MEMORANDUM FOR: Mr. Cormack 4/6/87

FYI and the File. Since CIA was left out of the loop altogether on this one (i.e., not on distribution and not notified by Sheila Lopez), Anne found out via [redacted] STAT and called Sheila for the info. [redacted] STAT sent someone to State to pick up this paper yesterday so they did at least have it for the 5:30 meeting. This came in this a.m. via the Operations Center per [redacted] STAT I called Sheila whose explanation was --a pretty flimsy one at that--this paper and meeting were handled on Sunday and whoever did it was not aware of all agencies involved and excluded CIA by mistake. I'm not sure how [redacted] STAT heard of the meeting, but it's a good thing he did or we wouldn't have known anything about it.

Chris

Date

FORM [illegible] USE PREVIOUS

DEPARTMENT OF STATE

Washington, D.C. 20520

~~SECRET~~

April 4, 1982

TO :	OVP	- Mrs. Nancy Bearg Dyke	S/S 8209185
	NSC	- Mr. Michael Wheeler	S/S 8209186
	Commerce	- Ms. Jean Jones	S/S 8209187
	Defense	- COL John Stanford	S/S 8209188
	Energy	- Mr. William Vitale	S/S 8209189
	Interior	- Mr. Kent Larsen	S/S 8209190
	JCS	- LTC Edward Bucknell	S/S 8209191
	Justice	- Mr. F. Henry Habicht	S/S 8209192
	Labor	- Mr. Robert Searby	S/S 8209193
	Transportation	- Mrs. Katherine Anderson	S/S 8209194
	Treasury	- Mr. David Pickford	S/S 8209195
	UNA	- Amb. Harvey Feldman	S/S 8209196

SUBJECT: Law of the Sea: Mid-Session Assessment

The Senior Interdepartmental Group on Law of the Sea will meet on Monday, April 5 at 5:30 p.m. in room 7219 at the Department of State under the chairmanship of Under Secretary Buckley. Attached is a paper setting forth the assessment of the Chairman of the US LOS Delegation on the state of the negotiations, and prospects for meeting the President's objectives.

T. Stricker for
L. Paul Bremer, III
Executive Secretary

Attachments:

1. Assessment of the Chairman of the LOS Delegation on the State of the Negotiations and Prospects for Meeting the President's Objectives
2. Group of 11 Papers
3. Instructions for the US Delegation to the Eleventh Session of the Third UN Conference on the Law of the Sea (with three attachments)

~~SECRET~~
GDS 4/4/88

Drafted by: OES:OEskin:mw

Clearances:

OES:JMalone
EB:MCalingaert (clears except for section on production limitation)
L:EVervilla
T:WSalmon

Attachment 1

SECRET

ASSESSMENT OF THE CHAIRMAN OF THE LOS DELEGATION ON THE STATE OF THE NEGOTIATIONS AND PROSPECTS FOR MEETING THE PRESIDENT'S OBJECTIVES

The purpose of the meeting is to review the status of the negotiations and the Chairman's assessment as the to prospects for achieving the President's objectives and fulfilling the delegation's instructions. The Chairman considers that it may be possible to achieve all of the President's objectives, but that it will not be possible to fulfill certain detailed delegation instructions. The SIG should note the Chairman's assessment that the complete elimination of the production limitation and the U.S. proposal for affirmative voting are not negotiable and that continued pursuit of these proposals could damage our ability to achieve the President's objectives.

The Law of the Sea Conference has now reached a critical stage. Substantive negotiations with the G-77 will only begin if the U.S. shows a more flexible approach. We have until April 23 to complete the principal parts of these negotiations.

The U.S. proposals included in the "green book of amendments" have served their purpose very well by acquainting the Conference with our requirements and accomplishing for us several changes necessary to our further participation. At this point we have achieved the maximum usefulness from the "green book". We now must be prepared to negotiate.

The G 77 have in essence agreed to commence negotiations with us subject to our capacity to convince them that:

-our bottom line is closer to the Group of 11 papers than to the "green book" (G-11 papers attached at Appendix 2)

-their acceptance of the U.S. bottom line will bring a substantial probability of U.S. signature of the Convention in 1982

-our bottom line is saleable by the G-77 leadership to the entire group within the next two weeks

The delegation instructions interpret the President's six objectives sufficiently narrowly so as to inhibit the prospects for any continued negotiations with the G-77. However, if the delegation is authorized to construe the President's objectives as set forth in this memorandum it appears that the prospects for successful negotiation will be materially enhanced.

SECRET
GDS 4/4/88 (Malone, James)

It is the view of the Chairman of the Delegation that it will not be possible to delay the adoption of the Convention at this session of the Conference unless the Conference believes that it is near final negotiations which will attract U.S. signature). Also, unless the U.S. shows more flexibility than it can now do our allies may withdraw their lukewarm support for our effort and could become quite reluctant to sign the reciprocating states agreement for fear of criticism that they helped the U.S. to sabotage the conference and pave the way for a "mini-treaty". Our allies will be in a particularly awkward position because the so-called "PIP Resolution" now goes quite far toward providing broad approval for the reciprocating states agreement provided it is transitional to a comprehensive treaty.

Appendix 1 sets forth the view of the Chairman of the Delegation on:

-the adequacy of the G-77 proposals;

-the extent to which improvements or additions can be made;

-and the specific areas in which satifaction of the delegation's instructions now appear impossible.

APPENDIX 1

TECHNOLGY TRANSFER

After considerable consultation with industry and informed patent experts within and outside of Government, it is the view of the Chairman that the G-11 proposals, with certain relatively minor amendments, can only in a most strained way be construed to require the mandatory transfer of privately owned technology. The Article as we could finally expect to negotiate it would only require that technology be made available for sale to the Enterprise if: a) used by the operator; b) the operator is legally entitled to transfer it; c) the operator makes it available to any other party; and d) the terms and conditions are freely negotiated. (The operator may not, however, impose conditions more onerous than those imposed on the sale to a third party.) Finally, there is no relationship between the operator's right to obtain a contract from the Seabed Authority or to carry out his contract in the event the technology sale does not occur or ends in dispute.

