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DEPARTMENT OF STATE

Washington, D.C. 20520

file LOS

July 15, 1982

TO: IG

FROM: Julie Reardon
632-3529

SUBJECT: Draft Testimony for Ambassador Malone

Attached is a draft of Ambassador Malone's testimony before the House Merchant Marine and Fisheries Committee. The hearings are scheduled for Tuesday, July 20; however, copies of the testimony must be delivered to the Committee tomorrow afternoon.

I would appreciate receiving, by telephone, any comments that you might have no later than 10:00 a.m., Friday, July 16.

I will assume clearance if I do not hear from you

Draft

Testimony

by

James L. Malone
Assistant Secretary of State for
Oceans and International Environmental
and Scientific Affairs

and
The President's Special Representative
for the Law of the Sea Conference

July 20, 1982

Mr. Chairman, Members of the Committee:

It is a pleasure to appear before you today to review the results of the Eleventh Session of the Law of the Sea Conference. You had asked that I summarize briefly our efforts to achieve the President's objectives at the Eleventh Session of the Law of the Sea Conference. You also indicated an interest in the alternatives available to the United States with respect to future oceans policy.

As you are aware, on July 9, the President announced his decision to not sign the Law of the Sea Treaty as adopted on April 30, 1982. With your permission, I would like to request that the President's statement be made a part of the record.

When the President indicated on January 29 that the US would return to the law of the sea negotiations and work with other countries to achieve an acceptable treaty, we had hoped that the final Convention would be one that we could

sign. The President emphasized that the United States remained committed to the multilateral treaty process for reaching agreement on law of the sea.

It was in this spirit that the United States went to the Eleventh Session of the LOS Conference. The US delegation demonstrated its flexibility in a variety of ways and exerted every effort to find pragmatic solutions. We adjusted our proposals in terms of timing and format to meet the concerns of the Group of 77. Indeed, mid-way through the Conference, we sought changes in our instructions to break the negotiating deadlock.

Despite our efforts and those of a number of other countries to encourage negotiations, I must report that no meaningful negotiations in fact took place. The attitude of many countries and groups was resistant to making changes that might have made it possible to meet our concerns. As a result, we are left with a law of the sea treaty that, as President Reagan recently indicated, ignores the misgivings of those countries that produce more than sixty percent of the world's gross national product and provide more than sixty percent of the contributions to the United Nations. Included in these countries are those who have, or are likely to develop, seabed mining technology. I would therefore have to say that, from my point of view, the negotiations on the seabeds provisions represent a major failure

of multilateral diplomacy, in that important concerns of countries were not taken into account.

There are, of course, positive elements in the treaty that demonstrate what can be accomplished through multilateral diplomacy if a serious effort to find solutions and to reach compromises is expended by all.

I would like to emphasize that the United States went to the Conference prepared to work and negotiate with other countries to find mutually acceptable solutions that not only would have satisfied our objectives but would have provided a fair and balanced system promoting the development of deep seabed resources and benefiting all nations.

I cannot, of course, say what the results might have been had such negotiations taken place. It is possible that the final outcome would have been the same. However, I believe that, had the opportunity been given, the majority of delegations would have recognized that the United States and the co-sponsors of its final amendments were not seeking to change the basic structure of the draft treaty. We did not try to destroy the system; rather, we sought to make it work to the benefit of all nations by enhancing seabed resource development.

On April 30, the Conference adopted the treaty text by a vote of 130 in favor, four against, with 17 abstentions. The three states other than the US that voted against the treaty's adoption were Israel, Turkey and Venezuela, and the 17 states

abstaining included the UK, FRG, Belgium, Holland, Luxembourg, Italy, Spain, Thailand, the Soviet Union and other Eastern European nations, except for Romania. While the reasons which prompted these countries to abstain or vote against the treaty were varied and not neccessarily the same as ours, the number of countries expressing their displeasure with the treaty text was of significance.

