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ID	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
225849	REPORT	INTERAGENCY REPORT ON THE LAW OF THE SEA: AGENCY RECOMMENDATIONS	3	6/24/1982	B1
225850	MEMO	WILLIAM CLARK TO THE PRESIDENT, RE: NATIONAL SECURITY COUNCIL MEETING [LAW OF THE SEA], ANNOTATED	3	ND	B1

URGENT

8217755

DEPARTMENT OF STATE

Washington, D.C. 20520

→ NSC/S

June 24, 1982

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~~(With SECRET Attachment)~~ 12/11/2016

Senior Interagency Group No. 8

TO	:	OVP	- Mrs. Nancy Bearg Dyke
		NSC	- Mr. Michael O. Wheeler
		CIA	- Mr. Thomas B. Cormack
		Commerce	- Mrs. Helen Robbins
		Defense	- COL John Stanford
		Energy	- Mr. William Vitale
		Interior	- Mr. Arthur Russell
		JCS	- MAJ Dennis Stanley
		Justice	- Mr. F. Henry Habicht
		Labor	- Mr. Robert Searby
		NSF	- Dr. Francis Johnson
		OMB	- Mr. William Schneider
		Transportation	- Mrs. Katherine Anderson
		Treasury	- Mr. David Pickford
		UNA	- Amb. Harvey Feldman

SUBJECT: SIG Report on Law of the Sea: Agency Recommendations

Attached for final interagency review and clearance is the revised report to the President on LOS with agency positions as verified in the June 24 SIG meeting. Addressees are requested to telephone their clearance of this paper to Mr. Tain Tompkins at 632-5804 by 2:00 p.m. Friday, June 25. It is the SIG's intention to convey the final paper to the White House by COB June 25. Your prompt action will be appreciated.

L. Paul Bremer, III
Executive Secretary

Attachment:
As stated.

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225849	REPORT INTERAGENCY REPORT ON THE LAW OF THE SEA: AGENCY RECOMMENDATIONS	3	6/24/1982	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]
B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) 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]

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

File
LOS

June 28, 1982

NOTE to: Mike Uhlmann
Bill Barr

From : Bob Keating

Subject: Correspondence with George Shultz on LOS Treaty

Attached are copies of correspondence with George Shultz on the LOS treaty. He would join an Industry-White House meeting to discuss strategy and tactics for implementing the President's decision to develop a viable alternative seabed mining regime. (At one time, he was considering being the chairman of the "Committee of 100" to provide industry support for the President's position on the LOS treaty.)

I recommend that we hold an Industry-White House meeting as soon as possible after the President has made his decision on the LOS treaty.

Bob Keating

George P. Shultz
President

Bechtel Group, Inc.
Fifty Beale Street
San Francisco, CA 94105

April 7, 1982

Mr. Robert B. Keating
1681 32nd Street, N.W.
Washington, D. C. 20007

Dear Mr. Keating:

Thank you for your letter about the proposed LOS Treaty. I share your concerns. Is my impression correct that the negotiations are making some progress?

I will be glad to help to the extent I can.

Sincerely yours,

George P. Shultz

GPS/z

1681 32nd Street, N.W.
Washington, D.C. 20007
March 15, 1982

Mr. George P. Schultz
Vice Chairman
Bechtel Group of Companies
Box 3965
San Francisco, Calif. 94119

Dear Mr. Schultz:

Bill Wearly asked me to write to you on the proposed Law of the Sea treaty. Also, Taylor Ostrander may send you information on the efforts we have made to inform industry leaders of the problems of the proposed treaty (e.g., Ian MacGregor, Chuck Barber, Jim Lesch, Plato Malezemoff, Jack Jones). At Taylor's suggestion, we are forming a committee of 100 prominent Americans in various occupations and professions to sponsor full-page ads in support of President Reagan's position in the LOS Conference. I enlist your support in this effort.

I was a member of President Reagan's Strategic Minerals Task Force and responsible for preparing the basic assessment of the implications of the treaty provisions for our national security, foreign policy, and domestic economy (copy enclosed). President Reagan, recognizing that many of the provisions were not compatible with free market principles and the goals of his administration, directed that the draft treaty be thoroughly reviewed. (As part of the review process, I introduced new analytic techniques for the evaluation of the many complex issues).

The proposed LOS treaty concerns itself with, among other issues, fishing rights, sea lanes, protection of the marine environment, regulation of marine scientific research, and the development of deep-seabed mineral resources. After almost 14 years of negotiations, virtually all parts of the treaty, except those dealing with seabed mining, had been completed to the point where delegates to the LOS Conference had anticipated signing the comprehensive treaty last year. Had President Reagan not taken timely action, we might well have been confronted with a signed treaty unacceptable to the Reagan Administration and impossible for the U.S. Senate to ratify.

