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DEPARTMENT OF STATE

Washington, D.C. 20520

June 8, 1982

MEMORANDUM

TO: IG

FROM: OES/OLP - Otho E. Eskin

SUBJECT: Draft of the US Delegation Report for the Eleventh Session of the UN Conference on the Law of the Sea

The Draft Delegation Report is attached for your review and clearance. I would appreciate your providing any comments that you may have by COB Friday, June 11, to Ann Vlcek (x29617). If possible, your comments should be in the form of written margin notations on the draft.

REPORT OF THE UNITED STATES DELEGATION

to the

ELEVENTH SESSION OF THE

UNITED NATIONS CONFERENCE ON

THE LAW OF THE SEA

March 8 - April 30, 1982

June 8, 1982

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I. INTRODUCTION

This report describes the principal developments at the Eleventh Session of the Third United Nations Conference on the Law of the Sea, held from March 8 to Arpil 30, 1982, at the United Nations Headquarters in New York. The membership of the United States delegation to the Conference is attached (Appendix A).

After a one-year review of the Draft Convention on the Law of the Sea, the US returned to the Eleventh, and final negotiating, session of the law of the sea negotiations. In a statement made on January 29, 1982 (Appendix B), President Reagan emphasized that the US was committed to the multilateral treaty process for reaching agreement on the law of the sea and that the non-seabed mining sections of the Draft Convention were acceptable. The President stated that major elements of the deep seabed mining portion of the Convention were unacceptable and that the US would be returning to the Conference to seek changes necessary to satisfy six objectives important to the US.

The final treaty text that was adopted at the Conference failed to meet any of the President's objectives in regard to seabed mining. Consequently, the US called for a vote on the adoption of the text and voted against the Treaty's adoption. On April 30, 1982, the Conference adopted the Law

of the Sea Convention by a vote of 130 in favor, 4 against (US, Israel, Turkey and Venezuela), with 17 abstentions (FRG, UK, Belgium, Luxembourg, Netherlands, Italy, Spain, Thailand and the Eastern European Bloc, except Romania).

II. PART XI AND RELEVANT ANNEXES: DEEP SEABED MINING

Guided by the six objectives set forth by the President in his January 29, 1982 statement, the US delegation's principal aim at the Conference was to obtain improvement in the seabed mining provisions of the Treaty (Part XI and Annexes).

A. Intersessional Meeting: February 24-March 2

The first phase of the US delegation's efforts coincided with the intersessional meeting, February 24-March 2, called by Conference President Tommy Koh of Singapore to deal with three issues not fully addressed in prior sessions of the Conference: Preliminary Investment Protection (PIP), the Preparatory Commission (PrepCom) and participation in the Convention. Negotiations of these issues are discussed more fully as separate topics under Parts III, IV and V of this report.

During the intersessional meeting, the US circulated a comprehensive paper outlining its major concerns and suggesting alternative solutions. The paper marked the culmination of a process intended to inform industrialized countries and allies, the Soviet Union and the G-77 about the specific

concerns raised in President Reagan's January 29 statement.

The paper elicited strong reactions from most interest groups at the Conference. In particular, the breadth and scope of the US paper created a widespread impression that the US was not serious in its claim to have returned to the Conference to negotiate in good faith, even though the core issues presented in the paper were few in number and ones with which all delegations were familiar. The G-77 leadership, in both public and private, expressed concern that the US proposals were not in the form of specific textual language. The G-77 insisted that no considered response could be expected from them unless specific language was forthcoming. Although the US would have preferred to have left its proposals in their existing, more flexible format, the US delegation complied with the G-77 request and their additional suggestion that the package be completed around March 8, the opening day of the Conference.

B. The "Green Book"

The second phase of the Conference began March 5. Following an intensive drafting session, the US presented its book of amendments (Appendix C), referred to as the "Green Book" due to the color of its cover, to the Conference on March 11. In presenting the "Green Book", the US made clear that, since the proposed amendments were only one set

of a number of possible solutions, no ultimatum was intended that the actual changes enumerated in the book be made. Rather, the US emphasized that the sole purpose of the "Green Book" was to be responsive to the request from the G-77 for specific textual language.

Drawn from the US alternative approaches paper circulated during the intersessional meeting and proposing actual treaty language, the "Green Book" produced a significant reaction at the Conference. The book served initially as the basis for the G-77 to judge the US demands and for the US to assess the G-77 reactions thereto. Additionally, the book made clear to other delegations that President Reagan's six objectives could not be satisfied without substantive changes being made to the Draft Convention.

C. The Group of Eleven Proposals

The appearance of the "Green Book" and the continued resistance of the G-77 to begin negotiations galvinized into action a group of eleven western states (Australia, Austria, Canada, Denmark, Finland, Iceland, Ireland, New Zealand, Norway, Sweden and Switzerland). After a week of consultations and drafting, this group of eleven nations (G-11) produced a package of amendments (Appendix D), initially made a part of the Conference record on March 29, which they believed could serve as a basis for negotiations between the US and

the G-77. After careful analysis, the US delegation concluded that certain elements of the G-11 proposal provided adequate bases for addressing US concerns (e.g., contract approval, technology transfer and separation of powers), but that other elements fell considerably short of US objectives (e.g., review conference and council composition). More importantly, several of the US concerns were not addressed at all by the G-11 paper (e.g., production limitation, decision-making and participation in the Convention of national liberation groups).