The decision to call for a vote and to cast our vote against the treaty was not taken lightly. The United States was centrally involved in the Conference process at every stage since its inception and it was not easy to turn our back on these efforts. We did not easily dismiss the personal commitment and dedication of hundreds of delegates who had worked for years for this agreement, even when many of them, in the end, opposed us.

I would like to take special note of the effort of the so-called Group of Eleven (Australia, Austria, Canada, Denmark, Finland, Iceland, Ireland, New Zealand, Norway, Sweden and Switzerland). These countries prepared their own set of amendments which they hoped would serve as a basis for negotiations between the US and the G-77. The Group of Eleven proposals provided a basis for addressing some US concerns,

but other elements fell considerably short of the US objectives. More importantly, many US concerns were not addressed at all by the Group of Eleven proposals (e.g., production limitation, decision-making and participation in the Convention by national liberation groups). The Group of 77 insisted that the US and its allies accept the G-11 proposals as an exhaustive negotiating agenda. We could not agree to this.

I would next like to make the following general assessment regarding the text of the Law of the Sea Convention as it was finally adopted on April 30.

No significant changes were made to the navigation and overflight provisions. Those portions of the treaty dealing with these issues and many other non-seabed provisions of the treaty, while not optimal, are generally consistent with US interests.

However, the deep seabed mining provisions do not even minimally meet US objectives. I would like to recall at this point that the President set out six objectives in his statement of January 29, 1982. I must report that none of these objectives was achieved. As a result, the Law of the Sea Treaty is seriously flawed.

The regime which the treaty would create would seriously discourage private investment in deep seabed mineral production. There would be a fundamental lack of certainty in regard to the

granting of mining contracts and mandatory technology transfer requirements. The treaty would impose burdensome financial requirements.

The rules and regulations to be developed in the Preparatory Commission will not cure these defects.

The Resolution on Preparatory Investment Protection also fails to correct these defects of the treaty, and only creates additional problems of its own. The resolution would require a pioneer investor, such as one of our existing United States mining companies, to submit a mining application that covers an area sufficient for two mining operations; to relinquish to the Enterprise at least 50% of its exploration area within eight years after allocation; and to assume heavy financial obligations.

The financial obligations would include payment of $250,000 on registration by the Preparatory Commission; the accrual of a one million dollar annual fee payable upon approval of a plan of work when the Convention enters into force; payment of $250,000 for processing a plan of work; and diligence requirements to be established by the Preparatory Commission.

Additional obligations for a pioneer investor include exploration of the reserved area (on a reimbursable basis) at the request of the Preparatory Commission; training of personnel designated by the Preparatory Commission; and the transfer of technology prior to entering into force of the treaty.

The treaty would create a privileged competitor, the Enterprise, whose advantages could make it extemely difficult, if not impossible, for private ventures to compete -- at least absent national subsidies. A supranational monopoly over deep seabed mineral production could thus result. In effect, this could destroy the parallel system, which was the heart of the compromise worked out several years ago, as these provisions tend to discourage or even prevent any kind of deep seabed mining under the treaty.

I believe it is accurate to say that there is a consensus among US deep seabed mining consortia companies that they could and would not carry out commercial mining under the treaty. This is a great disappointment to all those who have worked for years to create conditions which would encourage the development of a new industry that could benefit the nations of the world.

Beyond the practical problems which it creates for seabed mining, the Convention presents other serious difficulties. The decision-making system of the International Seabed Authority would be so structured that the US and other potential deep seabed mineral producers and consumers would be unable to influence many important policy and operational decisions.

The treaty provides for a review conference which, after five years of negotiations, may adopt amendments to the deep seabed mining regime that would automatically enter into force for the US upon approval by three-fourths of the States

Parties and thus effectively by-pass Senate advice and consent. Our only recourse would be denunciation of the Convention.

The Convention would allow funding for liberation groups.

The Convention would artificially limit deep seabed mineral production and would permit discretionary and discriminatory decisions by the Authority if there is competition for limited production allocations.

It was for these reasons that the US could not agree to the adoption of the final text by consensus. Instead, it asked for a vote and, on April 30, voted against the Treaty's adoption.

