft Reciprocating States Agreement
Biographic Material
Draft Convention

WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name
BARR, WILLIAM: FILES

Withdrawer
DLB 12/11/2018

File Folder
LAW OF THE SEA (08/13/1982-08/17/1982)

FOIA
S17-8440
SYSTEMATIC

Box Number
9

56

ID	*Document Type* *Document Description*	*No of pages*	*Doc Date*	*Restrictions*
225852	PAPER DRAFT INSTRUCTIONS (SCOPE PAPER)	~~4~~ 5	ND	B1

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

B-1 National security classified information [(b)(1) of the FOIA]
B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
B-3 Release would violate a Federal statute [(b)(3) of the FOIA]
B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

DECLASSIFIED
Authority State Waiver 11/6/15
BY dlr NARA DATE 12/11/2018

Issue Paper

Defects in the LOS Seabed Regime

The Treaty text adopted by the Third United Nations Conference on Law of the Sea is fatally flawed with respect to seabed mining: it discriminates against the private side of the parallel system; it sets harmful precedents (e.g., mandatory technology transfer) which could be used against us in other negotiations; and it would establish adverse institutional arrangements and deterrents to seabed mining. In general, the text contains repeated and specific references to elements of the New International Economic Order (NIEO) and is biased against exploitation of the seabed. Below are the most severe defects.

1. Council Decision-Making/Composition: The Council will function as the main decision-making body of the Seabed Authority. Decisions in the Council require 10 or 13 members to block action on almost any issue, except for four categories of decisions which require consensus and which are related to access, the structure of the regime itself and environmental issues. The text provides for, at maximum, eight Western market economy States as members.

2. Contract Approval: There is no guaranteed contract approval for qualified applicants. An application for a contract to explore and exploit seabed resources would go to a subsidiary body of the Council which would make the

decision on granting the application. Although this decision is subject to review by the Council, a favorable change of the decision is unlikely.

3. Production Limitation: The Treaty would impose an unprecedented limitation on total seabed production by limiting the production of each conractor.

4. Technology Transfer: The Treaty provides for mandatory transfer of privately owned seabed mining technology in a forced sale in cases where they Enterprise or a developing country is unable to obtain the technology.

5. Review Conference: After the system of exploitation under the Treaty has been operating for 15 years, it will be reviewed by a conference of State Parties. The Conference can adopt changes to the Treaty by 3/4 of the parties which will be binding on all parties, even those who opposed the changes. Denunciation is a politically unsatisfactory protection.

6. National Liberation Movements: National liberation movements are eligible for sharing in the benefits, including financial benefits of seabed mining.

7. Enterprise: The text provides for Enterprise access to subsidized capital and for operational discrimination in favor of the Enterprise at the expense of the private side of the system.

8. Preparatory Investment Protection (PIP): The LOS Conference adopted a resolution which is supposed to grandfather into the Treaty those companies which have already made significant investments in seabed mining. The resolution does not give assurance that the miners will be given contract approval to mine by the Seabed Authority on entry into force of the treaty and at the same time levies substantial costs on the miners and requires them to transfer their technology and train LDC personnel prior to entry into force of the LOS treaty. Further, only those US companies which meet the criteria of hte Resolution as of January 1, 1983 are included; later entrants would not be convered. This contravenes existing US legislation.

The Alternative Regime

General Considerations

An ideal legal regime for seabed mining should at a minimum provide for avoidance of dispute through mutual recognition of mining licenses. Having achieved that, it should leave as much as possible of the legal framework, enforcement, and compliance machinery to individual states, while harmonizing domestic seabed mining activity. The regime should not itself have specific regulations for the conduct of ocean mining. It should leave maximum freedom to individual seabed operators to function in accordance with market forces and the decisions of their flag states.

To be viable, a deep seabed regime needs participation by those who can actually affect commercial operations. The regime need not be global in nature. Membership by all or most of those who can actually affect operations in the deep seabed beyond national jurisdiction is sufficient. This could mean a regime with just a few major allies but it could be expanded to include many others.

Finally, any regime for deep seabed minerals should address questions relating to exploitation of nodules, as well as provide a means to addressing questions relating to other minerals and hydrocarbons at a later date. We will then avoid dealing with the questions of other minerals prematurely, while allowing preliminary work leading to

eventual exploration and exploitation of polymetallic sulfides, hydrocarbons, or other as yet unknown resources of the deep ocean.

We can identify three categories of potential particpants: I) states with seabed mining legislation; II) states not actually having legislation for seabed miners, but with a substantial investment in seabed mining; and III) potential seabed miners and significant LDCs to become parties. As we move from a regime for Category I to a regime for Categories I, II, and III, new inducements may have to be added to obtain the participation of the additional states.