The first major problem in the proposed LOS treaty is that the United States and its industrial allies would not have decision-making roles in the International Seabed Authority (called "Authority") that fairly reflect and effectively protect political and economic interests and financial contributions. For example, voting in the Authority's Assembly would be based on the "one nation-one vote" principle. This would mean that the Third World, with 80 percent of the member representation, would have effective control not only of the Assembly, but also its executive Council and important subsidiary committees. The Council, as the operating arm of the Authority, would make case-by-case decisions on such important matters as approval of ocean mining site applications. Until the Authority is self-supporting, the United States would be committed to paying 25 percent of its administrative budget (a still undetermined amount) and 25 percent of the funds necessary to support one mining operation of its ocean mining company, the Enterprise (a U.S. contribution estimated in excess of $250 million).

Despite being expected to make the largest financial contribution to the Authority, the United States would not have permanent or guaranteed representation on the Council. The Soviet Union, however, would be virtually guaranteed a permanent seat on the Council along with two proxy seats. The United States would not be able to muster enough votes to initiate even procedural changes if Third World members were not in agreement. Under this arrangement, the Third World would have an extraordinarily high degree of control over the policy determinations, judicial arrangements, and management of deep ocean operations and resources. The decision-making system would give the Third World a virtual monopoly in perpetuity over the mining of manganese nodules, as well as other seabed resources (e.g., submarine sulfide deposits) whose potential commercial and strategic value cannot be estimated at this time.

What we found even more startling is that the powers of the Authority would be further extended by providing it with an ocean-mining company, called the Enterprise. The Enterprise would be in direct competition with private-sector ocean mining ventures. It would be put into business with capital from the United States (25%) and other nations ratifying the treaty. With no ocean mining experience, no expertise and no technical ability, the Enterprise would enjoy very special competitive advantages. For example, private mining companies would be compelled, as a precondition to their receiving ocean mining licenses from the Authority, to turn over their seabed mining technology to the Enterprise on the basis of whatever is meant by "fair and reasonable commercial terms and conditions". Furthermore, the private-sector miner would be prohibited from using the technology of a third party who refuses to sell it to the Enterprise. This provision obviously has implications which go beyond the LOS treaty (e.g., the NIEO-related technology transfer desires). Moreover, each private-sector applicant for an ocean mining contract would donate to the Enterprise a fully prospected mine site; the Enterprise would be exempt from payments to the Authority for ten years after start of commercial production, and would be accorded production allocation priorities and immunities in countries where it might operate. Finally, the Enterprise would control specific valuable areas of the seabed for an indefinite time, regardless of its plans for exploitation of its donated sites or of world mineral needs. We have concluded that this preferential treatment would have the effect of giving the Enterprise eventual monopoly in seabed mining.

A particularly troublesome provision, called the Review Conference, provides for a review of the ocean mining regime twenty years after the beginning of commercial production of manganese nodules. Amendments adopted by the Review Conference would enter into force for all parties to the treaty upon ratification by two-thirds of the members. What would stop the Third World from redrafting and approving within twenty years an entirely new set of provisions that would give them even more control over the resources of the world's oceans? As the Review Conference is now written, its entry into force would not require the consent of the United States, and, therefore, the advice and consent of the U.S. Senate should not be given to a treaty with such a provision.

Another difficult problem arises in connection with the proposed participation of national liberation movements (e.g., the PLO) in the Authority and its revenue sharing of proceeds from seabed mining and continental shelf resources beyond 200 miles. We are also concerned with the implications of provisions with regard to Puerto Rico, the Trust Territory, and island possessions in the Pacific and Caribbean.

In attempting to sum up my feelings and opinion of such a complex treaty proposal, my greatest concern is the precedent-setting concepts that would be established if this new world government were to come into being. What we might gain in the short run from such a treaty must be weighed against what we would have to contend with in the long run regarding the effects of such adverse precedents on other North-South dialogues. The basic flaw in the treaty lies in our being submerged as but one nation among 160 in a decision-making process based on a "one nation-one vote" principle. Without the ability for affirmative action, we would place our national interests at considerable risk by allowing decisions of great economic and strategic importance to us to be made by an automatic majority of Third World and Soviet bloc countries. The Authority and its Enterprise would actually have monopoly control over the deep seabed resources of two-thirds of the earth's submerged lands. There would be no effective checks and balances to protect U.S. economic and financial stakes in ocean mining. The centralized bureaucracy of the Authority and Enterprise, based on a socialist model, would not allow the free flow of capital, goods, and technology in response to market forces. Such an institution would deny private-sector miners access to deep seabed minerals on reasonable terms and conditions, and the onerous production controls and anti-density and anti-monopoly provisions would substantially increase the costs, constraints, and complexity of deep seabed mining. Our good common sense tells us not to go ahead with such a fundamentally flawed treaty unless major changes are achieved in many of its component parts.

