U.S. POLICY AND THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

HEARINGS

BEFORE THE

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WEDNESDAY, APRIL 29, 1981

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, D.C.

The committee met at 10:28 a.m., in room 2172, Rayburn House Office Building, Hon. Clement J. Zablocki (chairman) presiding.

Chairman ZABLOCKI. The committee will please come to order.

It is a pleasure to welcome Mr. James Malone, head of the U.S. Delegation to the United Nations Third Conference on the Law of the Sea, and Assistant Secretary-designate of the Bureau of Oceans, Environment and Scientific Affairs. Mr. Malone will discuss the status of the negotiations of the 10th session of the Conference.

As my colleagues know, the session met in New York from March 10 through April 17.

Mr. Malone, as you well know, this committee has had a longstanding interest in the Law of the Sea Conference, despite the fact that there are not very many members present here this morning due to other commitments, such as the Republican Conference and various markup sessions of other committees.

Shortly after the Conference officially opened about 8 years ago, members of this committee introduced a sense of Congress resolution encouraging the U.S. delegation to promote agreement on a comprehensive treaty on the Law of the Sea.

Subsequently, committee members have participated in the Department of State's Public Advisory Committee on the Law of the Sea and as advisers to the U.S. delegations. Members of this committee also had attended international conferences elsewhere that were held in Japan and other countries. In the 95th and 96th Congress the committee was actively involved with legislation on the Deep Seabed Hard Minerals Resources Act that was enacted into law in June 1980.

A number of members of this committee had looked forward to the 10th session of the Conference to resolve the remaining issues. The administration, however, decided to review the U.S. policy toward the negotiations and announced this decision only a few days before the opening of the 10th session.

Certainly the administration has a right to conduct a review, and we look forward to being consulted on the review as it proceeds.

I regret particularly the absence of Congressman Bingham and Congressman Bonker this morning. Both asked me to convey their regret at not being here because of longstanding prior commitments.

We look forward to your report on the 10th session of the Conference.

Mr. Malone, you may proceed in any way you wish and, as you are aware, after your testimony we may have some questions.

STATEMENT OF JAMES MALONE, HEAD OF THE U.S. DELEGATION TO THE U.N. THIRD CONFERENCE ON THE LAW OF THE SEA AND ASSISTANT SECRETARY-DESIGNATE OF THE BUREAU OF OCEANS, ENVIRONMENT AND SCIENTIFIC AFFAIRS, ACCOMPANIED BY THEODORE G. KRONMILLER, DEPUTY ASSISTANT SECRETARY FOR OCEANS AND FISHERIES

Mr. MALONE. Thank you very much, Mr. Chairman.

Before I proceed with my statement, I would like to introduce the gentlemen on my right, who is Mr. Ted Kronmiller, the Deputy Assistant Secretary for Oceans and Fisheries. Mr. Kronmiller is with me this morning in his capacity as the head of our review effort.

Mr. Chairman, members of the committee, it is a pleasure to be given the opportunity to speak today about the recently concluded session of the Law of the Sea Conference and the administration's policy review process.

I know that the Law of the Sea has long been of interest to your committee. I would like to assure you at the outset that you and other interested Members of the Congress will be fully consulted during the course of this review.

My statement will attempt to put into perspective this Administration's approach to the Third United Nations Conference on the Law of the Sea and the reasons why we adopted the decision to slow down the negotiating process just as it may have been about to finalize the draft convention text.

Preparation for the Third United Nations Conference on the Law of the Sea began, as is well known, in 1966. During the 15-year history of these negotiations the United States has sought to protect U.S. oceans' interests and has pressed for urgent solutions to what it perceived to be the problems of the Law of the Sea.

The developing countries have approached the negotiations with a different perspective and have sought economic concessions from the industrialized world, chiefly in the deep seabed part of the negotiations. Increasingly important compromises to developing country interests were accepted by our negotiators in order to achieve the protection of U.S. interests as they defined them.

When this administration took office, it was confronted with an informal draft convention on the Law of the Sea containing a number of provisions raising concerns on which I shall elaborate shortly. We were informed that the Conference was on the verge of finalizing this text and that there was expectation that the negotiations would conclude this year—1981.

Many of the provisions of the draft convention prompted substantial criticism from Congress, from industry, and from the American public. There was also some question of whether this draft convention was consistent with the stated goals of the Reagan administration. Therefore, the administration decided that it would be better to face criticism in the United Nations than to proceed

prematurely to finalize a treaty that might fail to further our national interests.

Many comments were made by foreign delegates and in the U.S. press about the manner in which we announced our decision to conduct a policy review and to appoint a new chief negotiator. Let me report to this committee that the decision to conduct the review was made as rapidly as possible, consistent with the many burdens and competing priorities faced by the new administration.

A change in the leadership of the American delegation was essential in order to insure that other countries clearly understood our seriousness of purpose with respect to the review. That action was also necessary in order to send the signal to other delegations that the United States could not be induced to return immediately, and thus prematurely, to the bargaining table by offers of minor technical changes to the draft convention.

I am sure that you can also appreciate that it would be less difficult for a new head of delegation to adhere to a negotiating posture that diverged from our past approach.

The argument has been made by some that the United States is failing to keep its commitments by reviewing its policy and possibly changing its position on subjects of importance. This, in my judgment, is an unconvincing argument. Shortly before the Carter administration took office, leading representatives of the developing countries at the conference rejected treaty provisions they had previously negotiated and demanded substantial changes to the draft text then on the table as the price of future agreement. Those delegates entertained the hope that more favorable concessions could be extracted from a new administration which was thought to be more sympathetic to developing country positions in U.N. forums.

It has always been well understood at the Law of the Sea Conference that a successful treaty must be based on a package deal. The position that the administration will take toward the contents of that package remains to be determined in the course of the review process. No nation is committed to the text in the sense that it is bound by it.

In this regard I would like to quote from the Conference President's preparatory note to the draft convention, and I quote:

> This text, like its predecessor, will be informal in character. It is a negotiating text and not a negotiated text, and does not prejudice the position of any delegation.

Mr. Chairman, let me list for you some of the features of the present draft convention which I referred to earlier as raising concerns. They raise concerns because questions have been raised whether these features are consistent with U.S. interests.

I will not today seek to identify other features of the text which have been considered to preserve or promote other U.S. interests. This will be part of the review process. The areas of concern include the following.

The draft convention places under burdensome international regulation the development of all of the resources of the seabed and subsoil beyond the limits of national jurisdiction, representing approximately two-thirds of the Earth's submerged lands. These resources include polymetallic nodules. They also include mineral deposits beneath the surface of the seabed about which nothing is

known today, but which may be of very substantial economic importance in the future.

The draft convention also would establish a supranational mining company, called the Enterprise, which would benefit from significant discriminatory advantages relative to the companies of industrialized countries. Arguably, it could eventually monopolize production of seabed minerals. Moreover, the draft convention requires the United States and other nations to fund the initial capitalization of the Enterprise in proportion to their contributions to the U.N.

Through its transfer of technology provisions, the draft convention compels the sale of proprietary information and technology now largely in U.S. hands. Under the draft convention, with certain restrictions, the Enterprise, through mandatory transfer, is guaranteed access on request to the seabed mining technology owned by private companies and also technology used by them but owned by others.

The text further guarantees similar access to privately owned technology by any developing country planning to go into seabed mining. We must also carefully consider how such provisions relate to security-related technology.

The draft convention limits the annual production of manganese nodules from the deep seabed, as well as the amount which any one company can mine for the first 20 years of production. The stated purpose of these controls is to avoid damaging the economy of any country which produces the same commodities on land. In short, it attempts to insulate land-based producers from competition with seabed mining.

In doing so, the draft treaty could discourage potential investors, thereby creating artificial scarcities. In allowing seabed production, the International Seabed Authority is granted substantial discretion to select among competing applicants. Such discretion could be used to deny contracts to qualified American companies.

The draft convention creates a one-nation one-vote international organization which is governed by an Assembly and a 36-member Executive Council. In the Council, the Soviet Union and its allies have three guaranteed seats, but the United States must compete with its allies for any representation. The Assembly is characterized as the "supreme" organ and the specific policy decisions of the Council must conform to the policies of the Assembly.

The draft convention provides that after 15 years of production the provisions of the treaty will be reviewed to determine whether it has fulfilled overriding policy considerations, such as protection of land-based producers, promotion of Enterprise operations, and equitable distribution of mining rights.

If two-thirds of the states parties to the treaty wish to amend provisions concerning the system of exploitation, they may do so after 5 years of negotiation and after ratification by two-thirds of the states parties. If the United States were to disagree with duly ratified changes, it would be bound by them nevertheless, unless it exercised its option to denounce the entire treaty.

The draft convention imposes revenue-sharing obligations on seabed mining corporations which would significantly increase the costs of seabed mining.

The draft convention further imposes an international revenue-sharing obligation on the production of hydrocarbons from the continental shelf beyond the 200-mile limit. Developing countries that are net importers of hydrocarbons are exempt from this obligation.

The draft convention contains provisions concerning liberation movements, like the PLO, and their eligibility to obtain a share of the revenues of the Seabed Authority.

The draft convention lacks any provisions for protecting investments made prior to entry into force of the Convention.

Mr. Chairman, on the basis of the foregoing difficulties and others that I have not taken the time to mention, it is the best judgment of this administration that this draft convention would not obtain the advice and consent of the U.S. Senate. Of course, since the treaty would require implementing legislation, the House would also have a major role that must be considered.

We have reason to doubt that the House of Representatives would pass the necessary legislation to give effect to a treaty containing provisions such as these. The provisions that I have mentioned raise questions for this administration. We must seriously consider whether those provisions should be included in a treaty to which the United States would become a party, unless there were a countervailing national interest.

The review will evaluate all of our national interests and objectives, including national security, to determine the extent to which they are protected by the draft convention, to identify necessary modifications to the draft convention. The review will also examine with great care whether these same interests and objectives would fare better or worse in the absence of a treaty.

During the course of the review, we will consult with the Congress, with other nations, including our principal allies, and with a broad spectrum of the private sector. We anticipate that this will be a fairly lengthy process. The administration believes that any decision concerning a subject as comprehensive and complex as this one must be taken with deliberation and with keen understanding of foreign and domestic reactions.

Accordingly, we have determined that the policy review process cannot be fully completed before the resumed 10th session of the Law of the Sea Conference in Geneva this August. We must have time to ensure adequate opportunity to test our tentative views with the widest possible number of countries.

At the recently concluded session of the Conference, disappointment and apprehension were indeed registered at the decision of the United States to undertake such a sweeping review, although this reaction was not universal. The administration realizes the concern and disappointment that this decision has engendered. However, we feel strongly that the American people would wish to see this review occur, rather than being plunged headlong into this treaty.

We think that the world community, too, will be better served if we return to the Conference with a realistic assessment of what will satisfy our people and our Congress. The administration does not wish to be in a position of misleading other countries into concluding a treaty they will expect us to ratify, a treaty which in

many respects is believed by them to satisfy our national interests, and then find that the United States is unable to participate in the final result.

As could have been expected in the light of the U.S. position the session in New York this spring was, relative to previous sessions, an inactive one. We were not in a position to negotiate on substance and, because our participation is vital to the formation of consensus, participants in the Conference were unwilling to proceed wthout us. There was some activity, however, which I will now briefly summarize for you.

The first week of the Conference was devoted to electing a President to succeed the late Ambassador Hamilton Shirley Amerasinghe of Sri Lanka. Ambassador Tommy Koh of Singapore, an able and experienced diplomat, was elected to replace him.

In Committee I, that is the committee dealing with seabed mining, Chairman Paul Engo of the United Republic of Cameroon focused attention on the draft resolution setting up the Preparatory Commission, known as the PrepCom, of the International Seabed Authority.

The developing states attacked, and the developed states defended, the requirement set out in the text that the rules, regulations, and procedures adopted by the PrepCom be applied by the Seabed Authority until others are recommended to the Assembly by a consensus of Council members and are adopted by the Assembly. Some developed countries, with the United States reserving its position at this session, have regarded this approach as essential to assuring those ratifying the treaty that the Seabed Authority would operate in a foreseeable manner.

Participation in the PrepCom, the so-called ticket of admission problem, was also debated. Those industrialized countries expressing a view preferred that signatories of the final act of the Congress be full participants in the work of the PrepCom and in its decisionmaking procedures in order to provide the broadest possible participation.

The developing countries wanted membership reserved to those states which had expressed the intent to become parties to the treaty by signing it. The developing states at that point offered a compromise that would have allowed those states that had signed the final act of the Conference but not the treaty itself to participate as observers in the PrepCom's work. Other Committee I issues were treated only superficially.

The U.S. delegation confined its participation in the seabed discussions to several brief interventions reserving our position pending completion of the review.

Committee II, which deals with the navigation and coastal state jurisdiction, held four informal meetings without agenda to permit delegations to raise any questions deemed important to them. Some states favored requiring prior authorization or notification of warship passage in the territorial sea. Of the approximately 70 states which expressed views on the subject, roughly one-half favored the amendment and one-half opposed it. Among those favoring the amendment, a small number thought notification alone might be acceptable.

Brazil argued that the text should be revised to exclude military exercises in the exclusive economic zone unless authorized by the coastal state. This proposal received support and opposition along the same lines as did that relating to warship passage.

Argentina pressed its suggestions for a change in the text to provide for cooperation among affected states for the conservation of so-called "straddling stocks," that is, fish stocks found both within and without the exclusive economic zone.

Disagreement continued to be expressed as to the relative weight to be placed upon "equitable principles" and the "median or equidistance line" in the formula for the delimitation of maritime boundaries of the exclusive economic zone between opposite and adjacent states. Finally, there was some discussion concerning artificial islands.

At the conclusion of the Committee II meetings, Chairman Aguilar of Venezuela noted that while there were widely divergent views expressed, a practical consensus existed along the basic lines of the Committee II package and that there remained only a very few questions of interest to a substantial number of delegations. As in the case of Committee I, no changes in the text emerged as a result of work regarding Committee II subjects.

Committee III, dealing with marine scientific research and pollution, met only once in the session. Chairman Yakov of Bulgaria stated that, in his view, negotiations had been completed at the ninth session and that any attempt to reopen substantive negotiations would seriously endanger the compromises already achieved.

Several delegations expressed agreement with these views. The United States once again reserved its position on the status of the work of the committee pending the outcome of our review. Further, the United States made clear that there also remained several minor, essentially technical changes that needed to be discussed at some point.

The drafting committee did extensive work directed toward conforming and harmonizing the texts. However, a great deal of additional work confronts that committee for the future.

Finally, the Conference scheduled a 4-week session beginning August 3 in Geneva with the option to extend the Conference for an additional week. Five weeks prior to the August resumed session will be dedicated to drafting efforts.

In closing, Mr. Chairman, I would like to emphasize that it is our intent to keep members of this committee and other interested members fully informed throughout the policy review. We will welcome your views, and you in turn may expect from us a candid and continuous reporting of our progress.

Thank you, Mr. Chairman, for giving me the opportunity to appear before you today, and at this time I stand ready to answer your questions.

Chairman ZABLOCKI. Thank you, Mr. Malone, for your statement. As you say, it gives food for thought and raises some very serious questions.

I understand, Mr. Malone, a copy of the report of the U.S. delegation will be sent to the committee; and therefore, I would ask unanimous consent that when we receive this report—which I

understand won't be long from now, that—if there is no objection, the report will be inserted in the record at this point.

Is there objection? The Chair hears none. It is so ordered.[1]

Chairman ZABLOCKI. At the very outset I wish to commend you, Mr. Malone, for your statement and assurances that there will be full consultation with interested Members of Congress during the course of the policy review. I would like to ask a few questions about the scope of the review.

As I understand, it is quite comprehensive. Is it to be so comprehensive as to cover all components of the draft convention, or is it to focus on the proposed international regime for seabed mining? Before you answer, I would like to comment how important I believe a balanced review is. Such a review should reflect not only the interest of ocean mining companies, but the full range of interests—military and defense, scientific, environmental, and other resource issues.

Now we would appreciate it if you would kindly advise us as to the scope of the review.

Mr. MALONE. Thank you very much, Mr. Chairman.

I would want to assure the committee that the review will be a complete and thorough one and will, indeed, cover all aspects of the draft convention. It will be by no means limited to part XI questions.

It is the desire of the administration, Mr. Chairman, that this very thorough and complete analysis be conducted, and indeed, that it be directed to determining what is in the net national interest of the United States, including all of the factors—our national security, our need for access to the various minerals which are available through deep sea mining and are of strategic interest to us, our interest in marine research, our interest in pollution control, and the entire range of other affected U.S. interests.

So it will be a complete and thorough review. We will be looking at all of these questions, and we will be doing so against the touchstone of the national interest.

And I would just finally want to emphasize and make it very clear that it is by no means the perception of this administration that this review is driven by the concerns of private deep sea mining interests. Obviously, there are many groups in the public sector that have an interest, but indeed, the Congress has an interest, the American people have an interest, and of course we have an interest in this administration in seeing, as I have said, that we judge this against what we believe to be our overall national interest and concerns.

Chairman ZABLOCKI. Who are the key participants in the interagency review—what agencies and what persons?

Mr. MALONE. We have judged it desirable to conduct the interagency review at a relatively high level, so that we can focus the attention of senior officers in this administration on the problems, but not to conduct it at such a senior level that the responsibilities be delegated. Therefore, we have determined to conduct it at the Deputy Assistant Secretary level, requiring that representatives from all of the concerned departments and agencies—the State

[1]The report of the U.S. delegation to the 10th session appears in appendix 1, p. 53.

Department, the Department of Defense, the Department of Treasury, the Department of Commerce, the Department of the Interior, the Environmental Protection Agency, and so on down the list—be represented and participate at that level.

As I mentioned before giving my prepared remarks, the gentleman to my right, Mr. Ted Kronmiller, is chairing the working interagency group that is doing the initial evaluation and work on the review. Now, once that work is accomplished, it will be considered at more senior levels, and I would expect, ultimately at the Cabinet level, before final decisions are taken.

Chairman ZABLOCKI. What is the status of the administration's review? How far along is it? Is there a target date set for completing the review?

Mr. MALONE. As I mentioned in my statement, Mr. Chairman, we feel that we will not have been able to complete the review in its entirety by the August resumed session.

Chairman ZABLOCKI. That gives you 3 months, doesn't it?

