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Analysis of Pros and Cons  
and Implementation of the  
Option to Withdraw  
from the LOS Conference

Arguments in Favor of Withdrawal From the LOS Conference

A decision to withdraw from the Law of the Sea Conference would demonstrate an American resolve not to participate in multilateral negotiations in which the terms of the draft agreement (a) do not fairly reflect US political and economic interests and financial contributions or (b) contain NIEO principles which we find unacceptable and which developing countries could employ to promote their aims in other negotiations.

Because of the extreme character of this action, withdrawal from the Conference might cause other countries, including US allies, to rethink their commitment to the treaty and eventually decide not to ratify the treaty. The Option avoids the risk that US interests in deep seabed mining might be compromised further through continued negotiation and might increase the effectiveness of a US denunciation of objectionable provisions of the treaty. The Option would appeal to those Americans who feel that US interests should not be subjected to majority votes by developing countries in international organizations.

Arguments Against Withdrawal From the LOS Conference

On the other hand, the Option to withdraw would eliminate any realistic possibility of improving the Draft Convention and would not capitalize on our currently strong bargaining position. It could further lead to the unravelling of important navigational provisions to the detriment of US security interests and, therefore, could reduce US ability effectively to assert its minority view of navigation rights in the face of adverse coastal state claims.

This Option would isolate the US from most other countries on this issue and provoke substantial international controversy, including severe criticism from US allies and others for walking away from the negotiating table.

State Dept. review completed

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It would be viewed as a major departure from the traditional US practice of cooperating in efforts to reach multilateral solutions to foreign policy issues thereby reducing US credibility as a reliable participant in multilateral negotiations and possibly affecting other US foreign policy goals adversely.

Withdrawal from the Conference would virtually eliminate any possibility of a US flag deep seabed mining industry, unless the US could convince its allies and other key countries not to ratify the treaty and to join an alternate regime. Otherwise, investors likely would operate under a foreign flag pursuant to the treaty, unless fully indemnified by the government against risk.

This action could result in US allies being unable to pursue and implement a reciprocating states agreement with the US since they would stay in the LOS negotiations and the US would be seeking a permanent, alternative regime rather than a transitional regime consistent with a law of the sea treaty.

Withdrawal from the Conference would offer the Soviets an opportunity to criticize the US in international fora for using "high-handed" tactics and would be opposed by those Americans who do not believe the US should walk out of negotiations and who favor multilateral solutions to major world problems and an international rule of law.

#### Implementation

If Option I is selected, the Interdepartmental Group believes that the following actions should be undertaken.

A public relations effort should be carried out which could include a White House announcement of the decision. It should be designed both to obtain domestic political advantages and to minimize domestic and international disadvantage such as the adverse editorial comments that followed announcement in March 1981 of the US review of law of the sea policy.

Contingency plans should be executed to protect US non-seabeds interests outside a law of the sea treaty. These plans are being prepared.

If the US wishes to attempt to persuade its allies not to ratify the treaty, a high-level, and potentially politically costly, effort should be made.

The US would have to develop a strategy for establishing an alternative regime for commercial investment in deep seabed mining.

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The prospects for establishing such an alternative regime would be affected by decisions made by US allies. Currently, the IG believes that the prospects are virtually nil for inducing the allies to withdraw from the negotiations with the US. The US would then have to seek to induce the allies not to ratify the treaty.

If the US should succeed in convincing its allies not to ratify the treaty, an effort would have to be undertaken to establish an alternative regime for commercial-scale investment in deep seabed mining. If such a regime were to be established in the face of a law of the sea treaty that comes into force, or is likely to come into force, companies may require financial protections from their governments. If the US fails to convince its allies not to participate in the treaty and decides to establish a unilateral regime under which its nationals would invest in commercial-scale deep seabed mining, the US would have to provide additional financial protections for its miners, because of serious international legal and political risks.

At one extreme, if a comprehensive treaty enters into force and the United States is the only major nation which is not a party to the treaty, commercial-scale deep seabed mining under US licenses almost certainly would not occur on an unsubsidized basis because of serious international legal and political risks.

At the other extreme, in the unlikely event that the treaty did not enter into force for many of the nations interested in deep seabed mining (US, UK, France, FRG, Belgium, Japan, Netherlands, and Italy), the USSR, certain major developing countries, and other industrialized countries, and provided the US could induce them to join in an alternative regime, investment in commercial-scale deep seabed mining under US and foreign licenses might occur under that regime.

A variety of cases lie between the two extreme alternative situations outlined above. The IG cannot predict with a reasonable degree of confidence whether commercial-scale investment would occur under any such case. The various industrial consortia hold differing views on this subject.