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DEPARTMENT OF STATE

Washington, D.C. 20520

June 29, 1982

MEMORANDUM

TO: The Interagency Group

FROM: OES/OLP - Otho E. Eskin

SUBJECT: Advisory Committee Meeting

For your information, the next meeting of the LOS Advisory Committee will be held in the Loy Henderson Conference Room on July 14, 1982 beginning at 9:30 A.M. (Agenda attached).

An open session will be held July 15, in Room 1912.

Attachment:

Agenda.

Agenda

LOS Advisory Committee Meeting

July 14, 1982

9:30	Opening - General Remarks by Ambassador James L. Malone on the LOS Conference and Policy Review and Oceans Policy Planning.
10:00	Discussion of Policy Options
11:00	Coffee Break
11:30	Prospects for a Reciprocating Seabed Mining Regime
1:00	Break for Lunch
2:30	Navigation; Fisheries
3:30	Coffee Break
4:00	Marine Science; Marine Pollution

THOUGHT you would be interested in this . . .

file
LOS

DAVID FRANKIL

Program Analyst
Resources & Technology Department

NAM

Issue Brief

A public policy summary

Law of the Sea

Issue

The United States has become critically dependent upon foreign sources for supplies of strategic raw materials. Mineral resources found on the sea floor in three to five miles of water may help to reduce this import dependence. These deep seabed deposits, consisting of potato-sized nodules containing manganese, nickel, cobalt and copper, could satisfy much (or possibly all) of projected world demand through the year 2000.

The development of these resources and the distribution of any profits from their exploitation have become major points of dispute in the negotiations aimed at producing a law of the sea treaty.

Background

Rights of access to and use of the world's oceans and their resources have been contested for centuries. As applied to ocean resources, the phrase "freedom of the high seas" has meant that no nation may claim jurisdiction over the open seas, and that any resources found there are available to anyone willing and able to acquire them.

Some nations, to protect their rights, have claimed broad zones of jurisdiction extending well beyond previous territorial limits, creating uncertain areas of international law concerning freedom of navigation and overflight. At the same time, the economic attractiveness of recovering deep seabed mineral resources has been greatly increased because of advances in technology and difficulties in reaching diminishing land-based sources.

The Third United Nations Conference on Law of the Sea (UNCLOS), which first convened in 1973, was prompted by a desire on the part of both developed and developing nations to codify a comprehensive set of political arrangements to govern all activities in the oceans.

The United States approached these negotiations with the aim of maintaining "freedom of the high seas" for deep seabed hard mineral resource development, and sought to assure relatively free access. Other nations participating in the UNCLOS negotiations argued new radical interpretations of the phrase "common heritage of mankind" in formulating their positions. Third World nations have defined "common heritage of mankind" as meaning that *every* nation owns a share of the ocean's resources, and that a treaty should distribute the wealth of the oceans in equal shares to all nations regardless of population, consumption of relevant resources, proximity to the sea, ability or even desire to exploit the resources, or national sovereignty.

The UNCLOS translated these views into concrete rules and regulations. Some 150 nations participated in the UNCLOS, and produced a lengthy text that covers navigation and overflight rights; creates a system for resource exploration, exploitation and distribution; provides for conservation and pollution control; and prescribes rules for fishing and shipping.

In March 1981, President Reagan made public his reservations about the draft treaty, sought to delay the negotiations, and ordered a comprehensive policy review to determine more accurately how satisfactorily U.S. interests would be served by the draft treaty.

President Reagan announced the results of this review on January 29, 1982. In the deep seabed mining area, President Reagan sought improvements so that the treaty would—

- not deter development of any deep seabed mineral resources ;
- assure national access to and promote the economic development of the resources;
- provide a fair decision-making role in the deep seabed regime;
- not allow amendments to come into force without approval of the participating states, including in our case the advice and consent of the Senate;
- not set other undesirable precedents for international organizations; and
- be likely to receive the advice and consent of the Senate. In this regard, the treaty should *not* contain provisions for the mandatory transfer of private technology or for participation by and funding for national liberation movements.

Efforts at compromise proved unsuccessful, and on April 30, the UNCLOS adopted the Law of the Sea Treaty by a vote of 130 to 4, with 17 abstentions. Joining the United States in voting against the treaty were Israel, Turkey and Venezuela. Abstaining in the vote were, among others, Belgium, West Germany, Italy, the U.S.S.R. and the United Kingdom. The treaty will become open for signature in December in Caracas, Venezuela.

The treaty establishes an international superstructure which sets adverse precedents for a variety of future agreements, including rules on the use of the geostationary orbit, the Antarctic, and outer space. Essentially, there are five specific objections to the entity created to regulate and control mining of the deep seabed under the treaty.

- **Political Institutions.** The treaty sets up the International Seabed Authority to govern seabed development activities. The authority will have an assembly, or legislative body, that will function on a one-nation, one-vote basis as the "supreme" body of the political regime.