No immediate face-to-face negotiations began with the G-77 as a result of the G-11's efforts. The G-77 insisted that the US and its allies accept the G-11 proposals as an exhaustive negotiating agenda. In that the US could not take a position so far removed from the President's overall objectives, the G-77 as a result introduced a further element of rigidity into the Conference. Consequently, the only meetings scheduled were pro forma in nature; the US and its close allies set forth their concerns and the G-77 leadership did little more than listen.

While informal discussions were taking place outside regular Conference sessions, delegations made official presentations of their positions in the Plenary sessions held from March 29 through April 1. On April 1, the Chairman of

the US delegation set forth the US position in a statement made before the Plenary (Appendix E), emphasizing the US desire for substantive negotiations to take place on its concerns.

D. Modified US Amendments

For the US delegation, the third stage of the Conference began with the recognition that tangible, substantive evidence of US good faith was necessary if the negotiating impasse were to be broken. The US delegation's instructions were modified to reflect additional flexibility in two areas: the US would not insist on complete elimination of the production limitation nor on affirmative voting power for the US and a few of its closest allies regarding the adoption of rules, regulations and procedures by the Council of the International Seabed Authority (ISA).

Following deliberations in Washington on April 3 and 5, the US delegation engaged in a series of meetings with Conference leaders and interest groups, including US allies, the G-77, the European Community, the G-11 and the USSR. At these sessions, the US described the minimum contents of a seabed mining package that could serve as a negotiating agenda for the short time remaining before April 13, the last day on which formal amendments to the text could be tabled.

As a further attempt to improve the atmosphere, the US agreed to the inclusion in the treaty text of a proposal submitted by a group of African nations concerning Article 171 (Funds of the Authority). This group, interested in securing compensation for land-based producers of seabed minerals, wanted a reference to a compensation fund whose sources would be recommended by the Economic Planning Commission of the ISA.

Unfortunately, no substantive negotiations took place on the US seabed regime proposals during the April 5-13 period. The only substantive negotiations that did occur during this time concerned the PIP Resolution, discussed in Part III of this report.

E. Formal Amendments

The fourth stage of the Conference began on April 13 with the tabling of formal amendments. Thirty-one sets of amendments were tabled. The most significant amendments were those sponsored by the US and six of its closest supporters (Appendix F) and those put forward by the G-11 (Appendix G). The US amendments, covering Part XI, the Annexes, PIP and PrepCom, represented movement away from the "Green Book". To foster co-sponsorship by the allies, these amendments drew upon the G-11 proposals, while tailoring them in such a way as to make them consistent with the President's objectives.

The number and breadth of the amendments which various delegations submitted caused concern that voting could lead to far-reaching changes in the Draft Convention, sufficient to unravel what was perceived by the Conference leadership as the delicate compromise embodied in the text. Consequently, the Conference leadership attempted in the days that followed the introduction of the amendments to induce sponsors to withdraw their amendments or to agree not to press them to a vote. The leadership succeeded in avoiding votes on all but three amendments. These amendments, described in more detail in Part VI of this report, concerned non-seabed mining provisions and were defeated. The US and its co-sponsors decided not to press for a vote on their amendments, in return for assurances that substantive negotiations would immediately ensue on US concerns with Part XI of the treaty text.

F. Final Stages

The fifth and final stage of the Conference began on April 23. Since the PIP negotiations were the principal focus of the final weeks of the session and the G-77, particularly the African group, continued to resist negotiating on Part XI, the time for achieving improvement in the seabed provisions of the text lessened considerably. Recognizing this, Conference President Koh established himself as an

arbiter between the US and the G-77. During a day and a half of intensive discussions, negotiators representing the US, the G-77 and the Soviet Union put their cases to each other and to President Koh. These discussions constituted the sole instances of substantive negotiations on the seabed mining provisions during the entire Conference session.

Working with the Collegium of the Conference, President Koh subsequently issued two reports (Appendix H) which, he asserted, incorporated those changes that would offer a better prospect than the existing text for adoption of the treaty by consensus. President Koh's final reports contained changes that modified the composition of the Council of the ISA by guaranteeing a seat to the largest consumer of seabed minerals (intended to meet the US concern for a guaranteed seat), introduced a more pro-production policy objective in Article 150 (Policies relating to activities in the area), and raised from two-thirds to three-fourths the majority needed for treaty amendments to enter into force at the Review Conference (Article 155: The Review Conference). Additional changes were made in Article 155 dealing with other minerals and the award of contracts. Conference President Koh's proposal on the transfer of technology was more troublesome to the US than the existing text. However, he withdrew the proposal before the final vote, leaving unchanged

the existing provisions of Annex III, Article 5 (Transfer of Technology).