Alternative Models

Using the aforementioned principles, we have developed outlines of three alternative models. The first is closely related to the Reciprocating States Agreement that was available for signature in February 1982. The second is based in part on the Antarctic Treaty system. The third is a regime calculated to attract support of some of the more important non-seabed mining states. One can think of these three models as points on a continuum. At one end of the continuum is a bare bones agreement probably with very few participants. Elsewhere on the continuum one could add flesh to the bare bones approach in order to induce participation of additional states, although this will inevitably raise the cost of the regime.

Any of the alternative arrangements could provide a consultative mechanism to meet at regular specified intervals to study common problems. For example, such a group could consider environmental impacts, based on available evidence; financing or subsidization problems; or foster uniform mining regulations. The findings of the consultative body's work would apply to activities of mining states on a "voluntary" basis.

Although the US Deep Seabed Hard Minerals Act of 1980 provides for international agreements, it may become necessary or desirable to amend that legislation to accommodate international concerns unforeseen when the Act was drafted.

Alternative 1: The RSA Model

This is a seabed mining agreement which will look very similar to the agreement given to the "Like-mininded Group" (UK, France, FRG, US, Belgium, Italy, Holland, and Japan) prior to the LOS Conference in March-April 1982. Its basic elements are resolution of overlapping claims for pre-enactment explorers, first-come first-served system for the aware of subsequent licenses for mine sites, harmonization of domestic regulations, reasonable regard for high seas freedoms, and few other restrictions outside of the conflict resolution context. In other words, a regime which is relatively permissive.

Alternative 2: The Consultative Model

The US would invite only seabed mining countries, (the like-minded group, including Canada, the Soviet Union and India) to negotiate an alternative seabed regime. Our aim would be a regime similar in essential respects to an RSA but recognized by a larger number of states and slightly more ambitious in scope. The regime would apply to all seabed minerals, but contain specific provisions for polymetallic nodules.

Those who participate in negotiating the regime could become Consultative Parties to the regime. Other countries would later be invited by parties to the regime to accede to it. Non-Consultative Parties to the regime could become Consultative Parties once they grant a mine site authorization under their own domestic legislation.

The Consultative Parties would meet regularly to review the functioning on the regime and could make adjustments to the provisions of the regime. A mechanism for making decisions on recommendations to governments related to seabed mining could be developed on a qualified majority system. The Consultative Parties could also develop provisions to cover exploration and exploitation of other seabed minerals when necessary. The non-Consultative Parties to the regime could participate, but without decision-making power, in these meetings.

A conflict resolution procedure based on arbitration would be established to handle disagreements between parties to the regime including cases where a Consultative Party feels a mine site authorization granted by another party is in violation of the regime provisions or cases where a dispute about overlapping claims may have arisen.

Alternative 3: The Broad Regime

If we intend to obtain the support of new seabed mining countries, then we must plan efforts to make the agrement saleable, both in the foreign ministries of countries wishing to appear forthcoming to the Thrid World, and in the Third World itself.

The main elements of a regime with broad participation, that is with participation by all three categories of states, would be mutual recognition of exploration and/or mine sites, and cooperative action in the environmental and scientific research areas. Information would be maintained by state parties. The depository of the multilateral agreement would perform such limited secretarial services as might be necessary.

A trust fund controlled by the contributors and fed from seabed mining revenues or profits could be established to furnish funds or resources for oceanographic research in the developing world, etc. The revenue sharing rates would have to be high enough to establish a sizeable fund, but not so high as to be a disincentive to seabed mining investment.

Such a regime would probably have to contain attractive opportunities for participation by LDCs in the development and benefits of seabed mining itself. It could contain provisions encouraging use of LDC nationals, either as private sector employees or as part of government ocean-related training programs in developed countries, funding on a concessionary loan basis for equity participation in mining consortia, incentives for location of processing facilities in developing states, provisions for training in ocean technology, funding for voluntary transfer of deep seabed mining technology with broader applicability, or merely provide a framework within which future cooperation would be specifically arranged. Some combination of the above would probably have the most appeal.

(Talking Points To be written after papers have received final IG Clearance.)

~~CONFIDENTIAL~~

DECLASSIFIED
Authority State Waiver 11/6 1/5
BY dlb NARA DATE 12/11/2018

ISSUES PAPER
NAVIGATION AND OVERFLIGHT

Our allies may raise the question of whether a country which does not sign the Law of the Sea Treaty can benefit from the navigation and overflight provisions of the Treaty. They will want to know what US policy will be.

Whether from the standpoint of the intended universal nature of the navigational provisions, or the fact that these provisions in large measure reflect customary practices, non-signature or non-ratification of the LOS Treaty will not adversely affect any State's right to enjoy navigational freedoms reflected in the Treaty. It is a fundamental mistake to conclude that the navigation provisions contained in the treaty create new privileges or will result in a significant modification of existing practices and activities.

In this regard, the United States anticipates no modification of our commitments to our allies and no change in the operational procedures of our maritime forces because of our decision not to sign the LOS Treaty. These rights stem from long-standing State practice, which will continue to exist independently of the Treaty.