Enclosed is a copy of President Reagan's recent statement on the LOS treaty. Please give me a call at the U.S. Mission to the United Nations, Law of the Sea Delegation, if you have any questions on what I have described to you (212-826-4728/9). I hope that we may have your support.

Sincerely,

Robert B. Keating

cc: Bill Wearly
Taylor Ostrander

AMAX

March 15, 1982

Mr. George Shultz, Chairman
Bechtel Corporation
50 Beale Street
San Francisco, CA 94119

Dear George:

I know that Bill Wearly has talked to you about the proposed "Committee of 100 to Support the President on the Law of the Sea" and that Bob Keating is sending you the Administration's position. Bob Keating is working as a Consultant to both Dr. Frederick Iklé, Under Secretary of State for Policy, and to Ambassador James Malone. Keating is a specialist in strategic resources and Law of the Sea questions.

As additional material on the Administration's policy-making on the Law of the Sea, I am enclosing a copy of the memorandum I prepared for John Towers, President of Amax Inc. after a meeting with Ambassador Malone last December, which was attended by a dozen or more industry leaders from resource companies. This, of course, is an entirely unofficial report but I think it gives the flavor somewhat better than the White House Fact Sheet and Presidential Statement.

The discussion which Bill Wearly and Ian MacGregor initiated at the BNAC meeting in Palm Beach in December has had a significant influence in London. I enclose copy of a letter drafted by Richard Powell and signed by Alastair Down and a number of others from the BNAC, also the answer and further response. Finally, I enclose a letter Ian MacGregor wrote to Lord Bridges in the Foreign Office on the same subject.

I might mention that one problem Ambassador Malone has, which the proposed Committee would try to deal with, is that he has inherited a formal Public Advisory Committee on the Law of the Sea, chaired by Eliot Richardson and stuffed with Carter and Richardson appointees. This is of less than no value to him, and he has not called it into session.

If there is anything further I can do to provide material or information on this question, please let me know.

Sincerely,

F. Taylor Ostrander

Attachments

P.S.: When Ian MacGregor was here in February, Keating arranged for Ian to call on Admiral Haywood, Chief of Naval Operations, who told us that in this Administration, the Navy considers seabed resources as equally important as navigation rights -- quite a change!

Personal April 16, 1982

The Honorable George P. Shultz

Dear Mr. Shultz:

Thank you for your letter of April 7. Several industry leaders have called me on the attached newspaper article by William Safire concerning a possible abandonment of Reagan Administration principles in the LOS Conference. The replies that I have been able to give them may partially answer your question as to whether or not we are making some progress in these complex negotiations.

With respect to the recent decision to allow a lessening of the Delegation's negotiating instructions, mentioned in the Safire article, I can only say that it came as a surprise to me. Had it been possible for me to have objected to such a decision, I would have done so for I believe that the specific negotiating "fixes" proposed under the revised instructions undermine the President's six objectives of January 29, when they are taken in aggregate.

In my opinion, not only does the new package of U.S. amendments submitted this week fall below what I would consider as the minimally acceptable bottom line, but it acknowledges several of the major precedent-setting concepts of the proposed treaty; hitherto considered unacceptable by the Reagan Administration. The net result of having ceded such adverse precedents will be to further enshrine the principles of the New International Economic Order (production limitations, mandatory technology transfer, restricted rights to private property, limited roles in international institutions for U.S. and other major contributors, curtailment of freedom of the seas, etc.).

Even if we were to walk away from this Conference and publically disavow the UNCLOS process, the endorsements of the treaty's precedent-setting concepts contained in the present set of U.S. amendments will come back to haunt us in other North-South dialogues. In sum, we have taken a step this week that is more extreme than any taken to date to legitimatize the demands of the Third World for "global management" of the earth's resources.

Another result of the new submission of U.S. amendments has been to make the treaty more attractive to our industrial allies. We may now expect 1) increased domestic and foreign political pressures to get us to sign the treaty, and 2) decreased opportunities for us to get our industrial allies to sign the Reciprocating States Agreement.

On the brighter side of things, I do not believe that the Group of 77 will give us a significant number of the changes sought in the new package of amendments. If I am right in this assessment, then the Reagan Administration would have compelling reasons not to sign such a bad treaty. I hope that you will be able to find the time to object to the folly of an international agency governing the earth's oceans which would be dominated by Third World countries whose chronic political instability is only matched by their economic irresponsibility.

I shall be writing to you again. Please give me a call should you come to NYC over the next two weeks (826-4744). My telephone number in Wash., D.C. is (202)338-8114.

Sincerely,

Bob Keating

file LOS

June 28, 1982

Mr. Michael Uhlmann
Special Assistant to the President
The White House
Washington, D. C. 20500

Dear Mr. Uhlmann:

About a week ago on the other side of the Atlantic, I had a conversation with a senior British mining company officer who has been either an official or unofficial expert advisor to the British LOS delegation for the recent conference and several previous sessions.

