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DLB 12/11/2018

File Folder LAW OF THE SEA (06/15/1982-06/18/1982)

FOIA

S17-8440

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SYSTEMATIC

52

ID	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
225839	REPORT	INTERAGENCY REPORT ON THE LAW OF THE SEA	12	6/15/1982	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]

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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.

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225839 REPORT

12 6/15/1982

B1

INTERAGENCY REPORT ON THE LAW OF THE
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LAW OF THE SEA - FUTURE U.S. COURSES OF ACTION

I. LOS Decision Issues

The five LOS issues for Presidential decision are: 1. sign or not sign the treaty, 2. decide now or later, 3. continue or discontinue further U.S. participation in Law of the Sea Conference, 4. sign or not sign Final Act, 5. encourage further efforts to amend the treaty. These issues are only tangentially related to actual U.S. policy goals explicitly or implicitly contained in the President's January 29th Statement.

Unless such policy goals are established as priority national objectives and aggressively pursued, beginning immediately and extending over the next year and a half, a Presidential decision on the five issues presented to him, in and of itself, will have little positive effect on the attainment of his goals. Such goals include:

- o developing an alternative international regime which would govern ocean mining activities;
- o relying on existing customary international law and existing bi-lateral and multi-lateral treaties pertaining to navigation, fishing, oceanographic research and control of ocean pollution;
- o limiting the number of signatures of the LOS treaty to less than 50, so as to prevent implementation of the Preparatory Commission;
- o preventing entry into force of the treaty by limiting the number of ratifications to less than 60;
- o failing that, discouraging ratification of the treaty by nations with ocean mining capabilities or interests, other developed nations, advanced developing nations and the Soviet bloc;
- o limiting activities by individual states or international organizations, which would adversely affect U.S. ocean interests or would create adverse precedents effecting the development of customary international law;

- o defending against possible political and legal actions taken by individual states or international organizations, intended to block or restrict U.S. seabed uses; and
- o encouraging and protecting ocean mining activities by U.S. citizens in order to obtain actual access to and development of strategic ocean minerals.

II. Need for an implementation plan related to five LOS decision issues and the pursuit of the President's policy goals.

WIN 2 WKS

The President should direct that an implementation plan be prepared based upon the Presidential decisions on the LOS issues and upon Presidential policy. This implementation plan should contain the following elements:

(a) Implementation Schedule (actions to be executed within the next three months, within the next year and a half);

(b) Designation of persons and departments responsible for carrying out the activities;

(c) Designation of activities such as:

1. International Actions

(a) a forceful and comprehensive statement by the President of U.S. position with respect to the Law of the Sea and the rules which the U.S. recognizes as applicable to ocean uses;

(b) high level bi-lateral discussions between U.S. and all other nations, including encouraging key nations not to sign or ratify the LOS treaty;

(c) continued negotiations among like-minded nations related to (1) the resolution of conflicts arising from overlapping applications, (2) reciprocal recognition by the U.S. and other nations of each other's exploration licenses and mining permits; (3) prevention of an agreement between or among any two or more ocean mining nations to seek preliminary investment protection under the LOS Treaty; and (4) attainment of an alternative ocean mining regime.

(d) use of multi-lateral organizations such as NATO, SEATO, ASEAN, OAS, etc., to pursue support for the U.S. position;

2. Domestic Actions

(a) policy statement by the President on his decision, including his intent to protect the rights of U.S. citizens to mine the seabed and establish an alternative ocean mining regime, etc. (which could be made in conjunction with his international policy declaration.)

(b) identification of other discretionary Executive Branch activities related to the encouragement and protection of ocean mining activities by U.S. citizens, including the promulgation of mining regulations as required by the Deep Seabed Hard Mineral Resources Act;

(c) legislative proposals such as providing OPIC type insurance, using Defense Procurement Act approaches to encouragement of ocean mining activities, provide for stockpile purchases of strategic ocean minerals, and establishing an exclusive economic zone and other means by which the development of polymetallic sulfide and nodular derposits would be encouraged.

III. Conclusion

There is a real danger that many allied and friendly nations will sign and eventually ratify the treaty if the President fails soon to clearly enunciate his goals and implement aggressive action. The greater the number and stature of nations which sign and ratify the treaty, the more difficult it will be to satisfy the President's ocean policy.