THE ACCESS SYSTEM -- AWARD OF CONTRACTS

The G-11 proposal is a fully workable access system which fulfills the President's objectives as expressed in subparagraphs (b) and (c) of NSDD-20 and reduces the difficulties in the negotiation of the Council decision making system. It adopts virtually all of the U.S. proposal in the "green book" except for the voting majority needed to reject an applicant, the qualifications for membership on the Legal and Technical Commision and its composition. If the composition and qualifications issue could be remedied, the voting question would not be considered a serious problem. The Chairman believes these additional changes are negotiable.

POWERS OF THE ASSEMBLY AND SEPARATION OF POWERS

The G-11 proposal is a duplicate of the U.S. proposal. It limits and reduces the power of the Assembly. If it is coupled with satisfactory Council composition, powers, and functions, it would greatly reduce the role of the one-nation, one-vote Assembly thus establishing an institution that is controlled in a manner that reflects the economic and political interests represented. It sets a desirable precedent for global institutions and should alleviate or eliminate a key Capitol Hill criticism of the Convention.

THE REVIEW CONFERENCE AND THE ADOPTION OF AMENDMENTS TO THE TREATY

The G-11 proposal does not accommodate the most essential U.S. requirement which is the avoidance of amendments being adopted without the advice and consent of the Senate. However the G-11 proposal does move in our direction in some very important ways and the Chairman believes that we can sucessfully negotiate the additional necessary protections.

GRANDFATHER RIGHTS (PREPARATORY INVESTMENT PROTECTION-PIP)

The G-11 proposal on this matter has now become a proposal of the President of the Conference. While it moves a long way toward meeting our requirements and could serve as a basis for negotiation, it contains serious defects which would need to be corrected. On the plus side, it achieves a number of vital U.S. objectives. First, it endorses the approach and timing of the Reciprocating States Agreement -- thus giving the RSA political approbation and hopefully making it much easier for France and Japan to join at an early date. Second, it guarantees access for all U.S. companies who have already made substantial investments. Third, it requires the Seabed Authority to issue a contract for exploration and exploitation as soon as the Convention enters into force without the exercise of discretion. Fourth, it could allow for at least nine PIP operators to include the four existing consortia, Japan's national mining project, the USSR, the French project and one each for Brazil and India. In addition, since the so-called "banking system" would apply, nine additional sites would be banked for the Enterprise.

This is important because all economic indicators point to a very slow beginning for seabed mining with very slow growth. The eighteen mine sites provided for under the PIP Resolution may be all that can be absorbed in world metal markets for the next 30-40 years or longer. In short, one of our primary objectives -- guaranteed access to strategic minerals -- may, in practice, essentially result from the PIP Reolution alone.

At the same time, we must recognize the inadequacies of the PIP Resolution. The main defect -- and one it will be difficult, but not impossible, to overcome -- is that it places the Soviet Union, potential LDC miners (e.g., Brazil and India) and possibly Japan on the same footing as the pioneer consortia. Further, it contains a number of provisions inconsistant with our domestic legislation, and the RSA -- one site per applicant, full banking of sites, prohibition on exploitation, mine-site

size limitation and expiration of PIP rights if the Convention does not enter into force within five years. The solution of these defects will not, of course, resolve all problems we have with the Treaty.

PRODUCTION POLICIES OF THE AUTHORITY

The G-11 paper (in its proposed change to draft Art. 150) only hints at a possibility of re-orienting the Authority's production policies toward fostering production. Nevertheless, considering that this proposal comes from a group of countries which include the world's largest nickel producer, it is a sign that more can be done. Thus the delegation believes that additional efforts can and should be made to secure a treaty provision which would require the Authority to favor production whenever the treaty provisions create ambiguity.

PRODUCTION LIMITATION

The G-11 papers do not offer any proposal on this subject. The U.S. instructions and the "green book" propose the elimination of the production limit in the treaty. It is the assessment of the Chairman that elimination cannot be achieved. It is even unlikely that any significant change can be made to the production ceiling. (However, in the Guidelines for Seeking Improvements in the Draft Convention para 2 provides for ". . . elimination or relaxation of . . . production limitation. . . .) The U.S. delegation may be able to make some progress on this issue by implying that if all else is satisfactory in the final treaty package this issue may not be a stumbling block. If we follow this course, toward the end of the negotiation we may be able to get some additional concessions by making them the price of final agreement. In order to get into the negotiation at this stage, however, it will be necessary in the judgement of the Chairman to indicate to influential G-77 leaders that we will not insist on the complete elimination of the production ceiling.

BENEFIT SHARING FOR LIBERATION MOVEMENTS

The G-11 papers do not address this point because it is the widespread view at the Conference, including the President of the Conference, that the present text contains a satisfactory solution to the U.S. problem. The Chairman considers that the present text will be adequate if the U.S. is guaranteed a seat on the Council, since the present text provides that benefits can be paid only pursuant to rules and regulations and any member of the Council can veto the rules and regulations. The current U.S. affirmative voting proposals would change the the Council voting system (change) so as to make the adoption of rules and regulations easier and, in doing so, would of

course give up the veto in the present text. Under this proposal, the U.S. would have to insist on the elimination of the reference to benefit sharing for liberation movements.

COUNCIL COMPOSITION

The G-11 papers, in substance, provide for a guaranteed seat for the U.S. and enchanced protection for our allies. Moreover, our allies appear to believe that in practice their seats will be guaranteed anyway. For this reason they have put the U.S. in a somewhat awkward position -- insisting on guaranteed seats for others who do not insist themselves. Nevertheless the Chairman believes that we should continue to make efforts to obtain guaranteed seats for the western allies; however, the delegation might want to further address this situation at a later point if our allies will not support us.

It should be understood that the guaranteed U.S. seat is accomplished by inserting a formula -- the world's largest consumer. The proposal does not designate the U.S. by name. Nevertheless the Chairman believes this solution appears to be adequate for the foreseeable future.