G. Adoption of Treaty Text

When Conference President Koh's last report appeared on April 29, it became clear that the changes to the seabed mining provisions of the text failed to meet any of the US objectives, thus preventing the US from agreeing to the adoption of the text by consensus. Consequently, the US delegation demanded that a recorded vote be taken on the adoption of the Convention and voted against the Treaty's adoption.

On April 30, the Convention was adopted by a vote of 130 in favor, 4 against, with 17 abstentions (see Appendix I for a chart showing the vote cast by each delegation). The US representative explained the US vote against adoption of the text in a statement made to the Plenary (Appendix J).

III. PREPARATORY INVESTMENT PROTECTION RESOLUTION

A. Negotiations

A major focus of activity during the intersessional period was the formulation of a PIP Resolution to offer protection of investments made in deep seabed mining prior to entry into force of the LOS Treaty. As a major element of unfinished Conference business, the Conference leadership

was impatient to receive a specific proposal dealing with the protection of pioneer investors. Consequently, during the intersessional meeting and into the Conference session itself, the US and several other key industrialized countries engaged in intense negotiations to develop a PIP proposal. The major issues in these negotiations included Japan's concerns over mine site size and its "second tier" status in the process of mine-site conflict resolution, France's concern that PIP be limited to a specified group of entities, the size and number of pioneer mine sites, and a requirement that a prospected site equal in value to the applicant's mine site be made available to the PrepCom by such applicant.

On March 16, 1982, the US, UK, FRG and Japan put forward a PIP proposal (Appendix K). Because the proposal used objective criteria rather than a list for identifying pioneer investors, it did not attract French co-sponsorship. The proposal established a two-tier system of conflict resolution, giving priority to those consortia with site specific claims and obliging those without specific claims to recognize that priority. States with prospective miners would ensure that conflicts were resolved prior to registration for PIP status. The PIP proposal contained a reference to areas of equal value being provided by an applicant upon registration.

The PIP proposal submitted by the US and other industrialized nations provoked a counterproposal from the G-77. The G-77 draft proposal was significant for its recognition that pioneer miners warranted special treatment and that conflict resolution was a responsibility of prospective certifying States. However, in other respects, the G-77 proposal imposed onerous burdens on prospective investors. The G-11, as they had in the case of the "Green Book", attempted to narrow the gap between the industrialized countries and the G-77 by producing a compromise draft proposal on PIP. All three PIP proposals were used by Conference President Koh to form the basis of his own proposal (Appendix L).

During the April 5-13 period, the only substantive negotiations that took place at the Conference concerned the PIP resolution. Conference President Koh held a series of meetings at which he tried to resolve the principal issues: the size of an exploration area, the definition of a pioneer investor, and the relationship of pioneer investors to the seabed mining regime embodied in the Draft Convention.

The G-77 presented the principal opposition in these negotiations, insisting that pioneer investors not be allowed to exploit the seabed minerals until after entry into force of the Convention, that pioneer investors be subject to the Treaty's production limitation found in Article 151 (Produc-

tion Policies), and that pioneer investors be required to submit a plan of work for exploration and exploitation to the ISA for approval. The G-77 also demanded that the provisions of the text relating to the reserved area apply to pioneer investors and that each pioneer investor be obligated to respond to PrepCom requests to explore the reserved area it had proposed. The US and its allies resisted these demands, arguing that pioneer investors should receive production authorizations prior to any new entrant, plans of work should be automatically approved upon certification of the applicants' qualifications by the sponsoring State, and only one reserved area need be fully explored.

During the negotiations on PIP, Japan's demands for a smaller exploration area of 60,000 square kilometers were resisted in favor of a 150,000 square kilometers initial exploration area.

A provision allowing a mining consortium to be certified by a single country of which one of the participating entities was a national, as long as that state had signed the Convention, proved to be a highly contentious issue. This provision would allow an entity participating in a consortium to obtain pioneer investor status without requiring the country, of which it is a national, to be a signatory to the Convention. The Soviet Union, which had earlier announced by letter to Conference

President Koh that it would qualify as a pioneer investor, was particularly troubled by this provision. The Soviet Union argued that the provision unfairly prejudiced their interests since it required them to sign the Convention in order to obtain pioneer status, while US pioneers could qualify with the US signature of the Convention. The Soviet contention was put to the Legal Counsel of the United Nations who agreed that the Soviet Union was correct. Nevertheless, Conference President Koh refused to include language to change that provision. The specific PIP categories are explained more fully below.

B. Final PIP Resolution

The final PIP Resolution adopted on April 30 creates three categories of pioneer investors: (1) four countries (France, Japan, India and USSR); (2) four consortia (nationals of Belgium, Canada, FRG, Italy, Japan, Netherlands, UK and US); and (3) developing countries.