Mr. MALONE. If I may, I would like to just indicate why this is the situation. We feel, of course, that the question is a very complex and involved one. It is one that we have to carefully go through in the review process within the executive branch. Then we must undertake, we believe, very thorough discussions, many on a bilateral basis, some in groups, with our key allies and other participants in the Conference. Indeed, some of that work will be done during the initial phases of the review. Some of it will have to be done at later junctures, and it will be necessary in some cases to meet more than once.

We want to very carefully involve the relevant Members and committees in the Congress in this process, and that is going to require some time. Then we also feel that we must carefully consider the positions of the public sector groups, and there are many responsible groups in the public sector that have very strong views that must be factored in to this review process in order to give us what is a satisfactory outcome.

So that although it would seem that yes, maybe 3 months would be ample time to do something like a simple review of a treaty text, I would suggest to you, Mr. Chairman, this complex review will require much more than that. It is a very thorough review.

We feel that we certainly will have completed the entire process by the fall, and indeed will be on our final phases by the August session. And we contemplate using the August session as a means of seeking reaction, seeking further input to the review as it is developed to that point. But we are not going to be dragging our feet on this. We are going to be moving forward just as rapidly as we possibly can to do the thorough job that we think must be done.

Chairman ZABLOCKI. I'm not suggesting that we should expedite the review so rapidly that it would not be in our security interests. It is important to fully consider our national security interests. However, if the United States is not prepared to go to the 10th session in August, there are some suggestions or rumors that the Third World states will seriously consider negotiating the conclusion of a treaty without us.

How do you assess that possibility? What do you expect might be some of the repercussions on the part of other states at the August session?

Mr. MALONE. We are, of course, aware that such statements have been made, that such concerns have been raised. We believe that it is probably considered by most countries to be in their interest to have the United States as a signatory to this treaty; and that they perceive the significance of the review in that relation. And although I think undoubtedly we will hear different expressions of concern, I would think that they would probably be from a minority.

We do feel that it is absolutely essential, as I have stressed, that we have at the time that we return to active substantive negotiations a completely developed position. We must go through this review process in a comprehensive way to achieve that.

Chairman ZABLOCKI. Let me ask a final question with a comment.

We have stated that this committee has had several hearings on the Law of the Sea Treaty. I do not recall right now whether some of the security-related matters that are contained in the provisions of the draft convention which you list on pages 5, 6, and 7, for example, concerning the participation of national liberation movements have been raised.

But, it is my understanding that certain criteria have been developed in the Conference which would exclude the participation of national liberation movements. Isn't it true, that there are certain criteria specifying that entities with a legal personality, including authority to enter into treaties would exclude participation of such organizations.

Many oppose the national liberation movements. Many nations that oppose national liberation movements pointed out that there was not a single legal precedent for allowing national liberation movements to become a party to a multilateral treaty.

Now, you very flatly state that the PLO could become a member, a participant. My understanding is that they could not.

Mr. MALONE. At the present time it is my understanding, Mr. Chairman, this question has indeed not been resolved.

Chairman ZABLOCKI. But you do raise it as if it is already in the proposed text of the treaty.

Mr. MALONE. I meant to raise it as a concern that we are looking at. We must address this question because there is contained in the draft text, specifically in articles 140 and 162, provisions giving rise to the possibility of participation of peoples who have not attained full independence or other self-governing status in seabed mining revenue-sharing arrangements.

At the present time, the question of nonstate participation as signatories to the treaty is an open question. The United States opposes signature by national liberation groups.

Chairman ZABLOCKI. But there are criteria in the draft?

Mr. MALONE. Well, yes, Mr. Chairman. Any group that is recognized in a U.N. General Assembly resolution would be eligible to receive revenues. To that extent there are criteria, but of course, this would not exclude the possible participation by such national liberation groups as the PLO. However, the criteria also might

include entities to which we would not object, such as Micronesia after the termination of the present arrangements there.

Chairman ZABLOCKI. My time has expired. Mr. Broomfield.

Mr. BROOMFIELD. Thank you, Mr. Chairman.

Mr. Malone, I would like to compliment you on your statement. I find it quite interesting. Frankly, it might have been a little bit easier to give the parts that you approve of.

I am just wondering if there is anything left. I do find the Chairman's comments quite interesting, as the Chairman has pointed out, on the PLO and the possibility of their eligibility and obtaining a share of the revenues from this authority.

I have a number of questions that I would like to submit to you to be answered at your convenience for the record——

Mr. MALONE. We will be happy to do that, Mr. Broomfield.

Mr. BROOMFIELD. I do have a question, however, that I would like to pose now, one that deals more in terms of what happens if the United States does not become a participant in this treaty and the effect it would have on our foreign policy generally with some of the underdeveloped and developing countries.

Mr. MALONE. Mr. Broomfield, as I also pointed out in my statement, the nontreaty situation is something that we have under careful consideration in our ongoing review process; so that we have not come to any conclusions at this point as to exactly what that outcome would entail. But we are very carefully looking at that question, and I would assume that relatively shortly in the review process we will have a fairly good fix on it.

Mr. BROOMFIELD. How long has this matter of the treaty been going on? Since before 1967, hasn't it?

Mr. MALONE. Since about 1966, Mr. Broomfield.

Mr. BROOMFIELD. I think, Mr. Chairman, I would like to yield the balance of my time to Mr. Gilman, who has served as one of our delegates to New York. He has a very keen interest in some of the things that are going on.

Mr. GILMAN. I thank the gentleman for yielding.

Chairman ZABLOCKI. The gentleman from New York, Mr. Gilman, is recognized.

Mr. GILMAN. Thank you, Mr. Chairman. I certainly want to welcome Mr. Malone to our committee. I regret that more of our members aren't available. There is a Republican caucus on at the moment as we prepare for some of the budgetary concerns that seem to be primary in our minds at this time.

We welcomed hearing your thoughts, Mr. Malone. Many of us on the committee and those of us who are congressional advisers to the Law of the Sea Conference have been concerned about the status of the negotiations. We are concerned about where we will be going and whether the delay has created any harmful effect on what has been accomplished to date over the long period of time that these very sensitive negotiations have been undertaken.

While some of us may be concerned that policy review may be too long a period of time and may be creating some very serious problems, I think we are all in accord that the new administration certainly needs a time for a policy review. But, we hope that we will soon see the culmination of the review, and we will get on again with the negotiations.

Have you or the administration made a statement that while the policy review is still ongoing that there is support for the general thrust of the Law of the Sea Treaty? Have you indicated that a treaty is necessary, and that the administration is supportive of such a treaty?

Mr. MALONE. Congressman Gilman, we have not. Neither the administration nor I have made a statement concerning either support or nonsupport for the treaty solution. Indeed, this is part and parcel of our review process. We are reviewing the possible options carefully, and this certainly explains part of the complexity of the process and the length of time that we feel will be involved.

The full spectrum of options which would be available to us, all the way from the treaty solution on one end of the spectrum to the nontreaty solution on the other—we are going to consider very carefully. We have in no wise prejudged an outcome at this time.

Mr. GILMAN. Mr. Malone, if I might interrupt, if the gentleman would yield, has the administration at any time taken a stand that they are opposed to a Law of the Sea Treaty in either the campaign phase or in the first few months of the administration?

Mr. MALONE. We have not taken a position either in support of or against a treaty solution; that is, as I say, very much a part of our review process.

Mr. GILMAN. I note that Ambassador T. T. Koh, who has acted as the chairman of the current session, wrote a letter to Secretary of State Haig on March 18, 1981,[1] and I quote from that letter:

> I wish to make two requests. First, I request that the process of review be completed as soon as possible, and that in any case, not later than June of this year. It is the collective will of the congress to complete our work this year. In order to do so, and given the fact that we are not in a position to conclude our negotiations at the current session, we will have to hold a final resumed session this summer.
>
> My second request is that while the review is taking place, the Reagan Administration should make an authoritative statement affirming that it is working towards the objective of a generally acceptable convention of the Law of the Sea and that it continues to uphold the principle that the resources of the international area of the seabed and ocean floor constitute the common heritage of mankind, and that it stands by the compromised proposals enunciated by Secretary Kissinger in 1976 on the international regime for the exploration and exploitation of the resources in the international area of the seabed and ocean floor.

Mr. GILMAN. How do we respond to that request by Chairman Koh who is trying his best to keep this whole negotiating process together and moving forward?

Mr. MALONE. I would like to submit for the record, Mr. Gilman, the reply of the Secretary of State in that connection.[2] We, of course, indicated essentially what I have indicated to you just now, that we are looking at the situation in our review very, very carefully. We will move through this to a conclusion just as rapidly as we possibly can. We are going to look at it thoroughly in terms of all of the questions that are involved.

I do want to emphasize that we are very aware of the urgency felt by some Conference participants and the need to move as rapidly as we can. We are going to do so, and we have so informed the President.

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[1] Secretary Haig's letter appears in appendix 2, p. 97; Ambassador Koh's response in appendix 3, p. 98.

[2] See letter of June 10 from James L. Malone in appendix 4, p. 100.

Mr. GILMAN. How soon do you anticipate that your review process will be completed?

Mr. MALONE. As I indicated in my statement, Congressman Gilman, we do not believe that it will be fully completed in all of its dimensions, including our bilateral consultations and group consultations with our allies and with many others, indeed many key participants from the Group of 77 and many participants from the Eastern bloc countries, until after the August session. Indeed, we would hope to have progressed by a very considerable degree by the August session, but in that session we will be further discussing the review with the other delegations.

Mr. GILMAN. Isn't that an unnecessarily long period of time to complete a policy review on such an important document? It would seem to me that with the ongoing treaty process there and the possibility that they may go on without us or that it may be all unraveled, that the review process could be expedited. Isn't that possible?

Mr. MALONE. That is a possibility.

However, we believe, that in terms of a probability, it not a high one, because we believe that there is a sentiment, indeed an increased sentiment, to permit us to conduct an adequate and full review without adverse consequences at the Conference. There is a desire on the part of the other participants to have the participation of the United States in the treaty.

I have to grant you there is a risk. We feel that it is a relatively modest one and one that probably will not eventuate.

We think there is a much greater possibility that these other participants will feel it is desirable for us, before we go to final action on the treaty, have an adequate opportunity to carry out a very complete and thorough review.

Mr. GILMAN. Mr. Malone, are you confronted with some serious objections to the status of the treaty at this time?

First of all, in your text you mentioned that you were concerned about whether there was support in the Congress; I don't know how you have evaluated that support. I think I would be very much at a loss at this time to determine whether or not there was sufficient support. I know there has been a great deal of interest and concern about drafting a treaty in the Congress. As a matter of fact, the Congress did criticize the Law of the Sea negotiation for being unduly delayed and went ahead with some legislation about 2 years ago in order to help speed up the process.

I know that our defense agencies and armed services are very much concerned. I have in front of me a letter dated April 3, 1981, from General Allen of the Department of the Air Force wherein it stated,

> The Air Force's vital interest in the development of a Law of the Sea treaty. We have long been concerned about access to air space over the oceans above international straits and in archipelagic waters.

The Chief of Naval Operations, Admiral Hayward wrote on April 2, 1981,

> I can assure you that the Navy is sensitive to the importance of retaining adequate safeguards for central navigation rights in a treaty. We will work to that end in the ongoing review process.

The U.S. Army Chief of Staff, commented in a March 26, 1981, letter,[1]

I agree with you that the U.S. security interests, among others, are an important aspect to the emerging treaty and should be carefully considered in that regard.

The generally accepted consensus is that the trend in customary international laws to restrict free transit of the oceans by expansion of the territorial sea from three to twelve nautical miles. This expansion of the territorial sea would close 116 straits to navigation, except innocent passage, which does not include submerged transit or overflight.

The draft treaty would appear to preserve the right of submerged transit and overflight through these key straits through a new regime called transit passage. A similar new regime could also preserve navigational overflight rights through archipelagos, another area in which there is a trend in customary international law toward restriction of free passage. On balance it appears that an international standard codifying such freedom would be desirable.

We hear from the mining companies that they are prepared to make further substantial investment, but need a treaty out there in order to protect themselves. They don't want the gunboats coming up and interrupting their work. We hear from the scientific community that they want to move ahead.

Where are you getting the opposition that requires such an unduly and lengthy review process? Is there some opposition that has arisen in the Congress or from some source that we are not aware of?

Mr. MALONE. Congressman Gilman, there has been concern, certainly, from a number of quarters within the Congress. Our evaluation at the moment was that on the Senate side the draft text would not be accepted for ratification. Here, indeed, on your own House, on December 10, a group of 14 Congressmen, several members of this committee included, wrote to then-President-elect Reagan requesting a very complete, thorough, and detailed review.

I think that within our national security structure at the Department of Defense there have been concerns raised that we want to look at very carefully. Obviously, the letter from the Air Force which you just read will be something that will be carefully and closely evaluated, but it does not express necessarily what the ultimate view of either the Department of Defense, as a whole, or the Joint Chiefs will be.

There are many opinions that we must consider very, very carefully. I have recognized this view that has been expressed by this particular service and we will consider it carefully, but we have many other views to factor in, as well.

Again, I have to return to the statement that I have previously made that all of this, of course, to really be done carefully and completely, is going to take us quite a bit of time.

Mr. GILMAN. Well, we hope that lengthy review isn't going to result in some dire consequences and that it will unravel what good has been done to date and that we will be able to move ahead.

I might note that a number of members of this committee including our good chairman, joined together in a letter to Secretary of State Haig urging that we get on with the job and that the review not be unduly prolonged. That was a letter dated March 6, 1981. As you recall, I handed a copy of that letter to you personally during

[1]For text of letters see appendixes 5–7, pp. 101–103.

my visit to the Law of the Sea Conference in New York not too long ago.[1]

Mr. MALONE. Indeed. I have it, Mr. Gilman.

Mr. GILMAN. What I am saying to you is that there are a number of us in the Congress who are concerned and would like to support a reasonable treaty. We are concerned that unnecessary delay may have an adverse effect on some of the important advantages that we have already obtained in some very lengthy and sensitive negotiations.

I would like to ask one question, if I might. What is the status of the negotiations between the United States and others—Japan, Federal Republic of Germany, France, Italy, Belgium, the Netherlands, and reciprocating states—on the provisions contained in section 118 of the Deep Seabed Hard Minerals Resources section of the conference in 1980?

Mr. MALONE. There have been discussions and meetings in this connection with a view toward implementing the Deep Seabed Hard Minerals Act, Congressman Gilman. That is ongoing at the present time.

Mr. GILMAN. A few years ago there was a short-lived rumor that the United States and others might try to develop a minitreaty. Is there such a possibility? Is there something of that nature in the works?

Mr. MALONE. As I responded to your earlier question, Congressman Gilman, of course we are considering a full range of possibilities in our review, but I don't believe at this time we would be in a position to discuss all of the options that we have under consideration.

Mr. GILMAN. On page 5 of your testimony you state that the *Enterprise* could eventually monopolize production on seabed minerals. I am wondering how that would be possible, in view of the fact that the proposed seabed authority is to be structured according to a parallel system on which there is substantial consensus and which, in turn, meant that the Third World would not have a monopoly.

Mr. MALONE. As I mentioned in my statement a little bit further on down on the same page, of course, after 20 years a review conference could put that eventuality, Congressman Gilman. It is something that we feel is a potential disadvantage which we must carefully consider.

Mr. GILMAN. I believe that my time has expired. I thank you, Mr. Ambassador, and thank you, Mr. Chairman.

Chairman ZABLOCKI. The gentleman from Washington, Mr. Pritchard.

Mr. PRITCHARD. Thank you, Mr. Chairman.

Mr. Malone, how do we operate in this country when we are in negotiations with other countries that run over quite a number of years and involve a number of administrations?

What policy should be followed by an administration that may be the fourth one involved in negotiations which have agreed to certain things, working toward a goal? Then we have an election. Do we start over from scratch? How do other countries deal with this?

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[1] See appendix 8, p. 104, for Mar. 6, 1981, letter from Members of Congress to Secretary Haig and Mr. Malone's response of Apr. 3, 1981.

This is a difficult area, but it is also a fundamental question, not just on the Law of the Sea but on all further negotiations. How do you see this problem?

Mr. MALONE. Well, Congressman Pritchard, you have touched upon a matter of concern. It is certainly a matter that goes to the kinds of relationships that we have with other countries and perceptions of our reliability.

However, this is a matter which involves many fundamental concerns to this country and not just to certain interests that may exist in this country. There are concerns with regard to national security issues of the greatest moment, the availability of strategic minerals which are essential to us, as well as so many of the other areas that are vital to U.S. interests.

The basic consideration and concern, it seems to me, must be that we believe, after a complete and thorough evaluation, that we have met our national security interests in the broadest sense.

I think that it is of overriding importance to this country that we have assured ourselves that all of our key national interests, particularly our national security interests, have been adequately taken care of before we took such a step as is contemplated here, and that is exactly the reason that this administration is looking so carefully at this matter.

Mr. PRITCHARD. Let's take a look at the other side of the coin.

Take a country, say Germany, which is involved in this process with us. At the end of 10 years, Germany has an election and then says it has to review the negotiations. We say to Germany, well, we can understand that. What is your timetable? They say well, we have had an election in November. We won't be ready to give you a definitive answer until August.

Now I think that if Germany said that to us, I would say that was arrogant. Second, it would look as if Germany really didn't want to play ball. It would send out very strong signals that America or Germany or whatever country could not really participate in a long-running treaty negotiation because any time there was an election it would have to stop for at least 9 months to get a decision out of the new administration.

I am disappointed, particularly since I am a member of the administration's party. I realize this is not your policy, but I must say that your answers here today really do not wash.

Mr. MALONE. Well, Congressman, I again have to indicate, of course, that this is a concern, but I would hope that we would not second guess the desire by Germany or another state to make a review that it felt was fundamental to its national interests.

I think there is a certain implication in your question that somehow the outcome of the review has been predetermined and that no one can really be sure that we are going to go on with the negotiation and conclude a treaty.

I can assure you that we have not, Congressman, made that kind of a judgment. I would hope that none of the participants in the Law of the Sea Conference have come to that sort of a conclusion—that basically we are unreliable because we have already come to a judgment and the judgment is x. We have not done that.

We feel that we must look at the Law of the Sea carefully. We feel that it is, indeed, in the interests of other countries as well,

because when we have made this sort of an evaluation, we will be in a position then to take a very definitive position and to proceed from that point.

Mr. PRITCHARD. I would say this. It isn't so much that you have sent a signal, even though there are perceptions of different interests groups as to what their position is or will be.

