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ID	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
225820	MEMO	DRAFT MEMO TO THE PRESIDENT, RE: OPTIONS FOR THE LAW OF THE SEA	15	ND	B1

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B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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Mr. Guhlmann

Boorz - File

DEPARTMENT OF STATE

Washington, D.C. 20520

BUREAU OF OCEANS AND INTERNATIONAL
ENVIRONMENTAL AND SCIENTIFIC AFFAIRS

May 21, 1982

~~CONFIDENTIAL~~

MEMORANDUM

TO: L - Mr. Robinson

FROM: OES/O - Theodore Kronmiller

SUBJECT: Reciprocating States Agreement

I am very deeply disturbed by resistance on the part of your office to efforts to achieve early signature of the Reciprocating States Agreement. Delays for which your office is responsible with regard to draft communications from the Secretary to his counterparts in the UK and FRG are highly prejudicial to the objectives reflected in the President's memorandum dated January 29, 1982. In that memo, it is stated, "The United States will continue active negotiations with other countries interested in deep seabed mining with a view to concluding a reciprocating states agreement as early as possible on recognition of deep seabed mining licenses." (Emphasis supplied.)

I had hoped that, after our very lengthy and comprehensive discussion on this subject yesterday, your office would clear the cables. If you remain unprepared to proceed with clearance, we are going to have to raise this with the Secretary as an issue upon which there is disagreement within the Department. Please let me know how you would like to proceed.

~~CONFIDENTIAL~~

GDS

THE LEGAL ADVISER
DEPARTMENT OF STATE
WASHINGTON

May 21, 1982

~~CONFIDENTIAL~~

TO: OES/O - Mr. Kronmiller

FROM: L - Davis R. Robinson

SUBJECT: Law of the Sea and Reciprocating States

L has just informed OES/OP that it will clear, with the insertion of the paragraph proposed by us yesterday and an additional minor change or two, the memorandum to the Secretary recommending that he send messages to the Allies urging signature of a Reciprocating States Agreement.

I am concerned that you have taken our interest in insuring that the Secretary is accurately informed, as resistance to furthering U.S. interests and accomplishing Administration objectives.

It is my view that there is a very clear relationship among moving forward on a Reciprocating States Agreement, implementation of the Deep Seabed Hard Mineral Resources Act and the determination of a recommendation to the President on how to proceed on law of the sea matters in the aftermath of the Eleventh Session of the Law of the Sea. My sole concern is to ensure that no action is taken now which will preempt options otherwise available to the President or which will make more difficult the accomplishment of his objectives as set forth in NSDD No. 20 of January 29, 1982. I am sure we will have an opportunity to discuss these issues further in the course of the review process.

~~CONFIDENTIAL~~

GDS 5/21/88

5/21/82

Dear Bill:

1. Proponents of the LOS treaty, here and abroad, are conducting an intensive lobbying campaign to have a Presidential decision on the treaty be delayed as long as possible. Their strategy is predicated upon the belief that sustained silence on the part of the Administration regarding signature of the treaty will encourage European allies to announce their intent to sign the treaty; thereby either isolating the U.S. from its industrialized allies or coercing the U.S. to sign the treaty.

(Those who are now counselling delay in announcing a Presidential decision on the treaty really want the U.S. to continue with the LOS system.)

2. I was told yesterday in an LOS meeting that the June 16 deadline for submitting the Inter-agency report on the LOS Conference results cannot be met.

Bob Keating

May 21, 1982

To: President Ronald Reagan

From:

Issue: Should the U.S. sign the Law of the Sea Treaty?