The commercial navigation interests of non-signatories will not be adversely affected. The LOS Treaty substantially reiterates the current maritme practice of States relating to commercial navigation. For example, both the LOS Treaty and

customary international law recognize the right of commercial vessels to unimpeded passage in recognized international routes. The exercise of this right is not contingent on participation in the LOS Treaty.

Nations participating in the Intergovernmental Maritime Organization (IMO) will continue to enjoy the protections entered into through the IMO framework. (FYI: The United States and 123 other countries belong to the IMO. IMO handles matters such as the designaiton of traffic separation schemes in restricted areas, ship construction and equipment standards, and chemical/hazardous material codes.)

We plan to work with our allies to ensure that these rules are not undermined by inconsistent State practices.

DECLASSIFIED
Authority State Waiver 11/6/15
BY dh NARA DATE 12/11/2018

~~CONFIDENTIAL~~

NAVIGATION AND OVERFLIGHT

Talking Points

- It is the US view that the navigation and overflight provisions of the LOS Treaty substantially perpetuate the long-standing maritime practice of states.

- There will be no change in the operation practices of US forces.

- These long-standing rights must not and will not be affected simply because a State does not sign the law of the sea treaty.

- It is the view of the United States that universal recognition of the balanced package of rights and duties envisioned by the navigation provisions of the LOS treaty will serve the interests of all nations. To do so will provide stabilty while recognizing both the legitimate concerns of the coastal states and the needs of the maritime international community.

- With the support of our friends and of nations with maritime interest, we do not expect any serious challenge to navigational freedoms.

- We plan to consult with key strait and archipelago states in the near future and we believe we will be successful

in working out any differences.

- We assume we can expect your full support in assuring continued freedom of navigation.

- We will be proposing bilateral consultations with you in the near future as to what can be done to develop mutally supportive navigation and overflight peacetime policies.

- [If the argument is raised that the LOS treaty was negotiated as a package and a country cannot enjoy rights under one portion of the treaty and not be bound by the remainder.

While it is true that the LOS Convention was negotiated as a "package deal", the package is basically severable into two parts: seabed and non-seabed issues. The non-seabed provisions may be further broken down into discrete packages such as navigaiton issues, marine environment issues, and the like. The package of navigaiton issues is clearly intended for universal applicability. The navigation and overflight provision do not provide nations with new or unique rights. For example, it is US practice to navigate over, under, and through international straits. The treaty incorporates this right in what is called the transit passage regime for straits

used for international navigation. Accordingly, inasmuch as the LOS Convention substantially perpetuates current maritime practice of the United States and other leading maritime nations, we would not be enjoying "rights" under one portion of the treaty while not being bound by the remainder. In this regard, it may be noted that only the seabed and dispute settlement parts of the treaty, both of which establish new procedures rather than codifying existing practices, refer to "states parties". All other areas of the text simply refer to "states". Further, the seabed part explicitly provides that rights and benefits of the seabed legal regime are available only to state parties.

DECLASSIFIED
Authority
BY NARA DATE

CONTINENTAL SHELF

The continental shelf is the natural prolongation of the coastal state's land territory beneath the oceans bordering its coasts. The coastal state possesses sovereign rights for the purpose of exploring for and exploiting the natural resources in the seabed and subsoil of the continental shelf and sedentary living resources. The coastal state is under no obligation to permit other states to engage in resource related activities on its continental shelf. The primary resources of the continental shelf are oil and gas, hard minerals, and sedentary fisheries. The rights of the coastal state in the continental shelf do not affect the legal status of the superjacent waters or of the airspace above those waters.

The principal difficulties of the continental shelf regime relate to delimitation, both the shelf's outer limit and its boundary between opposite and adjacent states. An outer limit of the continental shelf is defined by the LOS Treaty. The continental shelf extends to the limit of the entire submerged prolongation of the land mass of the coastal state, consisting of the shelf, the slope, and the rise. It does not include the deep ocean floor. The Treaty grants a coastal state a minimum of 200 nautical miles, whether or not the geologic shelf extends that far. If the shelf extends beyond 200 miles, the coastal state may claim the entire

margin subject to a maximum limit of 350 miles or the coastal state must delimite the outer limits of the shelf according to formulas set out in the Treaty.

The problem of delimitation of continental shelf boundaries among opposite and adjacent states is more complex. The 1958 Continental Shelf Convention and the Draft Convention attempt to provide formulas for resolution of these disputes but are too vague to provide a real means of resolution. This problem is more fully discussed under Boundary Disputes.

For the European countries, most continental shelf boundaries have been resolved in a series of ICJ and arbitration cases. The major boundary area subject to dispute is the North Atlantic off the Scottish, Irish and Danish (Faroe Islands) coasts. The problem is compounded by the British claim to Rockall, an uninhabited and uninhabitable small island approximately 289 miles from Scotland, 226 miles from the Republic of Ireland and 322 miles from the Faroe Islands. Rockall was incorporated into the United Kingdom by the Island of Rockall Act of 1972.