What I am saying is, the timetable you have set up makes it impossible to have a meaningful treaty. If every one of these countries—and there are about 50 of them now out of the 150 that have elections and change administrations—are going to have to stop for a 9-month review after each election, I don't know how we could even complete this negotiation.

Your approach gives our country a very arrogant position by setting out this timetable. I am disappointed that my administration, which came in, in January, can't give an answer in August. This is a deep disappointment to me and, I think, many Members in Congress. If you are getting some static from the Senate, well, so be it. They have produced more static in the last 20 years than the House ever has. I really worry about our ability to participate in long-running treaty negotiations if we have the attitude that we start from scratch. It looks to me that you have started over, particularly since you threw out almost all the people who were working on the process.

I am not a lawyer. The administration sounds like a group of Wall Street lawyers that have come to tell me, a businessman, why they aren't ready to go to court, why it is going to take twice as long to get ready and why it is also going to cost twice as much money. They are saying why they can't do it, rather than why they can. I guess I will have to say, as one Member, that I feel very disturbed by it.

I have no further questions.

Mr. MALONE. If I might just respond to the Congressman, I would hope, certainly, that we will have largely completed this by August. We want to move forward as rapidly as we can.

You made a point with regard to the fact that we had discharged everyone that had previously been involved. It is true that we made some changes. As I noted——

Mr. PRITCHARD. You knocked out the key players.

Mr. MALONE. But we certainly did not discharge everyone that was involved.

We made some changes, because we felt that the situation necessitated that, in order to permit us to undertake our review and the steps that were necessary to facilitate that effort. But we certainly are going to move ahead and we are going to complete this as rapidly as possible.

I would just also like to refer to a little matter of history very shortly here in reference to what might seem to some to have been the continuity of this matter through previous administrations, both Democratic and Republican, and call to the committee's attention a statement that was made in 1977 by Ambassador Richardson when he was then Special Representative of the President to the Law of the Sea Conference, at the United Nations, on July 20, 1977.

And I quote:

I am led now to recommend to the President of the United States that our government must review not only the balance among our substantive issues but also whether an agreement acceptable to all governments can best be achieved through the kinds of negotiations which thus far have taken place.

We all know, of course, that the negotiations have continued since 1977. I have no reason to tell you that this will not be the case for the future, but we must have a close look at this before we take that decision. But certainly here was an instance in the very recent past in which a question of review arose and in which there were, I think we all know, no dire consequences as far as the continuing negotiations were concerned.

Thank you.

Mr. PRITCHARD. Well, I would say it is rather a long reach to take Elliot Richardson and attempt to make him a pillar of the process that you are using now.

I think there are reviews and there are reviews. Mr. Chairman.

Chairman ZABLOCKI. If I may further comment on it, there was a session of the conference 3 months after this administration came into power. Then, just before that session conference, the review was announced as I said in my opening statement. Mr. Malone, I'm sure you can perceive that this is not a partisan matter of concern. As a matter of fact, my Republican colleagues were more direct in their questions than I was to you. However, I must ask to see that we get on the record, your assurances that this administration still supports the conclusion of a comprehensive treaty.

Mr. MALONE. Again, Mr. Chairman, as I attempted to make clear in my previous answer, this administration has not taken a position for or against the conclusion of a Law of the Sea treaty. But we have not taken such a position as you have characterized it. We have not come down on that question on one side or the other.

Chairman ZABLOCKI. When will the administration come to this simple conclusion that they are for or against?

Mr. MALONE. That is exactly what our review process is aimed at, and that is what we would hope to be in a position to do just as rapidly as we can complete this.

Chairman ZABLOCKI. I thought the review was for the purpose of finding whether there was anything in the provisions of the treaty—the draft treaty—thus far agreed to by consensus which is contrary to our national security interests. I understand 95 percent of it is agreed to and that the review is merely to see if there is anything that would be contrary to our national security interests and thereby amend it.

But as far as the question of the attitude of the administration, whether it is for or against a treaty, should be a simple answer. Yes, we are for the treaty, with reservations—if you would only say that much, but you say we have to review and review and we haven't made a decision.

Mr. MALONE. Mr. Chairman, if I were to make that statement I would not characterize—I would not accurately characterize our review. Certainly we may judge it to be in our national interests to do exactly as you have described, to request that certain changes be made and then we would have something that we feel we can go with. But we have to look more basically than that in this review process. And that is, as I attempted to describe earlier, we are looking at the full range of options and possibilities which would be

in the national interests of this country. But at this moment we have not taken the decision that a treaty with fixes is the best outcome.

But, on the other hand, I hasten to add we certainly have not taken a decision that would indicate that we don't think a treaty is necessary.

Chairman ZABLOCKI. On the basis of your last statement on the purpose of the review, let me rephrase the question.

Is the purpose of the review to find reasons not to enter into a conclusion of a comprehensive treaty?

Mr. MALONE. No, the purpose of the review is to assess what, as I've characterized, is in the net national interests of the United States in the broadest sense.

Chairman ZABLOCKI. And at the conclusion of the review, is the goal of the administration to seek the conclusion of a comprehensive treaty? [Laughter.]

Mr. MALONE. Again, Mr. Chairman, I have to say that that is not now the position of this administration. We have not made that judgment as yet. That is part and parcel of the process that we are going through in the review.

Chairman ZABLOCKI. I understand that. I say after you complete the review.

Mr. MALONE. We have not taken a judgment. It is possible that we would come down on the no treaty option. That is a possibility. It is not a conclusion. It is a possibility.

Chairman ZABLOCKI. With that possibility becoming a reality, where does that put our country vis-a-vis the rest of the world?

Mr. MALONE. Again, that is part of the assessment that we are in the process of making. Obviously we have to consider the non-treaty situation and what would flow from that before we can fully assess where that would lead us. I can't tell you now exactly where it would lead us because we haven't come to our conclusions on that.

But it is something that is part of this very thorough and comprehensive evaluation that we now have underway.

Chairman ZABLOCKI. I see it is futile to pursue the issue. I am not a lawyer. You are, and you are circling me around. I understand it, and I would hope you would give it a direct answer, but someday you will. Perhaps a month from now we will have you back. [Laughter.]

Chairman ZABLOCKI. As I mentioned before, a consensus exists on 95 percent of the provisions in the text. Do you agree with that as of now?

Mr. MALONE. There has been. Nothing, of course, is finally concluded until everything is concluded.

Chairman ZABLOCKI. I'm not speaking about ratification. I am now speaking about the text in its present state.

Mr. MALONE. I don't know whether I would characterize it as 95 percent, but there has been a general agreement up to this point on an informal basis with something, I suppose, of about that percentage.

Chairman ZABLOCKI. Is my understanding correct that new provisions can only be accepted if those provisions offer the prospect of achieving a substantially improved consensus?

Mr. MALONE. That is the ground rule. That is the rule that is followed. Yes.

Chairman ZABLOCKI. And after the review you would hope that whatever recommendations we make would improve the consensus?

Mr. MALONE. Again, I have to come back to the point I just made, Mr. Chairman.

Yes, obviously, if it is our decision based upon our evaluation of our national interest to move toward the treaty solution, then, obviously, that is the way that we would want to move.

But again I have to indicate that that is something that is part of our review process. We have not concluded that.

Chairman ZABLOCKI. Under the ground rules that we both understand, I think you are dreaming if it is going to improve the consensus.

Mr. MALONE. Well, of course there is no consensus if the United States does not participate. It takes all participants to create the consensus.

Chairman ZABLOCKI. If the United States does not participate then what is the future role that the United States can hope to play?

Mr. MALONE. Again, I have at this juncture no reason to conclude that the United States will not participate, but again, that is something that we are in the process of considering.

Chairman ZABLOCKI. My colleague from Washington said that unless you cooperate, unless we are part of a team and work with our allies and participate in the negotiations and don't insist totally on our position, we will get nowhere.

Mr. MALONE. I recognize that, of course, Mr. Chairman. If we feel that the way that we ought to move in this is merely to seek certain changes in the treaty text, we would obviously want to move along these lines.

But that brings me back, of course, to the basic premise, which is one that I cannot give you at this juncture an affirmative answer to, because this is part of our review process. We have not made this judgment yet. You are assuming the treaty solution and obviously what you say, given the treaty solution, follows. Yes.

Chairman ZABLOCKI. Well, I must join my colleague in hoping and, indeed, praying that after the review you come to that conclusion as soon as possible.

Now let me move to another question, to follow up on what my colleague from Washington referred to regarding some of the personnel—the key personnel—who are no longer involved.

I understand that Mr. Leigh Ratiner has been given an office in the State Department and was on the delegation to the 10th session of the conference. Would you tell us what is Mr. Ratiner's relation to the delegation and to you in the Department of State? How was he selected and for what purpose?

Mr. MALONE. Mr. Ratiner is an adviser to the Department of State. We have, of course, a number of advisers and experts.

Chairman ZABLOCKI. Experts of the same caliber as Mr. Ratiner?

Mr. MALONE. Certainly, yes.

Chairman ZABLOCKI. Hopefully better? [Laughter.]

Mr. MALONE. I think that Mr. Ratiner has a great deal of expertise in certain areas involved in the Law of the Sea. He is one adviser among a great many. He has no official position at the Department of State. He is not an employee of the Department of State and he is in no different position than a number of other experts and advisers that we have.

Chairman ZABLOCKI. Whom did he speak for at the 10th session?

Mr. MALONE. He spoke for no one but himself.

Chairman ZABLOCKI. He was a private delegate there?

Mr. MALONE. Not in any official capacity, Mr. Chairman. He was an adviser, as I say, to the delegation, but he spoke in no official capacity as a representative of the United States.

Chairman ZABLOCKI. To whom did he speak?

Mr. MALONE. As in the case of many, many other advisers and experts, he spoke to a great many people, both on our delegation and on other delegations.

Chairman ZABLOCKI. And when he spoke to other delegations, was he speaking for the United States?

Mr. MALONE. He had, as I have just described, no official standing except that of an adviser.

Chairman ZABLOCKI. Did he speak to delegates from other states as a Mr. Ratiner, private citizen?

Mr. MALONE. He spoke to them as a person who was an adviser to the U.S. delegation. He was not a member of that delegation having official representation or responsibilities.

Chairman ZABLOCKI. That is a new one, I must say. I don't recall that we have resorted to similar status for a person who is not officially a member of the delegation speaking for the delegation. As an adviser, who does he clear with when he gives a particular position of the United States? With whom did he clear?

Mr. MALONE. He was not given any official position of the United States, Mr. Chairman. He had discussions, I am sure, with other delegates that were present at the session, as did many of the other advisers and experts to the delegation, but not, as I have just mentioned, in any official representational capacity of the United States.

Chairman ZABLOCKI. I can't pursue this any more. I'm not getting any more of an answer than I did on the prior questions.

I have no further questions.

Mr. GILMAN. Mr. Chairman, I have just one or two more questions.

Chairman ZABLOCKI. The gentleman from New York.

Mr. GILMAN. Mr. Ambassador, it states in your text that the Congress will be consulted as part of the policy review process.

Have you consulted with the Congress to date in any manner as part of that review process?

Mr. MALONE. Of course I have had some discussions with some of the Members, Congressman Gilman. We have not yet had formal discussions. We are in the process of setting up an arrangement to do that right now.

I would like Mr. Kronmiller to give you a little outline of the type of process that we are setting up.

Mr. GILMAN. I would welcome that, Mr. Kronmiller. Can you tell us a little about the process you are following in the review and how you intend to make the Congress a part of your discussions?

Mr. KRONMILLER. Yes, sir, Mr. Gilman. I would be pleased to.

We are going to carry out consultations on a number of different levels. Historically, there has been a heavy reliance upon the advisory committee that has been established for the Law of the Sea and we do not intend to diminish that. We will continue to consult with Members of Congress and members of the advisory committee.[1]

We will do that both in the formal proceedings of the advisory committee and at small group meetings with interested Congressmen who care to meet with us.

We also intend to have informal briefings at the convenience of interested Members, again to convey to them at what stage in the process we are at that time and also to obtain from them their views concerning where we ought to be going from that point.

There will be a number of different procedures involved.

Mr. GILMAN. Mr. Kronmiller, who is the "we" that is doing the ongoing process?

Mr. KRONMILLER. As Mr. Malone indicated, we are presently in the process—I will define "we" in a moment—of establishing how these consultations will be brought about.

Mr. GILMAN. They haven't started yet?

Mr. KRONMILLER. There have been some discussions. There have not been formal consultations such as I have described concerning the course of the review.

The review papers are in preparation. They are not in a form which we feel yet will provide us with an adequate basis to give you an understanding of how we are proceeding, and we would prefer to be farther along before we get into a formal situation with you, so that you are not misled as to our direction.

Mr. GILMAN. Who is preparing those papers?

Mr. KRONMILLER. Those papers are being prepared by an interagency group that Mr. Malone has described in testimony here today.

Mr. GILMAN. Is that the same interagency group that did the 1977 review for the Carter administration?

Mr. KRONMILLER. No, sir. It is not. It is a Deputy Assistant Secretary-level group that will be carrying out this particular review.

The 1977 review was carried out by a number of different levels.

Mr. GILMAN. They are in the process, then. The Deputy Secretaries are in the process of preparing papers for consideration by the policy group. Is that correct?

Mr. KRONMILLER. Yes, Mr. Gilman. That is correct.

Mr. GILMAN. Who will be the policy group to look over the papers?

Mr. KRONMILLER. There is a senior interagency group which will do further work on the papers and ultimately there will be a paper which will be forwarded to the President for his decision.

Mr. GILMAN. Who will the senior interagency group consist of?

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[1] For list of members of the Department of State Public Advisory Committee on the Law of the Sea, including subcommittee affiliations, see appendix 9, p. 107.

Mr. KRONMILLER. That group consists of Under Secretaries and, in some cases, Assistant Secretaries.

Mr. GILMAN. The same people who prepared the papers, in other words?

Mr. KRONMILLER. No, sir. Deputy Assistant Secretaries prepare the papers.

Mr. GILMAN. Then the Assistant Secretaries will look over the papers and prepare a formal paper to go to the President?

Mr. KRONMILLER. They will pass along recommended papers to go to the President.

Mr. GILMAN. At what point will Congress be brought into all of this? At this point I assume you haven't consulted at all with Congress. Is that correct?

Mr. KRONMILLER. In a formal sense, no. In an informal sense, yes. We have had discussions with Members of Congress on an informal basis?

Mr. GILMAN. With whom?

Mr. KRONMILLER. Mr. Malone has carried out those discussions.

Mr. GILMAN. May I ask Ambassador Malone who in the Congress? Have you consulted with the chairman of our committee?

Mr. MALONE. I have not yet had the opportunity and privilege to consult with Chairman Zablocki. We will be doing that and we will be doing that, of course, with all of the interested Members, either individually or in a group situation.

I have, however, not had discussions with Mr. Zablocki, as Mr. Kronmiller has just pointed out.

Mr. GILMAN. Have you had any discussions with any of the other chairmen of any congressional committee?

Mr. MALONE. No. I have only had a limited number of individual contacts with individual Members on both the House and the Senate side so far. We have not moved into what I would describe as the more formal phase of our consultation with Congress.

Mr. GILMAN. Were any of those discussions with members of the Foreign Affairs Committee or the Merchant Marine Committee?

Mr. MALONE. There has been some discussion with members of the Merchant Marine Committee. Thus far I have had no informal discussions with members of the Foreign Affairs Committee.

Mr. GILMAN. Mr. Kronmiller, at what point, then, do you intend to bring in congressional input?

Mr. KRONMILLER. We intend to do it as swiftly as possible. We had hoped to have that process underway already.

Mr. GILMAN. How do you intend to do that, in what manner and who are you going to seek out for that kind of input?

Mr. KRONMILLER. We are going to seek input, as I think you have implied, from the chairmen of the cognizant congressional committees on both sides. We will make certain that all other interested Members of Congress are brought into the process, and that their points of view are fully taken into account.

We intend for this to be iterative in nature.

Mr. GILMAN. Would that be before the Assistant Secretaries review the final document?

Mr. KRONMILLER. Absolutely. I can state that categorically. There will be consultations at an early stage. This is still an early stage. As Ambassador Malone has indicated this is a highly com-

plex subject. The initial papers are quite lengthy. They are still going through the drafting process. And they are not yet agreed in that process.

When we have some initial documents that we can discuss that deal with preliminary issues—and I stress they only deal with preliminary issues—then we will proceed to consult on a basis that we feel will be productive for both sides.

Mr. GILMAN. It almost seems as though you are negotiating a treaty within our own administration in this highly complex process. Will you be able to achieve that kind of consensus? We have just concluded 7 or 8 years of negotiations to arrive at this point.

Do you feel that you are going to be able to achieve the kind of document you wanted to present to the President?

Mr. KRONMILLER. What we are certain that we will be able to achieve is a document which takes into account all of the points of view of interested Members of Congress and, as has been indicated, representatives of the private sector.

It would be difficult, I think we all have to admit, to achieve a document which would truly be a reflection of complete consensus. There are differing points of view. We are aware of that in the administration. We are attempting, and we will attempt, to be as objective and responsible as possible in dealing with those differing points of view.

Mr. GILMAN. Have you invited the advisory committee to make some input in this review process?

Mr. KRONMILLER. Yes, Mr. Gilman. We have. We intend to have an advisory committee meeting either the very end of May or the first week in June, which is the soonest we can do it in accordance with law, because of notification requirements.

We have indicated informally that we welcome the participation of members of the advisory committee in this process.

Mr. GILMAN. I have no further questions.

Mr. Chairman, I would like to make part of the record, if there is no objection, the letter of Ambassador Koh dated March 18, 1981, and the response by Secretary Haig to that letter.

I would also like to make part of the record our joint letter to Secretary Haig by the Members of Congress. And that was dated March 6, 1981, and the Secretary's response thereto.[1]

Chairman ZABLOCKI. Without objection, it is so ordered.

Now may we return to my questioning as to Mr. Ratiner?

I think you mentioned there are quite a few advisers. I presume they are hired. They are not doing it for free, as they are consultants.

Mr. MALONE. In some cases they are without compensation, I believe, Mr. Chairman.

Chairman ZABLOCKI. Do you think they would have an unbiased view if they gave service without compensation?

Mr. MALONE. It has been the practice for some time now to have such advisers. Obviously you have to evaluate the advice that you are getting.

We have these people and, as I understand it, they have traditionally advised the delegation because it was believed that they had a special background or expertise to do that and, in some

[1]See appendix 8, p. 104.

cases, those people may have some biases one way or the other. But obviously, as in any case when you rely upon an expert, you try to factor the bias out.