None of your stated objectives was achieved at the 11th and final session of the Conference, which concluded on April 30th. Therefore, the United States is confronted by a treaty which:

--fails to provide assured access to strategic deep seabed minerals and thus deprives the United States of security of supply;

--not only fails to promote, but also deters the development of deep seabed mineral resources which have economic and strategic significance;

--creates conditions in which such resource development as occurs is likely to be monopolized by the Enterprise in future years when strategic minerals become unavailable from terrestrial sources;

--denies the United States a role in the decision-making process of the International Seabed Authority which fairly reflects and effectively protects our political and economic interests and our financial contributions; minimizes the influence of our allies; and promotes the influence of the Soviet Bloc and Third World nations;

--establishes a regime that entails enormous financial outlays by the U.S., including nearly $500 million in long-term, interest-free loans and loan guarantees for the start-up of the Enterprise as well as 25% of the budget of the Authority until, or unless, it becomes self-financing through ocean mining revenues;

--provides for amendments to the seabed regime to come into force without the advise and consent of the Senate;

--propels the New International Economic Order from ideological rhetoric into economic and political reality by providing for mandatory transfer of technology, restrictions on production, and recognition of and funding for national liberation movements; and

--sets adverse precedents for current and future international negotiations and organizations dealing with such important matters as the use and development of outer space, the allocation of frequencies in the electromagnetic spectrum, the development of Antarctic minerals, and the establishment and restructuring of global financial and monetary institutions.

While it is true that the Administration was committed to accept the treaty in the event that your objectives were achieved, it is also the case that the non-seabeds portions of the treaty were understood to be flawed, nevertheless. The policy review which analyzed the full range of U.S. interests in relation to the Draft Convention demonstrated that entry into force of the treaty would, in various ways and to varying degrees, adversely affect the interests of the U.S. with respect to fisheries, oil and gas development, preservation of the marine environment, marine scientific research, navigation and disputes settlement.

--The United States would be required to give much greater consideration to the economic interests of foreign fishing nations operating in our 200-mile zone. This would reduce the effectiveness of our policy which conditions the allocation of our surplus living marine resources principally upon reciprocal benefits being provided to the U.S. industry. Currently, these benefits take the form of improved access to foreign markets for U.S. fish exports, and increased joint ventures among U.S. fishermen and foreign fish processors operating within our 200-mile zone.

--The treaty would require the United States to abandon its position that tuna are not properly subject to coastal state jurisdiction beyond a narrow belt of waters (as that species, due to its highly migratory behavior, can only be effectively managed and conserved on an international basis). The treaty requirement to recognize coastal state jurisdiction over tuna would destroy the leverage

by which we have preserved our $1.5 billion distant-water tuna fleet, and thus would have a most serious impact upon our $2 billion/year domestic tuna industry.

--The treaty would require the United States to give up its jurisdiction over salmon of U.S. origin beyond 200 miles; a stipulation that would seriously erode our negotiating position vis-a-vis foreign high seas salmon fishing nations, again with the effect of injuring a highly productive U.S. industry.

--The treaty would require the United States to make very substantial contributions to the International Seabed Authority of revenues from Outer Continental Shelf development beyond 200 miles; financial requirements which would serve to effectively deter such development. Furthermore, the argument has been made by experts in the private sector that the treaty would require the United States to cede significant portions of our continental margin beyond 200 miles to the control of the International Seabed Authority.

--The treaty's regime for the control of marine pollution would require the United States to abandon certain of its legislative authority for the control of pollution within U.S. territorial seas. It would also create a highly complex and very ambiguous enforcement system within 200 miles of the coasts. In addition, the state under which offending vessels are registered would have the right, in many cases, to preempt judicial proceedings of the coastal state.

--The treaty's marine scientific research regime would require the United States to recognize onerous and restrictive coastal state conditions relating to marine research in the 200-mile zone.

--In the opinion of several eminent legal scholars,the navigation provisions of the treaty would not provide the U.S. with unambiguous free transit of straits by its submerged submarines. Nor would they provide assurances that freedoms of navigation and communication within 200 miles of foreign shores would be preserved against

infringement by coastal states through their exercise of resource jurisdiction.

--The Law of the Sea Tribunal, which would be empowered to resolve many kinds of disputes, would be dominated by jurists of Third World nations. This could have long-term, adverse political and economic effects for the United States.

This is not to say that our proceeding with allies in a ocean regime independent of the treaty would be free of difficulties. Clearly, in each of the foregoing areas, there would be an array of problems.

--Seabed mining by U.S. companies would face legal and political challenges.

--The United States would continue to face international controversy concerning various aspects of its fisheries policies.

--The United States would doubtless be criticized for declining to make international contributions from its marine oil and gas operations, and could be challenged if it were to assert jurisdiction over the margin beyond the limits provided in the treaty.