While he was candid in stating that as he knows the situation from the inside he would not be able to talk about it, nevertheless I gleaned from our conversation three points, which may be of interest to you.

(1) I asked him point blank how he thought the British would handle the question of signing the treaty in December, having abstained on the vote in May.

He said that whichever way the UK government finally decides, no policy decision has been made up to now, and he doubts that there will be one until the moment of signature.

He indicated that there was considerable confusion within the government on this point, and at least two schools of thought.

(2) He took very violent exception to the use of the words "mini treaty" to describe the Reciprocating States Agreement. Apparently he found this version used chiefly in U.S. circles and he said it was lessening the chances of a successful outcome. Nevertheless, he indicated that he favors a successful negotiation of the RSA.

(3) Personally, he was prepared to agree that the whole paraphernalia of the Enterprise and global management by the Third World is absurd, but he said it will take a decade to put it in place, it won't work, and it can't work; therefore one shouldn't worry about it.

He seemed to take the standard British position that it is too late to go back on what has been agreed to and negotiated up to now.

Taylor Ostrander

Taylor Ostrander

United States Senate
WASHINGTON, D.C. 20510

June 28, 1982

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

Dear Mr. President:

The treaty text emerging from the Law of the Sea Conference falls far short of the well considered and highly defensible position you announced on January 29 of this year. It also clearly falls short of the Congressional intent expressed in Title II of the Deep Seabed Hard Mineral Resources Act. We feel you correctly instructed the U.S. Delegation to vote against adoption of the treaty text.

We understand that should the treaty nevertheless enter into force, it would establish:

- a system of world government in which our political and economic interests and those of our industrial allies were not fairly represented;

- a cartel for strategic ocean minerals which would freeze out nearly every American company which decided it wanted to develop the seabed;

- a world-wide state owned company which would monopolize ocean mining at the direct expense of American taxpayers who would be called upon to subsidize its operations;

- an economic structure built upon production controls, commodity agreements, mandatory transfer of technology and numerous other restrictions which are an anathema to our free enterprise system;

- a means by which terrorist groups conceivably could be awarded financial benefits;

- sovereignty threatening precedents applicable to current and future international negotiations;

- o a defacto system of immediate interim application based upon the mere adoption of resolutions by conference delegates, imposing burdens upon the United States and all other participants, not only prior to the treaty's entry into force, but without the advice and consent of the Senate; and

- o a means by which amendments to the treaty would become binding on the United States without the advice and consent of the Senate.

You have already clearly identified other features of the treaty as well which would be inimical to US interests and implicitly to those of our industrial allies.

As you know, the U.S., the United Kingdom, France and West Germany have already enacted legislation which would establish a legal framework for developing ocean minerals. These nations have already negotiated, pursuant to statutory authority, a Reciprocating States Agreement, which would provide for the harmonization and implementation of their legislation and for the resolution of any conflicts. The agreement has not yet been signed due to a hope that waiting until the conclusion of the Law of the Sea Conference on April 30 would result in an agreement on a Law of the Sea treaty text which all industrialized nations with ocean mining interests could enthusiastically sign and ratify.

Mr. President, the vote on the treaty text at the Law of Sea Conference confirms that such a prospect has decayed far beyond the point of even the most wishful thinking. We feel that the time has come for a serious rebuilding effort to begin now, based on the model of our domestic legislation and that enacted by the United Kingdom, France and West Germany. Because of the failure of the treaty to meet our national interests, you should withhold signature of the treaty; promptly sign and implement the Reciprocating States Agreement with these nations and then invite any other nation which enacts similar legislation to join with us in such agreement; and commence exploring possibilities for a more acceptable international regime.

We hope that you will see fit to follow such a course.

Respectfully yours,

Spark M. Matsunaga

Paul Laxalt

Strom Thurmond

Don Nickles

John P. East

Bob Dole

Paula Hawkins

Steve Symms

Jesse Helms

S. I. Hayakawa

John Warner

Orrin Hatch

Jim Abdnor

Barry Goldwater

Bob Kasten

Larry Pressler

Roger W Jepsen

Alfonse D'Amato

Chuck Grassley

Dick Lugar

Bennett Johnston

Jim McClure

Malcolm Wallop

Lloyd Bentsen

Quentin Burdick

Dennis DeConcini

John Melcher

Ted Stevens

Russell Long

SIGNATURES ON LETTER TO PRESIDENT 6-28-82

SPARK MATSUNAGA
PAUL LAXALT
STROM THURMOND
DON NICKLES
JOHN P. EAST
BOB DOLE
PAULA HAWKINS
STEVE SYMMS
JESSE HELMS
S.I. HAYAKAWA
JOHN WARNER
ORRIN HATCH
JIM ABDNOR
BARRY GOLDWATER
DAVID BOREN
BOB KASTEN
LARRY PRESSLER
ROGER W. JEPSEN
ALPHONSE D'AMATO
CHUCK GRASSLEY
DICK LUGAR
J. BENNETT JOHNSTON
JIM MC CLURE
MALCOLM WALLOP
LLOYD BENTSEN
QUENTIN BURDICK
JOHN MELCHER
RUSSELL LONG
DENNIS DE CONCINI
TED STEVENS

TALKING POINTS ON LOS TREATY

I. There is consensus that:

(1) U.S. should not sign the Treaty; and

(2) U.S. should publicly announce its position before July 12 (when the LOS drafting session begins).