Except for the developing countries, the PIP Resolution requires that pioneer investors must have spent $30 million in pioneer activities prior to January 1, 1983, with not less than 10% of that figure spent on survey and evaluation of the pioneer area. Developing countries have until December 1, 1985 to meet the same financial qualification.

Under the PIP resolution, pioneer investors have the following obligations:

1) Pioneer investors must obtain certification by a State signatory to the Convention before applying for registration with the PrepCom.

2) Certifying States must ensure that overlapping claims are resolved prior to registration with the PrepCom. Conflict resolution, if not accomplished by negotiations between the certifying states, is to be performed through binding arbitration using principles of equity, set out in the Resolution, with final awards to be made by December 1, 1984.

3) Each application must cover an area sufficient for two mining operations. The PrepCom is to allocate an exploration area to the pioneer investor which cannot exceed 150,000 square kilometers.

4) The pioneer investor must relinquish at least 50% of his exploration area within eight years after allocation.

5) Financial obligations:

a) $250,000 on registration by the PrepCom. The accrual of a one million dollar annual fee payable upon approval of a plan of work when the Convention enters into force.

b) $250,000 for processing a plan of work.

c) Diligence requirements to be established by the PrepCom.

6) Other obligations for pioneer investors include:

a) Exploration of the reserved area at the request of the PrepCom. Costs incurred to be reimbursed plus 10% annual rate of interest.

b) Training for personnel designated by the PrepCom.

c) Transfer of technology prior to entering into force.

The PIP resolution also sets forth certain rights of pioneer investors:

1) Registration as pioneer investor, if certified by a signatory to the Convention.

2) One pioneer area of 150,000 square kilometers.

3) Production authorization after entry into force with priority over all other applicants except the Enterprise. If Article 151 (Production limitation) ceilings are in force, pioneer investors must apportion the available authorization among themselves.

The Enterprise (the operating arm of the ISA) obtains two guaranteed production authorizations in the first round of allocation for pioneer investors.

While not every State with a national participating in a consortium must sign the Convention for the consortium to be registered as a pioneer investor, every State must ratify the Convention in order for that consortium to obtain an approved plan of work including production authorization. Without

such ratification, a pioneer investor must alter its nationality within a specified period to that of any State party to the Convention which has effective control over the pioneer investor and which has proper PIP status.

For the US, the PIP Resolution might have been more acceptable had the negotiations on the seabeds provisions of the treaty text led to significant improvement. However, those provisions were so little changed that the PIP Resolution, with all of its linkages to Part XI and the relevant Annexes, continues to impose unacceptable risks and burdens on seabed miners.

IV. PREPARATORY COMMISSION

The specific task of the PrepCom is to prepare for the establishment of the ISA and its various organs. Rules and regulations for deep seabed mining set by PrepCom will permit the ISA and the Enterprise to commence their functions upon entry into force of the Convention. These rules and regulations may be changed when the Convention enters into force, subject to the rule of consensus in the Council of the ISA.

A. Negotiations

As indicated earlier, the PrepCom was one of the three unresolved issues left to be negotiated after the August 1981 Conference session. At that session, a text was submitted to

the Conference by President Koh and First Committee Chairman Engo. A revised version of the Koh-Engo text was presented to the Eleventh session of the Conference on April 2 after a series of discussions in the Working Group of 21 (Appendix M). Later in the New York session, the Collegium introduced additional provisions as a result of formal amendments submitted by delegations on April 13. Two major additions were the establishment of a special commission to study the problems of the landbased mineral producers likely to be most seriously affected by the production from the Area (Appendix N) and the ability of certain national liberation movements to participate in the Commission as observers.

Membership in PrepCom is limited to those States which sign the Convention. Non-signatories may participate as observers but may not participate in the taking of decisions. The Collegium took this position on PrepCom membership over the objections of the US and other industrialized States who had pressed for signature of the Final Act as the qualification for membership. Additionally, entities which were observers at the Conference, i.e., certain national liberation movements, are allowed to participate as observers. The United Nations Council for Namibia may also participate.

As to decision-making in PrepCom, various views were expressed ranging from requiring a simple majority to consen-

sus voting. The US proposed that PrepCom's decisions on matters of substance be taken by a two-thirds majority of 36 States, to be elected by the Conference according to the system used for the compositon of the Council. The Collegium proposed that the Conference's rules apply to the adoption of the Commission's rules and that, thereafter, the Commission determines its own rules for decision-making.

B. Final PrepCom Resolution

The negotiated solution, adopted by the Conference on April 30, allows PrepCom to:

- exercise the powers and functions assigned to it in Resolution II on the protection of preparatory seabed investments.

- undertake studies on the problems encountered by developing land-based producers likely to be most seriously affected by the production of the Area.

- establish a special commission for the Enterprise, which will "take all necessary measures for early entry into effective operation" of that organ.

- begin meeting between 60 to 90 days after 50 States sign or accede to the Convention. PrepCom will be financed from the United Nations' regular budget and serviced by the United Nations Secretariat. It will remain in existence until the end of the first session of the Assembly of the

International Seabed Authority.