--The United States could also be faulted for declining to establish or recognize pollution or marine science regimes along the lines provided in the treaty.

--Regarding navigation, the U.S. might encounter more frequent challenges, particularly if we were to conduct ourselves in a manner incompatible with the treaty. (As a non-party to the treaty, the U.S. would not be bound to the process or decisions of the LOS Tribunal.)

Recommendations:

1. Do not sign the treaty, and announce this decision as soon as possible.

-- The decision not to sign the treaty would be based primarily upon the refusal of the Conference participants to accommodate any of your stated objectives. Conference leaders from the Third

World refused to even enter into negotiations about any of your desired changes to the treaty texts.

--In the face of a treaty which clearly fails to accommodate your stated objectives, any delay in announcing your decision would give rise to the appearance of indecisiveness on the part of the Administration and would increase the likelihood of preemptive decisions by our allies to go ahead and sign the treaty.

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3. Direct that the Reciprocating States Agreement be signed by mid-June without any substantive amendments, and that it be transmitted to key ocean-mining states for their signature.

4. If by mid-June, one or more of the other three nations which have already negotiated the Reciprocating States Agreement are not then prepared to sign it without significant changes, direct the Commerce Department (NOAA) to immediately begin processing applications filed by U.S. citizens for ocean mineral exploration licenses.

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6. In compliance with existing legislation, direct the Commerce Department to (a) invite a second round of applications for ocean mining exploration licenses for new entrants; and (b) promulgate regulations pertaining to ocean mining permits for commercial production.

7. Direct the appropriate Government departments and agencies to prepare legislative and executive actions which will (a) protect the rights granted to U.S. citizens by existing domestic legislation and ocean mining licenses and permits, and (b) encourage the further development of a viable ocean mining industry, and (c) strengthen generally the security of U.S. access to strategic ocean minerals.

8. Direct the appropriate government departments and agencies to formulate strategies for containing any foreseeable international criticism of the decision not to sign the treaty.

9. Announce that the United States will soon establish a positive oceans policy that will take into account the full array of our domestic and international interests in both seabed and non-seabed ocean matters. (Your announcement of such a policy would outline a number of legislative and other initiatives called for in recommendations 6 and 7.)

To : Bill Barr

5/21/82

Dear Bill:

1. Proponents of the LOS treaty, here and abroad, are conducting an intensive lobbying campaign to have a Presidential decision on the treaty be delayed as long as possible. Their strategy is predicated upon the belief that sustained silence on the part of the Administration regarding signature of the treaty will encourage European allies to announce their intent to sign the treaty; thereby either isolating the U.S. from its industrialized allies or coercing the U.S. to sign the treaty.

(Those who are now counselling delay in announcing a Presidential decision on the treaty really want the U.S. to continue with the LOS system.)

2. I was told yesterday in an LOS meeting that the June 16 deadline for submitting the Inter-agency report on the LOS Conference results cannot be met.

Bob Keating

cc : Mike Uhlmann

May 21, 1982

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--creates conditions in which such resource development as occurs is likely to be monopolized by the Enterprise in future years when strategic minerals become unavailable from terrestrial sources;

--denies the United States a role in the decision-making process of the International Seabed Authority which fairly reflects and effectively protects our political and economic interests and our financial contributions; minimizes the influence of our allies; and promotes the influence of the Soviet Bloc and Third World nations;

--establishes a regime that entails enormous financial outlays by the U.S., including nearly $500 million in long-term, interest-free loans and loan guarantees for the start-up of the Enterprise as well as 25% of the budget of the Authority until, or unless, it becomes self-financing through ocean mining revenues;

--provides for amendments to the seabed regime to come into force without the advise and consent of the Senate;

--propels the New International Economic Order from ideological rhetoric into economic and political reality by providing for mandatory transfer of technology, restrictions on production, and recognition of and funding for national liberation movements; and

--sets adverse precedents for current and future international negotiations and organizations dealing with such important matters as the use and development of outer space, the allocation of frequencies in the electromagnetic spectrum, the development of Antarctic minerals, and the establishment and restructuring of global financial and monetary institutions.