UK concern with Rockall stems from the hydrocarbon potential of the continental shelf off of Rockall. A host of legal issues are raised by customary law and the Law of the Sea treaty regarding the status of Rockall as British territory and whether it has a continental shelf of its own.

Rockall is separated from the UK continental shelf by a trough which may have the legal effect of cutting off the UK shelf.

The U.S. has not taken an official position on the status of Rockall. However, we believe we can assure the UK that their interests in Rockall and the nearby shelf are at least well protected outside of the LOS treaty by the 1958 Geneva Convention and customary law as they would be if the UK becomes a party to the UNLOS treaty. No country would seriously challenge development of the Rockall Shelf by the UK. No country would undertake development there without UK consent.

Revenue sharing on the continental shelf would impose a burden on the UK if its claim to Rockall is accepted. The Treaty requires the coastal state to make payments to the International Seabed Authority out of revenues derived from the exploration of oil and gas and hard minerals from the continental shelf beyond 200 nautical miles from the coast. Among the European countries to be visited and Japan, only the UK's continental shelf could extend beyond 200 miles and thus be subject to this obligation.

ISSUES PAPER:

FISHERIES

Approximately 93 coastal states including the United States have enacted unilateral legislation providing exclusive fisheries jurisdiction seaward to a distance of 200 nautical miles. Since such exclusive coastal state authority has clearly become customary international law, no coastal state need rely on the Law of the Sea Treaty as a source of fisheries jurisdiction. Thus it can be safely argued that, in regard to coastal fisheries, all the countries to be visited are or can be at least as well off under their own domestic legislation as they would be under the LOS treaty. In addition, coastal states can be subjected to potentially troublesome compulsory conciliation procedures under the LOS treaty by states which accuse them of arbitrarily abusing their jurisdiction. This would be avoided by remaining outside the Treaty.

With regard to highly migratory species (primarily tuna) the US neither claims nor recognizes exclusive jurisdiction beyond a 12-mile territorial sea. We argue that effective management and conservation of this highly migratory species requires international agreement. States which fish for highly migratory species and which remain outside the treaty can avail themselves of the same argument made by the US. The argument is far more difficult to maintain under the Treaty.

Non-participation in the LOS would have no appreciable effect on the bargaining leverage in negotiating bilateral agreements with coastal states in whose waters they wish to fish. In the final analysis the total economic and political leverage a country can bring to bear in fisheries negotiations will determine the extent of access.

Talking Points

-- With regard to coastal state fisheries, 200-mile exclusive fisheries jurisdiction has become customary international law. Therefore, there is no need for states to rely on the LOS treaty to obtain such jurisdiction.

-- With regard to highly migratory species, bilateral or regional agreements will be required with or without the LOS treaty.

-- The extent and terms of access provided by bilateral agreements to foreign fisheries zones will depend on the total economic and political leverage available to the countries involved, and non-participation in the LOS Treaty will have no independent effect.

BOUNDARY DISPUTES

Boundary disputes arise from the demarcation of the continental shelf and EEZ between opposite and adjacent States. The 1958 Continental Shelf convention set forth rules for the delimitation of these boundaries. Unless special circumstances justify another boundary line, the boundary is to be defined by the median like or principle of equidistance. This formula has been expanded upon and given definition by a series of ICJ cases known as the North Sea Continental Shelf cases and the UK vs. France arbitration. The result of these cases has been not to clarify the law of boundary delimitation, but to confuse it. Noted commentators such as Bowett believe that no predictability exists now resulting in virtually every future dispute going to arbitration.

The Law of the Sea Treaty does nothing to clarify this. The Draft Convention contains no principles for delimitation of such boundaries. The problem is compounded by the introduction of the EEZ which, like the continental shelf, raises problems of opposite and adjacent boundary delimitation. The boundaries of the EEZ need not be the same as those of the continental shelf.

A country's interests regarding boundary dispute with its neighbors will not be affected by signing or refusing to sign the LOS Treaty.

WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name
BARR, WILLIAM: FILES

Withdrawer
DLB 12/11/2018

File Folder
LAW OF THE SEA (08/13/1982-08/17/1982)

FOIA
S17-8440
SYSTEMATIC

Box Number
9

56

ID	*Document Type* *Document Description*	*No of pages*	*Doc Date*	*Restric-tions*
225853	PAPER ISSUES PAPER - PROTECTION OF THE MARINE ENVIRONMENT	1	ND	B1

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

B-1 National security classified information [(b)(1) of the FOIA]
B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
B-3 Release would violate a Federal statute [(b)(3) of the FOIA]
B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name
BARR, WILLIAM: FILES

Withdrawer
DLB 12/11/2018

File Folder
LAW OF THE SEA (08/13/1982-08/17/1982)