- apply the Conference's rules of procedure with respect to the adoption of the Commission's rules. The Conference's rules apply to the adoption of the Commission's rules, and thereafter the Commission determines its own rules for decision-making. (The Conference's rules provide for the taking of substantive decisions by a two-thirds majority -- including a simple majority of all participants -- but with no voting to take place unless the Conference decides, also by a two-thirds majority, that all efforts to achieve consensus have been exhausted.)

In terms of participation in PrepCom, only States and other entities, e.g., associated states, which sign the Convention can be members of the PrepCom and participate in the taking of decisions. States which have not signed or acceded to the Convention and other entities which were observers at the Conference may participate in the PrepCom as observers.

V. PARTICIPATION IN THE CONVENTION

A. Negotiations

Conference President Koh conducted a number of informal Plenary sessions to complete work on the question of what entities can participate in the Convention, one of the issues formally designated as remaining to be negotiated. The basis

for negotiation was contained in reports of the Conference President on Articles 305 (Signature), Article 306 (Ratification and formal confirmation), Article 307 (Accession) and Annex IX (participation by international organizations). Debate focussed on three separate categories of potential participants: intergovernmental organizations (primarily integrated economic organizations); associated states and territories which enjoy full internal self-government, are recognized by the Organization of African Unity or League of Arab States and were observers at the Conference; and "national liberation movements".

Negotiations at previous sessions of the Conference had actually brought the questions of intergovernmental organizations and associated states and territories to near-completion, and few issues regarding them were left to be resolved at this final Conference session. Thus, the delicate question of participation by "liberation movements" was a major focus of the final consultations. Following the Plenary sessions on March 29 to April 1, a number of small group consultations were chaired by Conference President Koh to discuss these issues.

B. Final Resolution

The negotiated solution, adopted by the Conference on April 30, (Appendix O), includes the following elements.

International intergovernmental organizations, such as the European Economic Community, and associated states and territories that enjoy full internal self-government recognized by the United Nations can be signatories of the Convention. In addition, the Convention is subject to formal confirmation by the international organizations or ratification by the associated states and territories, and shall be open for accession by each of these entities. Finally, all signatories of the final act may participate in the deliberations of the PrepCom as observers.

With regard to "national liberation movements", those liberation movements which have been participating in the Conference shall be entitled to sign the final act in their capacity as observers; they may not sign, ratify or accede to the Convention. Observers who have signed the final act, but who are not referred to in Article 305(b),(c),(d), or (e) (Signature), have the right to participate in the ISA as observers. Finally, signatories of the final act may participate in the deliberations of the PrepCom as observers.

At a late stage in the proceedings, the United Nations Council for Namibia proposed that the Treaty be amended to include Namibia in the category of States in Article 305 (Signature). After consultations, it was agreed between the Council and the contact group that Namibia, represented

by the Council, would be listed as a participant in a separate subparagraph of Article 305 and would be able to participate in the PrepCom (Appendix P). Namibia is also eligible to sign the Convention.

VI. COMMITTEE II

Committee II, which was responsible for traditional non-seabed mining issues, held three informal sessions and one formal meeting during this final session of the Conference. At those meetings, further debate took place on issues that various delegations viewed as not yet commanding a consensus in the Conference. Many old issues were revived, but most of the debate centered on only a few articles.

A. Navigation Through Territorial Seas

The most prominent of the informal debates was on the suggestion to amend Article 21 (Laws and regulations of the coastal State relating to innocent passage) to require prior authorization or notification for warships entering the territorial sea (Appendix Q). This proposal was pressed by a number of delegations, including Romania, Morocco, the Philippines and Panama, all of whom perceived such prior notice or authorization as being necessary for the protection of coastal State security interests. The proposal was strongly opposed on the merits by a number of delegations, including the US and other major maritime states. The Soviet

Union and the Eastern European States (excluding Romania) opposed the proposal on the merits and on the additional ground that there should be no changes whatsoever to any of the texts. Many States, in fact, took the position that the delicately negotiated balance reflected in the Draft Convention should not be disturbed.

In answer to incessant appeals by the proponents of the change, the Chairman of Committee II held a series of informal consultative meetings with interested delegations, in order to explore the possibilities of a compromise. During these meetings, the proponents of the change alluded to a number of possible compromise solutions, including a requirement for prior notification only, a requirement for prior notification outside of generally recognized sealanes, or the addition of a reference to "security" added in Article 21(1)(h). None of these suggestions was acceptable to the maritime powers. Thus, the Committee chairman was forced to conclude that there was no possibility of a consensus change to the text concerning the Article 21 issue.

During the fourth stage of the Conference's work program, April 13 to 22, two formal amendments were submitted relating to this subject. The first proposal, sponsored by Gabon, would have changed Article 21 to permit coastal States to require prior authorization or notification for warships

entering the territorial sea (Appendix R). The second amendment, co-sponsored by approximately 30 states, sought the inclusion of a reference to "security" in Article 21 (1)(h), so as to permit the coastal State to promulgate "security" regulations that would cover warships (or even commercial vessels) entering the territorial sea (Appendix S).