While it is true that the Administration was committed to accept the treaty in the event that your objectives were achieved, it is also the case that the non-seabeds portions of the treaty were understood to be flawed, nevertheless. The policy review which analyzed the full range of U.S. interests in relation to the Draft Convention demonstrated that entry into force of the treaty would, in various ways and to varying degrees, adversely affect the interests of the U.S. with respect to fisheries, oil and gas development, preservation of the marine environment, marine scientific research, navigation and disputes settlement.

--The United States would be required to give much greater consideration to the economic interests of foreign fishing nations operating in our 200-mile zone. This would reduce the effectiveness of our policy which conditions the allocation of our surplus living marine resources principally upon reciprocal benefits being provided to the U.S. industry. Currently, these benefits take the form of improved access to foreign markets for U.S. fish exports, and increased joint ventures among U.S. fishermen and foreign fish processors operating within our 200-mile zone.

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by which we have preserved our $1.5 billion distant-water tuna fleet, and thus would have a most serious impact upon our $2 billion/year domestic tuna industry.

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INSERT →

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Boon - files

DOCUMENT NO. 072191 PD

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 5/21/82 ACTION/CONCURRENCE/COMMENT DUE BY: FYI

SUBJECT: Law of the Sea Treaty

	ACTION	FYI		ACTION	FYI
HARPER	☐	☐	DRUG POLICY	☐	☐
PORTER	☐	☒	TURNER	☐	☐
BARR	☐	☐	D. LEONARD	☐	☐
BAUER	☐	☐	OFFICE OF POLICY INFORMATION		
BOGGS	☐	☐	GRAY	☐	☐
BRADLEY	☐	☐	HOPKINS	☐	☐
CARLESON	☐	☐	OTHER		
FAIRBANKS	☐	☐	_____	☐	☐
GUNN	☐	☐	_____	☐	☐
HEMEL	☐	☐	_____	☐	☐
B. LEONARD	☐	☐	_____	☐	☐
MALOLEY	☐	☐	_____	☐	☐
SMITH	☐	☐	_____	☐	☐
UHLMANN	☐	☒	_____	☐	☐
ADMINISTRATION	☐	☐	_____	☐	☐

Remarks:

Presidential Versailles guidance was revised.

Please return this tracking sheet with your response.

Edwin L. Harper
Assistant to the President
for Policy Development
(x6515)

THE WHITE HOUSE
WASHINGTON

To: Mike Uhlman

Presidential Versailles guidance was revised.

EDWIN L. HARPER

~~CONFIDENTIAL~~

LAW OF THE SEA

I. ISSUE

How to ensure further cooperation with our major allies to protect US Law of the Sea and ocean interests in this key phase.

II. ESSENTIAL FACTS

Last January you announced that we would resume participation in the UN Law of the Sea (LOS) conference, stressing that we would seek changes to meet six broad objectives for the deep seabed regime. The conference made only modest improvements in the treaty in March-April. The G-77 was obdurate and we did not get changes meeting your objectives. Thus, while most provisions of the treaty are acceptable, major parts of the deep seabed regime remain contrary to US interests.

At the end of the conference on April 30 we called for a vote rather than allow a consensus on adopting the treaty. The vote was 130 for adoption (including France and Japan); 4 against (US, Israel, Turkey, and Venezuela); and 17 abstentions (including the UK, FRG, Italy, Belgium, Soviet Union and other eastern European countries). The latter were abstaining for reasons different than ours. But our allies' abstentions were important and as far as we expected they could go at this time.

We are actively reviewing next steps to protect US LOS and ocean interests, with a completion date in mid-June. We have continued to press to conclude a Reciprocating States Agreement for seabed mining with our key allies (UK, FRG, France and Japan) but reactions are cautious as they review their options and will want to keep all of them open (including that of adhering to the LOS treaty at some future time after signature later this year).

Cooperation with our major allies on LOS and a Reciprocating States Agreement is critical. The UK and FRG are closer to us in their positions, while France and Japan are farther away. You wrote Thatcher, Schmidt, Mitterand and Suzuki on LOS before the conference and will want to remind them of the interest and importance the US attaches to these issues.