COUNCIL DECISION-MAKING

The G-11 papers do virtually nothing on this issue to accommodate stated U.S. requirements. The USSR is fighting on every front possible at the Conference to prevent us from renegotiating any of our concerns in seabed mining because they fear that we will obtain changes to the decision-making article which would give us either blocking power not available to the USSR or give us the power to adopt decisions without reliance on the USSR while they would not have equivalent power. Our instructions make it impossible to meet this overriding USSR concern and they are making it impossible for us to successfully negotiate our objectives at the Conference.

In this stalemate the Chairman has reexamined more closely the need for all elements of our instructions on Council voting and considers that we must pursue somewhat less comprehensive solutions if we are to achieve the President's objectives.

Specifically it is proposed that the U.S. explore first with the USSR and then with the G-77 the following:

a) a voting system in the Preparatory Commission for the adoption of rules and regulations which would give significant influence to the sponsoring states of those who are given

grandfather rights under the PIP Resolution.

b) a chambered voting system in the Council for blocking power which would provide, as in the "green book," that a specified group of important decisions be made by a three-fourths majority of the Council which majority would also have to include a majority in each of the special interest categories of the Council. In addition, to meet the concern of the USSR, we would also require a majority of each of the regional groups represented in the Council

c) retention of the present consensus voting formula for the adoption and amendment of rules and regulations and the present text of Article 308 (4) providing for provisional application of the initial rules and regulations promulgated by the Preparatory Commission pending adoption or amendment by the Council.

Analysis: The net impact of these proposals would be to give easy blocking power to virtually every group on the Council thus ensuring that virtually all decisions of the Council are the product of negotiation. At the same time we would have a relatively easier time getting the first set of rules and regulations adopted by doing it in the Preparatory Commission under special voting rules. In the judgement of the Chairman such a voting system would adequately fulfill the President's objectives, particularly when seen in the context of other changes to the powers of the Assembly, the separation of powers, and the contract approval system.

FINANCIAL CONTROL OF THE ENTERPRISE

The essence of the U.S. objective is to gain some control over terms and conditions of the financing of the Enterprise and over the Enterprise itself if it is in danger of financial failure so as to enable its principal creditors to protect their assets. This issue is politically sensitive at the Conference and not on the list of the President's objectives (only in 3(m) of the Instruction). Protections may also be found in the present text to the extent these matters will be specificially covered in the rules and regulations over which we have a veto. In the judgement of the Chairman, it may not worth trading significant negotiating leverage to achieve specific provisions on this issue.

DC

AVOIDANCE OF MONOPOLY POWERS BY THE ENTERPRISE

The treaty gives the Enterprise a number of advantages not available to other operators. Taken together, these tend to put the Enterprise in a potentially monopolistic position. The principal U.S. concession in these negotiations, however,

is to leave the parallel system untouched and not to disturb the politically sensitive and symbolically important Enterprise. This puts us in a dilemma. If we attack the advantageous position of the Enterprise we are likely to make further negotiation impossible and ensure the adoption of the draft convention by April 30.

The Chairman believes that it may be possible to negotiate one crucial amendment which would signficantly reduce the monopoly powers of the Enterprise without stripping it of its major advantages. We might be able to obtain agreement that if the Enterprise does not use banked mine sites within a stated period of time they would revert to the general pool of unreserved sites--thus avoiding hoarding of prime quality mine sites.

OTHER SEABED MINERALS

As now drafted the treaty text does not permit exploration or exploitation of minerals without the adoption of rules and regulations by the Authority. It is clear that enough is known about manganese nodules to allow for the drafting of these rules and regulations immediately. In any case under the PIP Resolution these activities can go on until the Authority adopts its rules and regulations.

Other minerals may turn out to be far more important than nodules, we simply do not know, as yet. Scientific research to date has been limited but has revealed interesting potential.

Developing countries are equally concerned about these minerals because many of them whose economies are not affected by nodule production cannot be sure that other minerals which are eventually discovered and possibly exploited will not adversely affect their own land-based production.

This issue could raise severe treaty ratification problems in the Senate if not satisfactorily resolved, it has received little attention at the Conference and while potentially disruptive may be capable of resolution as a practical problem.

There are some possible solutions to the problem which would require special voting rules for the adoption of rules and regulations allowing the U.S. disproportionate influence. Another possibility is to allow only exploration and the equivalent of PIP treatment once the Authority adopts rules and regulations. A third possibility would be a moratorium as is the case in the present draft treaty which would be automatically lifted if the Authority had not adopted rules and regulations by a date certain.

The Chairman believes that too little attention has been given to this subject at the Conference to date to justify any new recommendations at this time. He believes more exploratory discussion is justified while recognizing full well the potential this issue has for affecting our access to new sources of strategic raw materials and ratification of the treaty in the Senate.

Attachment 2

WG.21/Informal Paper 21/Add.1
25 March 1982

ORIGINAL: ENGLISH

CHANGES SUGGESTED BY THE HEADS OF THE DELEGATIONS OF AUSTRALIA, CANADA, DENMARK AND NORWAY ON BEHALF OF A GROUP OF TEN HEADS OF DELEGATIONS

Addendum

Article 158

Organs of the Authority

Paragraphs 1, 2 and 3 as in L.78

4. /~~The principal organs and the Enterprise~~/ Each organ shall /~~each~~/ be responsible for exercising /~~those~~/ the powers and functions which have been conferred upon it /~~them~~/. /~~In exercising such powers and functions each~~/ No organ shall /~~avoid taking~~/ take any action /~~which may derogate~~/ that derogates from or impedes the exercise of specific powers and functions conferred upon another organ.

Article 160

Powers and Functions

Add at the end of paragraph 1 the words:

"Nothing in this paragraph shall derogate from the provisions of article 158, paragraph 4".