Chairman ZABLOCKI. I have a definition for an expert, but I'd better not put it in the record. [Laughter.]

Let me just say I think it would be very helpful, Mr. Malone, if you would supply for the record the list of advisers.[1]

Mr. MALONE. I would be happy to do that.

Chairman ZABLOCKI. How long they have been advising the Agency, whether it was beginning in January or in the past.

Mr. MALONE. I would be happy to do that.

Chairman ZABLOCKI. Please include what their salaries are, if they are paid a per diem, expenses, or whatever. If they are doing it gratis I would be even more interested. I am not opposed to advice. I have been married for 40 years and I have all I could take. [Laughter.]

But whenever somebody volunteers gratuitous advice to me, I really wonder why that advice is coming and why the person wants to give it to me, so I have a jaundiced eye and attitude toward that.

Mr. MALONE. Of course, as I am sure you are aware, Mr. Chairman, the public advisory committee, in which there are a very large number of members, do serve without compensation, and they are considered advisers to the delegation. And, of course, we have other advisers and other experts that are specifically related in an individual capacity to the delegation, as well.

So we can certainly provide you with lists of people in both of those categories.

Chairman ZABLOCKI. I understand. There are some advisers that are invited and some that volunteer. I fully understand that.

I would like to ask at this time, for myself at least, unanimous consent that the record be kept open until the end of this week so that Congressman Bonker and Congressman Bingham could submit questions for the purpose of the record.[2]

And again, Mr. Malone, thank you very much for appearing before our committee.

Mr. MALONE. Thank you very much, Mr. Chairman.

Chairman ZABLOCKI. The committee stands adjourned until 2 this afternoon.

[Whereupon, at 12:15 o'clock p.m., the committee recessed, to reconvene at the call of the Chair.]

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[1] See appendix 10, p. 126., for list of the U.S. delegation to the 10th session of the Third U.N. Law of the Sea Conference, and the accompanying experts.

[2] Questions and answers appear in appendixes 11–13, pp. 130–161.

U.S. POLICY AND THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

THURSDAY, MAY 14, 1981

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, D.C.

The committee met at 3 p.m. in room 2172, Rayburn House Office Building, Hon. Clement J. Zablocki (chairman of the committee) presiding.

Chairman ZABLOCKI. The committee will come to order.

This afternoon we meet to continue consideration of the U.S. participation in the negotiations of the United Nations Third Conference on the Law of the Sea.

On April 29, Mr. James Malone, the head of the U.S. delegation to the Conference, testified before the committee on the status of the negotiations at the 10th session and the administration's policy review. Mr. Malone indicated several problems he has with the deep seabed mining provisions of the draft convention. He also said that the administration would carry out a thorough review of U.S. policy which would not be concluded until after the resumed 10th session of the Conference this August in Geneva. Thus the United States would not be prepared to participate in the Geneva meeting in a substantive way. Members of the committee expressed considerable concern with the timing of the review and urged the administration to complete the review in a balanced and expeditious manner hopefully, in time for the August session.

Today we welcome Elliot Richardson, former head of the U.S. delegation to the Conference and currently president of the Department of State's Advisory Committee on the Law of the Sea. We are glad to have you with us and look forward to having your views of the negotiations and U.S. participation.

I understand you have a prepared statement. Do you want to begin with that and either summarize or read it for the record?

STATEMENT OF ELLIOT RICHARDSON, PRESIDENT, DEPARTMENT OF STATE ADVISORY COMMITTEE ON THE LAW OF THE SEA

Mr. RICHARDSON. Thank you, Mr. Chairman and members of the committee.

I do have a prepared statement, and judging from experience, Mr. Chairman, I suspect I can deliver the whole statement verbatim more quickly than any adlibbed summary.

I do appreciate the opportunity to be here, Mr. Chairman.

I have been grateful over all the years of my association with the Law of the Sea negotiations for the sustained interest of this committee.

It is not a subject that has during any of that period enlisted a degree of public attention commensurate with its true importance, and so I have been all the more appreciative of the recognition by this committee of the dimensions of its implications for the long-term interests of the United States, and I feel that way particularly at this time, Mr. Chairman.

In the interval since I last appeared before you, two developments have taken place which seem to me significant.

First, the Conference as a whole has exhibited a notably tolerant understanding of the need of the United States to carry out a thorough review of the draft convention, provided that it is done in a timely manner.

The last point, of course, is one which you have just underscored, Mr. Chairman, in your introductory remarks.

There have been indications, moreover, that many delegations would be prepared to consider proposals emanating from the review that are designed to correct what we, the United States, regard as flaws in the text.

Short of such a futile gesture as attempting to change the basic elements of the parallel system, how far we should attempt to go in seeking such improvements is a question of judgment. Intersessional consultations with other delegations should help to provide answers to this question.

Although the Advisory Committee on the Law of the Sea, of which, as you have just noted, I am the public chairman, will undoubtedly have views on these matters, as well on the substance of the changes to be sought, the committee will not have had a chance to discuss them until it meets again on June 8 and 9. I shall not, therefore, try to anticipate its recommendations.

The second noteworthy development is the remarkable persistence of distortions of the draft convention by critics apparently less interested in getting a good treaty than in scuttling any treaty whether satisfactory or not. These distortions are now being picked up and repeated by people who are not fundamentally hostile to the treaty but who, under the impression that the text actually contains the alleged flaws, are understandably disturbed. This hearing, Mr. Chairman, affords a timely opportunity to correct the record.

The most frequently repeated misstatements, and the answers to them, are as follows:

One, that the treaty would not give the U.S. assured access to seabed minerals. In fact, the text expressly gives companies sponsored by a member state the right to apply for a plan of work, spells out the qualifications of applicants in clear, objective terms, and directs the International Seabed Authority to approve a plan of work proposed by an applicant meeting the specified financial and technical standards.

Two, that the United States would not be assured of a seat on the Council of the Authority, although the Eastern bloc would be guaranteed three seats. Actually, the provisions for membership on the Council would assure the Western industrial countries six to

nine seats; each interest group whose representation is required would designate its own representatives. The United States, either as the probable largest investor in deep-seabed mining—one of the represented interest groups—or as the largest importer or consumer of deep-seabed minerals—a second interest group—would have as much practical assurance of being named to one of these groups as would the Soviet Union of being named as one of the Eastern bloc representatives.

Three, that the U.S. companies would be required to sell sensitive national-security-related technology. On the contrary, the U.S. Government would presumably deny an export license for any such sale. The text provides that "nothing in this convention shall be deemed to require a State Party, in the fulfillment of its obligations under the relevant provisions of this convention, to supply information, the disclosure of which is contrary to the essential interests of its security."

Four, that a company seeking an ocean-mining contract would be required to transfer its technology without adequate compensation. In fact, the technology-transfer obligation applies "only if the enterprise finds that it is unable to obtain the same or equally efficient and useful technology on the open market" and then only on "fair and reasonable commercial terms and conditions," subject to binding commercial arbitration of any dispute as to those terms and conditions. In passing, I would note that a number of companies have already come forward with offers of seabed mining systems to the future enterprise.

Five, that national liberation movements like the PLO would be eligible to share in the net revenues of the Authority. Although "activities in the area,"—those would, of course, include deep-seabed mining—under the jurisdiction of the Authority are to be conducted on a basis talking into consideration the interests of "peoples who have not obtained full independence or other self-governing status," the sharing of economic benefits can only be carried out in accordance with regulations in which we must concur. We shall, therefore, be in a position to prevent the PLO from being eligible.

Fortunately, Mr. Chairman, the attacks on the text have a positive aspect. They help to point up the remarkable fact that so little of this extraordinarily complex document is the subject of controversy. They also invite their own refutation by the kind of retort I have just made; namely, that the text does not say—or was not intended to say—what the critic has alleged. And where the criticism cannot wholly be disposed of by a fair reading of the existing text, it identifies an opportunity to make the language conform with its intent.

In the case, for example, of U.S. membership on the Council of the Authority, the provision for the selection by each interest group of its own representatives was put forward by the U.S. delegation last year in the belief that this would solve the problem. It was accepted by the Group of 77 with the same understanding. Having thus in substance already acquiesced in a "guaranteed seat for the United States," it is likely that the 77 would now agree to make the guarantee more explicit.

Again, take the allegation that liberation movements like the PLO would be eligible for a share of the net revenues of the Seabed Authority. Although, as noted above, we have in fact secured effective means of preventing such an outcome, this, too, is a result that could be reinforced, if not in the text, at least in the official record at the final stage of the Conference.

Not all criticisms of the draft convention are distortions, of course. The Interdepartmental Group on the Law of the Sea had already targeted a number of needed improvements even before this administration's review was announced. The IG proposals would have addressed most of the concerns identified by Assistant Secretary Malone when he testified on April 29 before the Subcommittee on Oceanography of the House Merchant Marine and Fisheries Committee.

The most important of these proposals—and concerns—was the protection of investments made prior to the draft convention's entry into force. Other such matters were the transfer of technology owned by subcontractors, the "Brazil clause," the number of ratifications required for the entry into force of amendments emanating from the Review Conference, and the exemption of net importers from sharing the revenue from the exploitation of hydrocarbons in the Continental Shelf beyond the 200-mile limit.

Although not on either Mr. Malone's or the IG's list, other desirable changes which the Conference would undoubtedly agree to put on its agenda would be a clause more positively encouraging the exploitation of seabed resources and a fixed date for the startup of the production-ceiling formula.

Mr. Malone also referred to the burden imposed on seabed mining corporations by the convention's review-sharing provisions, but this is a concern which should, in all fairness, be dealt with under domestic law. All that is necessary is to give revenue-sharing payments to the Authority the same treatment as taxes paid to a foreign government. Indeed, this has all along been advocated by the State Department. If this were done the present revenue-sharing provisions are likely to be acceptable to U.S. mining companies.

In conclusion, Mr. Chairman, I want once again to emphasize that the treaty, as thus improved, would bring substantial benefits to the United States. This is widely acknowledged—indeed, I should say, except for fringe elements, not disputed at all—in the case of freedom of navigation and overflight, environmental protection, conservation of living resources including marine mammals, oil and gas exploitation, telecommunications, conflict prevention, and dispute settlement.

Most members of the scientific community agree that marine scientific research would be better off under the treaty than without it. And even the seabed mining industry recognizes that a treaty improved in realistically possible ways is the preferable means of obtaining rights good against all the world to carry out deep seabed mining operations in defined areas of the ocean bottom. Such a treaty would, therefore, better serve the national interest in access to strategic minerals than a vulnerable reciprocal regime to which only a handful of industrial countries belonged.

Let me interpolate, Mr. Chairman, that with one possible exception. I do not know of any representative of the perspective deep seabed mining industry that would disagree with those statements.

Thank you, Mr. Chairman and members of the committee. This concludes my prepared statement. I would be glad to respond to your questions.

Chairman ZABLOCKI. Thank you, Mr. Richardson. You have certainly responded to some of the concerns and questions that Mr. Malone has presented before this committee which also caused some question among the membership of this committee.

You have stated that you are president of the Department of State's Advisory Committee on the Law of the Sea. The committee is comprised of what membership, and what input does it have, as far as our new administration's policy position?

Mr. RICHARDSON. The committee is composed, Mr. Chairman, of representatives of all the affected or interested groups. It is, therefore, a large committee, and it includes Members of the House and Senate as well. Total membership, I think, is 126, and it is divided into subcommittees for each interest.

For example, there is a Subcommittee on Deep Seabed Minerals or Seabed Mining. That subcommittee is chaired by Mr. Marne Dubs, of Kennecott Copper, who is also the chairman of the American Mining Congress Committee on Seabed Mining.

There is a subcommittee on Marine Scientific Research, chaired by Dr. Paul Fye of Woods Hole, which includes representatives of the Lamont Doherty Geological Observatory at Columbia, Scripps at La Jolla, the universities of Oregon, Washington, Rhode Island, and other distinguished marine biologists and oceanographers.

There is a Committee on Oil and Gas, including representatives of Exxon, Shell, Mobil, Gulf, Texaco, Standard Oil of Indiana, and several independent experts.

There are Subcommittees on Shipping, Fishing, International Law, and so on. It has been my practice to ask the subcommittees to designate one member who would serve at a given time as a member of the U.S. delegation. Members of the Advisory Committee are entitled, in addition, to attend meetings of the delegation during negotiations, and in the intervals between sessions, there have been meetings of the committee usually of a day and a half or two days at which the status of negotations is reviewed, and at which the views of members of the committee on pending issues are invited.

I was pleased to note, Mr. Chairman, that in testimony by Mr. Kronmiller before this committee when he accompanied Mr. Malone on April 29, 1981, Mr. Kronmiller, in response to a question by Congressman Gilman said, and I quote, "Historically, there has been heavy reliance upon the Advisory Committee that has been established for the Law of the Sea, and we do not intend to diminish that."

Chairman ZABLOCKI. Mr. Malone, in his testimony, stated that when there is a change of administration, a review of previous negotiations is almost automatic.

Given the outcome of the Presidential elections in France last week, is the French Government likely to want to review its policy negotiations at the Law of the Sea Conference, and would you care

to comment on whether a review of past negotiations is automatically sought when there is a change of administration?

Mr. RICHARDSON. Certainly, Mr. Chairman, this degree of automaticity is not visible in the conduct of negotiations by other countries as a general rule.

There have been, of course, many changes of governments around the world, even during the 4 years in which I have been associated with the negotiations, and I am not aware of any instance in which another country has sought to delay the negotiations or has indeed significantly changed its negotiating position because of the change of government.

The presumed explanation for this is that the national interests at stake in each country are so fundamental and so persisting that they have been given a recognition transcending purely partisan considerations.

This, in turn, therefore, has accounted for the fact that a change of party leadership of the Government has not resulted in a change of negotiating positions.

I do not on the other hand, want to be understood as questioning the legitimacy of undertaking the review at this time, and indeed, even the Law of the Sea Conference as a whole, as I noted at the outset of my statement, has accepted that position.

I am concerned, however, as to the depth of the review, and thus as to the time that it may take.

It does seem to me that there ought to be some fundamental premises, premises that have guided every administration since Johnson, that ought relatively quickly to be capable of review and assessment in order then to be able to address the question of how to improve the treaty at Geneva, and it does seem to me the negotiating session in Geneva may well afford an opportunity for the United States to obtain improvements in the treaty, or at least to initiate that process which may not be available at a later date after the United States has curdled the atmosphere by another foot-dragging performance.

Chairman ZABLOCKI. You have stated also in the opening part of your testimony that the Conference as a whole has exhibited notably tolerant understanding of the need for the United States to carry on a review.

However, would the Conference have a tolerant understanding of the United States if the review is not completed by August, and what is likely to happen at the Conference if the United States is not ready to negotiate substance by that time?

Mr. RICHARDSON. I am concerned about this, Mr. Chairman.

I can't make a completely confident forecast, of course.

I am concerned, as I indicated, that a negative reaction would make the Conference less receptive at a later date to whatever amendments we then seek.

I am also concerned that the Conference might insist upon "formalizing" the text, which would mean that the document now referred to as "Draft Convention on the Law of the Sea" (Informal Text), would become a formal text. That would mean, then, that for the first time the Conference operated under its rules, and under the rules, changes in the text can only be made by amendment.

This would require an affirmative two-thirds vote, so for the United States then to get a consensus could be difficult.

It would be more difficult, perhaps, then for us to muster a two-thirds vote, and for us to get a two-thirds vote in any circumstances would be extremely difficult, so I do think we have timing considerations that are of considerable urgency, and this, it is fair to say, is a major concern, in my view, with respect to the manner in which the review is now being conducted.

Chairman ZABLOCKI. Of course, Mr. Richardson, you said you did not intend to guess what the Conference would do or what would likely happen at the Conference if we are not ready, but is there a possibility that the Conference would go ahead without us?

Mr. RICHARDSON. I certainly think that they might well go ahead with the formalization of the text, as I have just indicated.

I do not think that they would go ahead and adopt the treaty without us, but the formalization of the text would be a step that make it harder for us thereafter to get changes. So, looking at the situation, therefore, in terms of trying to make the most of an opportunity to get improvements, I would be concerned if we were not prepared to do that in Geneva.

Chairman ZABLOCKI. With the permission of the members, I would like to return to my first question when I referred to your presidency of the Department of State's Advisory Council—what input do you have, what input have you had, and what input do you expect to have on the executive branch as President of the Department of State's Advisory Council?

Mr. RICHARDSON. We have not had a whole lot of input up to now, Mr. Chairman, although I did have an informal conversation with most of the subcommittee chairmen a month ago, the result of which was the conclusion that each subcommittee should seek its own means of presenting its views to the group of Deputy Assistant Secretaries now conducting the review under Mr. Malone, and to Mr. Malone himself.

The Seabed Mining Subcommittee has done this. Whether any other has up to now, I don't know.

The committee will meet, as I indicated, on June 8 and 9, and at that meeting, I feel sure that these questions—the questions we have been discussing—will be addressed together with the question of judgment I mentioned which is, what will the traffic bear in terms of future improvement in the text.

Chairman. ZABLOCKI. Mr. Winn.

Mr. WINN. I thank you, Mr. Chairman.

I want to take this opportunity, if I may, to commend the gentleman, the Secretary, for the many hours of dedication and hard work that he has put in trying to make this become a law, an international agreement that is important to so many countries and so many people in the world.

I am quite sure that it must take a very patient man to spend the time and energy that you have, and then to have your own administration sort of put the brakes on you, almost slam the door in your face.

I would like to know, maybe you would prefer to tell me later—but I am anxious to known in the committee anyway, do you really have the ear of the President?

Does he know what you are doing, the amount of work that has been involved, or do you have to go through staff?

Mr. RICHARDSON. The answer, Congressman Winn, is that, no, I don't have the ear of the President.

I haven't sought it either, up to now. It seemed to me, for the reasons that the review was legitimate, it was legitimate that it be undertaken in the ordinary course by the representatives of all the departments and agencies concerned, whoever they might be, and that if I or anyone else concerned with the treaty were to go to the President of the United States, at the beginning of such a review, the answer we would inevitably get would be that no, the issues have not been prejudged, that the review is being undertaken even-handedly, and that certainly there would be the opportunity for us to be heard at a later date, and so on, and so on.