As part of his overall efforts to minimize the number of votes on substantive issues, Conference President Koh conducted intensive consultations concerning withdrawal of the proposed changes to Article 21. As a result, the sponsors of the amendments agreed not to press the amendments to a vote, on the understanding that President Koh would make a statement in the Plenary to the effect that the sponsors were of the view that the existing text of Article 21 was without prejudice to the right of coastal States to safeguard their security interests in accordance with the provisions of Article 19 (Meaning of Innocent Passage) and Article 25 (Rights of Protection of the Coastal State). The statement was compatible with the provisions of the draft text, which were carefully negotiated to preserve pre-existing law, precluding coastal State discrimination against warships in their exercise of the general right of innocent passage.

B. Straits Provisions

Although there was no direct reference to the straits

articles in the Committee II debates, Spain submitted four formal amendments concerning straits (Appendix T) and pressed two of them to a vote. The first of these two amendments attempted to delete the word "normally" from Article 39(3) (Duties of ships and aircraft during transit passage) which would have had the effect of making absolute the requirement that State aircraft comply with ICAO rules of the air regarding safety measures. The second amendment, more technical in nature, would have replaced the word "applicable" by the words "generally accepted" in Article 42(1)(b) (Laws and regulations of States bordering straits relating to transit passage). The first amendment, which the US strongly opposed, was soundly defeated by a vote of 21 in favor, 55 against, with 60 abstentions. The second amendment failed to receive a simple majority of states registered at the session and thus, under the rules of procedure, was not adopted.

Negotiations concerning the correct interpretation of the straits provisions with respect to the Malacca and Singapore straits continued between the maritime user States and the littoral States and were concluded at this session of the Conference. Malaysia, on behalf of the littoral states, submitted a letter to the Conference President containing a statement relating to Article 233 (Safeguards with respect to straits used for international navigation). The statement

incorporates an understanding which takes cognizance of the peculiar geographic and traffic conditions in the straits, and which recognizes the need to promote safety of navigation and to protect and preserve the marine environment in the straits. This understanding was subsequently confirmed by letters from major user states. These letters constitute a part of the permanent records of the Conference (Appendix U).

C. Abandoned Installations, Structures

The Chairman of Committee II reported out only one informal amendment as being conducive toward enhancing the possibility of consensus. This was the UK proposal concerning Article 60(3) (Artificial islands, installations and structures in the exclusive economic zone). The amendment modified the requirement that abandoned installations in the exclusive economic zone and on the continental shelf be entirely removed. Debate in the Committee and in the Plenary demonstrated that the proposal had widespread support, once the UK delegation made clear that the amendment contemplated the expeditious adoption of binding international standards, and that the UK intended to cooperate immediately in the development of such standards. Accordingly, the Conference President and the Collegium were able to recommend that the proposed amendment be incorporated into the treaty without a vote (Appendix V), as follows:

> Any installations or structures which are abandoned or disused shall be removed to ensure safety of navigation, taking account of any generally accepted international standards established in this regard by the competent international organization. Such removal shall also have due regard to fishing, the protection of the marine environment and the rights and duties of other States. Appropriate publicity shall be given to the depth, position and dimensions of any installations or structures not entirely removed.

D. Fisheries

An effort also was made at this final negotiating session of the Conference to encourage increased cooperation for the conservation of "straddling stocks" by incorporating a change in Article 63 (Stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it). While this suggestion promoted by Canada and Argentina, among others, received widespread support in the Committee, the possibility of consensus approval was blocked by Soviet Union objections on both procedural and substantive grounds. A formal amendment on this issue was proposed by eight states (Appendix W), but not pressed to a vote as a result of Conference President Koh's efforts to avoid as many votes as possible on substantive issues.

E. Delimitation of Maritime Boundaries

Venezuela put forward a proposal that would permit reservations to three articles regarding the delimitation of maritime boundaries. The articles were Article 15 (Delimita-

tion of the territorial sea between States with opposite or adjacent coasts), Article 74 (Delimitation of the exclusive economic zone between States with opposite or adjacent coasts), and Article 83 (Delimitation of the continental shelf between States with opposite or adjacent coasts). Venezuela, however, decided not to press for a vote on its proposal, throwing its support instead to a Turkish proposal to delete Article 309 (Reservations and exceptions). This article prohibits all such reservations unless expressly permitted elsewhere in the Convention. Opposition to the Turkish proposal was widespread, since an open door on reservations would have frustrated the "package deal" underpinnings of the entire Committee II text. The proposal was overwhelmingly defeated by a vote of 19 in favor, 100 against, with 26 abstentions.

F. Conclusion

All other amendments affecting Committee II issues were not pressed to a vote at the final stage of the Conference. In sum, the carefully negotiated balance reflected in the Committee II texts, particularly those dealing with navigation and overflight issues, was preserved at the Eleventh and final negotiating session of the Conference.