82-07559

WG.21/Informal Paper 21
25 March 1982

ORIGINAL: ENGLISH

CHANGES SUGGESTED BY THE HEADS OF THE DELEGATIONS OF AUSTRALIA, CANADA, DENMARK AND NORWAY ON BEHALF OF A GROUP OF TEN HEADS OF DELEGATIONS

Article 150

Policies relating to activities in the Area

Insert the following new subparagraph before subparagraph (a) and reletter the subsequent subparagraphs accordingly:

(a) the development of the resources of the Area;

Existing subparagraph (a) should be changed to read:

(b) orderly, safe and rational management ...

Article 155

The Review Conference

1. (as in L.78)

2. (as in L.78)

3. The Review Conference shall establish its own rules of procedure. The decision-making procedure applicable at the Review Conference shall be the same as that applicable at the Third United Nations Conference on the Law of the Sea unless otherwise decided by the Conference. The Conference shall make every effort to reach agreement on any amendments by way of consensus and there should be no voting on such matters until all efforts at consensus have been exhausted.

82-07488 0112u (E)

/...

4. (a) If, five years after its commencement, the Review Conference has not reached agreement on the system of exploration and exploitation of the resources of the Area, it may decide during the ensuing twelve months to adopt and submit to the States Parties for ratification or accession such amendments changing or modifying the system as it determines necessary and appropriate taking into account the experience gained as to the effectiveness and the viability of the system as laid down in article 153, paragraph 2.

(b) The amendments shall enter into force twelve months after the date of deposit of instruments of ratification or accession by two thirds of the States Parties. Exploration and exploitation of the resources of the Area shall thereafter be governed by this Part and the relevant Annexes as amended.

(c) A State Party which has not ratified or acceded to the amendments shall nevertheless continue to enjoy the rights and perform the obligations of the other provisions of this Convention.

5. (as in L.78)

Article 161

Composition, procedure and voting

Reverse the order of paragraphs 1 (a) and (b) and add the following to the new paragraph 1 (a):

as well as the largest consumer

Add the following paragraph after paragraph 1 (e):

Accordingly, the Council shall consist of nine members from the group of Western Europe and others,* three members from the Eastern (Socialist) European group and twenty-four members from the African, Asian and Latin American groups.

Article 161

Composition, procedure and voting

In paragraph 7 (c), delete the reference to article 162, paragraph 2 (q)** and add as paragraph c (bis):

---

* N.B. For the purpose of this paragraph, the Western European and other States Group shall include, inter alia, Japan and the United States of America.

** N.B. paragraph (q) reads: submit the budget of the Authority to the Assembly for its approval;

/...

(c) (bis) Decisions on questions of substance arising under article 162, paragraph 2 (g), shall be decided by a majority of three fourths plus one of the members present and voting provided that such a majority includes a majority of the members of the Council.

ANNEX III

Basic conditions of prospecting, exploration and exploitation

Article 1

Title to minerals

Title to minerals shall pass to the operator upon recovery of the minerals from the Area in accordance with this Convention.

Article 2

Prospecting

(no change)

Article 3

Exploration and exploitation

1. The Enterprise, States Parties, and the other entities referred to in article 153, paragraph 2 (b), of Part XI of this Convention, may apply to the Authority for approval of plans of work covering activities of the Area. Upon approval of a plan of work, any such entity shall be referred to as an "operator" for the purposes of this Convention.

2. (as in L.78)

3. (as in L.78)

4. Every plan of work approved by the Authority shall:

(a) be in strict conformity with this Convention and the rules, regulations and procedures of the Authority;

(b) include the following undertakings by the applicant:*

---

* Consequently, article 17, paragraph 1 (b) (iii) should be redrafted as follows:

(iii) performance requirements including assurances pursuant to article 3, paragraph 4;

/...

(i) to accept as enforceable and comply with the applicable obligations created by the provisions of Part XI, the rules, regulations and procedures of the Authority and the decisions of the organs of the Authority in force at the time the plan of work is approved, and the terms of his contracts with the Authority;

(ii) to accept control by the Authority of activities in the Area, as authorized by this Convention;

(iii) to provide the Authority with a written assurance that his obligations under the contract will be fulfilled in good faith;

(iv) to comply with the provisions on the transfer of technology set forth in article 5.

(c) (as in L.78)

5. (as in L.78)

Article 4

Qualifications of applicants

1. Applicants, other than the Enterprise, shall be qualified if they have the nationality or control and sponsorship required in article 153, paragraph 2 (b), of Part XI of this Convention and if they follow the procedures established by the Authority by means of rules, regulations and procedures and meet the following qualification standards:

(a) financial and technical capability including the capacity to generate internally or to raise funds necessary to comply with the minimum annual expenditures for exploration established in the rules, regulations and procedures of the Authority;

(b) except for the Enterprise and State Party applicants, the provision of a satisfactory financial guarantee to assure performance of the obligations under the proposed plan of work in the amount of 50 per cent of minimum annual expenditures for the first three years of exploration;

(c) any additional qualifications as may be determined by the Authority in its rules, regulations and procedures.

2. (as in L.78)

3. (as in L.78)

4. (deleted)

5. (deleted)

6. (deleted)

/...

Article 4 (bis)

Certification of applicants

1. A State Party or States Parties which sponsor an applicant, or in the case of the Enterprise, the Authority, shall provide the Legal and Technical Commission with a certification that the applicant which it sponsors in accordance with article 153, paragraph 2, is in full compliance with article 4 and the rules, regulations and procedures of the Authority concerning qualification standards for applicants.

2. A State Party shall not be subject to certification requirements but shall comply with article 4 and the rules, regulations of the Authority concerning qualification standards for applicants.