II. But, where do we go from there? (The decision memo does not address this.) Having decided to stay out of the LOS Treaty, the U.S. must develop positive oceans policy goals and a strategy for achieving these goals.

- Immediately direct interagency group to prepare plan for achieving U.S. oceans policy.

- When U.S. announces it will not sign Treaty, President should also make affirmative statement of oceans policy that could serve as the basis for an alternative regime.

- Initiate a major effort (with direct Presidential involvement) to disengage allies from Treaty and have them join us in alternative regime.

    -- the commerce ministries and business communities of our key allies are opposed to the Treaty;

    -- the foreign ministries, like State Department, contain entrenched pro-treaty elements who are trying to engineer their countries into signing; our diplomatic efforts are doomed if State continues to deal solely with its counterparts.

    -- there are strong indications that direct Presidential intervention at political level with the heads of state of our key allies would succeed (particularly with U.K.).

III. The U.S. should not participate any further in the LOS process or seek improvements to the Treaty.

- Since we are trying to draw our allies into an alternative regime, it would be self-defeating to make the LOS Treaty more attractive to them by obtaining improvements in it.

- There is no evidence to suggest that any significant improvements are possible. (Indications to the contrary from various sources are based either upon demonstrably erroneous reports, or upon a deliberately misleading effort calculated to deter a timely decision by the U.S.)

- Participation will send mixed signals to our allies and make it appear that U.S. is trying to keep its options open. This would frustrate efforts to wean our allies away from the LOS Treaty.

- Participation is not necessary to protect against changes to Treaty that would be adverse to the U.S. The chances of any such changes are remote. Proxies can be used to protect our interests.

June 28, 1982

Enclosed for your use in preparation for the meeting regarding Presidential Law of The Sea options, is a brief memorandum which stresses the following three points:

1. the issues for Presidential decision partially miss the boat because of their indequate focus on the two primary ocean policy goals, which are to:

   (a) prevent the entry into force (or mitigate the effect) of a Law of the Sea Treaty unacceptable to the United States;

   (b) develop an alternative international regime which would govern ocean mining activities.

2. For the President merely to make a passive decision on each of issues, and take no other action, would probably result in many of the other nations of the world concluding that their proceeding to sign and ratify the treaty would not offend the United States. This is because the options paper fails to establish the law of the sea issues as a priority foreign policy concern of the United States and fails to contain any implementation plan designed to maximize opportunities for attaining the above mentioned ocean policy goals.

3. Accordingly, in order to avoid U.S. isolation from the rest of the world on the Law of The Sea issue, the matter should be made a priority foreign policy objective of the United States, (consistent with the aforementioned ocean policy goals) and that an aggressive implementation plan (involving both international and domestic elements) be prepared within the next two weeks, so that an early Presidential announcement of his decisions on the five issues be accompanied by the immediate execution of an aggressive implementation plan.

LAW OF THE SEA - FUTURE U.S. COURSES OF ACTION

I. LOS Decision Issues

The five LOS issues for Presidential decision 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:

- developing an alternative international regime which would govern ocean mining activities;
- 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;
- limiting the number of signatures of the LOS treaty to less than 50, so as to prevent implementation of the Preparatory Commission;
- preventing entry into force of the treaty by limiting the number of ratifications to less than 60;
- 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;
- 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;

- defending against possible political and legal actions taken by individual states or international organizations, intended to block or restrict U.S. seabed uses; and

- encouraging and protecting ocean mining activities by U.S. citizens in order to obtain actual access to and development of strategic ocean minerals.

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

The President should direct that an implementation plan be prepared within the next two weeks based upon the Presidental 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 the 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 applica-cations, (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 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.

HOUSE OF REPRESENTATIVES
WASHINGTON, D. C. 20515

JACK FIELDS
EIGHTH DISTRICT, TEXAS

June 28, 1982

Mr. Ron Mann
Associate Director,
Office for Presidential Personnel
The White House (Room 143)
Washington, D.C. 20500

Dear Ron:

It was a great disappointment to me, and to our industry leaders in Texas, that Bob Keating was not named U.S. Ambassador to Botswana. Bob's loyalty to the Reagan Administration and its goals cannot be challenged, and his sustained support of our principles in the LOS negotiations was remarable. He is also dedicated to the protection of our minerals interests and continues to serve with distinction as a member of the NSC Strategic Minerals Task Force. Finally, he possesses unique expertise and experience in the management of major projects overseas which would be of immediate advantage in the conduct of U.S. foreign policy in the Third World.