VII. Transitional Provision

A. Negotiations

The former text of the Transitional Provision was incor-

porated into the Draft Convention (Appendix X) to ensure that rights established or recognized by the Convention to the resources of a territory would vest in the inhabitants thereof, even though the people had not attained either full independence or some other self-governing status recognized by the United Nations or were inhabitants of another, specified type of territory. The text of the second paragraph in the Draft Convention stated that parties involved in a dispute over the sovereignty of a territory should refrain from exercising the rights vested in them by the provision until settlement of the dispute is achieved under the auspices of the UN Charter.

Throughout the work of the Conference, the US and others voiced strong objection to the inclusion of this Transitional Provision regarding the resource rights of dependent territories, in that it raised questions of a political nature that transcended the law of the sea negotiations. Because of this opposition, the subject was injected into the consultations conducted by Conference President Koh. As a result, the Transitional Provision was substantially modified in form and substance.

B. Final Resolution

The Transitional Provision adopted at the Conference was incorporated into a separate Conference Resolution (Appendix Y).

The revised provision eliminates the reference to vesting of rights in the inhabitants of territories and, instead, states that the rights and interests under the Convention shall be implemented for their benefit, with a view to promoting their well-being and development. The second paragraph of the provision was modified as follows:

> 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.

VII. DRAFTING COMMITTEE

Meetings of the Drafting Committee's six Language Groups and coordinators continued throughout the session, although a severe shortage of facilities hampered the work of the coordinators in the last three weeks of the Conference. The US continued to serve as English language coordinator.

Having completed Part XI during the intersessional meeting, the Drafting Committee worked on Annexes III and IV. In addition, it was directed by the Collegium to take up, as a priority matter, the PIP, PrepCom and Transition resolutions,

as well as the new Annex IX. Although these texts prevented the Drafting Committee from making very much progress in its other work, the Collegium insisted that the Committee continue to concentrate on them. This was the case even after it became clear that the PIP resolution was being fundamentally renegotiated.

The English Language Group completed its analysis of the English version of the text, with the exception of Article 1 and the Preamble. In addition, the Group completed work on all proposals from other language groups through Article 7 of Annex III. The Coordinators were significantly further behind and, in fact, did not complete work on Annex VI, which the language groups finished during the Tenth Session.

The US delegation, supported by other members of the English Language Group, insisted on receiving translations of changes proposed by other language groups even if such changes were intended to apply to that language only. The US delegation believed that, if drafting a treaty in six equally authentic languages were to succeed, it was vital that the US be in a position to examine the texts in all languages for substantive harmonization and concordance.

The Drafting Committee will meet for five to six weeks in July-August, 1982, in Geneva to complete all outstanding issues. An informal Plenary will meet in New York from

September 22 to 24, 1982, to review and adopt Drafting Committee recommendations.

The President should decide that the U.S. will not sign the treaty and should announce his decision without any delay beyond the completion of the RSA process.

Arguments in Favor

° would best enable the U.S. to avert preemptive decisions by our allies to join the treaty.

° would provide maximum opportunity for successfully campaigning to bring the allies into an alternative mining regime (i.e., mini-treaty).

° would demonstrate decisiveness on the part of the Administration.

Arguments Against and Counterarguments

° would cripple the effectiveness of the U.S. in the remaining Conference processes.

Counter:

The U.S. should not participate in any further Conference processes, because:

- °° participation would send a confusing signal to our allies concerning our real intentions re: signature of the treaty and our desire to create an alternative regime with them;
- °° participation would create the appearance of indecisiveness or lack of resolve on the part of the Administration;
- °° participation could give rise to an adverse reaction from those who plan to sign the

treaty and feel that a continued U.S. presence in the Conference processes would be an attempt to have it both ways;

° would upset the allies by forcing them to choose openly between support for the U.S. and a mini-treaty and support for the G-77 and the LOS treaty and could thus prove counterproductive.

<u>Counter</u>:

The allies should be forced to choose. Any uncertainty regarding the U.S. position will enable them to conclude that their siding with the G-77 and the LOS treaty will not have a significant effect on relations with the U.S.

° could make it more difficult for the allies to act as surrogates for the U.S. in future Conference processes, (e.g., Drafting Committee, and Caracas session where interpretative statements will be made) should we decide not to participate.

<u>Counter</u>:

The allies should be pressed to abandon the LOS process entirely; their participation would make it very much more difficult to pull them out of the LOS treaty and into a mini-treaty.

file
LOS

THE WHITE HOUSE
WASHINGTON

June 9, 1982

Bill, Mike wonders if you would do the following:

1) Get copy of the testimony referred to by Keating in his note.

2) Check with Kronmiller about hearings and witnesses. (Who were they, etc.)

3) Get from Guhin or Kronmiller a report on the IG meeting.

4) Draft a memo to Harper and Meese, attaching the Keating material sans Keating's and my remarks.