Article 5

Transfer of technology

1. (as in L.78)

2. (as in L.78)

3. Every contract for the conduct of activities in the Area entered into by the Authority shall contain the following undertakings by the contractor:

(a) to co-operate with the Authority in the acquisition by the Enterprise on fair and reasonable commercial terms and conditions of the technology necessary for the carrying out of its activities in the Area;

(b) to make available to the Enterprise, if and when the Authority shall so request, the technology which he uses in carrying out activities in the Area, which he is legally entitled to transfer and which he has made available or is willing to make available to third parties. This should be done by means of a licence or other appropriate arrangements which the operator shall negotiate with the Enterprise and shall be on terms and conditions no less favourable than the terms and conditions under which the operator has made or is willing to make the technology available to third parties;

(c) to acquire, if and when requested to do so by the Enterprise and whenever it is possible to do so without substantial cost to the contractor, a right to transfer to the Enterprise any other technology than that mentioned in subparagraph (b) which he uses in carrying out activities in the Area;

(d) to assist, if and when the Authority so requests, the Enterprise in obtaining on the free market efficient and useful technology through purchase, licensing, leasing or other appropriate agreement or arrangement on fair and reasonable commercial terms and conditions;

/...

(e) to take the same measures as those mentioned in subparagraphs (a) to (d) for the benefit of a developing State or group of developing States which have applied for a contract under article 9, provided that these measures shall be limited to the exploitation of the part of the Area proposed by the contractor which has been reserved pursuant to article 8.

4. Disputes concerning the undertakings required by paragraph 3 between the contractor and the Authority and between States Parties and the Authority shall be subject to compulsory dispute settlement in accordance with Part XI as appropriate. Disputes arising under subparagraph (b) may be submitted by either party to commercial arbitration in accordance with the UNCITRAL Arbitration Rules or other arbitration rules as may be prescribed in the rules, regulations and procedures of the Authority.

5. In order to comply with the policy of Part XI, the States Parties undertake to ensure that the Enterprise is able to become a viable commercial entity and to engage successfully in the operations referred to in article 170. To this end, State Parties which engage in activities in the Area or which sponsor an entity referred to in article 153, paragraph (2), subparagraph (b) shall take effective measures to ensure that the provisions of paragraph 3 are brought into effect and shall take appropriate measures consistent with national law to prevent persons subject to their jurisdiction from engaging in a concerted refusal to supply technology to the Enterprise on commercial terms and conditions.

6. (as paragraph 5)

7. (as paragraph 6)

8. (as paragraph 7)

Article 6

Approval of plans of work

1. The Legal and Technical Commission shall take up for consideration and recommendation to the Council, as expeditiously as possible, proposed plans of work in the order in which they are received.

2. When considering an application for approval of a plan of work with respect to activities in the Area, the Commission shall presume that the requirements of article 4 have been met in the case of applicants which have been certified pursuant to article 4 (bis) unless the Commission decides otherwise by a three-fourth majority of its members. In such a case, or in the absence of any of the commitments and assurances referred to in article 3, the applicant shall be given 45 days to remedy any deficiencies.

/...

3. The Commission shall recommend for approval the plans of work submitted by the Enterprise, State Party applicants and applicants which have been certified by State Parties pursuant to article 4 (bis) and whose applications have not been rejected pursuant to paragraph 2, unless:

(a) it determines by a three-fourth majority of its members that the plan of work does not conform to the Convention and the requirements established by the rules, regulations and procedures of the Authority;*

(b) (as in subparagraph (a) of L.78)

(c) (as in subparagraph (b) of L.78)

(d) (as in subparagraph (c) of L.78)

4. (as in L.78, with the exception that references to paragraph 3 (c) should be to paragraph 3 (d).)

5. (as in L.78, with the exception that references to paragraph 3 (a) should be to paragraph 3 (b).)

Article 17

Rules, regulations and procedures

Add the following new paragraph (1) (b) (xv):

(xv) exploration for and exploitation of resources of the Area other than polymetallic nodules;

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* Article 163, paragraph 11, should, consequently, read as follows: (11) Without prejudice to Annex III, article 6 (2) and 3 (2) the decision making ...

Annex II

DRAFT RESOLUTION GOVERNING PREPARATORY INVESTMENT IN PIONEER ACTIVITIES RELATING TO POLYMETALLIC NODULES

The Third United Nations Conference on the Law of the Sea,

Having this day adopted the Convention on the Law of the Sea (the "Convention"),

Having this day also established by resolution the Preparatory Commission for the International Sea-bed Authority and the International Tribunal for the Law of the Sea (the "Commission") and directed it to prepare such draft rules, regulations and procedures as it deems necessary to enable the Authority to commence its functions, as well as to make recommendations for the early entry into effective operation of the Enterprise,

Desirous of making provision for investments by States and other entities made in a manner compatible with the international regime set forth in Part XI of the Convention and the annexes relating thereto, prior to the entry into force of the Convention,

Recognizing the need to ensure that the Enterprise will be provided with the funds, technology and expertise necessary to enable it to keep pace with the States and other entities referred to in the preceding paragraph, with respect to activities in the Area,

Decides as follows:

1. For the purposes of this resolution:

(a) "pioneer investor" means a signatory of the Convention or any State entity or natural or juridical person which possesses the nationality of such State or is effectively controlled by it or its nationals, or any group of the foregoing which, prior to 1 January 1983, has expended at least $US 30 million (United States dollars calculated in constant dollars relative to 1982), or, relative to a developing State, such smaller amount as the Preparatory Commission shall determine to be substantial, in pioneer activities and has spent no less than 10 per cent of that amount in the locaton, surveying and evaluation of a specific portion of the Area;

(b) "pioneer activities" means undertakings, commitments of resources, investigations, findings, research, engineering development, and other activities relevant to the identification, discovery, and systematic analysis and evaluation

/...

of polymetallic nodules and to the determination of the technical and economic feasibility of exploitation. Pioneer activities include:

(i) any at-sea observation and evaluation activity which has as its objective the establishment and documentation of:

a the nature, shape, concentration, location and grade of polymetallic nodules;

b the environmental, technical, and other appropriate factors which must be taken into account prior to exploitation;

(ii) the taking from the deep sea-bed of polymetallic nodules with a view to the designing, fabricating, and testing of equipment which is intended to be used in the exploitation of polymetallic nodules;

(c) "certifying State" means a signatory of the Convention standing in the same relation to a pioneer investor as would a sponsoring State pursuant to Annex III, article 4, and which certifies the level of investment specified in subparagraph (a);

(d) "polymetallic nodules" means one of the resources of the Area, consisting of any deposit or accretion on or just below the surface of the deep sea-bed consisting of nodules which contain manganese, nickel, cobalt and copper;

(e) "pioneer area" means an area allocated by the Commission to a pioneer investor for pioneer activities pursuant to this resolution. It shall not exceed 150,000 square kilometres;

(f) "Area", "Authority", "activities in the Area" and "resources" shall have the meanings assigned to those terms under the Convention.