I again ask that Bob Keating be appointed ambassador to a mineral-producing country where his outstanding abilities would stand us in good stead. To those of us whose first concern lies with assuring the success of the Reagan Administration, we are truly concerned that ambassadors be selected who share our political philosophy and are unequivocally well-qualified to represent our country with foreign governments. Bob Keating meets such standards and would serve our country with distinction.

With best personal regards, I am

Sincerely,

Jack Fields

JACK FIELDS
Member of Congress

JF:jh

Possible Alternatives to Signature of the LOS Treaty by the US

A. US seabed mining legislation could be amended to allow the US, at the discretion of the Executive Branch, to reject license applications which overlap areas applied for pursuant to national legislation of other states.

This solution should provide us with a means for getting the benefits of a tacit reciprocity without requiring a formal agreement. It could allow, at our discretion, for the co-existence of PIP and non-PIP seabed mining but on the other hand would remove some of the disincentive to signature of the Treaty for our allies.

B. The US together with its closest allies could establish a Reciprocating States regime very similar to the one contemplated in the Reciprocating States Arrangements negotiations in February, 1982.

C. We could initiate plans for a real mini-treaty with between 20 and 30 other nations as parties. These would include a majority of the OECD, the USSR and its bloc, and a handful of significant LDCs (i.e. Brazil, Mexico, Columbia, Chile, Malaysia (?), Indonesia, Nigeria, Kenya, Ivory Coast, Zimbabwe, Saudi Arabia, and India). Such a system would involve an agreement purely on seabed mining matters. It would also involve, in any reasonable scenario, concessions of some sort from the mining countries to the non-mining countries in the arrangement.

D. We could establish a "High Seas Freedom" regime by agreeing with all other countries that seabed miners would not receive security of tenure except as against citizens of their own country.

We would be recognizing that all countries have an inalienable right to fish for ocean resources whether mineral or biological in nature.

E. We could establish regional ocean resource regimes with for example the Pacific Coast countries of the Western Hemisphere as a framework for exploitation of ocean resources (perhaps including fish). This like case B would probably require concessions to non-mining participants.

June 28, 1982

NOTE to: Mike Uhlmann
Bill Barr

From : Bob Keating

Subject: Correspondence with George Shultz on LOS Treaty

Attached are copies of correspondence with George Shultz on the LOS treaty. He would join an Industry-White House meeting to discuss strategy and tactics for implementing the President's decision to develop a viable alternative seabed mining regime. (At one time, he was considering being the chairman of the "Committee of 100" to provide industry support for the President's position on the LOS treaty.)

I recommend that we hold an Industry-White House meeting as soon as possible after the President has made his decision on the LOS treaty.

Bob Keating

George P. Shultz
President

Bechtel Group, Inc.
Fifty Beale Street
San Francisco, CA 94105

April 7, 1982

Mr. Robert B. Keating
1681 32nd Street, N.W.
Washington, D. C. 20007

Dear Mr. Keating:

Thank you for your letter about the proposed LOS Treaty. I share your concerns. Is my impression correct that the negotiations are making some progress?

I will be glad to help to the extent I can.

Sincerely yours,

George P. Shultz

GPS/z

1681 32nd Street, N.W.
Washington, D.C. 20007
March 15, 1982

Mr. George P. Schultz
Vice Chairman
Bechtel Group of Companies
Box 3965
San Francisco, Calif. 94119

Dear Mr. Schultz:

Bill Wearly asked me to write to you on the proposed Law of the Sea treaty. Also, Taylor Ostrander may send you information on the efforts we have made to inform industry leaders of the problems of the proposed treaty (e.g., Ian MacGregor, Chuck Barber, Jim Lesch, Plato Malezemoff, Jack Jones). At Taylor's suggestion, we are forming a committee of 100 prominent Americans in various occupations and professions to sponsor full-page ads in support of President Reagan's position in the LOS Conference. I enlist your support in this effort.

I was a member of President Reagan's Strategic Minerals Task Force and responsible for preparing the basic assessment of the implications of the treaty provisions for our national security, foreign policy, and domestic economy (copy enclosed). President Reagan, recognizing that many of the provisions were not compatible with free market principles and the goals of his administration, directed that the draft treaty be thoroughly reviewed. (As part of the review process, I introduced new analytic techniques for the evaluation of the many complex issues).

The proposed LOS treaty concerns itself with, among other issues, fishing rights, sea lanes, protection of the marine environment, regulation of marine scientific research, and the development of deep-seabed mineral resources. After almost 14 years of negotiations, virtually all parts of the treaty, except those dealing with seabed mining, had been completed to the point where delegates to the LOS Conference had anticipated signing the comprehensive treaty last year. Had President Reagan not taken timely action, we might well have been confronted with a signed treaty unacceptable to the Reagan Administration and impossible for the U.S. Senate to ratify.