I have provided to the Committee copies of the unclassified US delegation report which describes the Conference session, our negotiating efforts and our assessments of the text in greater detail.

Some people have suggested that we should have agreed to the treaty because it is the only means of assured access for the US to seabed minerals. As I have noted earlier, this treaty does not in fact provide assured access. The procedures for granting contracts are not automatic and there is no way that a company or a nation can be certain that it will secure authorization by the International Seabed Authority to mine. In reality, it is highly unlikely that there will be investment in seabed mining under the treaty unless governments are willing to subsidize their companies or mining entities.

However, even if the treaty were satisfactory in this respect, it would not constitute the only means of access.

We reject the proposition that all nations of the world are bound by the seabed provisions of the LOS treaty whether or not they have signed the treaty.

It has been suggested that we have sacrificed commercial interests in the deep seabed for some goal of ideological purity. This misrepresents the aims of this Administration. In the first place, we dealt largely with very concrete issues. The treaty creates very real practical problems for deep seabed mining which have nothing to do with ideology. Secondly, there are important matters of principle involved--but these are not important just to us but to other nations as well. One cannot dismiss these concerns as insignificant. They were of over-riding importance to many members of the Group of 77, who saw these issues as very relevant to other North-South negotiations.

The technology transfer issue is a case in point. The implications of agreement in the LOS context would go far beyond these negotiations. Other delegations recognized that fact from the beginning. It would have been foolish to have pretended it was not true.

The United States could not go along with a treaty that so clearly thwarted many important US oceans interests. Further, I do not believe that the treaty which was adopted on April 30 had any chance of receiving approval by the Senate. In my opinion, to have done other than to vote against the treaty would have been an act of bad faith.

Looking to the future, there are three stages of the Conference remaining. First, the Drafting Committee is meeting in Geneva for five weeks this month and next to complete its review of the text. Second, an informal Plenary will meet in New York on September 22-24 to adopt the final drafting committee changes. The Final Act will be opened for signature in Caracas in early December. The United States will participate in the remaining conference process at a technical level and will be concerned with those provisions that serve US interests.

The Administration has just commenced the development of a national oceans policy. We are starting to carefully examine the actions which the United States must take to protect and enhance its ocean interests outside of the LOS Convention. It is too early at this time to state what these actions might be, but we believe that we should be prepared not only to meet any challenges to traditional maritime activities, but to take new initiatives to assure the orderly development of oceans resources in response to market forces. We will consult with other countries with common oceans interests, as bilateral and multilateral cooperation will be an essential element of the new policy.

We will also work closely with this Committee and with other committees in Congress concerned with the area of law of the sea.

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STATEMENT BY THE PRESIDENT

The United States has long recognized how critical the world's oceans are to mankind and how important international agreements are to the use of those oceans. For over a decade, the United States has been working with more than 150 countries at the Third United Nations Conference on Law of the Sea to develop a comprehensive treaty.

On January 29 of this year, I reaffirmed the United States' commitment to the multilateral process for reaching such a treaty and announced that we would return to the negotiations to seek to correct unacceptable elements in the deep seabed mining part of the Draft Convention. I also announced that my administration would support ratification of a Convention meeting six basic objectives.

On April 30 the Conference adopted a Convention that does not satisfy the objectives sought by the United States. It was adopted by a vote of 130 in favor, with 4 against (including the United States) and 17 abstentions. Those voting "no" or abstaining appear small in number but represent countries which produce more than sixty percent of the world's Gross National Product and provide more than sixty percent of the contributions to the United Nations.

We have now completed a review of that Convention and recognize that it contains many positive and very significant accomplishments. Those extensive parts dealing with navigation and overflight and most other provisions of the Convention are consistent with United States interests and, in our view, serve well the interests of nations. That is an important achievement and signifies the benefits of working together and effectively balancing numerous interests. The United States also appreciates the efforts of the many countries that have worked with us toward an acceptable agreement, including efforts by friends and allies at the session that concluded on April 30.