I am, however, concerned now that the tactical questions of judgment affecting the timing of the U.S. presentation of amendments be brought to a level in the Government where this can be looked at in a broader perspective, than I think the rather laborious process that is now underway would permit, and I would think the question of how best to do that, through what channels and the like, is a question that certainly concerns me and others who have been deeply involved in these negotiations.

Mr. WINN. Do you think that there are too many agencies involved in the work that is being done at the present time, the study, recommendations? Is it unwieldy?

Mr. RICHARDSON. It is to a degree, and in the sense that the whole U.S. delegation has to some extent been unwieldy, but there is no way of excluding representation of departments and agencies who do have genuine interests.

The Department of Defense is represented for obvious reasons. The Department of Transportation, largely because of the responsibilities of the Coast Guard; Department of Commerce, which includes the Maritime Administration as well as the National Oceanographic and Atmospheric Administration; and the Department of Energy, given the enormous oil and gas reserves of the continental margin, as well as the potential for energy development through such devices as ocean thermal energy conversion; the Environmental Protection Administration, and so on down the list of those who have been represented in this process from the very beginning.

I chaired in 1969 and 1970 the Under Secretary's Committee of the National Security Council, and in 1970 we had an enormous number of members at every meeting, because of all the interests that were engaged and they have been represented ever since.

Mr. WINN. Thank you.

Well, listing all those agencies, I don't think that was a very smart question of me to ask you, because I could have answered that myself.

Is there anything the members of this committee can do or the Members of Congress can do to help you in your efforts?

Mr. RICHARDSON. Well, I don't want to create the impression in the first instance, Congressman Winn, that I am carrying on a battle inconsisent with the interests or objectives of the administration, or the United States generally.

I am assured and believe that the review being undertaken is a genuine and open ended review. I think, first, that any members of this committee who are convinced that a treaty is on balance in the interest of the United States; and, second, that we should seek to take advantage of the opportunity to get improvements in it—and are, therefore, concerned about the problem of time—that it could be helpful if they expressed that concern.

Mr. WINN. I think there are a great many of us that feel that way.

Again, I want to thank you for your time, dedication and, probably more than anything else, patience. Thank you, Mr. Chairman.

Chairman. ZABLOCKI. Thank you very much.

Mr. Bingham?

Mr. BINGHAM. I would like to join in what Congressman Winn just said.

As you know, I followed your work in this area with great interest and admiration for a long time.

I don't know whether you have seen a publication that I have here headed "Mineral Policy Issues," put out by Government Research Corp. and written by William J. Baker, energy and national resources analyst.

I would like to quote a couple of passages from this paper, and then ask for your comment.

The mining industry is vigorously opposed to the seabed mining provisions currently in the treaty. Industry representatives argue that enactment of the treaty without major amendment would preclude any additional investment in seabed mining.

And a little later, the paper says:

Many of the mining industry's objectives involve major, long-standing provisions which, while not to everyone's liking, had largely been accepted as settled.

Mr. RICHARDSON. The statements, I think are essentially accurate characterizations of industry views. But if you were to ask another question which is, what changes can the United States get, and then would you rather operate under the treaty as thus improved than without a treaty, you would elicit important additional information.

You would find out first that mining companies would favor a course directed toward getting improvements to the extent that this is feasible, and would oppose demands by the United States that would not be taken seriously, and that could not be achieved.

You would get into questions of judgment as to what is feasible, and those are perfectly legitimate as well as difficult questions.

The second point you would find out that there will be no investment in deep seabed mining without a treaty.

I have asked the representatives of all the consortia whether or not they would be willing to invest under domestic reciprocal legislation, and the answer was "No."

You then come to the question, what are the greater risks to a potential investor: under a treaty that is improved as much as feasible, or under reciprocal legislation?

I think most of them would say that the risks under the treaty are not as great as the risks that would exist in the attempt to operate under national legislation.

If at the end of the road it turned out that the companies needed further reassurance in order to get them to invest under the treaty, then the only possible answer would be risk insurance, either offered commercially—and it might be available commercially, if we had done a good job on the rules and regulations, for example. If commercial risk insurance were not available, then there could be an adaptation of the type of insurance we now offer to investors in other countries under OPIC.

The costs of the insurance are likely to be less under the treaty than outside it, because the legal risks are likely to be less under the treaty than outside it. So you then finally get to the key point, which is that if on balance the industry is better off under an improved treaty than without it, and if it takes insurance to induce investment under the treaty, then by all means, let us provide that insurance, because by that route, the United States will gain the other benefits of the treaty.

Conversely, if we kick over the treaty, we will find ourselves with an equal or greater need for providing insurance in order to get a company to act, but at the same time, we will have lost all the other benefits.

Now, these shorthand statements, such as the ones you have read, gloss over all of this.

The industry has been unable to change gears quickly. For a long time they regarded themselves as in effect putting pressure on the Conference and on the U.S. delegation to get a better treaty.

Their criticisms of the treaty have been picked up by people whose basic objection to the treaty are essentially ideological.

Now, last year, Mr. Chairman, and Mr. Bingham, I would not have told you that there would be no investment under the legislation. I was personally responsible for getting the last administration to change its position from opposition to the legislation to support of the legislation. I did that because we needed the negotiating leverage created by the perception on the part of the Conference that we were indeed prepared to go forward under that legislation.

Now the situation is one in which we have obtained all the negotiating leverage we could possibly need because of the possibility we may kick over the treaty regardless of its benefits to the United States, so it ought to be clear, therefore, that insofar as U.S. access to strategic minerals is concerned, we should prefer the treaty.

It is not a question of trading off U.S. access to minerals against U.S. politico-military interests in freedom of navigation. It is a question of having better assurance of access to seabed minerals under the treaty than without it, and I do not know a single representative of the seabed mining industry who, as I said at the conclusion of my prepared statement, disagrees with that, with one possible exception.

Mr. BINGHAM. My time has expired, but you have just made one of the most significant statements that I have heard in any hearing on this subject.

I trust the industry press is here and will faithfully report what you have said, that there will not be investment without a treaty.

This provides a totally new light on the subject and underlines the urgency of the treaty.

Thank you, Mr. Richardson.

Chairman ZABLOCKI. Mr. Pritchard.

Mr. PRITCHARD. Thank you, Mr. Chairman. I join my colleagues in welcoming our distinguished guest who has served our country so well in so many positions.

I was very critical of the administration when they were up here, because I thought that they were undertaking a process that was excessively long, and in fact, I guess I questioned their motives.

I would like to review just a little bit here. When the administration made its decision on appointments and replacing staff, did they talk to you as the Chairman of the Citizens Advisory Committee? Did you advise them in any way?

Mr. RICHARDSON. No, I did not, Mr. Pritchard.

Mr. PRITCHARD. I find that remarkable.

Mr. RICHARDSON. I had, I might say, communicated with a number of people after the election in order to urge the designation of my Deputy, George Aldrich, as the head of the delegation.

It seemed to me that his outstanding performance as our seabed mining negotiator made him the appropriate person for that role but that was the only kind of communication I had.

Mr. PRITCHARD. In your testimony you say "all respected members of the scientific community support this agreement." That is a rather tough statement.

Mr. RICHARDSON. I don't think I put it quite that way, did I? I think I said that "most members of the scientific community agree that marine scientific research would be better off with the treaty than without it."

I think this is true of the overwhelming majority of members of the scientific community.

That was ticked off in the previous sentence that refers to the widely recognized benefits of the treaty, with the exception of what I would regard as a fringe element.

That, I think, is true of all the things referred to in that sentence, but I put science in the next sentence because the scientists have, I think rightly, been concerned about the consent regime, so-called, provided for in the text.

From the time I came in in January or February 1977, until last August, we fought by every possible means—and I mean every possible means—to get improvements in the science text, and we did achieve significant improvements.

This helped to reconcile the scientific community, but in the meantime, as a result of U.S. unilateral action in 1976 in effect inviting every other country to establish a 200-mile zone, they were running into all kinds of problems in getting consent to projects in and around the world which were more troublesome than what they would have under the treaty.

The treaty would at least establish consistent uniform rules. It would give them certain dispute settlement benefits. It would help to establish a worldwide approach to science that would be significantly better than the chaos they are encountering now.

Mr. PRITCHARD. I asked Mr. Malone this and I think it is an honest question. When we change our administration during the

time we are involved in long running negotiations—whether the Panama Canal, the Law of the Sea, or these communications conventions, how do we reconcile the views of the new administration and how much is the new administration held responsible for what has gone on before?

How do you do this without starting from scratch? Would you give me your thoughts?

Mr. RICHARDSON. I don't have any easy answer to that, Mr. Pritchard. The shift of ideological content of the national leadership from the previous administration to this administration was certainly more marked in degree than has occurred in any recent election that I can think of.

This has, therefore, made the problem somewhat more difficult than it would be ordinarily.

We are a country which to a larger extent than most others—than other democratic countries—changes the leadership of executive branch departments. There are reasons under our system for doing this. Undoubtedly in this kind of context we do pay a price.

I encounter among colleagues in the Law of the Sea Conference, including people who in their own countries and Foreign Ministers, Ministers of Justice, representatives to the U.N., a considerable degree of dismay on this score.

It has raised exactly the question you have touched on. How can we know when we negotiate in the United States whether any understanding reached is going to survive?

It does suggest the possible desirability of some kind of consultative mechanism that would help. One might have thought in this case that the fact that the basic elements of the U.S. position had been laid down in the beginning of the Nixon administration, had been maintained without change under Ford and Carter, that all the heads of the U.S. delegation had been Republicans, that we had an advisory committee broadly representative as previously described, and that we had had constant consultations and hearings with the Congress, like this one, would have minimized these risks.

I can only hope that the result of the review will be to reaffirm earlier positions. The realities have not changed. Four Presidents, four Secretaries of State, seven Secretaries of Defense—I don't know how many chairmen and members of the Joint Chiefs of Staff—have all come out with the same conclusions during all the years since 1966 in which these issues have been addressed.

As I say, since the realities have not in fact changed, one would hope they will have the same penetrating power in due course that they have had in the past.

Mr. PRITCHARD. May I ask one short question?

Chairman ZABLOCKI. Yes.

Mr. PRITCHARD. Is there any country which is sympathetic to the adminstration's desire to conduct a complete review of these negotiations, or feels it is legitimate for us to take more than 9 months to come to a conclusion?

You have dealt with these countries. What is their attitude?

Mr. RICHARDSON. I couldn't prove a negative. I don't know that there are any. All I can say is if there is any I haven't encountered it.

Chairman ZABLOCKI. Mrs. Fenwick.

Mrs. FENWICK. On page 7 you just spoke briefly about navigation. Could you tell us about the freedom of the seas and what has been guaranteed there, if anything? What are the conditions?

Mr. RICHARDSON. I would be glad to, Mrs. Fenwick.

The provisions on this subject have not changed since 1977 when we had very difficult negotiations with respect to navigation and overflight in the 200-mile economic zone and nailed down the final provisions for freedom of passage and overflight through archipelagos.

So what we have in effect is a regime under this treaty that does guarantee these freedoms for the passage of straits as well as movement outside the 12-mile territorial sea and through sealanes that would be established pursuant to the treaty through the waters enclosed by archipelagos.

Mrs. FENWICK. Are the straits specifically named?

Mr. RICHARDSON. Oh, yes. Indeed, to go back and give you a historic footnote on this, the first U.N. conference in 1958 dealt with the question of extension of the territorial sea but reached no conclusion.

Another conference in 1960 dealt particularly with the territorial sea and the passage of straits because to extend the territorial sea from 3 to 12 miles could result in overlapping of something like 120 straits by territorial waters.

That would, under traditional principles of international law, mean there was no right to transit such a strait by submarine traveling submerged and no right of overflight at all.

So it was a central objective of the United States, as well as other maritime countries, from 1960 onward, to assure that the extension of the territorial sea would be coupled with the guarantee of freedom of transited straits.

We have here a curious phenomenon. When I was Under Secretary of State, a job they now call Deputy Secretary of State, in 1970 the paramount and overriding U.S. interest in the negotiation of a comprehensive treaty was the politico-military interest in freedom of navigation and overflight; second came oil and gas; third, fisheries; and seabed mining was a distant fourth.

We have fully and adequately protected U.S. interests in the first three of these, starting with navigation. It is one of those what-have-you-done-for-me-lately phenomena. Personnel in the Department of Defense who were able, with the help of some of us in the State Department, to get Defense Department interests recognized in ways that completely overrode other departments are now gone, and the whole thing has been turned upside down so that arguable defects in the seabed mining regime have come to dominate all approaches to this subject. But the fact is that the navigational interests have long been satisfactorily met by this text, subject to quibbles over interpretation which in fact are not the subject of any disagreement in the conference.

I have repeatedly, for example, in various publications and conversations with colleagues stated the U.S. understanding of this language, and no question has ever been raised about it.

Mrs. FENWICK. On the last page of your testimony you speak of, "Such a treaty would, therefore, better serve the national interest

in access to strategic minerals than a vulnerable reciprocal regime to which only a handful of industrial countries belonged."

Is that the rather grim alternative that faces us if we do not sign this treaty?

What are the alternatives? Suppose we don't. What could happen? Would the other industrial nations join up with the other nations of the world that want the treaty and leave us out?

Mr. RICHARDSON. Even if the other countries' representatives in seabed mining did join us, we would still only be a handful, but you have raised a different point which is an important one, and that is that we might find at the end of the day that even they or some of them had decided to join the treaty regime and not our little club of industrial countries.

They could have a number of reasons for doing this. They might, for example—it is certainly true of the United Kingdom—concluded that their paramount interest in the treaty is in the provisions that secure coastal state jurisdiction over the hydrocarbons in the continental shelf beyond 200 miles.

Other countries might decide that the marginal economic advantages of operating outside the treaty were outweighed by the legal security of operating inside and that, given their dependence on overseas sources, they would prefer the security to that economic margin, and so on.

Third World relationships could have a significant degree of weight, and these might influence, in the case of France, for example, a decision to go forward under the treaty rather than to join with us and a few others in a reciprocal regime.

Mrs. FENWICK. I see my time has expired. Thank you.

Chairman ZABLOCKI. Mr. Dornan.

Mr. DORNAN. Thank you.

Mr. Secretary, I, too, want to join my colleagues in complimenting you for taking on a task that easily has to have been as difficult as any of the great branches of our executive department that you headed ably for years.

You made a statement that fascinated me. You said that the change to the last administration had been a greater ideological shift from one administration to another than any in recent memory.

One would assume from that statement that you mean the ideological shift from President Carter to President Reagan is greater than the shift in thinking in the approach to economic and even international affairs than it was from a Nixon-Ford administration to a Carter administration, than it was from President Johnson's administration to a Nixon administration. Is that a fair assumption?

Mr. RICHARDSON. Oh, I think, clearly, yes. Having served in all these administrations—my first Presidential appointment was by President Eisenhower; I served throughout his second term—I think the answer is clearly yes.

Mr. DORNAN. I am building up to something here, not just fishing for your fascinating observations on recent history.

It would seem then that some of the charges of those of us who unabashedly call ourselves conservatives would be true in your estimation when we said, without alluding to some demagogs from

the South about not a dime's worth of difference between the two parties, when we made the change those of us who consider ourselves responsible conservatives that there was an awful lot of me-tooism in the Republican Party as opposed to what to do about the unbelievable growth of the Federal Government in the last four decades.

Would you say some of those charges of me-tooism were correct?

Mr. RICHARDSON. Yes, I certainly would. Of course, by the time of the 1980 campaign the concerns about the growth of the Government and the burden of regulation had become very widely shared.

It is somewhat ironical, although I am regarded as a liberal or moderate Republican, that I first made a speech urging block grants in 1967 and wrote a book in 1975 which developed at length the problem of excessive intrusion by Government, so I don't think that alone is the earmark of conservatism.

Mr. DORNAN. I agree.

Mr. RICHARDSON. There are certainly many such differences, including attitudes toward multilateral international organizations. That is a set of concerns as to which my own views tend to diverge from those of many conservatives.

In the case of this treaty, for example, the criticism, as I said earlier, has shifted from a criticism by mining company representatives of features of the seabed mining regime to an attitude on the part of some conservatives of general hostility toward any sort of international seabed authority exercising supernational powers.

Mr. DORNAN. Each one of our great parties and each one of the major ideologies within those parties has its fever swamps, and I feel it is totally unacceptable from what I now call my administration, to put off until August coming to some sort of resolution on this treaty.

However, I can sense without being overly apologetic, for a viewpoint with which I do not agree, and unfortunate paranoia among conservatives who now have real power for the first time in their lifetime that everything is suspect that came out of this long era—also, my entire lifetime of 48 years—of massive Government intrusion and then a lot of me-tooism on the part of our Republican Party.

What I hope to convey to the administration in the White House is don't, to use a weak cliche, throw out the baby with the bath water and think that everything that came out of every administration is tainted.

I think the Carter administration showed some skill in keeping Peter Benzinger on at the Drug Enforcement Agency from the Nixon administration, and in assigning you this most difficult task it gave a reputation, your reputation, the impact on the international scene that was needed to move forward with this treaty.

I would like to read to you from one of the so-called conservative think tanks on the Hill formed the year I came here in 1976, the Heritage Foundation.

I will read it slowly so you can absorb it. I want an impression of whether you think there is any merit to bilateral agreements and some of the good things in the treaty that everybody agrees are good.

Achieving Law of the Sea Gains. The current Law of the Sea proposal contains several positive aspects with regard to protection of navigation rights through international straits, setting territorial limits of 12 miles, establishing economic zones to 200 miles.

Additionally, the treaty provides for a cooperative international fisheries regime aimed at safeguarding and conserving migratory and endangered species as well as providing protection for marine mammals and other components of the fragile marine environment.

The above benefits can be equally obtained through bilateral relationships with the affected nations who are negotiating specific agreements through the U.N. General Assembly or existing organizations such as the U.N. Environmental Program, the International Civil Aviation Organization and the Intergovernmental Marine Consulting Organization, to name just a few.

The base approval of the treaty on fears of losing a few good benefits while accepting a number of potentially harmful provisions would be ill-advised and possibly worse than no treaty at all.

If worse comes to worst and we see August lead off into nothing, Mr. Secretary, would you recommend a positive approach here to trying to save all the best parts of the treaty through the approach analyzed here in this Heritage Foundation background paper.

Mr. RICHARDSON. I couldn't honestly do that. The American Heritage background paper is demonstrably wrong on a number of points, indeed, ill-informed. Take, for example, the reference to the Intergovernmental Maritime Consultative Organization Conventions. One of the reasons why this treaty is so important from an environmental point of view is that it makes binding on all member states the internationally established standards which emanate from IMCO.