The authority will have a 36-member council, or executive body, charged with implementing the treaty and establishing specific policies of the authority. The council members will be elected by the assembly on the basis of a set of geographical and political preferences. Under the draft treaty, the United States was not assured of even a single seat in this executive body. An amendment adopted during the final session sought to provide a vote to the United States by guaranteeing "the largest consumer" of seabed minerals a seat on the council. Depending upon the definition of consumption, however, this is not necessarily the U.S. Under the treaty, industrialized nations would have no guarantee of a voice in the council commensurate with their interests, and would have little or no ability to block adverse decisions or promote favorable outcomes.

The authority will conduct deep seabed mining on its own, through an operating arm called the Enterprise. Establishment of this body is a response to developing world concerns, and represents the so-called "parallel system" in which seabed mining will be undertaken by both private or national entities and by the authority. Any profits generated by the enterprise will be distributed to the developing world, including national liberation groups.

■ **Access to Mine Sites.** The treaty permits the authority to use "special considerations for developing states" in allotting mining rights in order to increase mining activities and to "prevent monopolization" of deep seabed resource development, presumably by industrialized nations. This bias can be exercised in any of several steps along the way to full-scale production.

Preliminary exploration will occur only under a plan which must first be authorized by the council, and will be conducted only in those portions of the deep seabed identified in an applicant's plan. Each plan must include an area large enough to support two distinct mine sites. After exploration, the council "reserves" one mine site for the use of the enterprise. Exploration costs for each site are expected to run several million dollars.

The council will then rule on a mining license for the operator, basing its decision upon recommendations made by a legal and technical commission, whose composition will closely reflect that of the council.

One amendment adopted during the negotiating session in March/April 1982 designated certain consortia as "pioneer investors," in an attempt to ensure that firms having already spent in excess of $30 million on deep seabed-related activities would be guaranteed one mine site. This "Preparatory Investment Proposal" (PIP), or "grandfather clause," limits firms to exploration activities until the treaty comes into force. To produce minerals, the consortia must still apply to the council for "production authorizations."

Given the immense investment required for commercial-scale deep seabed mining, it is anticipated that first-generation mining will be only marginally profitable at best. The PIP contains no assurances that any operators will be allowed to produce beyond the first generation.

■ **Production Controls.** Should commercial volume of mineral output appear viable, production will not occur until an operator receives a "production authorization" from the authority. To protect land-based mineral producers, the authority will set ceilings on the amount of minerals that may be produced. Once the initial ceiling is reached, the authority would be free to select among competing applications for future production authorizations.

Production controls could deter investment into deep seabed mining, restrict the profitability of any deep seabed ventures, limit the number of companies that could conduct deep seabed mining, create artificial scarcities and inflate commodity prices.

■ **Technology Transfer.** The enterprise will obtain technology through a provision in the treaty which mandates the transfer of technology from private firms. Operators must make available to the enterprise (and to developing countries when requested) "the technology [used] in carrying out activities ... [on the seabed]."

As defined in the treaty, "technology" encompasses everything from specialized equipment to technical expertise, including manuals, designs, operating instructions, training and technical advice and assistance—anything necessary to assemble, maintain and operate a viable system. Disagreements will be subject to compulsory dispute settlement, with subsequent monetary penalties and suspension or termination of mining contracts.

This mandatory transfer also includes technologies supplied by third parties, some of which will not be directly related to mining still but are essential. If assurances cannot be obtained from 200-300 third-party suppliers which allow transfer to the enterprise, then mine operators may not use the technology themselves.

The mandatory technology transfer provisions in the treaty are totally inconsistent with presently accepted international practice. They fail to protect proprietary technology, intellectual property rights, and militarily sensitive technologies, and do not assure adequate compensation for transferred technologies. In addition, they establish a devastating precedent for all future international negotiations.

■ **Review Conference.** The International Seabed Authority is empowered to convene a review conference 15 years after the onset of the "earliest commercial production" to evaluate the seabed mining provisions of the treaty. Should this conference be unable to achieve a consensus within five years, amendments to rules and regulations will be adopted by three-fourths majority.

The possibility that adverse amendments that alter the rules for ocean mining could be adopted in mid-stream increases risk for private operators and could deter investment. Should the U.S. ever sign, these amendments could be adopted over U.S. objections and irrespective of Senate ratification, presenting a clear constitutional challenge to the treaty.

Status

The U.S. National Security Council met on June 29, 1982, to evaluate an interagency review of the March/April 1982 negotiating session. A consensus was reached that the treaty is not in the best interests of the United States. On July 9, President Reagan announced his decision not to sign, and limited further U.S. involvement.

The treaty will enter into force once 60 nations sign and ratify the treaty. However, without U.S. participation, funding, and technology, those provisions relating to deep seabed resource development will have little meaning.

On June 21, the United States took the first step to encourage deep seabed mining. Under the authority of the Deep Seabed Hard Mineral Resources Act of 1980 (P.L. 96-283), the National Oceanic and Atmosphere Administration is accepting applications for exploration licenses.