III. TALKING POINTS

Criticism: Will the US sign the LOS treaty?

Responses: We are reviewing the convention but are disappointed at the outcome of the negotiations and the conference's failure to correct major problems in the deep seabed regime.

We appreciated your cooperation. Cooperation between us now in this area is even more important. We need to work together and consult before making commitments or major moves.

We also consider it important to conclude a Reciprocating States Agreement for seabed mining soon and hope you will be able to do so.

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Law of the Sea

~~CONFIDENTIAL~~
STATE'S
DRAFT

I. ISSUE:

The Third United Nations Conference on the Law of the Sea concluded its eleventh session on April 30, 1982 with adoption of a comprehensive convention. The United States was unable to negotiate changes needed to make the convention consistent with your six objectives. An interagency task force is currently reviewing our oceans policy objectives and the convention and will be reporting to you on its conclusions to determine whether it can recommend that the US become a signatory to the treaty.

II. ESSENTIAL FACTS:

After an eleven-month interagency review, you announced on January 29 your decision to resume United States participation in the Law of the Sea Conference. You indicated your commitment to the multilateral treaty process for reaching an agreement on the law of the sea, but that major elements of the deep seabed mining regime in the Draft Convention were unacceptable. In addition, you noted six broad areas in which improvement was needed so as to enable the US to sign the treaty and actively support ratification by the US Senate.

Despite herculean efforts to reach agreement, the US was forced to vote against adoption of the Convention. G-77 obduracy precluded compromises on key seabed mining issues. During this last Conference session, the United States delegation made every effort to cooperate with other delegations and to be receptive to alternatives to our proposals, consistent with your objectives. No substantive negotiations took place on our proposals until the final weeks of the session. The US and other industrialized nations worked closely together at the Conference due to their commonality of purpose in achieving an acceptable, comprehensive Law of the Sea Treaty.

III. TALKING POINTS:

CRITICISM: -- Will the United States sign the LOS treaty?

RESPONSE:

-- The US is disappointed by the outcome of the LOS negotiations. We hoped for a comprehensive treaty acceptable to all nations.

-- We are actively reviewing the final convention text in the light of our larger oceans policy objectives. A decision on signature of the treaty will flow from that review.

-- The US has greatly appreciated the support and constructive efforts of the Law of the Sea delegations of other western industrialized nations.

-- We will closely monitor LOS developments but in the meantime we must sign an RSA to give industry a basis for planning seabed mining.

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DOCUMENT NO. 07213 PD

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 5/18/82 ACTION/CONCURRENCE/COMMENT DUE BY: FYI

SUBJECT: L.O.S. Treaty - Where Do we Go From Here?

	ACTION	FYI		ACTION	FYI
HARPER	☐	☐	DRUG POLICY	☐	☐
PORTER	☐	☐	TURNER	☐	☐
BARR	☐	☐	D. LEONARD	☐	☐
BAUER	☐	☐	OFFICE OF POLICY INFORMATION		
BOGGS	☐	☐	GRAY	☐	☐
BRADLEY	☐	☐	HOPKINS	☐	☐
CARLESON	☐	☐	OTHER		
FAIRBANKS	☐	☐	Dick Darman	☐	
GUNN	☐	☐	Craig Fuller	☐	
HEMEL	☐	☐	_____	☐	☐
B. LEONARD	☐	☐	_____	☐	☐
MALOLEY	☐	☐	_____	☐	☐
SMITH	☐	☐	_____	☐	☐
UHLMANN	☐	☐	_____	☐	☐
ADMINISTRATION	☐	☐	_____	☐	☐

Remarks:

Please return this tracking sheet with your response.

Edwin L. Harper
Assistant to the President
for Policy Development
(x6515)

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 17, 1982

OFFICE OF POLICY DEVELOPMENT

1982 MAY 17 P 4:09

FOR: EDWIN MEESE/III

FROM: MICHAEL M. UHLMANN

SUBJECT: L.O.S. Treaty -- Where Do We Go From Here?

Prompt Action Required

There are two matters which require swift action:

1. Within the next 6 weeks, the Administration should make and announce its decision on whether the U.S. will sign the Treaty.