There is no way in which more than a relatively small number of countries can be induced to ratify IMCO Convention. None has ever been ratified by more than a relatively small number of countries.

This document, as I explained at length in an article in Oceans magazine, greatly extends the reach of IMCO's standards for design of tankers, for discharge standards, or toxic substances, by incorporating in effect by reference the standards established by IMCO and making them binding on a number of countries which will be much larger because of the array of inducements to join that are held out by this document.

With respect to the straits, I think it would be an exceedingly shortsighted and ill-advised policy to undertake to negotiate bilaterally with groups of straits countries, as in the case of the Strait of Malacca, deals for the transit of U.S. ships.

We would, in effect, be confessing that these states control straits passage. We would be forced into bidding for such rights against the Soviet Union or other countries, and we would be subject to the cancellation of these rights as the result of a change of regime.

I cannot imagine a representative of the Joint Chiefs of Staff endorsing such a course. The evidence of it is a fundamental reason why from the outset the Defense Department has been the driving force behind the U.S. effort to get this treaty.

There are other references there with respect to the breadth of the territorial sea. Again, one of the reasons why these negotiations were initiated was in order to halt the process referred to as "creeping jurisdiction" under which states were claiming 12-mile, 24-mile, 80-mile and, 200-mile territorial seas.

One thing that is not adequately understood about these negotiations is that the interest of the United States is not simply in having the power to transit straits or territorial or economic zones.

It is to gain the right to do so under universally accepted rules. Because the United States has political relationships with every country, we cannot afford merely in order to assure the transit of our tankers without harassment by coastal state environmental rules, to incur cumulative political ill will.

We don't want to have to count the costs every time we send a carrier task force through the Java Sea.

This is why as a superpower we need rules. It is not sufficient for us to say, "We are on the right side of the issue. We don't recognize the extention of the territorial sea 3 miles or 12. Therefore, we insist that there is still a high seas lane through the Strait of Lombok or the Strait of Malacca."

But if there are 120 other countries that say, "We don't agree with you, we believe that the 12-mile territorial sea has now become assimilated into customary international law," then, if we defy that position, we do so at cumulative political cost.

I could elaborate. Bilateral negotiations are expensive. A bargain is a bargain. You can't assume that representatives of the United States will always be able successfully to overreach the representatives of little countries. It doesn't work that way.

Bargains in which we gain excessive advantages are inherently unstable. The result, therefore, is that we have benefited in many instances unrecognized by the American Heritage Foundation by broad multilateral agreements under which we don't have to keep bargaining.

This, by the way, is a respect in which the American Heritage Foundation is fundamentally off base with regard to economic aid.

We should be in a position to have sufficient bilateral aid resources so that we can, through bilateral aid agreements, factor in political considerations.

The United States has an interest in the economic development of the sub-Saharan and Sahel on humanitarian and moral grounds as well as other considerations such as a long-term concern with global stability. This interest is unaffected by whatever political advantages we can extract by squeezing some concession out of the Central African Republic.

There are uses of multilateral institutions because they are multilateral that cannot be obtained through bilateral negotiations.

I think this is a matter that becomes clearer the more closely it is examined.

Mr. DORNAN. Thank you for that thoughtful answer. My time has run out.

If I could just say in concluding that I think human patience always reaches a breaking point and I hope after putting so many years into this effort you stay with it in the area of unofficial guidance so that those of us who believe the administration is making a mistake in taking so much time to reevaluate the matter, they should be well aware of how generous you were in your immediate analysis of the new administration's right to take another look at this.

I would hope without any disregard for my colleagues on the other side of the aisle, those who have an interest in this will follow it closely and are already in accordance with you.

If I can inform you of something that was a nice precedent yesterday, all of the Republicans of the House Foreign Affairs Committee had a breakfast with the Secretary of State.

I think if you would write to each one of the members of our side of the aisle of this prestigious committee so that we can develop a consensus quickly, to use our good offices to lean on the administration, to move forward with this historical document which I think—and I hope this isn't being hyperbolic—is a predecessor to the law of the galaxies.

We are already seeing articles about how we are going to mine asteroids on the closest planets in outer space for minerals that are more common there than in this planet, that we simply have to do something quickly in this whole area and your advice is invaluable.

Anything you want to communicate to the Republicans, I can promise you our senior members will have meetings where we can immediately project to the administration that this is not just a democratic concern in the House, it is a Republican concern in the House and the Senate to move forward with this incredibly important treaty quickly and not take a year to analyze it.

Thank you for your voluntary efforts over the past few months.

Mr. RICHARDSON. Thank you very much, Mr. Dornan.

Mr. DORNAN. It has been indicative of your spirit in decades of service.

Chairman ZABLOCKI. May I ask the gentleman from California, does he want the last statement on the record because it is a confession?

Mr. DORNAN. Yes. The confessions of St. Augustine have been a big seller for centuries and that puny, little confession I don't mind being circulated broadly.

Chairman ZABLOCKI. I do wish you, Mr. Secretary, good luck in trying to convey religion to some of my colleagues on the minority side. We already have the faith.

That is in jest. My Republican colleagues very often come to the fore at moments I least expect them to.

Mr. LEACH. Thank you.

I would like to comment to the gentleman from California that I find his constructive judgment very, very impressive and his galactic imagination also quite interesting.

Mr. DORNAN. Will the gentleman please yield?

Mr. LEACH. Yes.

Mr. DORNAN. A ghastly but extremeley popular movie last year was the "Alien" and the scene began on a gigantic galactic freighter bringing back minerals to the planet Earth, and when I consider my father was 11 years of age when the Wright Brothers flew, I expect to see that happen literally in my lifetime and the sea is just a backyard situation of what we will expect when all the nations look toward the first nation that ventures into outer space and it will probably be the United States.

If it is not us we know who it will be.

This treaty may be the Magna Carta prototype of how we are going to benefit smaller nations when we reach out for commercial concerns to outer space.

I thank the gentleman for yielding.

Mr. LEACH. I thank the gentleman.

I am reminded of a famous English cartoon by a man who is my namesake, John Leech, showing King John signing the Magna Carta with all the princes and dukes around pressuring him into it.

I have the feeling we may have that situation in our own Government today.

Mr. Secretary, it has been noted that every Chairman of the Joint Chiefs has supported the Law of the Sea. It has also been noted that some of the mining companies have serious reservations about it. If the law were even more restrictive on the mining companies—to the point of being prohibitory, would you assess our security interests as so much more important than mining interests that we should go forth in any regard?

Mr. RICHARDSON. I have never had to think through, Congressman Leach, the question of whether or not the United States should ratify a treaty less satisfactory than the present text for seabed mining or even ratify the present text.

First, because I have felt from the outset that we could still improve it, and I think it is fair to say that the present circumstances marginally enhance the opportunities for improvement.

Second, because it has been my view ever since I began to focus on the role of the Preparatory Commission that will come into being after the treaty is signed, that we should wait until we see the work of the Preparatory Commission before making up our minds.

This is so because the Preparatory Commission will have the function of drafting rules and regulations. It is a function essentially like that of the Internal Revenue Service writing rules after enactment of a new tax code.

Some of the concerns of the mining companies with respect to the treaty are concerns that arise out of possible interpretations of the text.

The rules and regulations will be more detailed. There is one very concrete example. I have said here the United States is assured access because the text spells out the qualifications of applicants in clear objective terms and because these qualifications have to do only with the financial competence and technological capabilities of the applicant.

The rules and regulations will have to go into greater detail as to what exactly is being taken into account in order to enhance the assurance that there is not the opportunity for the politicization of the process.

So I think that the United States should not decide whether or not to submit the treaty for ratification until after the Preparatory Commission has completed its work.

This allows me to highlight what I consider to be among the most significant gains of the negotiations conducted last August. Quite clearly, if we intend to place significant reliance on the detailed provisions of the rules and regulations, we need to assure

that the rules and regulations cannot be changed in ways that reduce that reassurance.

This has been accomplished first by getting agreement in the final clauses, article 308, I think it is, on a provision under which the rules and regulations drafted by the Preparatory Commission will become the rules and regulations that take effect on day one when the International Seabed Authority comes into existence.

After that the rules and regulations cannot be changed over the objection of the United States. So what we would be presenting to the Congress, then, is a package containing the treaty language plus details which we would have had a large role in working out.

Mr. LEACH. I would like to ask a little different type question. Without a treaty, we will have problems with regard to international laws on the straits, with regard to conflicts involving mining companies whose attempts to mine the sea are challenged in one forum or another, et cetera.

Do you think those problems would enhance the likelihood of conflict in the world, and is a reduction in potentialities of conflict a very serious rationale for this treaty?

Mr. RICHARDSON. Yes, it is. This prompts me to call attention to one of the points made in the passage from the American Heritage Foundation publication read by Mr. Dornan.

It referred at one point to what could be accomplished by U.N. General Assembly resolutions.

This treaty is a legislative document. The U.N. General Assembly resolutions do not have the force of law and they are not backed up by any dispute settlement machinery. This treaty takes effect as internal law as well as international law in all the countries that ratify it.

That means, then, that they accept the obligation to submit disputes to binding settlement. They have the option of agreeing to submit the dispute to the International Court of Justice or to the Law of the Sea tribunal that would be established under the treaty.

If they cannot agree on either of those alternatives they must accept binding arbitration. That means they have the obligation to submit the issue to arbitration and they are bound by the result.

There are some exceptions where the obligation is only to submit the issue to conciliation, but, broadly speaking, the dispute settlement machinery is binding both as to the obligation to submit the issue and as to the acceptance of the result.

That means, therefore, that you do have a major gain in conflict avoidance and prevention by this means but a major contribution also for the reason I touched on earlier, namely, the universality of the rules.

The very fact that the world community has agreed—I mentioned this in the context of science and also in the context of navigation, seabed resource exploitation—on the definition of areas and boundaries has contributed to conflict prevention.

Take, for example, oil and gas. Oil and gas, of course, are vastly more important economically than manganese nodules. This total world market for nickel today is only about $2 billion annually. So you are talking about a seabed mining industry which at its peak 20 years from now might be generating no more than an annual volume of $2 billion in current dollar amounts.

Oil and gas is a totally different story. It is estimated that somewhere between 30 and 40 percent of all the world's oil and gas reserves are within the continental margin under salt water.

There is room for serious dispute over limits of coastal state jurisdiction under the vague provisions of the existing Continental Shelf Convention.

It provides that the coastal state jurisdiction extends as far as the existing technology permits the exploitation of the resources. That means that the coastal state claims have been moving out steadily as technology has evolved and are at the point of colliding with the claims of the international community for the jurisdiction of some international machinery over the common heritage of mankind.

This is why the broad-margin countries, including the United States, Canada, Great Britain, Ireland, Norway, Australia, New Zealand, India, and Argentina, attach importance to the provisions of this treaty defining—a very complicated definition to be sure—defining the outer limits of coastal state jurisdiction.

This is why the American oil companies unanimously favor the treaties. Some of them have delivered testimony which addresses the problem of hydrocarbon potential beyond this line, but I don't know of a single responsible oil geologist who thinks there is any oil or gas beyond the line brought within coastal state jurisdiction by the treaty.

So there again—one could go through the whole treaty whether talking about protection of whales or any of the other things I have already touched on, and a lot more, and point to the ways in which it contributes to the prevention of disputes and the resolution of conflict.

Mr. LEACH. Given the possibility that after review this administration may refuse to sign the potential treaty after review, would your assumption be that many others would sign in any regard? If that occurred, would this put the United States of America in a very awkward diplomatic position and would it also have ramifications in many other foreign policy dimensions?

Mr. RICHARDSON. It is impossible to give you a confident answer to that question, but my best guess is that most countries would go ahead and adopt the treaty anyway and that a very large number of those would ratify it.

That would create a very awkward situation for the United States both legally and in terms of our diplomatic relations with other countries.

This would be more true if, as I said in answer to Congresswoman Fenwick's question, some of the countries belonging to the advanced Western industrial group would decide their interests were on balance better served by the treaty than without it.

Mr. LEACH. Thank you, Mr. Chairman.

I would just like to comment in conclusion that, like everyone on this committee, and in the Congress, I am very impressed and appreciate the hard work you have put into the Law of the Sea. Further, I think even more impressive than the work you have put in has been the tenor of your position since you gave up your position as chief negotiator.

Your presentation is a classic example of how the weight of argument is a far more persuasive and effective means of advancing a cause than loud and abrasive martyrdom.

I personally admire your stand during and after the negotiation of this document.

Chairman ZABLOCKI. Mr. Bingham.

Mr. BINGHAM. Thank you, Mr. Chairman.

I would like to return to the subject of what the mining companies would do if there were no treaty and clarify one point.

You said earlier that if there is no treaty the mining companies would not invest. Would that still be true if there were the kind of reciprocal agreement worked out with the other industrial countries that you referred to at the end of your statement?

Mr. RICHARDSON. Yes. I believe the answer to that is clear. They would not invest under reciprocal legislation of the kind that has now been adopted by the United States and the Federal Republic of Germany.

They would not do so even if a handful of other countries, for example, France, Japan, The Netherlands, Belgium, were to enact similar legislation.

Mr. BINGHAM. Would you explain why you think they would make that judgment?

Mr. RICHARDSON. There are basically two reasons, both of which would affect the judgments of boards of directors as well as the lenders to prospective investors.

The first is that the rights to a particular area of the seabed conferred by the reciprocal legislation would have to be recognized only by the countries that had enacted that legislation. No such country, including the United States, asserts as a legal position that it can confer rights to engage in seabed mining that are required to be recognized by any other country except a country that chose to recognize them, and as to that proposition there is no dispute whatever.

The result, therefore, is that any other country can charter a mining company to mine in the same area, and there are quite a few countries in the world today that have plenty of money for the purpose if they choose to use it.

The consequence, therefore, is that a mining company established by some OPEC country, for example, could wait to see where an American company began to conduct seabed mining and then in effect piggyback on the investment made by the American or German company or whoever it might be in identifying the area as one with rich beds of exploitable nodules.

The second reason is that so few countries maintain the position that there is a right under international law to engage in seabed mining. This fact inevitably creates the potential for a vast amount of legal harrassment and litigation over the assertion of such a right by one of the reciprocal countries.

There are many ways in which such litigation might arise in the courts of other countries. It would be likely, at some stage, to culminate in the International Court of Justice, and a measure of the risk is one's guess as to what would be the decision of the International Court of Justice. I know many lawyers who would

predict that the decision would be that there is no high seas right to engage in deep seabed mining.

At any rate, whatever the odds, one would be risking the investment of a billion dollars in a single seabed mining project against the hazard that the ICJ might issue such a ruling, and all of the countries that we are talking about are bound by the statute of the court.

Mr. BINGHAM. I believe you said earlier that you would not have given the answer 1 year ago or 2 years ago; that mining companies would not go in without a treaty; am I correct?

Mr. RICHARDSON. Yes.

Mr. BINGHAM. What has been the factor to change your position on that?

Mr. RICHARDSON. My position has not changed, only my tactical judgment as to whether to answer the question. I never believed that any mining company would ever invest under U.S. legislation.

Mr. BINGHAM. Oh, I see.

Thank you, Mr. Chairman.

Chairman ZABLOCKI. You have been generous with your time, but I think for the record, I would like to ask a couple of additional questions on which I would like to have your views or assessment.

It is my understanding that the Conference has operated on the principle of consensus. If the proposals for changes that the seabed mining industry's checklist includes were to be put forth, would the proposals generate wider consensus or not?

Mr. RICHARDSON. I am sorry, Mr. Chairman. Which proposals are you referring to?

Chairman ZABLOCKI. The seabed mining interests' checklist. I understand there is a checklist that may be accepted by this administration, and if that were included in future negotiations, would this checklist enhance it, or generate wider consensus at the Conference?

Mr. RICHARDSON. I have not seen the checklist, Mr. Chairman. I think it would, of course, depend on what is on it. I think that I could imagine a checklist, including all the items referred to in my own testimony, which would have a good chance of consensus, perhaps not every item and not every item in the form in which we initially proposed it, but we could get a high percentage of it through, depending on how far the list goes.

I don't myself believe that the industry leadership would come up with a list now that I would regard as out of sight.

I might think that they could not get everything on their list, but I think that a carefully drawn list which perhaps went beyond what we really hoped to get at the end of the day would have a good chance of consensus.

Chairman ZABLOCKI. Well, you did say that the seabed mining industry recognized a treaty improved in realistically possible ways would be preferable to no treaty at all. They agreed to that.

I interpret "realistically possible ways" to mean certain recommendations that the seabed mining industry would request.

Mr. RICHARDSON. Oh, yes. Oh, yes, it would.

I have reflected, even in my own rather illustrative references in my testimony, to some things that I know the industry would regard as important.

I went through—it should be noted just for the record, that I only referred to things touched on by Mr. Malone.

I was trying to make the point that if you put aside the radical renegotiation of the parallel system itself, and the essential compromises intrinsic to the parallel system, everything else that Mr. Malone referred to, everything else could be the subject of a list that would have a good chance of adoption.

I can imagine some additions to that list by the industry that I would also think would have a good chance of acceptance.

Chairman ZABLOCKI. Is my understanding correct that the Conference might agree to minor changes but not major changes? What would you consider a minor change, and what would you consider a major change?

Mr. RICHARDSON. Well, I would rather adopt a classification of radical changes a three-tiered rather than a two-tiered classification.

I would consider a radical change the proposal to do away with the parallel system and start with some wholly different kind of international regime.

I would put on the radical change side the attempt to get rid of the technology transfer obligation altogether. I would put on the major, under the major change heading, a provision to relax the production ceiling.

Of course, the provisions on interim investment protection would be major improvements, but since they are not included in the treaty at all now, they would not be major changes.

The elimination of the Brazil clause would be a major change, and very difficult to get, I think.

A minor but quite important change would be a provision for commercial arbitration of actions by the Legal Commission in passing on the approvability of a plan of work. This would eliminate a significant concern and should not be a serious problem.

Another major change, although, as I said in my testimony, it would only be declaratory of the intent of the Conference anyway, would be some provision that explicitly guaranteed a seat on the Council to the United States.

Chairman ZABLOCKI. Mr. Richardson, I again want to express our appreciation for all the work you have done in this field, and I want to wish you well in the future.

Thank you.

Mr. RICHARDSON. Thank you very much.

May I say one further word and extend the record in answer to Mr. Bingham?