The first major problem in the proposed LOS treaty is that the United States and its industrial allies would not have decision-making roles in the International Seabed Authority (called "Authority") that fairly reflect and effectively protect political and economic interests and financial contributions. For example, voting in the Authority's Assembly would be based on the "one nation-one vote" principle. This would mean that the Third World, with 80 percent of the member representation, would have effective control not only of the Assembly, but also its executive Council and important subsidiary committees. The Council, as the operating arm of the Authority, would make case-by-case decisions on such important matters as approval of ocean mining site applications. Until the Authority is self-supporting, the United States would be committed to paying 25 percent of its administrative budget (a still undetermined amount) and 25 percent of the funds necessary to support one mining operation of its ocean mining company, the Enterprise (a U.S. contribution estimated in excess of $250 million).

Despite being expected to make the largest financial contribution to the Authority, the United States would not have permanent or guaranteed representation on the Council. The Soviet Union, however, would be virtually guaranteed a permanent seat on the Council along with two proxy seats. The United States would not be able to muster enough votes to initiate even procedural changes if Third World members were not in agreement. Under this arrangement, the Third World would have an extraordinarily high degree of control over the policy determinations, judicial arrangements, and management of deep ocean operations and resources. The decision-making system would give the Third World a virtual monopoly in perpetuity over the mining of manganese nodules, as well as other seabed resources (e.g., submarine sulfide deposits) whose potential commercial and strategic value cannot be estimated at this time.

What we found even more startling is that the powers of the Authority would be further extended by providing it with an ocean-mining company, called the Enterprise. The Enterprise would be in direct competition with private-sector ocean mining ventures. It would be put into business with capital from the United States (25%) and other nations ratifying the treaty. With no ocean mining experience, no expertise and no technical ability, the Enterprise would enjoy very special competitive advantages. For example, private mining companies would be compelled, as a precondition to their receiving ocean mining licenses from the Authority, to turn over their seabed mining technology to the Enterprise on the basis of whatever is meant by "fair and reasonable commercial terms and conditions". Furthermore, the private-sector miner would be prohibited from using the technology of a third party who refuses to sell it to the Enterprise. This provision obviously has implications which go beyond the LOS treaty (e.g., the NIEO-related technology transfer desires). Moreover, each private-sector applicant for an ocean mining contract would donate to the Enterprise a fully prospected mine site; the Enterprise would be exempt from payments to the Authority for ten years after start of commercial production, and would be accorded production allocation priorities and immunities in countries where it might operate. Finally, the Enterprise would control specific valuable areas of the seabed for an indefinite time, regardless of its plans for exploitation of its donated sites or of world mineral needs. We have concluded that this preferential treatment would have the effect of giving the Enterprise eventual monopoly in seabed mining.

A particularly troublesome provision, called the Review Conference, provides for a review of the ocean mining regime twenty years after the beginning of commercial production of manganese nodules. Amendments adopted by the Review Conference would enter into force for all parties to the treaty upon ratification by two-thirds of the members. What would stop the Third World from redrafting and approving within twenty years an entirely new set of provisions that would give them even more control over the resources of the world's oceans? As the Review Conference is now written, its entry into force would not require the consent of the United States, and, therefore, the advice and consent of the U.S. Senate should not be given to a treaty with such a provision.

Another difficult problem arises in connection with the proposed participation of national liberation movements (e.g., the PLO) in the Authority and its revenue sharing of proceeds from seabed mining and continental shelf resources beyond 200 miles. We are also concerned with the implications of provisions with regard to Puerto Rico, the Trust Territory, and island possessions in the Pacific and Caribbean.

In attempting to sum up my feelings and opinion of such a complex treaty proposal, my greatest concern is the precedent-setting concepts that would be established if this new world government were to come into being. What we might gain in the short run from such a treaty must be weighed against what we would have to contend with in the long run regarding the effects of such adverse precedents on other North-South dialogues. The basic flaw in the treaty lies in our being submerged as but one nation among 160 in a decision-making process based on a "one nation-one vote" principle. Without the ability for affirmative action, we would place our national interests at considerable risk by allowing decisions of great economic and strategic importance to us to be made by an automatic majority of Third World and Soviet bloc countries. The Authority and its Enterprise would actually have monopoly control over the deep seabed resources of two-thirds of the earth's submerged lands. There would be no effective checks and balances to protect U.S. economic and financial stakes in ocean mining. The centralized bureaucracy of the Authority and Enterprise, based on a socialist model, would not allow the free flow of capital, goods, and technology in response to market forces. Such an institution would deny private-sector miners access to deep seabed minerals on reasonable terms and conditions, and the onerous production controls and anti-density and anti-monopoly provisions would substantially increase the costs, constraints, and complexity of deep seabed mining. Our good common sense tells us not to go ahead with such a fundamentally flawed treaty unless major changes are achieved in many of its component parts.