FOIA
S17-8440
SYSTEMATIC

Box Number
9

56

ID	*Document Type* *Document Description*	*No of pages*	*Doc Date*	*Restric-tions*
225854	PAPER ISSUES PAPER: MARINE SCIENTIFIC RESEARCH	1	ND	B1

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

B-1 National security classified information [(b)(1) of the FOIA]
B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
B-3 Release would violate a Federal statute [(b)(3) of the FOIA]
B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

DECLASSIFIED
Authority State Waiver 11/6/15
BY dlr NARA DATE 12/11/2018

~~CONFIDENTIAL~~

Background Paper
Analysis of Problems in Part XI of the
Law of the Sea Treaty

The Treaty text as it was finally adopted on April 30, 1982, contains severe, probably fatal, economic impediments to private sector seabed mining and does not assure access to seabed minerals by private firms. The Enterprise, as the Seabed Authority's mining arm, clearly does have access, however. The Treaty also sets several undesirable precedents.

In general the text has an anti-production bias. It draws upon unacceptable New International Economic Order concepts. It specifically and repeated discriminates in favor of developing countries and the Enterprise.

Below are some of the key problems with the Treaty text.

1. Composition of the Council and Decision-Making:
Since the precise application of the criteria for Council membership would be decided by negotiation in the Prepartory Commission, the result would be unpredictable at best. The number of our allies on the Council would be insufficient to prevent adverse action on key issues. Since only six US allies, plus the US could be on the Council at most, we would not have effective power to prevent adverse decisions. In addition, there is no guarantee that the US would have a seat on the Council, although the Soviet bloc is guaranteed at least three seats. The Council also will include 26 developing countries.

Four issues are decided by consensus (i.e. lack of formal objection) of the entire Council.* Only one of these -- changes to Rules, Regulations and Procedures -- actually affects day-today operations. Any change to the Rules, Regulations and Procedures and Procedures can be vetoed by any member of the Council for any reason, thus potentially freezing the Rules and Regulations. Regulations. They could prevent us from having Rules and Regulations adopted which we feel we need. Other important issues such as adoption of rules of procedures, submission of the budget of the Seabed Authority to the Assembly (where the budget can be changed by 2/3 of the members in any event), issuance of emergency stops orders of 30 days (or several consecutive stop orders), selection of the Secretary-General of the Seabed Authority, and initiation of proceedings in the Seabed Tribunal against those accused of non-compliance with the Treaty, would be decided on a 3/4 vote (requiring ten votes to block a decision).

Items such as establishment of a system of compensation for land-based producers and issuance of "directives" to the

---

*These four issues are: Changes to the Rules, Regulations and Procedures of the Seabed Authority, adoption of amendments to the seabed portion of the Treaty text, adoption of appropriate measures for the protection of land-based producers of seabed metals from the adverse effects of competition from seabed production, and extension of 30-day emergency stop orders issued to seabed operations to prevent environmental damage.

Enterprise are decided by a 2/3 vote (requiring 13 states to block a decision).

2. Contract Approval: Under the provisions of the Treaty, there is no guarantee that a qualified seabed miner would be able to obtain a contract to carry out seabed mining. Applications to the Seabed Authority for contracts to explore and exploit the seabed would be handled by the Legal and Technical Commission, a 15 member subsidiary organ of the Council. The Council could reverse a negative decision by the Legal and Technical Commission by the three-quarters vote. Although it is a theoretical possibility, it is not very likely that we would obtain the needed 27 votes to overturn such a decision made by the Legal and Technical Commission. This is a threshold issue since without assurance that a qualified seabed miner would be able to obtain a secure contract to explore and exploit the seabed, no potential miner will make the $50-100 million investment necessary before the application stage is reached.

3. Production Limitation: The Treaty provides for rigid limits on output by all contractors. These limits are established well in advance of actual production. The limit itself is based on global nickel consumption and would insure that mathematically seabed mining could have no more than 70% of the growth segment in the nickel market at any time. As

a practical matter, the limitation would mean that seabed mining would have far less than 60% since production at full annual capacity over the life of all mine sites is unlikely.

Although no one can say with certainty whether seabed mining would reach the ceiling set by the text, the limitation nonetheless would be the source of distortions in investment patterns and discrimination against developed country seabed miners and the Enterprise. Production limits are also unprecedented in international commodity agreements. Further, the Authority would be able to enter into commodity agreements covering all seabed production.

4. Technology Transfer: One of the best known defects in the Treaty, technology transfer, is a practical and ideological issue with far-reaching implications for both the G-77 and developed countries. In cases where the Enterprise cannot obtain seabed related technology on "commercially fair and reasonable" terms and conditions, the text now provides for compulsory transfer of mining technology to the Enterprise or to developing country parties to the Treaty (which could include some with whom we have little or no trade relations, such as Cuba). The text also provides for transfer of nodule processing technology as an obligation on State Parties which have access to the technology. The technology transfer provisions are impracticable, since they would seek involuntary

transfers of equipment and technology -- even that owned by third parties not bound to make the transfers -under treaty provisions which are vague and inexpertly written. Further, access could be affected, because any technology - even if essential for mining could not be used at it, if it were not made available for transfer.