Billy, Jim Leach is now chairman of Hughes Tool Company, Houston, Texas

NATIONAL OCEAN INDUSTRIES ASSOCIATION

1050 Seventeenth Street, N.W., Suite 700

Washington, D.C. 20036

(202) 785-5116

June 16, 1982

The Honorable Ronald Reagan
The White House
Washington, D.C. 20500

Dear Mr. President:

I am writing you in my capacity as Chairman of the Board of Directors of the National Ocean Industries Association, a trade association of some 500 American companies engaged in all aspects of ocean resource development and utilization. The Association is seriously concerned about a series of choices you will be facing in the very near future with regard to (1) the treaty concluded April 30 at the Third U.N. Conference on Law of the Sea, and (2) implementation of programs mandated by the laws of the United States to establish and promote domestic ocean industries. The choices you make will "make or break" the ability of American industry to continue developing the vast resources of the oceans. The indirect effects of your actions will have an even broader scope, and could affect the entire future of the nation's free market economic principles and of our political system.

The National Ocean Industries Association respectfully urges you to consider taking each of the following actions:

-- Publicly state, at the culmination of your Administration's review of the Law of the Sea Treaty, which may mean as early as mid-June, that the final text of the treaty does not meet any of the six requirements you imposed in your January 29, 1982 statement, and that the United States will not sign, ratify, or implement the treaty.

-- Resist entreaties by proponents of the present treaty text that you delay, or remain silent about, your decision not to sign the treaty on the grounds that to do so would encourage other nations to believe their signature and ratification of the treaty will not be offensive to the United States.

-- Direct the Department of State to pursue urgently the cooperation of other Western developed nations and friendly developing nations in creation of an alternative body of ocean law which will protect our mutual interests and values.

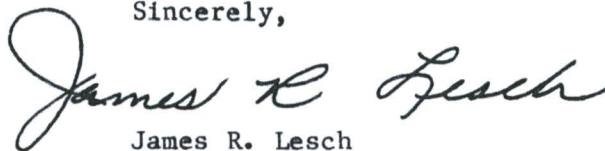
-- Direct the Department of Commerce to stand by the position taken in its final regulations on deep seabed mining exploration licenses, and commence the formal processing of mining licenses in the near future.

-- Direct appropriate Departments and Agencies to begin promptly working with the Congress, to consider development of legislation which will protect this nation's interests in future development of the oceans' resources, by such measures as extension of a claim over an "exclusive economic zone" off our coasts, protective modifications of the Deep Seabed Hard Mineral Resources Act, and adjustments to the laws governing fishing off the coasts of the United States.

In short, we are asking that your Administration exercise strong leadership to protect the needs and interests of the minority of Western free market economies from the certain domination of the Third World idealogues and the Warsaw Pact. To that end, we urge you to continue making clear to the world, as you did during the North-South Economic Summit in Cancun last October, the will of the United States to maintain its position of strength through the structure of a free economic and political system, and resisting by all appropriate means the distortion of our system by devices like the Law of the Sea Treaty. I assure you the business community in the United States will firmly support you.

The members and staff of the National Ocean Industries Association will be pleased to meet with you or your staff at your convenience, to explain our concerns in detail. Please call on us if we may serve you. Thank you for your consideration of our interests.

Sincerely,

A handwritten signature in cursive script that reads "James R. Lesch". The signature is written in dark ink and is positioned above the printed name.

James R. Lesch

JRL/ld

~~Ball - FYI.~~
file LOS

Statement of Doug Bandow
before the
House Committee on Foreign Affairs
June 18, 1982

The Reagan Administration has taken a courageous stand in voting against the proposed Law of the Sea Treaty, an action, I might add, which was supported by all of the leading members of the U.S. delegation in New York. This vote should now be followed by a firm rejection of the treaty, and the new world order for which it stands.

The Law of the Sea Conference is not an isolated negotiation, but rather, an integral part of an international network of conferences, commissions, and organizations, through which the developing nations have been waging economic and political war on the developed states, under the banner of the New International Economic Order (NIEO)--a euphemism for old-fashioned greed.

The Third World nations want to create new, and restructure old, international organizations, to give them control, allowing them to enforce the mandatory redistribution of the wealth of the West. Their greedy demands extend to money, preferential commercial terms, natural resources, expropriated property, and technology.

Unfortunately, they have been succeeding. The Second

Conference on the Global Environment recently concluded, with a predictable call for the establishment of the NIEO. The so-called Moon Treaty is based on precisely the same fundamental premises as the Law of the Sea Treaty. Further, the United Nations Conference on Trade and Development (UNCTAD), the World Health Organization, the United Nations Industrial Development Organization (UNIDO), and the Commission on Transnational Corporations all are continuing work on redistributive, burdensome, and perverse regulations and programs.