2. As soon as the Preparatory Commission begins to function, any signatory of the Convention may apply to the Commission on its own behalf or on behalf of any entity specified in subparagraph 1(a) hereof, for registration as a pioneer investor and for allocation to it of the pioneer area specified in the application. The Commission shall register the applicant as a pioneer investor and allocate to it the pioneer area applied for if the application:

(a) in the case of a signatory, is accompanied by a statement certifying the level of expenditure made in accordance with subparagraph 1(a); and, in the case of any other entity specified in subparagraph 1(a), a certificate concerning such level of expenditure issued by the signatory of which it is a national; and

(b) if it is otherwise in conformity with the provisions of this resolution.

The Commission shall notify the applicant forthwith of such registration.

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3. (a) Every application shall cover a total area, which need not be a single continuous area, sufficiently large and of sufficient estimated commercial value to allow two mining operations. The application shall indicate the co-ordinates of the area, defining the total area and dividing it into two parts of equal estimated commercial value and contain all the data available to the applicant with respect to both parts of the area. Such data shall include, inter alia, information relating to mapping, sampling, the density of nodules and the composition of metals in them.

(b) Within 45 days of receiving the data required by paragraph 3 above, the Commission shall designate the part of the area to be reserved in accordance with the Convention for the conduct of activities by the Authority through the Enterprise or in association with developing States. This designation may be deferred for a further period of 45 days if the Commission requests an independent expert to assess whether all data required has been submitted to it. The other part of the area shall be allocated by the Commission to the pioneer investor as a pioneer area.

4. No pioneer investor may be registered in respect of more than one pioneer area.

5. (a) Certifying States shall ensure that areas in respect of which applications are made do not overlap with one another or with areas previously allocated as pioneer areas. The certifying States concerned shall keep the Commission currently and fully informed of any efforts to resolve conflicts with respect to overlapping claims, and the results thereof;

(b) Certifying States shall ensure that pioneer activities are conducted in a manner compatible with the Convention prior to its entry into force.

6. A pioneer investor registered pursuant to this resolution shall, as from the date of such registration, have the exclusive right to carry out pioneer activities in the pioneer area allocated to him.

7. (a) Every applicant for registration as a pioneer investor shall pay to the Commission a fee of $US 500,000.

(b) Every registered pioneer investor shall agree to incur expenditures of not less than $US 1 million each year with respect to the pioneer area allocated to it, until approval of its plan of work pursuant to paragraph 8. The financial arrangements undertaken pursuant to such plan of work shall be adjusted to take account of payments made pursuant to this paragraph.

8. (a) After the entry into force of the Convention and certification by the Commission in accordance with paragraph 11 hereof of compliance with the

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provisions of this resolution, the pioneer investor so registered may apply to the Authority for a plan of work for exploration and exploitation in accordance with the Convention. The Authority shall approve such application;

(b) When an application is made by an entity other than a State, pursuant to subparagraph (a), the certifying State shall be deemed to be the sponsoring State for the purpose of Annex III, article 4 of the Convention, and shall thereupon assume such obligations.

9. In the allocation of production authorization, in accordance with article 151 of the Convention and Annex III, article 7, the pioneer investors who have obtained approval of plans of work for exploration and exploitation shall have priority over all applicants other than the Enterprise as contained in paragraph 2(c) of article 151. In the event of a competition between two or more pioneer investors for production authorization, the provisions of Annex III, article 7 shall apply unless they agree to some other arrangement.

10. (a) Notwithstanding the provisions of paragraph 8, the Authority may not deal with any application for approval of a plan of work made, or deemed to be sponsored by, a State which, at the time the application is taken up for consideration has not ratified the Convention. If such State fails to ratify the Convention within six months after it has received a notification from the Authority that an application by it, or sponsored by it, is pending, its status as a pioneer investor or certifying State as the case may be, shall terminate, unless the Council, by a majority of three-fourths of its members present and voting shall decide to postpone the terminal date by a period not exceeding six months;

(b) Nothing in this resolution shall preclude a pioneer investor from altering its nationality and sponsorship from that prevailing at the time of its registration as a pioneer investor. The pioneer investor shall give the Authority six months' notice in writing of any such alteration;

(c) Alteration of nationality and sponsorship pursuant to this paragraph shall not affect any right or priority conferred on a pioneer investor pursuant to paragraphs 6 and 8 of this resolution.

11. The Commission shall:

(a) provide pioneer investors with the certificates of compliance with the provisions of this resolution referred to in paragraph 8 hereof; and

(b) incorporate in its final report provided for in paragraph 10 of resolution No. __ of the Conference, details of all registrations of pioneer investors and allocation of pioneer areas pursuant to this resolution.

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12. In order to ensure that the Enterprise is able to carry out activities in the Area in such a manner as to remain in step with States and other entities, any registered pioneer investor shall:

(a) carry out exploration at the request of the Commission in the area reserved pursuant to paragraph 3 of this resolution in connexion with its application for activities by the Authority through the Enterprise or in association with developing States, on a cost-re-imbursable basis;

(b) provide training at all levels for personnel designated by the Commission;

(c) be prepared, prior to the entry into force of the Convention, to perform the obligations prescribed in the provisions of the Convention relating to transfer of technology;

(d) ensure that the necessary funds are made available to the Enterprise in a timely manner in accordance with the provisions of the Convention.