The Treaty (which was adopted on April 30 at the L.O.S. Conference by a vote of 130-4) fails to meet the requirements set forth by the President in his January 29 statement. In December -- six months from now -- the Treaty will be opened for signing.

One alternative we have to signing the Treaty is to persuade our industrial allies to join us in establishing a rival L.O.S. regime. Our potential partners, however, are, and will be, under increasing pressure to commit to signing the Treaty. Unless we stake out our position soon and start working on our allies, we may lose the opportunity to establish an alternative regime.

Delay in staking out our position could thus isolate us, foreclose the option of an alternative regime, and severely circumscribe the President's scope of action.

2. The White House should keep pressure on State Department to get the Reciprocating States' Agreement (RSA) signed within the next two weeks.

RSA is an agreement among the U.S. and its industrial allies establishing an interim deep seabed mining regime until such time as an international L.O.S. treaty has been approved and the seabed mechanism established thereunder has become operational. Though it was supposed to be executed before the last L.O.S. negotiating session, RSA is as yet unsigned. In a week or so, we are having discussions with our allies to discuss signing the RSA. (Signing RSA does not foreclose the possibility of approving the L.O.S. Treaty in the future.)

If our allies (particularly U.K. and F.R.G.) sign RSA without substantive amendments, this agreement could, without committing

us to an alternative regime, serve as the basis for such a regime if we later decide to take that route. If our allies do not sign RSA, it will be much more difficult to establish an alternative regime.

Time is of the essence because Third World countries and other Treaty proponents are pressing for amendments to RSA which would bring it into conformity to the L.O.S. Treaty.

If our allies balk at signing RSA, we must be able to move quickly to get the President involved in pressuring U.K. and F.R.G. by direct contact with Prime Minister Thatcher and Chancellor Schmidt.

Suggested Procedure for Decision

1. Background

This is a national issue which should be decided by the President after consultation with the full Cabinet.

- o During negotiations, L.O.S. was treated predominantly from a foreign affairs perspective. Half the members of the Interagency Group (IG) are from the State Department's regional bureaus.

- o With negotiations completed, our task is to formulate a national response on a matter that has broad domestic, as well as foreign affairs, ramifications. Every department, with the possible exception of HUD and Education, has interests at stake.

2. Consideration by CCLP

The issue should be considered by the CCLP (with the Secretary of Energy invited to attend). A Working Group chaired by the Secretary of the Interior, working closely with OPD, should prepare the decision memorandum for the President and the full Cabinet.

The IG would be tasked to provide CCLP and its Working Group with analyses of U.S. options.

Use of the cabinet council process has the following advantages:

- o Provides a mechanism for integrating into the process those departments which heretofore have not been significantly involved.

- o Brings more balance to the process by

amplifying the domestic perspective while retaining State, Defense, and NSC participation.

- o Gives President a direct institutional means for consideration of the issue from a Presidential perspective.

- o Provides better access to the process for the numerous private domestic organizations who are concerned about the Treaty and whose rumblings we are only beginning to hear. (Some have complained that, because the IG was dominated by State's regional bureaus, Burundi has had, in effect, more of a voice in setting U.S. policy than American industry.)

3. Strict Deadlines

It is essential that the Administration's decisions be made and implemented according to a fast-paced and disciplined timetable. I would recommend:

- o IG should submit its analysis to CCLP by May 30.

- o CCLP should submit a decision memorandum to the President by June 16.

- o The Presidential decision should be announced no later than June 20.

- o If President decides not to sign Treaty, CCLP should set timetable for those subsidiary decisions and actions necessary to implement the selected alternative strategy.

There will be resistance to moving fast. Treaty proponents in the departmental bureaucracies and on the Hill, suspecting that the President's decision is likely to be adverse, will argue strenuously to delay the decision. They will urge postponing the decision until September when there is a plenary session of the L.O.S. Conference, suggesting that it might be possible to obtain some concessions from the Third World at that meeting. In fact, the chances of obtaining any material changes in the Treaty are exceedingly remote and, in any event, would be enhanced by an early firm stand against the Treaty in its present form.

A strong White House role will be necessary to ensure that decisions are made, and implementing actions are taken, on time.

cc: Edwin L. Harper

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