I gave him an answer which made it clear that I all along had the view that no American mining company would ever invest under the seabed legislation, and I said I would have given the question a different answer at an earlier stage. I don't mean that I would have lied to you, Mr. Bingham, but I would have avoided the question.

I think the record would show that in various ways the question has come up, and I don't believe I have ever said that I thought that mining companies would invest, although I am sure that it was clear that I was for the enactment of the legislation. I was for the enactment of the legislation.

I thought I ought to make that somewhat clearer, lest there be some misinterpretation of what I had earlier said.

Mr. BINGHAM. Thank you for the clarification. I repeat that I think your judgment on this is very, very significant and I think by itself would affect the thinking of many Members of Congress on that issue.

Mr. RICHARDSON. It has been very frustrating over all this time to have to sit there in various public gatherings and so on, and to hear people talk about how bad the treaty is and how good it would be if we could only go forward on our own while being convinced that we never would go forward on our own. It is only, as I said, the change of circumstances—I won't repeat—that has in a sense liberated me.

Now, I am fighting for the treaty, for the survival of the treaty for a whole set of reasons, and I don't think by saying this now, I am prejudicing at all the chances of the United States to get improvements in it, because the risk is now, as perceived by me as well as by the rest of the world, that we may kick it over altogether.

Chairman ZABLOCKI. Well, in closing, let me comment, perhaps you should consider changing your middle initial from L to J for Job.

Thank you very much.

[Whereupon, at 5:05 p.m., the hearing was adjourned.]

APPENDIX 1

U.S. Delegation Report—10th Session of the 3d United Nations Conference on the Law of the Sea—March 9-April 24, 1981, New York

SUMMARY

The tenth session of the Third United Nations Conference on the Law of the Sea was dominated by reactions to the United States announcement on March 2 that it was undertaking a policy review with respect to the Convention and that the United States delegation would be instructed to seek to ensure that the negotiations would not be completed at this session. As a result, while there was some intensive discussion of a few issues, no new texts or agreements emerged.

As its start, the Conference elected Tommy T. B. Koh of Singapore as its President to succeed the late Hamilton Shirley Amerasinghe of Sri Lanka, who died in December.

At the ninth session, the Conference had identified three major outstanding issues: preparatory investment protection, the resolution on the preparatory commission, and participation in the Convention. With respect to preparatory investment protection, the immediate reaction of the Group of 77 to the United States policy review was to refuse to discuss this issue so long as the United States was unable to make commitments. With respect to the preparatory commission, there was considerable discussion in the First Committee and in its Working Group of 21, but no new drafts were proposed. With respect to participation, there was a further debate in the informal plenary, followed by intensive consultations held by the President, which served to clarify the legal issues involved in participation by entities other than states. Again, no new texts were proposed.

While work continued between the two interest groups concerned with respect to delimitation of offshore zones between states with opposite and adjacent coasts, no agreement was reached.

The informal plenary met and approved almost all of the proposals of the Drafting Committee regarding Second and Third Committee texts.

The tenth session of the Conference will resume in Geneva on August 3 for four weeks. The Conference may decide to extend that session for a fifth week. The Drafting Committee will hold an intersessional meeting in Geneva from June 29 to July 31; it will direct its attention to Parts XV, XVI and XVII of the text, turning back to Part XI and Annexes III and IV in the last two weeks.

REACTION TO US POLICY REVIEW

The reaction to the U.S. policy review was characterized by bewilderment and frustration. Many Conference participants had believed that this would be the last negotiating session of the Conference; those who were skeptical thought remaining matters could be cleared up this summer in time for signature in Caracas soon thereafter.

The announcement of the U.S. review was followed by widespread endorsement of the basic package embodied in the Draft Convention as it stands by developing countries, the Soviet bloc, and some Western countries.

Three motivations appear to be prevalent in this reaction among foreign delegates:

1) A desire to conclude the treaty quickly. The reasons for this range from fatigue and frustration with the length of these negotiations and the need to show a tangible end product to a concern that existing trends in the law of the sea toward expansion of coastal state controls of navigation are prejudicial to their national interests and may soon render the existing provisions on navigational freedoms unratifiable by coastal states.

2) A desire to avoid making further concessions to the United States with respect to deep seabed mining.

3) A desire to avoid encouraging their own governments, or third states, to reopen other matters in the Convention in response to U.S. proposals for changes.

No delegation seriously questioned the right of the U.S. Government to carry out such a review. While some were annoyed at its timing and our inability to give more notice, most were much more concerned about the outcome. Thus, statements of foreign delegations were characterized by efforts to affirm the basic "package deal" as it stands and stress the difficulty of considering any fundamental changes in that deal. Nevertheless, they stopped short of presenting the draft as it stands on a "take it or leave it" basis, and were keenly aware of the need to avoid provoking a sharp negative reaction to the Convention. This led to numerous statements toward the end of the session that the reservoir of good will for the United States was not inexhaustible and that the United States should not misinterpret moderation at this session as a sign of weakness.

The arguments made stressed two basic themes. The first was the issue of the credibility of U.S. participation in long-term negotiations, in this case, negotiations that were begun

in 1967 and carried on under presidents of both parties. The second theme was that "a single state" could not be permitted to stop the entire world from concluding such a long-range effort. While recognizing the classic problem of reconciling inequalities of wealth and power with the sense of national dignity inherent in the legal equality of states, some of the delegates seem to be warning that public embarrassment would not be tolerable to them or their governments whatever the consequences of defiance.

There is widespread recognition of the need to deal with the United States if at all possible. Thus, for example, it is now generally recognized -- as the United States stated -- that the resumed tenth session in Geneva will be for the purpose of considering the problems identified in the U.S. review, but that the review may well not be finally completed until after the session. President Koh speaks of "benign pressure" on the U.S. to complete its review before August.

ELECTION OF THE PRESIDENT

The death of the long-time President of the Conference, Hamilton Shirly Amerasinghe of Sri Lanka, necessitated the election of a new President. Since the previous President was Asian, and since the various chairmanships were distributed among the regions, it was generally expected that the primary responsibility would fall on the Asian Group to select a candidate generally acceptablle to the Conference.

The principal candidates were Satya Nandan of Fiji and Christopher Pinto of Sri Lanka. Repeated polling in the Asian Group revealed a split between the candidates, with a significant number of delegations casting votes for neither candidate. There were persistent rumors that the Soviet Union was attempting to maneuver a "compromise" on Dr. Jagota of India, but this did not materialize.

As expected from the outset, in the end Ambassador Tommy T. B. Koh of Singapore emerged as the consensus candidate of the Asian Group and was elected by the Conference by consensus. Loas, Mongolia and Vietnam reserved their positions within the Asian Group, but did not block a consensus.

NEXT SESSION

Considerable time was devoted to the question of the next session of the Conference. The issue was of interest because of its effect on the expectations of states regarding the outcome.

There was a general desire among developing countries to schedule a long resumed session of six weeks this summer to complete the negotiations. This reflected in part a genuine frustration by developing countries with the length of time that these negotiations have taken, and in part tactical considerations related to the United States review.

The United States indicated that since it was doubtful that final decisions could be taken in the review before August, it would be preferable to hold a session next year. In acceding to the general desire to hold a session in August, the United States made clear that it viewed such a session as an opportunity for informal consultations rather than definitive negotiation on texts, and that it did not expect to complete its review until after the August session.

The resultant compromises on the timing of the next session reflect a general, but not explicit, acceptance of the desirability of avoiding confrontation on the issues at this point. Thus, while the four week session can be extended to five weeks, the decision on whether to extend it will be taken by consensus if at all possible. While the Drafting Committee will work for five weeks prior to the session, it will not turn to deep seabed mining texts until the last two weeks.

COMMITTEE ONE

The First Committee held two formal meetings and four informal meetings before shifting to an informal WG-21 format. Events in the First Committee at this session were significantly affected by U.S. positions announced before the Conference. While discussion of the Preparatory Commission resolution continued, no serious negotiations were conducted. The Group of 77 itself precluded any work on preparatory investment protection so long as the United States was unable to commit itself to the package.

First Committee Chairman Paul Engo held private consultations with the EEC countries, Zambia, Zaire, Zimbabwe, and Canada, on the production limitation. The consultations were based on papers prepared by Zaire, Zimbabwe, and Zaimbia attaching the Secretariat's report (see below). No changes occurred in the text as a result. U.S. participation in all work was minimal and was expressly qualified by our position regarding review of the convention.

Secretarial Reports

The Secretary-General's representative for Law of the Sea presented two reports to the conference in the First Committee.

One, which had been requested at the last session of the conference by certain land-based producers of seabed metals, was a definitive study of the operation of Article 151, paragraph 2 -- the Production Limitation (A/Conf.62/L.66). It was accompanied by voluminous tables showing how much production would be allowed under certain assumptions.

A second report on financial implications of a Preparatory Commission and start-up of the International Seabed Authority (A/Conf.62/L.65) was also presented in the First Committee. This report gave costs for the operation, administrative support and housing of the PrepCom given assumptions made by the Secretariat about its size and duration. It also costed out start-up of the Enterprise under certain assumptions.

During discussion on the Production Limitation paper, Zaire, Zambia, and Zimbabwe, with Canadian support, urged that the report be supplemented with work on the implications of Article 151 for metal markets and the economies of relevant countries. There was no broad support for this request.

The Canadian Delegation followed this up with a proposal that a technical group be formed to continue work on Article 151, paragraph 2, without specification of the Technical Group's term of reference. This proposal was rejected by all speakers except Zimbabwe, Zaire, and Zambia.

Working Group of 21

The Working Group of 21 (WG-21), of which the United States is a member, met in sessions open to all delegations to discuss the draft resolution to create the Preparatory Commission contained in A/Conf.62/L.55. This group was co-chaired by Paul Engo of Cameroon in his capacity as Chairman of the First Committee and T.T.B. (Tommy) Koh of Singapore as President of the Conference. The WG-21 then moved through the Preparatory Commission resolution in a general fashion.

The WG-21 began with a substantive debate on the status of Preparatory Commission drafts of rules, regulations, and procedures. G-77 delegates in general attacked Article 308, paragraph 4, of the ICNT, Rev. 3, which specifies that the PrepCom drafts of rules, regulations, and procedures will be the provisional rules, regulations, and procedures of the Seabed Authority until others are adopted by the Authority. Generally, developed countries defended this approach as the only way to assure those ratifying the treaty that the Seabed Authority would operate in the manner foreseen by them.

The decisionmaking procedures of the PrepCom were also vigorously debated.

Participation in the PrepCom (the so-called Ticket of Admission problem) was thoroughly debated. Industrialized countries expressing a view preferred that signatories of the Final Act be full particpants in the work of the PrepCom and its decisionmaking procedures since that would provide the broadest possible participation in the PrepCom. Developing countries demanded that full participation be reserved for signatories of the convention so that only those who had already indicated their intent to become parties to the convention could become full members of the PrepCom.

The WG-21, after reviewing the broad issues involved in the PrepCom, shifted to a more private atmosphere in which only members of the WG-21 and the co-chairmen were present. Chairman Engo then led the group through a paragraph by paragraph review of the resolution text with a view toward producing another iteration.

The process proved to be slow and contentious. Nevertheless, the WG-21 came close to completing a sentence by sentence review of the text.

Chairman Engo's report on the session contained no new drafts or suggestions for the text. The report described in a general manner the activities of the session and noted efforts made to develop consensus.

The U.S. Delegation confined its participation in the debate to noting our need to review Law of the Sea issues. In the case of PrepCom issues, the U.S. Delegation noted that the PrepCom could not be discussed in isolation from other issues which would be under review in the U.S. in coming months.

Other Issues

Other Committee I issues were referred to in passing only and the texts of Part XI and Annexes III and IV were given no substantive discussion. Private conversation indicated that most delegates were awaiting the outcome of the U.S. review before making any further moves.

The site of the Seabed Authority was discussed and support was registered for Jamaica. The African Group and the Latin American Group stated tht it was the consensus of their groups that Jamaica should eventually be chosen. Fiji and Malta (the other countries which have offered to host the Seabed Authority) found discussion of the issue at that time inappropriate.

COMMITTEE TWO

The Second Committee held four informal meetings without agenda to permit delegations to raise any questions deemed important to them. The articles receiving primary attention were 21 (warship passage in the territorial sea), 58 (warship activities in the 200-mile economic zone), 60(1) (military installations and structures), 60(3) (duty to remove installations), and 63 (straddling fish stocks). Private consultations were also held among delegations on the subject of delimitation of maritime boundaries between opposite and adjacent states. No changes in text emerged as a result of work related to Committee Two subjects.

At the conclusion of the meetings, Chairman Aguilar (Venezuela), drew three conclusions: (1) while there were widely divergent views expressed, a practical consensus exists along the basic lines of the Committee Two package; (2) there remain only a very few questions of interest to a substantial number of delegations; (3) it was not the time, under the circumstances, to establish any working groups.

The committee was held together, once again, by the strong and able leadership of Amb. Aguilar. Interventions in plenary on the record following his report were lengthy, followed by the same lines as in committee debates, and constituted a clear indication that many coastal states delegations were ready and willing to do battle on a number of military-related issues should the text be reopened. Peru stated that there was no consensus on certain contentious provisions such as Article 21. The U.S. stated that our views regarding navigation rights, including those of warships, and other uses of the sea related to international peace and security were well known, and that we reserved our position regarding any efforts to alter these rights under customary or conventional law.

Warship Passage in Territorial Sea - Article 21

Discussion on this article centered on a proposal by the Philippines and others (C.2/Inf. Mtg./58) which had the effect of permitting coastal states to require prior authorization or notification before warships may enter the territorial sea. This article absorbed the attention of the committee for most of the four meetings. Of the approximately seventy speakers on the subject, roughly one-half favored the amendment and one-half opposed. Among those favoring the amendment, a small number thought that notification only might be acceptable. Those opposed were split between those who spoke to the substance of the article (it upset the balance of the text)

and those who thought that the Committee Two text had, as a package, been highly negotiated and should not be reopened. Western states were joined by the Eastern bloc in opposition to the change. Several delegations pressed for the formation of a small consultation group on this subject.

Warship Activities in 200-mile Economic Zone - Article 58

Brazil argued that Article 58 should be revised to make clear that it does not authorize military exercises in the exclusive economic zone without the authorization of the coastal state. This proposal received support and opposition along the same lines as the proposed change to Article 21, but it received less attention.

Military Installations and Structures - Article 60(1)

Brazil and Uruguay suggested that, in accordance with their amendment contained in C.2/Inf. Mtg/11, the limitations on coastal state jurisdiction over artificial islands, installations, and structures contained in subparagraphs (a), (b), and (c) should be deleted.

Duty to Remove Installations - Article 60(3)

The U.K. raised the problem created by the requirement in the present text that all installations in the EEZ (and on the shelf) be "entirely" removed. It was suggested that a new form of words be used to allow partial removal, based on international standards and provided that navigation and fishing interests are adequately protected. In principle, this proposal received widespread support, particularly among broad margin states, and no opposition. Wording remains a problem.

Straddling Fish Stocks - Article 63

Argentina pressed its suggestions for a change in the text to provide for cooperation among affected states for the conservation of so-called "straddling stocks", that is, stocks found both within and without the exclusive economic zone. This change would incorporate the thrust of the language in Article 117, dealing with the same subject on the high seas. The suggestion was supported by others, including Canada, who pointed out that consultations were underway on the subject, but was opposed by a number of distant water fishing states.

Common Heritage Fund

Nepal drew the attention of the committee to its suggestion contained in C.2/Inf.Mtg/45, Rev. 1, for the establishment of a "common heritage fund", contributions to which

would be made by payments occurring from the exploitation of the non-living resources of the exclusive economic zone. Payments would be made from the fund to developing countries and be used for other beneficial purposes. The proposal was supported by ten other countries, most of which were co-sponsors. There is broad opposition among coastal states.

Delimitation of Maritime Boundaries between Opposite or Adjacent States

The two delimitation groups, those favoring a solution based upon equitable principles (Group of 29) and those preferring emphasis on the median or equidistance line (Group of 22), met separately and jointly on several occasions. The focus of the joint discussions was a lack of agreement on a text as a basis for negotiation. The G-22 wished to utilize the text contained in the Draft Convention, while the G-29 rejected that approach. Accordingly, the discussions proceeded along the lines of previous discussions with both sides concentrating on the various elements contained in any possible solution. When the G-22 insisted on inclusion of a general reference to principles of international law, the other side agreed on condition that the term be accorded sufficient clarity. Subsequent discussions indicated that the two sides were in fact little closer to a final solution than before. The basic disagreement as to the relative weight to be placed upon "equitable principles" and the "median or equidistance line" remains. The group concluded its work, deferring future negotiations to the summer session.

COMMITTEE THREE

Committee Three met only once during the session. Chairman Yankov convened a brief informal meeting to elicit the views of the committee on whether any issues within the mandate of the commitee remained to be discussed or negotiated. He stressed that, in his view, negotiations had been completed at the Ninth Session and that any attempt to reopen substantive negotiations would seriously endanger the delicate compromises already achieved. He stated that the only reason that he would see for further meetings of the Committee would be in the event that additional matters were referred to it by the plenary. There was general agreement expressed by several delegations with the views of the Chairman.

The United States representative intervened to state that the United States reserved its position on the status of the work of the committee pending the outcome of our review of the draft convention. Further, he made clear that there

remained several technical changes that needed to be discussed at some point. (This was in reference to the technical straits amendments to Articles 221 and 233, and to adding "generally accepted" in Article 208(3).)

INFORMAL PLENARY

Participation

The question of participation in the Convention by various entities was a substantive issue on which President Koh tried to make some progress toward resolution during this session.

It is generally agreed that all States may become party to the Convention. The "all States" clause will presumably be applied by the UN in traditional fashion. The question discussed was what entities other than States may become party to the Convention.

The legal aspect of this problem involves two situations. The first concerns regional economic integration organizations such as the European Economic Community to which members have transferred the internal and treaty-making competences of States with respect to some matters regulated by the Convention. The second concerns associated States, such as the Cook Islands, Niue, and those that may emerge in Trust Territory of the Pacific Islands, that have the independent internal and treaty-making competences of States with respect to matters regulated by the Convention in accordance with the relevant instruments of association.

The political aspects of the question relate to proposals to permit areas that have not yet attained full independence generally, and so-called national liberation movements, to become party to the Convention.