Meanwhile, the administration is trying to formalize an existing "Reciprocating States Agreement" (RSA). The RSA would be based upon recognition by participating states of each other's claims to mining rights. It would not regulate the deep seabed nor offer the degree of certainty provided by a universally accepted treaty, but would still accord a high degree of authority to seabed mining activities.

NAM Position

The NAM endorses the policy of the United States that any acceptable law of the sea treaty must provide assured, continuing access for the U.S. and its citizens to the resources of the sea, seabed and subsoil beyond the limits of national jurisdiction. Such access must be established under reasonable and nondiscriminatory terms and conditions. The NAM agrees that these goals are not met in the treaty.

The NAM supports President Reagan's decision not to sign the treaty. The NAM also supports the U.S. policy of negotiating an RSA and promoting the development of deep seabed hard mineral resources through the issuance of domestic mining exploration licenses.

Action

NAM members are urged to express their support to President Reagan, and to endorse publicly his efforts to develop deep seabed resources.

Information Contacts

H. Richard Seibert
Vice President
(202) 626-3775

David C. Frankil
Research Analyst
(202) 626-3783

Resources and Technology Department
Program/Policy Division

July 1982

DEPARTMENT OF STATE
Washington, D.C. 20520

BUREAU OF OCEANS AND INTERNATIONAL
ENVIRONMENTAL AND SCIENTIFIC AFFAIRS

July 1, 1982

EYES ONLY

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TO: Bill Barr

FROM: Ted Kronmiller TK

SUBJECT: Reagan Proclamation

I appreicate your having asked me what I thought might be done from a domestic standpoint to advance the oceans interests of the nation. I believe that President Reagan has an opportunity to advance substantially these interests with considerable economic and political benefit.

The charge has been made that the Administration has focused too closely on the seabed mining, which is merely in its embryonic stages. I do not agree with this. However, now that we have disposed of the LOS Treaty and have decided to seek to establish an alternative seabed mining regime, I do believe that the President could usefully act decisively to promote U.S. fisheries, oil and gas, sulfides and other oceans interests. In each of these non-seabeds areas, there exists an important national economic interest and political constituency.

I note that, in the area of fisheries (with which I am most consistently concerned) the affected industry commands the attention of the Majority Whip of the Senate and the Chairmen of the Senate Appropriations and Commerce Committees. Further, this industry has an important influence with democrats in the House (including John Breaux) whose votes are essential to the forwarding of the President's initiatives in the Congress.

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In light of the foregoing, I would strongly urge that you consider a recommendation to the President that he announce a "Reagan Proclamation" on a 200-mile exclusive economic zone. (Of course, the Truman Proclamation of 1945 stands as a precedent.) By that action, he would declare sovereign rights over the resources, living and non-living, within 200 miles of the coasts of the U.S. He would assert that the U.S. would ensure that these resources be developed for the maximum economic benefit of the nation. He would indicate that his action is consistent with the trends of international law and practice among coastal states. Most importantly, he would convey to the American people and the world his determination to expand our national horizons. The underlying theme would be that, far from withdrawing, the U.S. is reaching out, not only into space and other areas involving high technology, but also into the oceans. The President could make a strong case that by his action he would be improving the balance of payments, expanding employment, and enhancing the resource security of the U.S.

I promoted this idea with John Breaux shortly before I joined the Administration. On that basis, I think that the President could expect bipartisan support for legislative implementation of his proclamation.

July 2, 1982

NOTE to: Mike Uhlmann
From : Bob Keating

Subject: Industry-White House Meeting on Implementation of the President's Decision on the LOS Treaty

1. With a Presidential announcement imminent on the LOS treaty, you may wish to convoke a small number of industry leaders to meet with Ed Meese, Judge Clark, and Jim Baker to discuss how industry might support the President's decision and participate in a high-level effort to develop an alternative regime.

2. I talked with Mike Stephenson, Executive Secretary to George Shultz, on the possibility of Mr. Shultz participating in the Industry-White House discussion. He thought it would be of interest to Mr. Shultz, but suggested that it should be checked out with Ed Meese. (Mike Stephenson's telephone number is 393-4747).

Bob Keating

~~HRM~~
~~JLM~~

TEXT OF MESSAGE FROM THE RT HON FRANCIS PYM MP TO SECRETARY OF STATE ALEXANDER M HAIG JR

I understand you may be about to announce publicly a decision not to sign the UN Law of the Sea Convention. If this is the case, I very much hope that you will reconsider.

In your message of 26 May about UNLOSC, you said that it was more important than ever before that our Governments continue to work closely together in charting our future course of action. You suggested that our representatives should consult before any final decisions regarding the Convention were taken, so that our shared interests could be fully considered. In my reply of 4 June I agreed strongly with this sentiment and asked if you had in mind further meetings of the co-ordinating group.

If we are to consult together as you suggested, I do not think it would be in your or our interests to announce your final decision before the co-ordinating group meets. Such a unilateral action would defeat the object of our collaboration and only play into the hands of the extremists among the G77.