13. The Authority and its organs shall be governed by the terms of this resolution.

14. If, five years after the date of its adoption, the Convention has not entered into force, the effect of the provisions of this resolution and all rights thereunder shall terminate.

Attachment 3

SECRET

Instructions for the US Delegation to the Eleventh Session of the Third UN Conference on the Law of the Sea.

March-April 1982

I. BACKGROUND

In December 1981, the Senior Interdepartmental Group on Law of the Sea submitted to the President an options paper on law of the sea. On January 29, 1982 the President signed National Security Decision Directive Number 20 (Attachment I). The President directed that the US continue to participate in the negotiations at the Law of the Sea Conference. The President directed that the United States objectives will be a treaty that:

(a) will not deter development of any deep seabed mineral resources to meet national and world demand;

(b) will 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.

(c) will give the United States a decision-making role in the deep seabed regime that fairly reflects and effectively protects its political and economic interests and financial contributions;

(d) will not allow for amendments to come into force without United States approval, including the advice and consent of the Senate;

(e) will not set other undesirable precedents for international organizations; and

(f) will be likely to receive the advice and consent of the Senate. (In this regard, the convention should not contain provisions creating serious political or commercial difficulties, including provisions for the mandatory transfer of private technology and participation by and funding for national liberation movements.)

SECRET

Fulfillment of these objectives shall be considered mandatory in the negotiations. It is understood that the United States negotiating effort will be based on the guidelines set forth in the interagency review (Attachment 2).

The President directed that the Senior Interdepartmental Group, including all relevant agencies, develop detailed instructions for achieving the objectives set forth above after consultation with key allies and, as appropriate, other major participants in the conference. The Senior Interdepartmental Group and its agency representatives are to oversee the Law of the Sea negotiations. The Senior Interdepartmental Group shall be kept fully informed of all developments in the negotiations and all US amendments to the text shall be transmitted to interested agencies prior to their submission. Generally, where time permits, consultation with interested agencies should take place before revised amendments are supported. Consultations among the agency representatives on the delegation must be conducted on a frequent, open and supportive basis to ensure full participation by all relevant agencies. The Delegation is not to accept an ad referendum draft convention pending the President's decision on a report to be submitted by the Senior Interdepartmental Group on its acceptability in terms of satisfying United States objectives.

The SIG working group on Law of the Sea prepared a document setting forth alternative solutions to the problem identified by the Senior Interdepartmental Group in Part XI of the draft Law of the Sea treaty. The US delegation has held extensive consultations with US allies, the Soviet Union, the Law of the Sea Conference leadership and spokesmen for the Group of 77 on problems with Part XI and possible solutions to these problems which would satisfy US objectives.

II. Instructions for the March 1982 Session of the Law of the Sea Conference.

1. The US Delegation shall make clear what aspects of the current draft convention are unacceptable to the United States. The US negotiating strategy shall be designed to achieve those changes necessary to fulfill all US objectives and, pending that, to avoid a move by the conference to complete its work and open a convention for signature. At the same time, the Delegation shall minimize the risk that any detrimental changes are made to the non-seabed provisions of the text. Trade offs between the seabeds and non seabeds provisions are not authorized.

2. The US Delegation shall seek improvements in the non-seabed provisions of the draft treaty consistent with United States interests if opportunities arise and if this

can be accomplished without risk to the military, navigation and overflight and other important United States interests.

3. In Part XI (Deep Seabed Regime) the Delegation shall seek the objectives set forth in NSDD No. 20. It is recognized that there may be various changes in the text which can achieve the same result. The Delegation is authorized to explore different approaches to achieve the mandatory results. The US Delegation shall seek changes in the text of Part XI which ensure the following results:

A. The US and the principal nations which share deep seabed mining interests (UK, France, FRG and Japan) will always be members of the Council.

B. The Council decision-making system will be such that:

- The United States, acting with four or five Western industrial nations which share US deep seabed mining interests, will have affirmative voting power for:

(1) the adoption and amendment of the Authority's rules and regulations; and (2) the procedure for deciding which category - majority, qualified majority and/or distributed majority - in which a question for decision by the Council falls.

- The United States, acting with two or three of its Western industrial allies, will be able to block all important Council decisions (Attachment 3). At the same time, it should be comparatively more difficult for other groups (e.g., the G-77) to block important Council decisions.

C. The broad policy-making powers of the Assembly will be curtailed by ensuring that the Assembly cannot set important policies of the Authority, override Council decisions, or interfere in seabed mining.

D. The United States must not be bound by amendments to the treaty without its consent.

E. To reduce the risk that qualified applicants will be denied contracts, the US and its allies will be able to take affirmative action on contract approval in the Legal and Technical Commission or there will be an automatic mechanism for contract approval based on certification by a Sponsoring State that an applicant meets specified qualifications.

F. To reduce the potential for abuse of the Authority's discretion to regulate seabed mining, the United States, acting with two or three other allies, will be able to block

regulatory interference by the Authority or will be able to ensure appropriate affirmative action.

G. The application of the Treaty will be restricted to manganese nodules or the treaty will explicitly grant Parties the right to develop minerals other than manganese nodules pending adoption of regulations by the Authority.

H. Provisions requiring the forced sale of private technology to the Enterprise and/or developing countries. will be removed.

I. The ceiling on seabed mineral production will be eliminated.

J. Participation by the Seabed Authority in commodity arrangements will require US consent and the Authority will at most represent only Enterprise production.

K. The production policies enumerated in Article 150 of the draft treaty will be recast to be consistent with a free-market orientation.

L. The major contributing countries to the Enterprise will be able to exercise adequate control over the terms and conditions of the financing, including the amount, call-up schedule, repayment schedule, and default procedures.

M. The major contributing countries will be able to protect their contributions to the Enterprise, preferably by enabling them to form an Emergency Board to run the Enterprise in case of its default on debt obligations.

N. To avoid monopolization of the Area by the Enterprise, the decision over whether or not the Enterprise can retain an excessive number of reserve sites should be made by an organ of the Authority in which the US has sufficient influence to implement US policy objectives.