Related to the NIEO is the New International Information Order, which translates into restrictions on the world press. These efforts have been led by the United Nations Educational, Scientific, and Cultural Organization (UNESCO). If resources are the common heritage of mankind, it is only logical that information is as well.

What we are seeing is a wholesale attempt to institute totalitarian global management based on principles that have manifestly failed again and again at the national level. Signing the Law of the Sea treaty is so important because it would legitimize these principles.

The treaty would, for the first time in history, establish an international institution under Third World domination to redistribute international wealth. Proprietary American technology would be subject to

involuntary transfer, and terrorist groups would be eligible to share in revenues from an international body. And a byzantine, stifling, and discriminatory international regulatory system for natural resources would be created.

Perhaps the greatest tragedy of the treaty is not that it is so obviously and grossly against our interest, but that it is against the interest of the developing countries as well. Instead of freeing developing country peoples from the stultifying economic systems, corruption, and political oppression that make them poor, the treaty would create yet another counter-productive bureaucracy that would retard economic growth and make it harder for these peoples to escape poverty. This is an international disaster, not an achievement.

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Doug Bandow is editor of Inquiry magazine, and a Senior Policy Consultant at the CATO Institute. He formerly served as a Special Assistant to the President, and was a Deputy Representative to the 10th and 11th sessions of the LOS Conference.



DEPARTMENT OF STATE

Washington, D.C. 20520

BUREAU OF OCEANS AND INTERNATIONAL
ENVIRONMENTAL AND SCIENTIFIC AFFAIRS

June 18, 1982

UNCLASSIFIED UPON REMOVAL
OF CLASSIFIED ENCLOSURES
12/11/80

EYES ONLY

CONFIDENTIAL ATTACHMENTS

MEMORANDUM

DECLASSIFIED
Authority MM
BY MM NARA DATE MM

TO: Mr. Bill Barr
FROM: OES/O - Ted Kronmiller TB
SUBJECT: Law of the Sea

Attached are copies of documents which you should have received in the normal course but did not due to our error. Please accept my apologies.

The rather bleak picture painted by several of the observations in these documents proceeds upon the premise of a business as usual approach to LOS and RSA in Washington. As you and I have observed in IG meetings, this Administration does not view itself as merely a victim of events, but rather, is conscious of U.S. economic, political and strategic influence and intends to make use of it. I believe that, with a rapid decision by the President against the treaty and with direct intervention by him with his counterparts in key European countries, the entire picture changes.

Attachments:

As stated.



DEPARTMENT OF STATE

Washington, D.C. 20520

DECLASSIFIED

Authority

State Waver 11/6/15 June 11, 1982

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BY

db NARA DATE 12/11/2018

10
True: LOS
RPA

TO: OES - Mr. Malone

FROM: OES/O - Theodore G. Kronmiller

SUBJECT: Reciprocating States and the Law of the Sea

This memorandum supplements a cable (London 12826-attached) sent earlier today. In meetings with the French, British and the Germans over these two days the following became clear:

1. A full-blown RSA along the lines previously contemplated cannot be achieved by June 21. The Germans and the French regard such an agreement as inherently prejudicial to their LOS options because they would be led into mutual recognition of mine site authorizations which would be impermissible under the LOS Treaty. Further, they do not think that there is time to respond to any initiatives by the 21st. The UK has a need for a European partner in such an Agreement, but does not see an inherent problem with the Agreement as such.

2. A full-blown RSA could be achieved with the UK within six weeks, possibly even without other European participation. It would require, probably, intervention at the highest level to persuade the UK to go bilateral. Because of the FRG and French position on the substance of the full-blown RSA, conclusion of the Agreement with them could not be achieved within this time period.

3. A full-blown RSA could conceivably be concluded later in the year. For France and the FRG, this would depend on decisions not to sign the LOS Treaty. For France, such a decision is exceedingly unlikely and for Germany there is little greater possibility. Naturally, a decision by the FRG to sign the RSA later in the year would aid in gaining UK participation.

4. A limited RSA, that is, one not providing a mechanism for mutual recognition of mine sites, could not be achieved by June 21. While such an Agreement appears acceptable to all parties in substance, there is insufficient time for final policy decisions to be made by June 21.