5. Review Conference: Fifteen years after the begining of commercial production of nodules, the States Parties will meet to review the system under a mandate prejudical to the interests of industrialized countries. If, after five years, the Conference has not reached consensus on changes to the seabed exploitation system (nodule mining and other minerals), it can adopt the proposals by a 3/4 majority during the following 12 months. The proposals thus approved would enter into force for all Parties to the Treaty after ratification by 2/3 of the Parties, i.e. an amendment could become binding even on a State which had objected to that amendment.

6. National Liberation Movements: Under the Treaty text, it is clear that national liberation movements are entitled to distribution of revenues. Although we could conceivably deny implementation of this text with respect to liberation movements, including the PLO and those in Puerto Rico, El Salvador, the Philippines, or elsewhere, (if we hyeld a Council seat) this would be an obvious violation of the intent of the text

and does not resolve the questions of principle involved in allowing international organizations to hand out benefits to liberation movements recognized by the United Nations.

7. The Enterprise: The minimum of $1.5 billion -- and probably vastly greater amount -- necessary to finance the Enterprise would come from interest-free loans and guarantees according to the UN scale (principally by the Western developed countries). The Enterprise would also have priority over the private side with respect to allocations under the production limitation would be guaranteed technology and technical assistance, and would in effect be the only applicant for contracts that would be automatically qualified and its payments to the Authority would be deferred for ten years.

8. Preparatory Investment Protection (PIP): For the stated purpose of grandfathering into the Treaty those seabed miners who have already invested in preparations for seabed mining and to give them first crack at the available mine sites, the LOS Conference adopted a so-called PIP resolution. The resolution is defective in major respects, however. First, there is no guarantee in the Treaty text that operators who have been granted PIP status will be granted a contract by the Seabed Authority. Second, the PIP resolution obligates the miners to begin meeting key Treaty obligations, e.g., technology transfer, prior to actual entry into force

of the Treaty. Third, although the PIP resolution provides for exploration only, it would prevent actual exploitation of the seabed by PIP status miner except under the Treaty if an when it enters into force.

~~CONFIDENTIAL~~

DECLASSIFIED
Authority State Waiver 11/6/15
BY dlr NARA DATE 12/11/2018

Background Paper

The Reciprocating States Agreement and the Agreement Concerning Interim Arrangements Relating to Polymetallic Nodules of the Deep Seabed

In November 1980, negotiations to establish an interim reciprocal arrangement for recognition of deep seabed mine site claims commenced among the eight likeminded nations actively interested in deep seabed mining (United States, France, the Federal Republic of Germany, United Kingdom, Belgium, Holland, Italy and Japan).

An interim arrangement, the Reciprocating States Agreement (RSA), which would permit the later development of an alternative seabed mining regime, was substantially negotiated before the March - April 1982 session of the LOS Conference. The RSA provided for mutual recognition of mining claims, harmonization of national seabed mining programs, and a method of conflict resolution. Because of the upcoming LOS negotiations, the FRG, UK and France asked that signature be postponed. Since the LOS negotiations ended on April 30, our allies have been unwilling to enter into the RSA pending the outcome of their own LOS reviews and their decision whether to sign the LOS treaty.

However, on July 27, the US reached ad referendum understanding with the UK, FRG, and France to proceed with an interim agreement encouraging the private resolution of conflicts resulting from overlapping seabed mining claims. This agreement does not include the reciprocal recognition

by any other arrangement prior to January 1983. It requires consultation among the allies before any party decides to join another seabed mining agreement or the LOS Treaty.

Signature of this agreement is scheduled for August 30 or 31. The Federal Republic of Germany, France, the United Kingdom, and the United States are expected to sign. It is possible that Belgium, Italy, and the Netherlands could also join.

DECLASSIFIED
Authority State Waiver 11/6/15
BY ds NARA DATE 12/11/2015

~~CONFIDENTIAL~~

BACKGROUND PAPER

POSSIBLE CHALLENGE TO AN ALTERNTIVE REGIME BEFORE THE INTERNATIONAL COURT OF JUSTICE

Tommy Koh, President of the LOS Conference, stated in a press conference on May 1 that he would seek to challenge the legality of any alternative deep seabed mining regime before the International Court of Justice (the ICJ). There have been similar rumblings from various quarters over the past several years. The allies are likely to raise the spectre of an ICJ challenge as a possible obstacle to establishing an alterantive regime.

The General Assembly of the United Nations might request an advisory opinion from the International Court of Justice concerning the legality of an alternative regime. The ICJ would not have to entertain the case, and even if it did, any opinion rendered would not have a legally binding effect. However, an adverse decision could affect the viability of the alternative regime, as an advisory opinion of the ICJ would be widely regarded as an authoritative statement of international law. Alternatively, it is possible that one or more of the participants in the regime could be taken before the ICJ by other States prusuant to their declarations accepting the compulsory jurisdiction of the Court.