The procedures of the Conference are not yet complete. Only after the final session in December will the Convention be open for signature and ratification. Until then there is always a chance that improvements can be made to the text: and you, like us, have no doubt heard of recent moves by the Group of 12. In these circumstances a negative announcement by you at this early stage would prejudice any chances of improvement by appearing to rule out any possibility of a generally accepted text.

There is also the wider political context to be considered. North/South relations generally are under strain at present. There is no advantage to be gained in that quarter from announcing a negative attitude towards the Convention so long before a final decision needs to be taken.

/For

For the UK, too, a negative announcement by you now would present problems. We are still in the process of considering our attitude to the Convention. This will not be an easy decision. There are many good arguments for and against signature and strong lobbies on each side. We do not expect to reach a conclusion before November. But in the meantime there is much useful work to be done with you and other like-minded states, not least on a reciprocating states agreement. It will not be easy to work constructively for such an agreement if one of the major partners has meanwhile announced a negative attitude to the Convention. This could provoke unhelpful public debate, and would risk pre-empting any chances of improvement to the Convention.

For all these reasons, I hope you can postpone an announcement of your definitive attitude towards the Convention at least until our representatives have had a chance to consult. We surely need to work together on this subject especially at a time when too much public attention is being focussed on exaggerating the differences between the US and Europe.

British Embassy
WASHINGTON DC

5 July 1982

July 6, 1982

SHORT LIST OF LOS PROBLEMS AND SOLUTIONS

I. PROBLEM: Messrs. Guhin and Salmon have drafted the Presidential announcement and apparently put the starboard side out of action.

SOLUTION: Ensure that announcement language is signed off by Bill Schneider, Perry Pendley (Jim Watt's expert), Ted Kronmiller (Malone's Deputy), and Mike Uhlmann (Policy Development) before it is sent on to the President for approval and release.

II. PROBLEM: The announcement is scheduled for Wednesday, July 7. With the deterioration and near collapse of the Reciprocating States Agreement negotiations, we have somehow miraculously arranged for the French consortium (AFRENOD) to come to Washington on Tuesday, July 13, to exchange coordinates with the four U.S. consortia. This coordinate exchange will include all existing preenactment ocean mining companies which have applied to their governments for exploration licenses under domestic legislation (note: two US consortia, Lockheed (OMCO) and U.S. Steel (OMA), have applied only in the United States.) Kennecott and OMI have filed duplicate applications respectively in England and West Germany.) AFRENOD has filed in France. We think that if the President announces on the 7th, the French government will order its AFRENOD not to exchange coordinates with the four U.S. consortia. If there is no such exchange, we have evidence to believe that the French consortium will try to cut a deal with the emerging Japanese consortium and will attempt to get grandfather protection under the treaty, leaving the four U.S. consortia hanging out to dry.

SOLUTION: We think that there is a 90% chance that if the President delays his announcement until Friday, July 16, and delays giving our allies advance notice until Wednesday, July 14, we will have managed to lock the French into their already signed and executed private commercial arbitration agreement with the four U.S. consortia to solve conflicts arising from overlapping claims.

III. PROBLEM: If the President announces his decision without a domestic and international implemention plan approved by the starboard side group mentioned in item I above, State Department portsiders will continue to maintain control of the implementation and the result will be a typical namby-pamby collapse in face of pressure from developed and developing nation treaty proponents, aggravated by a deliberate undermining of the President.

We can no longer afford to tinker amateurishly around in the international political environment in which the LOS Treaty is daily gaining momentum without a well defined strategy and an explicit, well-honed game plan. It is also necessary to grapple effectively with those seeking inconsequential improvements in the treaty text for the purpose of broadening support for its ratification and entry into force.

The price of failure is (1) isolation from, and freezing out by, the nations of the world that count insofar as access to the strategic minerals of the entire deep seabed is concerned, and (2) isolation from the political process of a supranational entity, the International Seabed Authority, most of whose members will share the common goal of punishing the United States.

SOLUTION: Ensure that an aggressive implementation plan, such as the one outlined in the memo I sent you last week (enclosed), is virtually complete with time table and approved by Item I listed starboardsiders before the announcement is made.

IV. PROBLEM: The State Department at the NSC meeting misrepresented that signing the Final Act of the LOS Treaty is merely an authentication procedure, i.e. , ensuring that the Final Act text is the same text that was agreed to at the LOS Conference concluded on April 30. Such a text would be modified only by non-substantive drafting changes to be prepared by the UNCLOS Drafting Committee which begins meeting this week in Geneva, and validated by the September Plenary session. This is not the case. Third World Conference leaders are attempting to include the four conference resolutions (attached) agreed to at the New York UNCLOS meeting as part of the Final Act. If such resolutions are combined with the Final Act text and made a part of it, the signatories of the Final Act would arguably be bound by the obligations contained in such resolutions.