O. Grandfather rights will provide for US pre-convention explorers assured access to deep seabed minerals under reasonable terms and conditions which will enable such explorers to continue their operations without new significant economic burdens beyond those resulting from domestic law and regulations with the effect of preventing the continuation of such operations on a viable economic basis.

P. National liberation movements will not be able to become a party to the treaty or share in the economic or financial benefits.

THE WHITE HOUSE

WASHINGTON

8202218

SECRET

January 29, 1982

NATIONAL SECURITY DECISION
DIRECTIVE NUMBER 20

UNITED STATES LAW OF THE SEA POLICY

I have reviewed the interagency report on United States Law of the Sea issues, along with the agencies' recommendations, and have decided that:

- The United States will continue to participate in the negotiations at the Law of the Sea Conference. (U)

- United States objectives in these negotiations will be a treaty that:

  (a) will not deter development of any deep seabed mineral resources to meet national and world demand; (U)

  (b) will assure national access to these resources by current and future qualified entities to enhance U.S. 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; (U)

  (c) will give the United States a decision-making role in the deep seabed regime that fairly reflects and effectively protects its political and economic interests and financial contributions; (U)

  (d) will not allow for amendments to come into force without United States approval, including the advice and consent of the Senate; (U)

  (e) will not set other undesirable precedents for international organizations; and (U)

  (f) will be likely to receive the advice and consent of the Senate. (In this regard, the convention should not contain provisions creating serious political or commercial difficulties, including

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Review on 1/21/2001

provisions for the mandatory transfer of private technology and participation by and funding for national liberation movements.) (U)

- o Fulfillment of these objectives shall be considered mandatory in the negotiations. It is understood that the United States negotiating effort will be based on the guidelines set forth in the interagency review.(S)

- o United States negotiating strategy will make clear what aspects of the current draft convention are unacceptable to the United States and will be designed to achieve those changes necessary to fulfill all U.S. objectives and, pending that, to avoid a move by the conference to complete its work and open a convention for signature.(S)

Improvements consistent with United States interests in other areas shall be sought if opportunities arise and if this can be accomplished without risk to the military navigation and other important United States interests. (C)

The United States will continue active negotiations with other countries interested in deep seabed mining with a view to concluding a reciprocating states agreement as early as possible on recognition of deep seabed mining licenses.(U)

The United States will also continue to exercise its rights with respect to navigation and overflight against claims that the United States does not recognize in accordance with established procedures and review for that program. (C)

The Senior Interdepartmental Group, including all relevant agencies, shall develop detailed instructions for achieving the objectives set forth above after immediate consultation with key allies and, as appropriate, other major participants in the conference. Any agency differences shall be forwarded for my consideration by February 15, 1982. The Senior Interdepartmental Group shall also oversee the Law of the Sea negotiations. The Delegation will not accept an ad referendum draft convention pending my decision on a report to be submitted by the Senior Interdepartmental Group on its acceptability in terms of satisfying United States objectives.(C)

Ronald Reagan

Guidelines For Seeking Improvements In The Draft Convention To Satisfy The US Objectives Enumerated in Section II(k)(1) above.

The IG has agreed that the following guidelines should be used as the basis for the US negotiating effort. The IG realizes, however, that all of these guidelines cannot be satisfied to the fullest extent and has, therefore, established priorities among them. The IG believes that if the priority guidelines were substantially satisfied and progress made in the other areas listed, the Convention which emerged could meet the five objectives set forth above.

The following six guidelines indicate the kind of improvements to which the group attaches the highest priority:

1. The procedures and decision-making system of the Authority should enable the US, in concert with a few allies, (1) to ensure that qualified deep seabed miners of manganese nodules and other deep seabed minerals, current and future, receive contracts and are allowed to mine; (2) to achieve acceptable rules and regulations applicable to development of all deep seabed minerals; (3) to insulate deep seabed miners from politically motivated interference from the Authority; and (4) to block adverse decisions on important financial/budgetary questions concerning the Authority and the Enterprise. The attainment of this objective would not only repair many of the defects outlined in the previous sections, but could also facilitate the attainment of most of the following objectives.

2. The production policies of the Authority should be amended by elimination or relaxation of those production limitations which discourage production by private enterprise of deep seabed mineral resources and which could artificially stimulate competition among potential deep seabed miners.

3. The technology transfer provisions should be revised to eliminate the mandatory nature of the transfer of private technology.

4. The provisions on the review conference should be revised so that any amendment to the deep seabed provisions of the treaty must have the the consent of the US before entering into force.

5. National liberation movements should not be parties to the treaty nor share in any revenues controlled by the Authority.

6. NIEO precedents should be minimized.

Beyond these, the group attaches considerable importance to the following areas:

-- establishment of separation of powers between the Assembly and Council to minimize the possibility that the Assembly can interfere with the Council's exercise of power entrusted to it;

-- minimization of the possibility that the Authority may expand or abuse its powers;

-- substantial reduction or elimination of discriminatory privileges of the Enterprise;

-- reduction of financial burdens on the US government and private operators.

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Important Council Decisions

Important Council decisions include:

-- exercise of "control" over seabed mining activities;

-- exercise of residual powers of the Authority (unless Art. 162 is made a "closed-end list" of powers with residual powers being dealt with in rules and regulations);

-- supervision and implementation of the seabed mining regime;

-- approval of the annual budget of the Authority;

-- issuance of emergency orders to suspend or adjust operations to prevent environmental harm;

-- initiation of cases before the Seabed Disputes Chamber;

-- measures to carry out judgment rendered by the Seabed Disputes Chamber, including suspension of privileges and rights of membership for gross and persistent violation of Part XI;

-- management of the inspector corps;

-- terms and conditions of Enterprise financing (Annex IV, Art. 11(1)(c);

-- borrowing powers of the Authority (Art. 174)

-- approval and adoption by the Council of "technical amendments to Part XI (Article 314);

-- issuance of directives to the Enterprise;

-- recommendation of candidates for the governing board of the Enterprise;