The United States might be able to escape by invoking the Connally Reservation, which provides that the United States

declaration accepting ICJ jurisdiction does not apply to "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America, as determined by the United States of America." Since our invocation of the reservation would, however, risk the Court declaring our exercise of the reservation (and, possibly the reservation itself) invalid, this is not certain. In any case, the United Kingdom, and perhaps others which did not enter similar reservations to their acceptance of the Court's jurisdiciton might find themselves before the Court in a contentious proceeding. A decision rendered under the compulsory jurisdiction of the ICJ would be binding only on the Parties to the case.

The likelihood of an ICJ decision upholding the legality of the alternative regime would depend on a number of variables, including the nature of and number of participants in the alternative regime, the number of signatories/parties to the LOS Convention, the time when the suit was brought, and whether and to what extent the treaty mining regime become operational. Clearly, the most favorable situation would be if the alternative regime had a broad membership and the LOS Convention had not entered into force.

The probability of success of a suit before the ICJ is difficult to assess. If a broadly based alternative regime were established, there would be solid arguments to make in its defense.

DECLASSIFIED
Authority State Waiver 11/6/15
BY dlr NARA DATE 12/11/2018

BACKGROUND PAPER
NAVIGATION AND OVERFLIGHT ISSUES

US interest in law of the sea issues related to navigation and overflight has always been the preservation of maximum operational mobility and flexibility around the world at minimum political and economic cost. From a military perspective our naval and air forces must be able to move through the world's oceans to the degree necessary to meet a variety of military and political-military situations. Since it is impossible to predict where US interests may be challenged, prudence has always dictated preservation of the maximum freedom of operation. We are dependent upon sea lanes of commerce for our international trade, including much of our fossil fuel energy requirements, and many of the raw materials essential to our industry. Accordingly, any encroachment to our maritime flexibility has always been a matter of serious concern.

The navigation and overflight issues have been central to the law of the sea negotiations since their inception in the late 1960's. The major US objective has been to stem the movement of coastal state assertion of rights beyond a narrow band of territorial sea to the detriment of US military and commercial navigation and security interests.

The Law of the Sea treaty contains many significant provisions affecting these interests.

- It would permit expansion of the territorial sea from three to 12 miles. This would result in over 100 international straits being overlapped by territorial seas.

- It would permit the establishment of a 200-mile Exclusive Economic Zones in which the coastal States would have extended jurisdiction.

- It would permit the establishment of archipelago regimes with restrictions on navigation and overflight.

Among the principal US objectives, we have sought to assure the right:

- to transit straits used for international navigation including overflight and submerged passage.

- to undertake non-resource related activities without coastal state controls in zones of extended jurisdiction beyond a narrow territorial sea.

- to exercise innocent passage within a narrow territorial sea without requirement of prior notification to and consent from the coastal state.

Despite ambiguities, the navigation and overflight provisions of the Law of the Sea Treaty reflect the forgoing objectives and are acceptable and consistent with US interests.

It is imperative that the US continue to exercise traditional high seas freedoms and its navigation and overflight rights. The fact that the United States will not sign the LOS treaty will not affect our rights and the manner in which we exercise them. It is important that our allies, particularly in NATO, understand US determination in this respect and actively support our interpretation of existing international law and act in ways calculated to support our position.

The argument is being made abroad, and by some commentators in the United States, that the United States cannot benefit from the navigation and overflight rights of the Treaty if it refuses to accept the Treaty as a whole (i.e. accepts the seabed regime). The argument is made that the LOS Treaty was negotiated as a package and that the rights provided are contractual in character.

It is important that this view not be endorsed by our allies. To the degree that this argument is accepted by our allies, it will constitute a strong argument in favor of signing the Treaty. Unless they can be convinced they will be free to exercise the navigation rights provided for in the Treaty, they will probably not seriously consider an alternative seabed mining regime. Further, public support for this view could undermine the US ability to exercise its navigation rights.

The allies must be convinced that we have good legal arguments and, more important, that, in the last analysis, they face a basic political decision: whether to support the US position which will enable it to enjoy maximum navigational mobility and thus meet its security obligations.

Historical Background

It was not until the post World War II era that traditional peacetime uses of the seas became an issue. Traditional rules were questioned as a result of the growing capability of states to exploit living and nonliving resources adjacent to their coasts. The jurisdictional march seaward was actually started by the United States, with the Truman Proclamation of 1945.

This proclamation, in essence, stated that coastal state jurisdiction over natural resources of the subsoil and seabed of the adjacent continental shelf was reasonable and just, inter alia, because the shelf was an extension of the land mass of the coastal nation, which had the right to utilize or conserve the resources of the shelf. By the mid-1950's a sizeable number of nations had made maritime claims to broad coastal areas of an even more comprehensive nature, arguing that the US had opened the door.