Resolution 1 provides for the establishment of the Preparatory Commission and vests it with certain authorities and authorizes the payment of all its expenses from the reglar budget of the United Nations, subject to UN General Assembly approval. It also provides that signatories of the Final Act may participate in the deliberations of the PREPCOM as observers, but shall not be allowed to participate in the taking of decisions. If the U.S. intends not to participate in the PREPCOM deliberations, it should not sign the Final Act. The Final Act can only be signed once (in Caracas in December). Thereafter, participation in the PREPCOM would require signature of the treaty itself and undertaking of all of its attendant obligations.

Resolution 2 deals with grandfather protection (Preliminary Investments in Pioneer Activities) for ocean mining companies. Every state which participates in the "PIP" process is required to:

> "(i) ensure that the necessary funds are made available to the Enterprise in a timely manner in accordance with the provisions of the Convention, upon its entry into force; and
>
> (ii) report periodically to the Commission on the activities carried out by it, by its entities or natural or juridical persons."

These Conference resolutions impose duties in the nature of treaty obligations upon their signatories, thereby in effect establishing a *de facto* system of immediate interim application, not only prior to the treaty's entry into force but without the advise and consent of the Senate.

Resolution 3 deals with territories whose people have not yet attained full independence or self governing status.

Resolution 4 allows national liberation groups to sign the Final Act and participate in the PREPCOM as observers. This is the major reason why Israel joined the United States in voting against the adoption of the treaty text. If the United States signed the Final Act, but not the treaty, it would participate in the PREPCOM as an equal of the PLO.

SOLUTION: If the intent is to inhibit further down stream participation in the Law of the Sea and Preparatory Commission process, the Final Act should not be signed. If the Third World UNCLOS Conference leaders succeed in including the four resolutions as an integral part of the Final Act, then signature of the Final Act by the United States could bind it to obligations in the nature of a treaty, without the advise and consent of the Senate and also would allow future administrations to participate in the activities of the Preparatory Commission without need of signing the treaty.

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;

- 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.

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 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 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.

ANNEX IV

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

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

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

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

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

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

Decides as follows:

1. For the purposes of this resolution:

(a) "pioneer investor" refers to:

(i) France, Japan, India and the Union of Soviet Socialist Republics, or a State enterprise of each of those States or one natural or juridical person which possesses the nationality of or is effectively controlled by each of those States, or their nationals, provided that the States concerned sign the Convention and the States or State enterprises or natural or juridical persons have expended, prior to 1 January 1983, an amount equivalent to at least $US 30 million (United States dollars calculated in constant dollars relative to 1982) in pioneer activities and has expended no less than 10 per cent of that amount in the location, survey and evaluation of the area referred to in paragraph 3 (a);

(ii) four entities, whose components being natural or juridical persons 1/ possess the nationality of, or are effectively controlled by, one or more of the following States: Belgium, Canada, the Federal Republic of Germany, Italy, Japan, Netherlands, the United Kingdom of Great

/...

1/ For their identity and composition see "Sea-bed mineral resource development: recent activities of the International Consortia" and addendum, published by the Department of International Economic and Social Affairs of

Britain and Northern Ireland and the United States of America or their nationals, provided that the certifying State or States sign the Convention and the entity concerned has expended, prior to 1 January 1983, the levels of expenditure and for the purpose stated in subparagraph (i);

(iii) any developing State signatory of the Convention or any State entity or natural or juridical person which possesses the nationality of such State or is effectively controlled by it or its nationals, or any group of the foregoing which, prior to 1 January 1985, has expended the levels of expenditure and for the purpose stated in subparagraph (i);

The rights of the pioneer investor may devolve upon its successor in interest.

(b) "pioneer activities" means undertakings, commitments of resources, investigations, findings, research, engineering development, and other activities relevant to the identification, discovery, and systematic analysis and evaluation of polymetallic nodules and to the determination of the technical and economic feasibility of exploitation. Pioneer activities include:

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

<u>a</u> the nature, shape, concentration, location and grade of polymetallic nodules;

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

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

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

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

(e) "Pioneer area" means an area allocated by the Commission to a pioneer investor for pioneer activities pursuant to this resolution. A pioneer area shall not exceed 150,000 square kilometres. The pioneer investor shall relinquish portions of the pioneer area to revert to the international Area, in accordance with the following schedule:

(i) 20 per cent of the area allocated by the end of the third year from the date of the allocation;

(ii) an additional 10 per cent of the area allocated by the end o the fifth year from the date of the allocation;

(iii) an additional 20 per cent of the area allocated or such larger amount as would exceed the exploitation area decided upon by the Authority in its rules, regulations and procedures, after eight years from the date of the allocation of the area or the date of the award of a production authorization, whichever is earlier.

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

2. As soon as the Preparatory Commission begins to function, any State signatory of the Convention may apply to the Commission on its own behalf or on behalf of any State enterprise or entity or natural or juridical person specified in paragraph 1 (a), for registration as a pioneer investor. The Commission shall register the applicant as a pioneer investor if the application:

(a) in the case of a State signatory, is accompanied by a statement certifying the level of expenditure made in accordance with paragraph 1 (a), and, in all other cases, a certificate concerning such level of expenditure issued by a certifying State or States; and

(b) is in conformity with the other provisions of this resolution, including paragraph 5.