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-2-

5. A limited RSA could be achieved within six weeks. For the French this would depend on US agreement not to make commitments before a point late in the year which would have the effect of (a) precluding mutual designation as reciprocating states (e.g., certification of an applicant for licensing by the US) or (b) establishing reciprocity between the United States and any other country. This would protect the French from isolation while they make their LOS decision and would enhance their ability to engineer European unity in favor of signature of the LOS Treaty. For the UK and FRG, a period of interaction with the US could much shorter (perhaps 30 to 60 days, though this is a guess). They favor this approach as non-prejudicial to their LOS options and as contributing to a favorable political climate with the US. They also believe that this Agreement, however limited, would benefit the industry (though the US delegation tends to disagree).

What the US would gain from a limited RSA would be the avoidance of political isolation for a very limited time, i.e., until the parties made their LOS decisions or simply decided to participate in the PIP process. What the United States would lose would be its ability to undertake immediate or (in the future) strong diplomatic efforts to draw the Europeans into a full RSA. (It may be argued that any agreement between the US and any of its allies would assist us in bringing them out of the LOS treaty with us, should we decide not to sign it.)

Concerning a decision by the President not to sign the LOS Treaty, the following was gleaned from the discussions:

1. An announcement of a Presidential decision prior to conclusion of interim seabeds arrangements would diminish or preclude our ability to achieve such arrangements.
2. Several members of the US delegation maintain that mere publicity of such a decision, without a formal announcement, would have the same effect.
3. A decision on the LOS Treaty by the UK could be profoundly influenced by Presidential intervention.
4. A decision by France to sign the Treaty, though not to ratify, appears to be foregone.

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-3-

5. A decision by the FRG in favor of signature appears highly probable in view of the recent tendencies of pro treaty Foreign Ministry forces. However, a US effort to produce a different result could possibly succeed if made at the highest levels.

Comment:

Though the FRG, France and UK each expressed concern over the June 21 date, discussion of the matter seemed to assuage their fears. They dropped their objections when convinced that the date was not necessarily prejudicial to their interests in possible future reciprocal arrangements with the US.

Attachment:

London 12826

CONFIDENTIAL

DECLASSIFIED

Authority State Waiver 11/6/15
 BY dk NARADATE 10/11/2016

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SSA742

PAGE 01 LONDON 12825 101534Z
 ACTION OES-09

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10 JUN 12 00

~~CONFIDENTIAL~~ LONDON 12825

E.O. 12855: RDS-1 5/10/12 (STREATOR, E.J.) OR-M
 TAGS: LMIN, PLOS
 SUBJECT: SEABED MINING: RECIPROCATING STATES NEGOTIA-
 TIONS JUNE 9-10, 1982; USDEL REPORT

REF: (A) STATE 158924, (B) STATE 152230

1. *C* - ENTIRE TEXT.

2. U.S. LAW OF THE SEA (LOS) DELEGATION, MET IN LONDON
 WITH UK, FRG AND FRENCH DELS ON INTERIM ARRANGEMENTS FOR
 SEABED MINING.

3. DISCUSSION ON JUNE 9 FOCUSED ON THE DEVELOPMENT OF A
 SEABED AGREEMENT WHICH WOULD FACILITATE THE RESOLUTION OF

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2

~~CONFIDENTIAL~~

PAGE 02

LONDON 12826 101534Z

CONFLICTS AMONG PENDING MINE SITE APPLICATIONS AND PROVIDE FOR FUTURE CONSULTATIONS AMONG THE STATES IN WHICH PRE-ENACTMENT EXPLORER (PEE) APPLICATIONS HAVE BEEN FILED. IN ORDER TO ENSURE THAT OPTIONS RELATING TO THE LOS CONVENTION OR AN ALTERNATIVE REGIME WERE NOT PREJUDICED, THE FRG AND FRANCE INSISTED THAT THE AGREEMENT NOT RPT NOT PROVIDE FOR A MECHANISM BY WHICH RECOGNITION OF MINE SITES WOULD BE EFFECTED. IT WAS, THEREFORE, AGREED AMONG THE FOUR THAT RECIPROCAL RECOGNITION BE DEALT WITH, IF AT ALL, BY FUTURE AGREEMENT.

4. AFTER SOME DISCUSSION, THE U.S. JUNE 21 DATE FOR BEGINNING OF PROCESSING OF APPLICATIONS WAS REGARDED AS NON-PREJUDICIAL AND OBJECTION TO IT WAS DROPPED.

5. FRANCE AND FRG DELS INDICATED THAT THERE WAS LITTLE OR NO PROSPECT THEY WOULD SIGN ANY AGREEMENT PRIOR TO JULY. IT APPEARS THAT FRANCE MAY BE ENGAGED IN AN EFFORT TO PREVENT, BY DELAY, ANY AGREEMENT WHATEVER.