Susannah

To: Mr. Michael Wollmann

US Inaction on Sea Law Hit

By RUTH PEARSON
Journal of Commerce Special

UNITED NATIONS — The former chief negotiator for the U.S. delegation to the Law of the Sea Conference, Leigh S. Ratiner, said the United States made a mistake in voting against the treaty April 30.

On that date, the U.S. delegation and the representatives of four other governments voted "no," while other governments abstained and 130 voted in favor of the adoption of the world's first comprehensive sea law treaty.

"Speaking as a conservative," Mr. Ratiner said Wednesday night at the House of the Bar Association, "I am appalled at the prospect that my country will allow the rest of the world, including our closest allies, to establish a new global institution for the regulation, management and even the protection of globally shared resources and do it successfully without the participation of the United States.

"I can think of no worse precedent for my country," Mr. Ratiner continued, "than to have it proven to the rest of the world that they can do quite well without us. And that is a public policy issue the Reagan administration has to face now."

Although Mr. Ratiner agreed that the United States should not be part of the treaty in its present form, he said there are other considerations that are more important.

"Our closest friends and allies are going to join this treaty and in my judgment, the socialist bloc, which abstained in the voting on the treaty on a small and minor point, will eventually join the treaty.

"Virtually all of the Third World except for one or two governments on which the United States may be able to apply special pressure will also join the treaty," he said.

"This treaty will enter into force rapidly," Mr. Ratiner went on. "The terms of the treaty make it easy for it to enter into force."

Mr. Ratiner said the officials who drafted the U.S. delegation's negotiating instructions were the same people who previously had been overruled by President Reagan when he decided that the United States would make a serious effort to obtain an economically viable treaty from the conference.

'Our closest friends and allies are going to join this treaty, and in my judgment the socialist bloc eventually will join.'

The instructions the delegation was given, Mr. Ratiner said, were not the same as the president's objectives. "Our instructions were far more detailed, far more circumscribed, far more constricting than what we publicly told the world our objectives were," he said, adding that the instructions made it impossible for the delegation to make the pragmatic compromises necessary for achieving the ends desired.

"Had it not been for our ocean mining industry and a few ideologues in the Department of State," Mr. Ratiner said, he would be defending the final treaty, as a conservative, on its merits.

The United States has transferred its technology to Japan, the United Kingdom and Germany, he said. And the capacity to raise finance for ocean mining, he went on, "is entirely conditional on the creation of a consortium of banks." Bank of America, he said, cannot afford to finance 10 ocean-mining projects. Neither can Chase Manhattan.

"There will have to be a consortium of banks from around the world to finance just 10 ocean-mining projects," he said. "We are talking in 1982 dollars of $15 billion if all those 10 ocean-mining projects were to come into effect today. We are probably talking about $25 billion to $30 billion by the time it begins in 1995 or the year 2000, which is the earliest possible time for commercial seabed production.

But Mr. Ratiner warned that raising $25 million to $30 billion for a venture which 156 out of 157 countries claim the United States has no legal right to will be impossible.

He also warned that an ocean mining mini-treaty signed by a few industrialized countries outside of the international treaty also is out of the question.

"Anyone who thinks that ocean mining will now occur under a mini-treaty between countries like the United Kingdom, Japan, France and Germany, who won't touch a mini-treaty with the United States at this point in time since it would be political and economic suicide is probably foolish," he said.

Dear Mike,
Leigh Ratiner will give testimony on the LOS treaty to the House Foreign Affairs Committee on June 17th. Industry is angry over the position he has taken.
Bob Keating

Note for Bob Keating: 4 June 1982

Is it possible, through your industry contacts, in France and the United Kingdom, and possibly Federal Republic of Germany, to obtain any assessment of popular or interest group positions on the Law of the Sea Convention -- if they have addressed such.

This might provide some answers to the questions about the nature and extent of domestic pressures in those countries for or against the signature and ratification of the Convention. There, as here, the Government sometimes takes one position which might be overcome by domestic forces once they are aroused -- on either side of the coin.

In this connection, it might be worthwhile to tabulate the domestic (U.S.) groups which might be vocal on one side or the other: mining industry, general industry, patent lawyers, environmental groups, 'internationalist' groups, isolationist groups, etc. I would assume that there is an equally wide spread in other countries. Also, is it the sort of thing which might generate political steam, in these nations with fragmented political parties and coalitions necessary for stable governments?

We need to know both sides of this equation. The subject may be of minor interest to most of the citizens, but that does not prevent small, but vocal or vociferous groups from carrying the day.

file LOS

Charles F. Barber

Chairman of the Finance Committee

June 9, 1982

Dear Bob:

Thank you for alerting me to the issue now pending with respect to the delay in announcing the Administration's position on the LOS treaty. Your concerns are clearly in order. I will be alert to an opportunity to help.

Yours sincerely,

Charles F. Barber

CFB:bc

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

Bill,
Chuck Barber is also chairman of the American Mining Congress.
Bob