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

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(b) Within 45 days of receiving the data required by subparagraph (a) above, the Commission shall designate the part of the area to be reserved in accordance with the Convention for the conduct of activities by the Authority through the Enterprise or in association with developing States. The other part of the area shall be allocated to the pioneer investor as a pioneer area.

4. No pioneer investor may be registered in respect of more than one pioneer area. In the case of a pioneer investor which is made up of two or more components, none of such components may apply to be registered as a pioneer investor in its own right or under paragraph 1 (a) (iii).

5. (a) Any State signatory which is a prospective certifying State shall ensure, before making applications to the Preparatory Commission under paragraph 2, that areas in respect of which applications are made do not overlap with one another or with areas previously allocated as pioneer areas. The States concerned shall keep the Commission currently and fully informed of any efforts to resolve conflicts with respect to overlapping claims and the results thereof;

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

(c) In carrying out the conflict resolution procedure required under subparagraph (a) above, the prospective certifying States, including all potential claimants, shall resolve their conflicts by negotiations within a reasonable period. If such conflicts have not been resolved by 1 March 1983, the prospective certifying States shall arrange for the submission of all such claims to binding arbitration in accordance with UNCITRAL Arbitration Rules to commence not later than 1 May 1983 and to be completed by 1 December 1984. If one of the States concerned does not wish to participate in the arbitration, it shall arrange for a juridical person of its nationality to represent it in the arbitration. The arbitration tribunal may, for good cause, extend the deadline for the making of the award for one or more 30-day periods.

(d) In determining the issue as to which applicant involved in a conflict shall be awarded all or part of each area in conflict, the arbitral tribunal shall find a solution which is fair and equitable, having regard, with respect to each applicant involved in the conflict, to the following factors:

(i) deposit of the relevant co-ordinates with the prospective certifying State or States not later than the date of adoption of the Final Act or 1 January 1983, whichever is earlier;

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(ii) the continuity and extent of past activities relevant to each area in conflict and the application area of which it is a part;

(iii) the date on which each pioneer investor concerned or predecessor in interest or component organization thereof commenced activities at sea in the application area;

(iv) the financial cost of activities measured in constant dollars relevant to each area in conflict and to the application area of which it is a part; and

(v) the time when activities were carried out and the quality of activities.

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

7. (a) Every applicant for registration as a pioneer investor shall pay to the Commission a fee of $US 250,000. When the pioneer investor applies to the Authority for a plan of work for exploration and exploitation the fee referred to in Annex III, article 13, paragraph 2 shall be $US 250,000.

(b) Every registered pioneer investor shall pay an annual fixed fee of $US 1 million commencing from the date of the allocation of the pioneer area. The payments shall be made by the pioneer investor to the Authority upon the approval of his plan of work for exploration and exploitation. The financial arrangements undertaken pursuant to such plan of work shall be adjusted to take account of the payments made pursuant to this paragraph.

(c) Every registered pioneer investor shall agree to incur periodic expenditures, with respect to the pioneer area allocated to it, until approval of its plan of work pursuant to paragraph 8, of an amount to be determined by the Commission. The amount should be reasonably related to the size of the pioneer area and the expenditures which would be expected of a bona fide operator who intends to bring the area into commercial production within a reasonable time.

8. (a) Within six months of the entry into force of the Convention and certification by the Commission in accordance with paragraph 11 hereof of compliance with the provisions of this resolution, the pioneer investor so registered shall apply to the Authority for a plan of work for exploration and exploitation, in accordance with the Convention. The plan of work in respect of such application shall comply with and be governed by the relevant provisions of the Convention and the rules, regulations and procedures of the

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Authority, including the operational requirements, the financial requirements and the undertakings concerning the transfer of technology. Accordingly, the Authority shall approve such application.

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

(c) No plan of work for exploration and exploitation shall be approved unless the certifying State is a party to the Convention. In the case of the entities referred to in paragraph 1 (a) (ii), the plan of work for exploration and exploitation shall not be approved unless all the States whose natural or juridical persons comprise those entities are parties to the Convention. If any such State fails to ratify the Convention within six months after it has received a notification from the Authority that an application by it, or sponsored by it, is pending, its status as a pioneer investor or certifying State as the case may be, shall terminate, unless the Council, by a majority of threefourths of its members present and voting decides to postpone the terminal date by a period not exceeding six months.

9. (a) In the allocation of production authorization, in accordance with article 151 of the Convention and Annex III, article 7, the pioneer investors who have obtained approval of plans of work for exploration and exploitation, shall have priority over all applicants other than the Enterprise which shall be entitled to production authorization for two mine sites including that referred to in article 151, paragraph 2 (c). After each of the pioneer investors has obtained production authorization for its first mine site, the priority for the Enterprise contained in Annex III, article 7, paragraph 6 shall apply.