6. UK VOLUNTEERED TO TWO MEMBERS OF U.S. DEL IN SEPARATE CONVERSATIONS THAT, FAILING INTERIM MULTI-LATERAL AGREEMENT, THEY WOULD EXAMINE THE OPTION OF INTERIM BILATERAL ARRANGEMENTS BETWEEN UK AND U.S. UK RMPs STATED THAT BILATERAL MIGHT BE BEST SOLUTION REALISTICALLY AVAILABLE. (NOTE: HEAD OF UK DEL INDICATED THAT THATCHER MIGHT DECIDE NOT TO SIGN THE TREATY UPON URGING BY REAGAN. THE UK HAS MADE NO DECISION EVEN AT STAFF LEVEL TO SIGN OR NOT SIGN LOS TREATY AND CLEARLY WANTS TO KEEP ITS OPTIONS OPEN ALTHOUGH ALL MINISTRIES BUT INDUSTRY ARE LIKELY TO RECOMMEND SIGNATURE.)

7. SPLIT BETWEEN FRG FOREIGN AND ECONOMIC MINISTRIES WAS

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PAGE 03

LONDON 120200 101534Z

OBVIOUS. FOM MIN WISHES TO DO NOTHING WHICH IS HOSTILE TO G-77 AND WISHES TO SIGN TREATY AT EARLIEST POSSIBLE TIME. RSA IS VIEWED AS DANGER TO FRG SIGNATURE OF TREATY. ECONOMIC MINISTRY WAS PESSIMISTIC THAT IT COULD OVERCOME FOM MIN IN THIS REGARD.

8. FRENCH DEL STATED REPEATEDLY THAT THEY HAD MADE NO DECISION REGARDING SIGNATURE OF THE CONVENTION.

9. MORNING OF JUNE 10 UK SURFACED NEW DRAFT AGREEMENT.

PREAMBLE REFLECTED U.S. PROPOSALS PER REF B, WITH MINOR AMENDMENTS. OBLIGATIONS INCLUDED: (1) CONSULTATIONS:

(2) USE OF PREVIOUSLY AGREED SEABED MINING PEE APPLICATION PROCEDURES (WITH AMENDED DATES); AND (3) USE OF PREVIOUSLY AGREED CONFLICT RESOLUTION PROCEDURES AND PRINCIPLES, IN EVENT THAT VOLUNTARY PROCEDURES FAIL AND RECIPROCITY IS ESTABLISHED.

10. INTENSIVE NEGOTIATIONS PRODUCED FEW SUBSTANTIVE CHANGES TO DRAFT.

11. AT THIS TIME, STATUS OF NEW TEXT REMAINS UNCERTAIN. IT WAS TO BE SUBMITTED, HOWEVER, TO CAPITALS. END USDEL REPORT. LOUIS

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DEPARTMENT OF STATE

Washington, D.C. 20520

UNCLASSIFIED UPON REMOVAL
OF CLASSIFIED ENCLOSURE(S)

12/11/2018

~~UNCLASSIFIED~~
(~~CONFIDENTIAL~~ Attachment)

TO: ✓ OES/O - Mr. Kronmiller
EB/CPD - Mr. Drucker
L/OES - Mr. Asher
EUR/RPE - Mr. Gadsden
EA/RA - Ms. McNutt

FROM: OES/OLP - Otho E. Eskin *E*

SUBJECT: Communications relating to Reciprocating States
Agreement

Attached are several recent communications relating to
the RSA.

- Canadian talking points and draft memorandum of under-
standing on the settlement of conflicting claims with respect
to seabed areas.

- French talking points on the RSA.

- Letter from FRG Minister Genscher to the Secretary

LAW OF THE SEA CONVENTION

TALKING POINTS

- B. 28/14
- ✓ -- It is the analysis of Western countries that the Law of the Sea Convention is central to their strategic, economic, and political interests; its successful implementation is sufficiently important to Canada that Canada hopes that the United States would consult with its allies before taking any final decision on whether or not to sign the Convention.
 - The United States should not assume that there is no longer any chance of bringing further change to the Convention.
 - The USA would draw considerable benefits from the Law of the Sea Convention, including the seabed mining regime, in light of amendments made at the eleventh session (ie. guaranteed seat on the Council for the USA, protection of preliminary investments providing guaranteed access to seabed resources and virtual control by USA companies of the first generation mine sites, and simplification of the procedures in seabed authority, etc.).

no enabling

-- It would certainly not be possible for a state to choose which provisions it may benefit from as customary international law (as opposed to conventional law) while remaining outside the Law of the Sea Convention. The treaty was negotiated as a package and much of its various substantive provisions will apply only to states parties. It cannot be argued, for example, that provisions on transit passage in straits which are of great importance to the USA are customary international law; these are new rules of law which will apply only between states parties to the Law of the Sea Convention.