The first and second United Nations Conferences on the Law of the Sea (in 1958 and 1960 respectively) were intended, among other things, to halt this proliferation of coastal state claims. The 1958 Conference resulted in the adoption of four conventions (Territorial Sea and Contiguous Zone; the High Seas; the Continental Shelf; and Fishing and Conservation of Living Resources of the High Seas.) Neither the 1958 nor the 1960 Conference was able to reach agreement on the maximum allowable breadth of the territorial sea. The failure to delimit the breadth of the territoral sea resulted in coastal states proclaiming for themselves the extent of their territorial of coastal state territorial sea claims and claims to jurisdiction and other competencies over water areas which the United States continues to regard as high seas. At the present time, 110 coastal states claim territorial seas of 12 miles or more.

The potential impact of escalating territorial sea claims is most profound vis a vis navigation and overflight of international straits. Over 100 international straits dominate the major ocean avenues of world trade to the point that maritime commerce is dependent upon passage through such straits. Moreover, air and sea mobility are essential to our fulfillment of some 40 bilateral and multilateral mutual defense agreements. Such mobility is dependent upon unimpeded passage through, over and under straits.

Concerned that the expansion of coastal state maritime claims might jeopardize the uniqueness of straits, the US and the USSR in 1967 discussed the possibility of another Law of the Sea Conference. The contemplated conference was to have two purposes:

(1) to fix the breadth of the territorial sea at 12 miles; and

(2) to explicitly preserve, in international straits, freedom of navigation as though a corridor of high seas ran through such straits.

The US and USSR reached agreement on these two issues and began to poll the world community through their Ambassadors abroad on the acceptability of a new Conference on the Law of the Sea limited to these two issues. The US and USSR also anticipated the inclusion of a third article which would address coastal state fisheries jurisdiction beyond 12-miles as the quid pro quo established by the rest of the world for convening the Conference. At the same time as the initial US-USSR consultations, Ambassador Pardo of Malta focused international attention on the great potential value of minerals on the bottom of the ocean, in a 1967 UN speech calling for UN action to declare that these minerals were the "common heritage of mankind." Thus by the time the

US-USSR proposal was being sounded out in the capitals of the world, the Pardo initiative had alerted the UN to the general subject of deep ocean resources. As a result, a UN consensus for a Law of the Sea Conference developed, but it was to be comprehensive in nature, and not limited to the navigational issues contemplated by the US and USSR. Nevertheless, navigational issues remained paramount in the view of the US and USSR.

The Treatment of selected navigational and overflight issues by the LOS Conference

International Straits: One key issue considered by the Conference was that of international straits. Historically, international law has treated straits differently from territorial seas. (See CORFU Channel Case, (Merits) [1949] I.C.J. Rep.) It was recognized by the negotiators that freedom of navigation through, over, and under international straits needed to be preserved. Innocent passage as permitted by the territorial sea regime would not suffice because it would not permit submerged transit by submarines and overflight by aircraft without coastal state consent. They were also aware that straits states have legitimate interests in the safety of navigation and the prevention of pollution. The accomodation of these interests was a recognition of the fundamental legal principle that straits require unimpeded transit subject

to certain coastal state protections. Accordingly, the doctrine of "transit passage" was adopted. Transit passage is defined by the Convention as the freedom of navigation and overflight solely for the purpose of continuous and expeditious movement through the strait using "normal modes of . . . transit." States bordering straits may neither hamper nor suspend transit passage. Transit passage, which includes the right of submerged navigation as well as overflight, applies to the vast majority of straits used for international navigation.

Exclusive Economic Zone: The exclusive economic zone (EEZ) concept of the LOS Convention was developed to satisfy legitimate coastal state concerns over management of ocean resources in the waters adjacent to their shores. Within its EEZ, a coastal state would exercise sovereign rights for the purposes of exploring, exploiting, conserving and managing the living and nonliving resources of the seabed and subsoil and of superjacent water column, and other resource-related activities in the zone, such as the production of energy from the water, currents, and winds. The width of the zone is limited to 200 NM measured from the baseline used for the territorial sea. Approximately fifty-three coastal states already have unilaterally claimed a 200 NM EEZ. An additional thirty-six states (including the U.S.) claim a 200 NM exclusive fisheries

zone. Most important is the fact that both the LOS Convention and customary international law preserve nonresource related high seas freedoms.

Archipelagic Sea Lanes Passage: The concept of archipelagic waters embodied in the LOS Convention provides that an island nation with the requisite land-to-water ratio can draw straight baselines connecting the outermost islands of the archipelago. The Convention provides for the right of "archipelagic sea lanes passage" through designated corridors through the waters enclosed by such baselines. As distinguished from the right of innocent passage in territorial seas but analagous to transit passage in straits, "archipelagic sea lanes passage" includes submerged transit of submarines and overflight by aircraft.