(b) Production authorizations shall be issued to each pioneer investor within 30 days of the date on which the pioneer investor notifies the Authority that it will commence commercial production within five years. If a pioneer investor is unable to begin production within the period of five years for reasons beyond its control, it shall apply to the Legal and Technical Commission for an extension of time. The said Commission shall grant such extension of time, for a period not exceeding five years and not subject to further extension, if it is satisfied that the pioneer investor cannot begin on an economically viable basis at the time originally planned. Nothing in this subparagraph shall prevent the Enterprise or any other pioneer applicant, who has notified the Authority that it will commence commercial production within five years, from being given a priority over any applicant who has obtained an extension of time under this subparagraph.

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(c) If, upon being given notice, pursuant to subparagraph (b), that the Authority determines that the commencement of commercial production within five years would exceed the production ceiling in Article 151 (2), the applicant shall hold a priority over any other applicant for the award of the next production authorization allowed by the production ceiling.

(d) In the event that two or more pioneer investors apply for production authorizations to begin commercial production at the same time and Article 151 (a) would not permit all such production to commence simultaneously, the Authority shall notify the pioneer investors concerned. Within three months of such notification, they shall decide whether and, if so, to what extent they wish to apportion the allowable tonnage among themselves.

(e) If, pursuant to subparagraph (d) above, they decide not to apportion the available production among themselves they shall agree on an order of priority for production authorizations and all subsequent applications for production authorizations will be granted after those referred to in this subparagraph have been approved.

(f) If, pursuant to subparagraph (d), they decide to apportion the available production among themselves, the Authority shall award each of them a production authorization for such lesser quantity as they have agreed. In each such case the stated production requirements of the applicant will be approved and their full production will be allowed as soon as the production ceiling admits of additional capacity sufficient for the applicants involved in the competition. All subsequent applications for production authorizations will only be granted after the requirements of this subparagraph have been met and the applicant is no longer subject to the reduction of production provided for in this subparagraph.

(g) If the parties fail to reach agreement within the stated time period, the matter shall be decided immediately by the .... in accordance with the criteria set forth in article 7, paragraphs 3 and 5 of Annex III.

10. (a) Any rights acquired by entities, natural or juridical persons which possess the nationality of or are effectively controlled by a State or States whose status as certifying State has been terminated, shall lapse unless the pioneer investor alters its nationality and sponsorship within six months of the date of such termination, as provided for in subparagraph (c).

(b) A pioneer investor may alter its nationality and sponsorship from that prevailing at the time of its registration as a pioneer investor to that of any State party to the Convention which has effective control over the pioneer investor in terms of paragraph 1 (a);

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

11. The Commission shall:

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

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

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

(a) Every registered pioneer investor shall:

(i) carry out exploration at the request of the Commission in the area reserved pursuant to paragraph 3 of this resolution in connexion with its application for activities by the Authority through the Enterprise or in association with developing States, on the basis that the costs so incurred plus interest thereon at the rate of 10 per cent per annum shall be reimbursed;

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

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

(b) Every certifying State shall:

(i) ensure that the necessary funds are made available to the Enterprise in a timely manner in accordance with the provisions of the Convention, upon its entry into force; and

(ii) report periodically to the Commission on the activities carried out by it, by its entities or natural or juridical persons.

13. The Authority and its organs shall recognize and honour the rights and obligations arising from this resolution and the decisions of the Preparatory Commission taken pursuant to it.

14. Without prejudice to paragraph 13, this resolution shall have effect until the entry into force of the Convention.

15. Nothing in this resolution shall derogate from the provisions of Annex III, article 6, paragraph 3 (c) of the Convention.

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Draft Resolution III

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

Having regard to the Convention on the Law of the Sea, ___

Bearing in mind the Charter of the United Nations, in particular_ Article 73,

1. Declares that:

   (a) In the case of a territory whose people have not attained ___ full independence or ___ other self-governing status recognized by the United Nations, or a territory under colonial domination, provisions concerning rights and interests under the Convention shall be implemented for the benefit of the people of the territory with a view to promoting their well-being and development.

   (b) Where a dispute exists between States over the sovereignty of a territory to which this resolution applies, in respect of which the United Nations has recommended specific means of settlement, there shall be consultations between the parties to that dispute regarding the exercise of the rights referred to in subparagraph (a). In such consultations the interests of the people of the territory concerned shall be a fundamental consideration. Any exercise of those rights shall take into account the relevant resolutions of the United Nations and shall be without prejudice to the position of any party to the dispute. The States concerned shall make every effort to enter into provisional arrangements of a practical nature and shall not jeopardize or hamper the reaching of a final settlement of the dispute.

2. Requests the Secretary-General of the United Nations to bring this resolution to the attention of all Members of the United Nations and the other participants in the Conference, as well as the principal organs of the United Nations, and to request their compliance with it.