-- In broad terms, staying outside the Law of the Sea Convention would isolate the USA, deprive it of benefits from the Law of the Sea Convention, harm its relations with third world countries, without enabling the USA to achieve its objective of guaranteed access to seabed resources.

-- A mini-treaty is not a viable alternative since it cannot provide security of tenure to USA consortia

with respect to mine sites. Only the Law of the Sea Convention, together with the Preparatory Investment Protection (PIP) and the Conflict Resolution Memorandum proposed by Canada can provide the security of tenure essential to seabed miners. Canada's proposal concerning the settlement of overlapping seabed boundary claims provides an alternative to a mini-treaty, one of which is compatible with the Convention. Early response (e.g. from Japan) has been favourable.

DRAFT MEMORANDUM OF UNDERSTANDING
ON THE SETTLEMENT OF CONFLICTING CLAIMS
WITH RESPECT TO SEABED AREAS:

TALKING POINTS

- 1/10
- In response to the resolution on Preparatory Investment Protection (PIP) adopted at the 11th Session of UNCLOS, and which requires potential certifying states (Canada is named as prospective certifying state) to resolve overlapping seabed area boundary claims before applications for pioneer status can be submitted to the Preparatory Commission (the precursor of the International Seabed Authority), Canada has prepared a Draft Memorandum of Understanding which would assist in this process. A copy of this Memorandum is attached to these talking points.
- We are sending a copy of our Memorandum to all potential certifying states, ie. France, Japan, India, USSR, FRG, Belgium, the Netherlands, Italy, U.K. and USA.
- Since all the potential certifying states are included, this will greatly assist in the settlement of overlapping claims.
- Canada would suggest that all interested states meet to discuss our Memorandum and the resolution of competing claims as soon as possible and would suggest a United Nations city such as New York or Geneva or some other convenient capital.
- 7-8 July
J. J. J.
- If it would be helpful to the work, Canada would be prepared to Chair the first meeting (which could be held in a Canadian mission) but would suggest that the Chairman (and the local venue) rotate among the participants.

- Canada does not wish to take the lead on this exercise which should be very much a cooperative effort amongst all concerned countries.
- As far as the relationship of this exercise to the "mini-treaty" is concerned, Canada does not subscribe to the creation of a regime outside of the Law of the Sea framework.
- The Canadian proposal is directed to all countries with seabed mining interests and is designed to assist in the development of internationally agreed rules for the deep seabed in line with the Law of the Sea Convention.
- Our proposals have the advantage of offering to bring all potential certifying states together, at the same time, to open the envelopes containing the coordinates for seabed areas.
- The State Department must recognize the danger of publicizing the coordinates of four private consortia without knowing the claims of the other interested states (ie. France, Japan, USSR and India) and the potential that this gives for future competing claims to the same area.
- Canada would welcome any comments on this initiative or the Draft Memorandum and we are naturally very open to suggestions and improvements.

D R A F T

MEMORANDUM OF UNDERSTANDING
ON THE SETTLEMENT OF CONFLICTING CLAIMS
WITH RESPECT TO SEABED AREAS

The Parties to this Memorandum of Understanding,
Bearing in mind the adoption of the Draft Convention on the
Law of the Sea by the Third United Nations Conference
on the Law of the Sea,

Bearing in mind the Draft Resolution governing preparatory
investment in pioneer activities relating to polymetallic
nodules and the Draft Resolution establishing the
Preparatory Commission for the International Seabed
Authority,

Recognizing that the Parties hereto are named in the Resolution
governing preparatory investment as controlling or having
an interest in potential pioneer investors engaged in
activities relating to polymetallic nodules,

Recognizing in particular the requirement of the Draft
Resolution governing preparatory investment to ensure
that areas in respect of which applications are made to
the Preparatory Commission do not overlap with one
another,

Desirous of resolving any such overlapping claims within
the framework of the Draft Resolution governing
preparatory investment,

Have reached the following Understanding:

SECTION I: Use of Terms

As used in this Memorandum:

- (A) "Pioneer Investor", "Pioneer Activities" and "Pioneer Area" have the meanings assigned to those terms under the Resolution governing preparatory investment in pioneer activities relating to polymetallic nodules adopted by the Third United Nations Conference on the Law of the Sea hereinafter referred to as the "PIP Resolution";
- (B) "Preparatory Commission" mean the Preparatory Commission for the International Seabed Authority and the International Tribunal for the Law of the Sea as established by the Resolution on the establishment of the Commission adopted by the Third United Nations Conference on the Law of the Sea;
- (C) "Conflicts" means the existence of two or more applications in which the pioneer areas applied for overlap in whole or part.