Enclosed is a copy of President Reagan's recent statement on the LOS treaty. Please give me a call at the U.S. Mission to the United Nations, Law of the Sea Delegation, if you have any questions on what I have described to you (212-826-4728/9). I hope that we may have your support.

Sincerely,

Robert B. Keating

cc: Bill Wearly
Taylor Ostrander

AMAX

March 15, 1982

Mr. George Shultz, Chairman
Bechtel Corporation
50 Beale Street
San Francisco, CA 94119

Dear George:

I know that Bill Wearly has talked to you about the proposed "Committee of 100 to Support the President on the Law of the Sea" and that Bob Keating is sending you the Administration's position. Bob Keating is working as a Consultant to both Dr. Frederick Iklé, Under Secretary of State for Policy, and to Ambassador James Malone. Keating is a specialist in strategic resources and Law of the Sea questions.

As additional material on the Administration's policy-making on the Law of the Sea, I am enclosing a copy of the memorandum I prepared for John Towers, President of Amax Inc. after a meeting with Ambassador Malone last December, which was attended by a dozen or more industry leaders from resource companies. This, of course, is an entirely unofficial report but I think it gives the flavor somewhat better than the White House Fact Sheet and Presidential Statement.

The discussion which Bill Wearly and Ian MacGregor initiated at the BNAC meeting in Palm Beach in December has had a significant influence in London. I enclose copy of a letter drafted by Richard Powell and signed by Alastair Down and a number of others from the BNAC, also the answer and further response. Finally, I enclose a letter Ian MacGregor wrote to Lord Bridges in the Foreign Office on the same subject.

I might mention that one problem Ambassador Malone has, which the proposed Committee would try to deal with, is that he has inherited a formal Public Advisory Committee on the Law of the Sea, chaired by Eliot Richardson and stuffed with Carter and Richardson appointees. This is of less than no value to him, and he has not called it into session.

If there is anything further I can do to provide material or information on this question, please let me know.

Sincerely,

F. Taylor Ostrander

Attachments

AMAX INC. • AMAX CENTER, GREENWICH, CONNECTICUT 06830 • TELEPHONE (203) 622-3000 • CABLES: AMAXMET, GREENWICH

P.S.: When Ian MacGregor was here in February, Keating arranged for Ian to call on Admiral Haywood, Chief of Naval Operations, who told us that in this Administration, the Navy considers seabed resources as equally important as navigation rights -- quite a change!

Personal April 16, 1982

The Honorable George P. Shultz

Dear Mr. Shultz:

Thank you for your letter of April 7. Several industry leaders have called me on the attached newspaper article by William Safire concerning a possible abandonment of Reagan Administration principles in the LOS Conference. The replies that I have been able to give them may partially answer your question as to whether or not we are making some progress in these complex negotiations.

With respect to the recent decision to allow a lessening of the Delegation's negotiating instructions, mentioned in the Safire article, I can only say that it came as a surprise to me. Had it been possible for me to have objected to such a decision, I would have done so for I believe that the specific negotiating "fixes" proposed under the revised instructions undermine the President's six objectives of January 29, when they are taken in aggregate.

In my opinion, not only does the new package of U.S. amendments submitted this week fall below what I would consider as the minimally acceptable bottom line, but it acknowledges several of the major precedent-setting concepts of the proposed treaty; hitherto considered unacceptable by the Reagan Administration. The net result of having ceded such adverse precedents will be to further enshrine the principles of the New International Economic Order (production limitations, mandatory technology transfer, restricted rights to private property, limited roles in international institutions for U.S. and other major contributors, curtailment of freedom of the seas, etc.).

Even if we were to walk away from this Conference and publically disavow the UNCLOS process, the endorsements of the treaty's precedent-setting concepts contained in the present set of U.S. amendments will come back to haunt us in other North-South dialogues. In sum, we have taken a step this week that is more extreme than any taken to date to legitimatize the demands of the Third World for "global management" of the earth's resources.

Another result of the new submission of U.S. amendments has been to make the treaty more attractive to our industrial allies. We may now expect 1) increased domestic and foreign political pressures to get us to sign the treaty, and 2) decreased opportunities for us to get our industrial allies to sign the Reciprocating States Agreement.

On the brighter side of things, I do not believe that the Group of 77 will give us a significant number of the changes sought in the new package of amendments. If I am right in this assessment, then the Reagan Administration would have compelling reasons not to sign such a bad treaty. I hope that you will be able to find the time to object to the folly of an international agency governing the earth's oceans which would be dominated by Third World countries whose chronic political instability is only matched by their economic irresponsibility.

I shall be writing to you again. Please give me a call should you come to NYC over the next two weeks (826-4744). My telephone number in Wash., D.C. is (202)338-8114.

Sincerely,

Bob Keating