DRAFT RESOLUTION IV

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

Bearing in mind that national liberation movements have been invited to participate in the Conference as observers in accordance with rule 62 of its rules of procedure,

Decides that the national liberation movements, which have been participating in the Third United Nations Conference on the Law of the Sea, shall be entitled to sign the Final Act of the Conference, in their capacity as observers.

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DRAFT RESOLUTION I

ESTABLISHMENT OF THE PREPARATORY COMMISSION FOR THE INTERNATIONAL SEA-BED AUTHORITY AND FOR THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

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

Having adopted the Convention on the Law of the Sea which provides for the establishment of the International Sea-Bed Authority and the International Tribunal for the Law of the Sea,

Having decided to take all possible measures to ensure the entry into effective operation without undue delay of the Authority and the Tribunal and to make the necessary arrangements for the commencement of their functions,

Having decided that a Preparatory Commission should be established for the fulfilment of these purposes,

Decides as follows:

1. There is hereby established the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea. Upon signature of or accession to the Convention by 50 States, the Secretary-General of the United Nations shall convene the Commission, and it shall meet no sooner than 60 days and no later than 90 days thereafter.

2. The Commission shall consist of the representatives of States and of Namibia, represented by the United Nations Council for Namibia, which have signed the Convention or acceded to it. The representatives of signatories of the Final Act may participate fully in the deliberations of the Commission as observers but shall not be entitled to participate in the taking of decisions.

3. The Commission shall elect its Chairman and other officers.

4. The Rules of Procedure of the Third United Nations Conference on the Law of the Sea shall apply mutatis mutandis to the adoption of the rules of procedure of the Commission.

5. The Commission shall:

(a) prepare the provisional agenda for the first session of the Assembly and of the Council and, as appropriate, make recommendations relating to items thereon;

(b) prepare draft rules of procedure of the Assembly and of the Council;

(c) make recommendations concerning the budget for the first financial period of the Authority;

(d) make recommendations concerning the relationship between the Authority and the United Nations and other international organizations;

(e) make recommendations concerning the Secretariat of the Authority in accordance with the relevant provisions of the Convention;

(f) undertake studies, as necessary, concerning the establishment of the headquarters of the Authority, and make recommendations relating thereto;

(g) prepare __ draft rules, regulations and procedures, as __ necessary, to enable the Authority to commence its functions, including draft regulations concerning the financial management and the internal administration of the Authority;

(h) exercise the powers and functions assigned to it ___ by resolution II of the Conference relating to preparatory investment;

(i) undertake studies on the problems which would be encountered by developing land-based producer States likely to be most seriously affected by the production of minerals derived from the Area with a view to minimizing their difficulties and helping them to make the necessary economic adjustment including studies on the establishment of a compensation fund, and submit recommendations to the Authority thereon.

6. The Commission shall have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes as set forth in this resolution.

7. The Commission may establish such subsidiary bodies as are necessary for the exercise of its functions and shall determine their functions and rules of procedure. It may also make use, as appropriate, of outside sources of expertise in accordance with United Nations practice_ to facilitate the work of ________ bodies so established.

8. The Commission shall establish a special commission for the Enterprise and entrust to it the functions referred to in paragraph 11 of resolution II of the Conference relating to preparatory investment . The special commission shall take all measures necessary for the early entry into effective operation of the Enterprise.

8 bis "The Commission shall establish a special commission on the problems which would be encountered by developing land-based producers likely to be most seriously affected by the production of the Area and entrust to it the functions referred to in paragraph 5 (i)."

9. The Commission shall prepare a report containing recommendations for submission to the meeting of the States Parties to be convened in accordance with Annex VI, article 4, of the Convention regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea.

10. The Commission shall prepare a final report on all matters within its mandate, except as provided in paragraph 9, for presentation to the Assembly at its first session. Any action which may be taken on the basis of the report must be in ___ conformity with the provisions of the Convention concerning the powers and functions entrusted to the respective organs of the Authority.

11. The Commission shall meet at the seat of the Authority if facilities are available; it shall meet as often as necessary for the expeditious exercise of its functions.

12. The Commission shall remain in existence until the conclusion of the first session of the Assembly, at which time its property and records shall be transferred to the Authority.

13. The expenses of the Commission shall be met from the regular
dget of the United Nations, subject to the approval of the General Assembly of
United Nations.

14. The Secretary-General of the United Nations shall make available to the
Commission such secretariat services as may be required.

15. The Secretary-General of the United Nations shall bring this resolution,
particular paragraphs 13 and 14, to the attention of the General Assembly for
cessary action.

DAVID P. STANG, P. C.
ATTORNEY AND COUNSELLOR AT LAW
1629 K STREET, N.W.
SUITE 601
WASHINGTON, D.C. 20006

Mr. William P. Barr

DAVID P. STANG, P. C.
ATTORNEY AND COUNSELLOR AT LAW
1629 K STREET, N.W.
SUITE 601
WASHINGTON, D.C. 20006

Mr. Michael Uhlmann