SECTION 2: Initial Meeting

2.1 The Parties will meet in a mutually agreed location not later than () for the purposes of:

(A) Notifying each other of the identity of each entity which has indicated its intention to apply for registration as a pioneer investor; and

(B) Opening, for the first time, the envelopes containing the coordinates of the areas which the entities referred to in (A) intend to submit to the Parties for registration by the Preparatory Commission.

2.2 Each area be given consideration for the purpose of Conflict Resolution only if the total area applied for is sufficiently large and of sufficient estimated commercial value to allow two mining operations in accordance with paragraph 3(A) of the PIP Resolution. Each entity is entitled to only one area.

SECTION 3: Identification of Conflicts and Notification

Each Party will identify the exact location of any conflicts and, not later than 30 days after the initial meeting, inform the other Party or Parties concerned by the conflict.

SECTION 4: Conflict Resolution by Entities Concerned

4.1 Each Party will give the entities involved in conflicting claims with respect to seabed areas the opportunity to resolve any conflicts by voluntary procedures. To that end, the entities may, at any time, amend the designation of the area which they intend to apply for with a view to eliminate conflicts. The Parties will be informed of all such amendments.

4.2 The Parties will not apply to the Preparatory Commission for the registration of areas which are the object of conflicting claims until all existing conflicts are resolved.

SECTION 5: Assistance by Parties

If by () the entities involved in a conflict have not resolved that conflict, the Parties will use their good offices to assist the entities to that end.

SECTION 6: Notification to the Preparatory Commission

In accordance with paragraph 5(A) of the PIP Resolution, the Parties will inform the Preparatory Commission of any efforts to resolve conflicts with respect to overlapping claims.

SECTION 7: Settlement of Claims

If, despite assistance by the Parties as provided in Section 5, a conflict is not resolved by negotiation by March 1, 1983, the Parties undertake to submit all such claims to binding arbitration in accordance with UNCITRAL arbitration rules. Arbitration will commence not later than May 1, 1983, and will be carried out in accordance with paragraph 5(C) and (D) of the PIP Resolution, including consideration of the factors on which the Arbitral Tribunal is to base the award.

SECTION 8: Amendments

This Memorandum may be amended by consent of the Parties. Any amendment will take effect 30 days after it has been accepted by all the Parties.

SECTION 9:

9.1 The Parties will use their best endeavours to fulfil commitments under this Memorandum of Understanding.

SECTION 10: Effective Date

Done at , this day of , 1982, in
the English, French, , and languages

each version being equally authentic.

For the Government of :

For the Government of :

Translation

Dear Al,

thank you very much for your letter stressing once more the need for the closest possible co-operation between our governments in dealing with the results of the Law of the Sea Conference, especially questions relating to deep-sea mining. The Federal Government has at all times considered such co-operation to be highly important and therefore welcomes your proposal to hold consultations before our governments take final decisions on the convention.

I also welcome the readiness expressed in your letter to adapt, in view of the results of the conference, the already elaborated draft reciprocating states agreement on deep-sea mining to the new situation. Initial confidential talks on this subject were recently held in Geneva and London between representatives of the United States, the United Kingdom of Great Britain and Northern Ireland, France and the Federal Republic of Germany. I noted with satisfaction that all the parties involved acknowledged the need to amend the draft reciprocating states agreement in a manner that does not prejudice in any way the future position of the states concerned on the results of the Law of the Sea Conference. Your government's readiness to incorporate other deep-sea mining states in future consultations has my government's full support. We would like to see solutions ultimately being found to this

question enabling as many deep-sea mining states as possible to participate in an agreement.

This goal is, in my opinion, too important to be jeopardized by hasty action. I fully appreciate the interest of industry in an early solution to this question.

Yet I feel that the states concerned should, in view of the great importance of the decision to be taken, leave themselves enough time to settle satisfactorily the associated legal, economic and political problems including the incorporation of other deep-sea mining states.

In the interest of the multilateral solution, as favoured by all the governments concerned, sufficient time should be allowed for the negotiations on the necessary adaptation of the reciprocating states agreement and on the processing of the applications already filed.