Our review recognizes, however, that the deep seabed mining part of the Convention does not meet United States objectives. For this reason, I am announcing today that the United States will not sign the Convention as adopted by the Conference, and our participation in the remaining Conference process will be at the technical level and concerned with those provisions that serve United States interests.

These decisions reflect the deep conviction that the United States cannot support a deep seabed mining regime with such major problems. In our view, those problems include:

-- Provisions that would actually deter future development of deep seabed mineral resources, when such development could serve the interest of all countries.

-- A decision-making process that would not give the United States or others a role that fairly reflects and protects their interests.

-- Provisions that would allow amendments to enter into force for the United States without its approval. This is clearly incompatible with the United States approach to such major treaties.

-- Stipulations relating to mandatory transfer of private technology and the possibility of national liberation movements sharing in benefits.

-- The absence of assured access for future qualified deep seabed miners to promote the development of these resources.

We recognize that current world demand and markets do not justify commercial development of deep seabed mineral resources, and it is not clear when such development will be justified. When factors become favorable, however, the deep seabed represents a potentially important source of strategic and other minerals. The aim of the United States in this regard has been to establish with other nations an order that would allow exploration and development under reasonable terms and conditions.

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Send to Bob Keating

CHARLES MATHEWS,PRESIDENT
NATIONAL OCEAN INDUSTRIES ASSOCIATION
1050 17TH STREET NW
WASHINGTON DC 20001

7/15/82

Dear Bill
Hopefully, this meeting can be set up from through your office!
Best
~~ROBERT~~ B. KEATING

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

COPY - TELEX SENT TO MR. MEESE TODAY
DEAR MR. MEESE:
CONGRATULATIONS ON THE PRESIDENT'S ANNOUNCEMENT ON NOT SIGNING THE LAW OF THE SEA TREATY. YOUR LEADERSHIP ON THIS ISSUE IS RECOGNIZED AND DEEPLY APPRECIATED.
WE IN THE INDUSTRY WANT TO HELP YOU OFFSET THE HIGHLY VOCAL MINORITY WHO FAVOR THE TREATY. ACCORDINGLY, WE REQUEST AN OPPORTUNITY TO MEET WITH YOU SOON TO DISCUSS THE MATTER AND HELP LAY THE GROUNDWORK FOR A BROAD BASE OF SUPPORT FOR THE PRESIDENT'S DECISION. SEVERAL OTHER CEO'S AND THEIR SENIOR CORPORATE OFFICERS AND I ARE ANXIOUS TO HELP LEAD THIS EFFORT AND ENCOURAGE ADMINISTRATION EFFORTS TO BUILD ALTERNATIVE ARRANGEMENTS TO SAFEGUARD OUR OCEAN INTERESTS.
KINDLY LET ME KNOW WHEN YOU WOULD BE AVAILABLE FOR SUCH A DISCUSSION.
SINCERELY,
JAMES R. LESCH

09:49 EST

MGMCOMP

Note: James Lesch is Chairman and CEO of Hughes Tool Company and Chairman, National Oceans Industries Association.

file LOS

July 16, 1982

MEMORANDUM

To : Bill Barr
From : Bob Keating

Subject: Decision-Analysis of Alternative Arrangements to Protect U.S. Ocean Interests

Dear Bill:

I again served as technical coordinator (unpaid) of a decision-analysis of alternative arrangements to protect U.S. ocean interests in view of the President's decision not to sign the LOS treaty. This work was done (copy attached) in response to the recent NSDD Directive on the subject. In designing a conceptual framework for the analysis, I asked the following critical questions:

-- What are the issues affecting our ocean interests?

-- Where do we want to end up on these issues?

-- How do we get there?

-- What are the inter-relationships among the possible actions we might take to achieve our goals?

-- What are the expected political, economic, military and legal consequences of non-participation in the LOS treaty, and what do we do about them?

Please give me a call (632-0830) if you have any questions on the analysis.

Bob Keating

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