With warm regards,

(sgd.) Hans Dietrich

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OES/OLP:OEESKIN

OES/O:TKRONMILLER
L/OES:SASHER
EA/RA:LMCNU TT

EB:MDRUCKER
EA/J:

*Clen with
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DECLASSIFIED
Authority State Warier 11/6/15
BY du NARA DATE 12/11/2014

IMMEDIATE TOKYO

IMMEDIATE LONDON, BONN IMMEDIATE, PARIS IMMEDIATE

GDS 6/17/88 {ESKIN, OTHO E}

PLOS, JA

LOS: RECIPROCATING STATES AGREEMENT

OEE
OEE
TK
MD
SA
LM

REF: TOKYO 9732

1. ~~CONFIDENTIAL~~ - ENTIRE TEXT.

2. ON JUNE 16, JAPANESE EMBASSY OFFICER {TSUBAKI} RAISED
RECIPROCATING STATES AGREEMENT {RSA} WITH DEPT OFF.

TSUBAKI MADE THE FOLLOWING POINTS ON INSTRUCTION: AN RSA
SHOULD BE COMPATIBLE WITH LOS PIP RESOLUTION AND SHOULD
INCLUDE ALL EIGHT LIKE-MINDED STATES. JAPAN WISHES TO
BE INCLUDED IN CONSULTATIONS ON RSA AND WOULD OBJECT TO
BEING FACED WITH A FAIT ACCOMPLI, I.E., A FINISHED TEXT
ON A TAKE-IT-OR-LEAVE-IT BASIS.

3. IMMEIDATE JAPANESE CONCERN WAS APPARENTLY PROMPTED BY

~~CONFIDENTIAL~~

REFERENCE TO A POSSIBLE MEETING OF RECIPROCATING STATES ON JUNE 21 WHICH APPEARED IN A NOTICE PUBLISHED IN THE FEDERAL REGISTER ON JUNE 8. DEPT OFF ASSURED TSUBAKI THAT NO MEETING IS SCHEDULED FOR JUNE 21.

4. TSUBAKI SAID THAT JAPANESE DEEP SEABED LEGISLATION HAD PASSED LOWER HOUSE AND WOULD PASS UPPER HOUSE BEFORE THE END OF JUNE. JAPANESE NATIONAL SEABED MINING CLAIM WOULD, HE SAID, BE FILED BY MID-JULY.

5. FYI. JAPANESE HAVE MADE SIMILAR APPROACH IN LONDON AND, WE ASSUME, ELSEWHERE. AS EMBASSY WILL BE AWARE FROM SEPTELS, US IS PROPOSING A MEETING WITH UK, FRG AND FRANCE FOR CONSULTATIONS ON A POSSIBLE REVISED, INTERIM RSA ARRANGEMENT. WE WILL DISCUSS QUESTION OF ROLE OF JAPANESE AND OTHER POTENTIAL SEABED MINING STATES IN RSA AT THAT MEETING. END FYI. YY

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Department of State

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E. O. 12065: GDS 6/10/88 (IMMERMAN, ROBERT) OR-P
TAGS: PLOS, JA
SUBJECT: LOS -- MEETING OF THE CG-5

REF: 157351

1. ~~C~~ - ENTIRE TEXT

2. MOFA LAW OF THE SEA DIVISION WOULD PREFER TO DELAY CG-5 MEETING IN WASHINGTON UNTIL THE WEEK OF JUNE 21 BECAUSE OF THE SHORT NOTICE AND PENDING DEEP SEABED LEGISLATION IN THE UPPER HOUSE OF THE DIET. IF OTHER DELEGATIONS CANNOT ADJUST THEIR SCHEDULES ACCORDINGLY, MOFA OFFICIALS SAID THE GOJ WOULD TRY TO SEND REPRESENTATIVES TO A JUNE 17-18 MEETING, BUT THIS MIGHT PROVE DIFFICULT. IF POSSIBLE, THE LOS DIVISION WOULD LIKE A MORE DETAILED AGENDA FOR THE TWO DAYS OF TALKS.

3. IN CONVERSATION CONVEYING CG-5 CONSULTATION INFORMATION, MOFA OFFICIALS ASKED WHEN THE NEXT RECIPROCATING STATES AGREEMENT MEETING IS TO BE HELD. PLEASE ADVISE.

MANSFIELD

DECLASSIFIED

Authority State Waiver 11/6/15
BY ab NARA DATE 12/11/2016

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