At the first of two informal plenary meetings, President Koh reviewed the history of this item and presented his summary of the issues as participation by five entities:

1) All States, which he called non-controversial;

2) Fully self-governing associated States which have chosen that status in an act of self-determination supervised and approved by the United Nations, and which have full competence in matters falling within the sphere of the Convention;

3) Territories which have not yet attained full independence, a more heterogeneous category of entities, which comprise:

a) trust territories;

b) territories over which there are disputes; and

c) non-trust territories;

4) Intergovernmental organizations and economic integration groups; and

5) National liberation movements recognized by the United Nations and by regional intergovernmental organizations concerned. (Note by the President: informal document FC/23)

During the informal plenary meetings, many delegations urged that the questions of participation should be examined from legal and juridical rather than from political perspectives. Some delegations viewed the five entities as part of a package which would require a comprehensive solution. There was no opposition to participation by all States.

In dealing with entities other than States, several delegations felt that objective criteria should be applied, in a uniform way, to determine whether those entities had the legal capacity to become a party to the Convention.

As to the category of "fully self-governing associated States", two important criteria emerged in the discussion: (1) whether the entities contemplated in this category have competence over the matters falling within the scope of the Convention, and (2) whether they possess the legal personality to enter into treaties in respect of those matters.

In the case of the Cook Islands and Niue, as well as the associated States that may emerge in the Trust Territory of the Pacific Islands, it was argued that both criteria were satisfied.

As to the category of "territories which have not yet attained full independence", the discussion again focused on legal and administrative competence over subject matters of the Convention and sufficient legal personality to make treaties on their own with respect to such matters. With respect to disputed territories, some delegations believed such territories could not enjoy the benefits of the Convention while other delegations saw no reason why peoples of such territories should not enjoy those benefits. Finally with respect to other territories that are not independent,

there was again no general consensus because some territories may not have competence and may lack capacity to enter into treaties on matters within the scope of the Convention.

A representative of the Trust Territory of the Pacific gave a full account of the status of the three States -- the Federated States of Micronesia, Palau, and the Marshall Islands -- so far as participation in and signature of the Convention was concerned (Statement to the Conference: informal document FC/24). He stressed their competence and capacity, citing their 200-mile fishery zones and fisheries agreements with other States and describing their Compacts of Free Association with the United States.

As to the category "international organizations and economic integration groups", the European Economic Community (EEC) submitted a proposal (informal document FC/22) which was explained at some length. Several questions were raised regarding: whether all the member States of the organization should become parties to the Convention; the areas of competence transferred by members to the organization with respect to matters falling within the sphere of the Convention; the information to be obtained or notification to be made to third States with regard to competence of the organization; rights and benefits that a member of the organization may or may not obtain when not itself a party to the Convention; dual representation; who would be responsible for infringement of the rights of third States or for failure to comply with obligations; and the application of dispute settlement provisions to the organization.

As to the category "national liberation movements recognized by the United Nations and by the regional intergovernmental organizations concerned", opinion was strongly divided. Arguments made in favor of participation included the fact that they have been granted full membership by the Non-Aligned Conference, the Islamic Conference and the League of Arab States, and observer status by the UN General Assembly and UNCLOS III. Arguments against participation were the facts that they lack legal and administrative competence in the subject matter of the Convention and lack sufficient legal personality to enter into treaties in respect of such matters.

President Koh convened a small group of about 20 countries (including the United States) for informal consultations to examine further the participation issues from a legal, not political perspective. The basic documents examined were the EEC proposal (FC/22) and another put forward by the Group of 77 (unnumbered, dated 25 March 1981) which incorporated prior proposals dealing with the Cook and Niue Islands, TTPI entities, modifications of the EEC proposal and its own proposals on other territories not yet independent and on national liberation movements.

During seven informal consultation meetings, each of the various entities was discussed in detail. There emerged from these consultations two criteria (same as those in the informal plenaries -- legal competence in LOS subject matters and treaty-making capacity with regard to such matters) which should be applied as a test to determine whether a non-State entity cold participate in the Convention. Some expressed the view that these criteria should not be strictly applied and that other factors should be taken into account.

In applying these criteria to self-governing associated States (as described in the Philippines/Solomon Islands proposal: informal document FC/19), it was found that they would satisfy the two criteria. In this regard, a strong case was made that the Cook Islands, Niue and the associated States that may emerge in the TTPI would satisfy both criteria.

Because of variations with respect to territories which have not attained full independence in accordance with UNGA resolution 1514 (XV), discussions revealed that:

1) Participation cannot be allowed to all dependent territories as a class;

2) Disputed territories and those to which the transitional provision applies should be deferred for the moment; and

3) Some territories, which have achieved significant autonomy, can satisfy both criteria.

With respect to national liberation movements, some delegations suggested that these groups had the potential to fulfill the criteria even though they could not presently do so, arguing that other criteria should be applied to them. Other delegations questioned the application of these criteria to these groups. The Arab Group States and others tried to ascribe legal competence and legal personality to the PLO by describing a growing jurisprudence with regard to them (i.e., certain degree of recognition by States, the United Nations and regional organizations; establishment of diplomatic missions in several States in accordance with the Vienna Convention on Diplomatic Relations; and signature, though on a separate page, of the Final Act of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflict). However, there was no consensus that the two criteria applied to the PLO or other national liberation movements.

Because of the many questions regarding participation by organizations (outlined above at the informal plenary), the

EEC proposal and that part of the G-77 proposal pertaining to international organizations were debated most thoroughly but without reaching consensus. To make participation by such orgnizations more restrictive, the USSR offered three proposals: making participation by all members of the organization a mandatory prerequisite for participation by the organization; requiring accession by an international organization only through an instrument filed with the depositary listing all powers delegated to it by member States in areas regulated by the Convention and immediate notice of subsequent changes thereto; and making the organization and its member States jointly and severally responsible with respect to obligations arising under the Convention. The Soviets apparently did not realize that their proposal might give each member of an organization the power to prevent ratification by all members. Although there was no consensus on most of the questions, there was agreement that there must be evidence of a transfer of competence to the organization, the fundamental criterion qualifying the organization to participate at all. The other criterion of treaty-making capacity would depend upon the nature and extent of the powers transferred to the organization by member States with respect to third States.

The G-77 spokesman reiterated that all elements of the question of participation form a package requiring a comprehensive solution.

Finally, it was agreed to defer consideration of the question of the so-called transitional provision that appears after the text of the Convention pending further consultations with the most interested delegations.

After some informal consultations, it quickly became obvious that no negotiations could be conducted at this session on the first two topics. There was some interest in starting the formidable task of coordinating the texts in Part XV, first through the language groups and then through the Drafting Committee. It did not prove possible, however, to allocate the necessary time for that purpose at this session. In consequence, priority will be given to the subject at the presessional meeting of the Drafting Committee. Some meetings of the informal plenary on this subject will also be required.

Drafting Committee

At its seven-week intersessional meeting prior to the commencement of the tenth session, the Drafting Committee recommended over 1,000 changes to the Second and Third Committee Texts. A report on that intersessional meeting is attached. During the session, these recommendations were considered in informal plenary. The meetings were informal

so as to avoid the problem of creating interpretive records during consideration of Drafting Committee recommendations. Virtually all of the Drafting Committee recommendations were approved. A few were referred back to the Drafting Committee, some of which have been reconsidered and submitted to plenary and approved.

During the session, the Drafting Committee continued its work on Part XI texts. It submitted a few recommendations on the initial articles to informal plenary, which were approved. That work continued in more intense fashion during the last week of the session, which was devoted exclusively to the Drafting Committee and its organs.

As in the past, proposals were presented initially in one of the six language groups to all Conference participants. If recommended by that language group, the proposal was reviewed by the others. The six coordinators of the language group would then meet to harmonize the positions of the language groups and make recommendations to the Committee. The Committee then considered texts recommended by the coordinators.

As of the end of the session, remaining Drafting Committee work includes:

1) A number of items still pending in the Committee and in the language groups with respect to the Second and Third Committee texts;

2) The significant portions of Part XI and Annexes III and IV which have yet to be addressed, including a number of the more difficult drafting problems that remain to be resolved regarding texts already reviewed;

3) The preamble, Article 1, and Parts XV, XVI and XVII, which have yet to be considered.

DISPUTE SETTLEMENT

Three issues were discussed among delegates during the tenth session: some changes in seabed mining provisions concerning dispute settlement sought by some Western European countries; two technical changes in Part XV (relating to the exhaustion of local remedies in case of a seizure of a vessel and the clarification of provisions relating to disputes concerning maritime boundaries); and drafting changes in the more than 100 articles in Part XI, Section 6, Part XV, and related annexes.

SITES OF THE AUTHORITY AND OF THE TRIBUNAL

The candidates for the site of the proposed International Seabed Authority are Fiji, Jamaica, and Malta.

The candidates for the site of the proposed Tribunal on the Law of the Sea are the Federal Republic of Germany, Portugal, and Yugoslavia.

The question of the site of the Seabed Authority was raised during one of the First Committee meetings. Questions were raised as to whether that matter would be resolved by the First Committee or by Plenary.

The President informed the Conference that the candidates have agreed that the matter would be taken up during the third week of the resumed tenth session in Geneva. The options facing the Conference at that time will be to select one of the sites for each of the two institutions, defer the matter for future consideration by the Conference or refer the matter to the proposed Preparatory Commission.

ATTACHMENTS:

1. Report of Chairman of the First Committee dated April 16, 1981

2. Report of Chairman of the Second Committee dated April 15, 1981

3. Report of the Chairman of the Third Committee dated April 17, 1981

4. Drafting Committee Report: Janury 12-March 2, 1981

UNITED NATIONS

THIRD CONFERENCE
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REPORT TO THE PLENARY ON THE NEGOTIATIONS IN THE FIRST COMMITTEE BY PAUL BAMELA ENGO (UNITED REPUBLIC OF CAMEROON), CHAIRMAN OF THE FIRST COMMITTEE

1. At the end of the resumed ninth session I reported that there had been what I consider to be a break-through in our negotiations on the outstanding hard-core issues before the First Committee. It was clear from the reactions of all delegations, in the First Committee and in the Plenary, that the proposals which were later incorporated in the Draft Convention enjoyed a consensus. The report I submitted therefore outlined only a few issues which required attention before the First Committee could terminate its mandate.

2. It is common knowledge that the United States delegation announced at the commencement of this session their decision to review the Draft Convention and insisted that the Conference must await the end of such a review before any fruitful negotiations could take place with a view to formalizing the Draft. The Group of 77 expressed the opinion that no useful negotiations therefore could be undertaken to resolve the issue of preliminary investment protection. Consequently, the work of the First Committee at this session proceeded with an unhappy cloud hovering over. My consultations left me in no doubt however that it was the will of the delegates to proceed with the negotiating effort on all outstanding issues bearing in mind the effect of the reservations expressed.

3. During this session the First Committee held four meetings, all formal. The first two were devoted to general debates on the Preparatory Commission. The other two meetings provided opportunity for general comments on two reports of the Secretary-General of the United Nations: one on potential financial implications for States parties to the future Convention on the Law of the Sea (document A/CONF.62/L.65), and the other on the effects of the production limitation formula under certain specified assumptions (document A/CONF.62/L.66 and Corr.1).

4. In addition, the issue of the Seat of the Authority (art. 156 (3)) was taken up for the first time. The opportunity was also given for the examination of all or any matter that delegations felt had not been or had never been dealt with formally in the First Committee.

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5. As may be recalled, the question of the Preparatory Commission had been considered by the Plenary of the Conference at its informal meetings, as part of the late President Shirley Amerasinghe's consultations on the final clauses. It became clear that the issues involved were so closely related to the issues negotiated on Part XI that the forum of the First Committee was the more appropriate for the negotiating process.

6. Consequently, following consultations with the President at this session, the matter was taken up formally for the first time. In order not to lose the valuable contents of the late President's report on the subject, and also to facilitate our examination, it was decided that those contents be made the basis for discourse. Furthermore, it was agreed that in order to avoid duplication, the negotiating effort should be co-chaired by the President and the Chairman of the First Committee, using the established system of a Working Group of 21.

7. The Working Group of 21 held four meetings and discussed, inter alia, critical issues relating to the composition, mandate, decision-making system, and the financing of the Preparatory Commission. Consistent with the understanding, it took as a basis for negotiation, the report of the President on the work of the Informal Plenary of the Conference on the question of the Preparatory Commission (document A/CONF.62/L.55 and Corr.1) in particular the annexed draft resolution proposed for adoption by the Conference providing interim arrangements for the International Sea-Bed Authority and the Law of the Sea Tribunal (see annex II of the same document).

8. Following an extensive and, I must add, illuminating discussion on the issues in the Working Group of 21, the President of the Conference and I commenced preliminary consultations with the members of the Working Group of 21 with a view to updating the ideas contained in the said draft resolution. I am of the opinion that the efforts made by the First Committee at its various negotiating fora on the Preparatory Commission, though preliminary, has achieved some constructive results in identifying major issues and the interrelationships among them. I am encouraged consequently to make the following observations:

9. First, there appeared to be general agreement that the Preparatory Commission should be established by a resolution of the Conference included in the Final Act.

10. Secondly, the objective in establishing the Preparatory Commission was broadly recognized, that is to say the purpose of making provisional arrangements for the first session of the Assembly of the International Sea-Bed Authority, and of its Council. The objective included such arrangements regarding the establishment of its other organs, namely the Secretariat and the Enterprise, as well as the convening of the International Law of the Sea Tribunal.

11. The title of "Preparatory Commission for the International Sea-Bed Authority and the International Law of the Sea Tribunal" may prove to be the most appropriate.

12. On the issue of the membership of the Commission, the text of the President's draft appeared to present difficulties for some of the industrialized countries. They would prefer that it be opened to all signatories to the Final Act. The other

participants insisted that only States which demonstrate an intention to be bound by the Convention should be members. They submitted consequently that signature to the Convention would be a minimum criterion, as this would also induce early commitment to the treaty and consequently prevent participation by those States who may have reached the decision not to be party to it anyway.

13. The Group of 77 appears to be ready to accept a compromise granting observer status to States which sign only the Final Act, granting them power to participate fully in the deliberations of the Commission but denying them a right to participate in the decision-making procedures.

14. This first reading also focused on the broad question of the decision-making process and the adoption of the Commission's rules of procedure. Three relevant areas were:

(i) the rules of procedure to be applied in the Preparatory Commission pending the adoption of its own rules of procedure;

(ii) the majority required for the adoption of its rules of procedure; and

(iii) provisions for voting on substantive issues.

15. The exchange of views, especially on the latter two, was somehow inconclusive. It would appear that the Western industrialized countries and the Eastern (socialist) countries would insist on the consensus rule. The Group of 77 would favour a two-stage approach by which the failure of a quest for consensus would be followed by a voting procedure. It is clear that more consultations in the negotiating process will be inevitable.

16. The function, or the mandate, of the Commission was examined. While it appeared that general agreement existed for the proposition that the Preparatory Commission would have the broad mandate of preparing for the establishment of the International Sea-Bed Authority and the International Law of the Sea Tribunal, the industrialized countries considered that the discussion of the issue of the establishment of the Enterprise was premature, as it had to be taken up in discussion on the preliminary investment protection proposals. The Group of 77 and other members of the Working Group of 21 consider this to be an imperative item, as the Enterprise would be a main organ to effect the agreed working of the parallel system.

17. The exchange of views appeared to have been more productive on the substantive question of the function of the Commission, especially as it related to its role in the preparation of rules, regulations and procedures. It is my impression that further reflection will be desirable to determine the scope of this function.

18. There appears to be general agreement for the proposition that the Secretary-General of the United Nations should be empowered to convene the Commission, certain criteria being satisfied with regard to the timing. That which was recommended in document A/CONF.62/L.55, requiring 50 signatures to the Convention or the same number of States depositing instruments of accession, received

widespread support. It was suggested, however, that the wording proposed in paragraph 10 should be harmonized with those specified in article 307.

19. There is general agreement that the life of the Preparatory Commission should not be unduly long, having regard to the nature of its mandate and also of the need for the Authority to be established expeditiously to perform functions assigned by the Convention. The view was expressed by some, however, that if that life must be extended beyond the convening of the Assembly, the latter, that is the Assembly, alone must decide to grant it.

20. The issue of the financing of the Preparatory Commission presented some difficulties. It was clear that all sides would support that the United Nations should provide the funds for the initial costs. Yet the terms found a divergency of views. The concept of loan proposed by the late President's text was rejected by those who saw fundamental legal as well as practical difficulties involved. The Group of 77 and the Eastern (Socialist) countries argued further that until the Authority was established the United Nations regular budget should finance the Commission in the same way as with the present Conference. Others pointed to the fact that observers or Member States of the United Nations who are not signatories of the Convention would be compelled to contribute to the financing. It is my feeling that the second reading on this issue might, hopefully, be more fruitful.

21. The Special Representative of the United Nations Secretary-General introduced two reports that were relevant to the mandate of the First Committee. They are contained in documents A/CONF.62/L.65 and A/CONF.62/L.66 and deal respectively with "potential financial implications for States Parties to the future Convention on the Law of the Sea" and "the effects of the production limitation formula under certain specified assumptions".

22. With regard to document A/CONF.62/L.66, the Committee decided to postpone detailed discussion until the resumed session. During the discussion of this report, some delegations proposed that a group of experts be established, which could utilize the report of the Secretary-General as the basis for an evaluation of the production limitation formula. Since there was no consensus with respect to establishment of such a group, I suggested that I be authorized to hold informal consultations with a view to reaching consensus on how to proceed.

23. The report on the financial implication of the future Convention contained in document A/CONF.62/L.65 offered a preliminary estimate of the cost involved in the functioning of the following organs of the Authority.

(a) The Authority - including the Assembly, Council, its Economic Planning Commission and Legal and Technical Commission and the Secretariat.

(b) The Enterprise - including Governing Board and the Secretariat.

(c) The International Tribunal for the Law of the Sea - including the Sea-Bed Disputes Chamber, Special Chambers, the Ad Hoc Chamber and the Office of the Registrar.

(d) The Commission on the Limits of the Continental Shelf.

(e) The Preparatory Commission, and any subsidiary bodies it may establish.

24. In introducing the report the Special Representative made the following observations:

1. Costs of the Authority and the Enterprise could be reduced considerably if both organizations are located at the same site and share the staff and institutional facilities on the reimbursement basis;

2. With regard to the Preparatory Commission: Cost estimate was based upon the assumption that the Preparatory Commission would be located at a site of United Nations Headquarters. If the Commission is located at a site other than the United Nations Headquarters, extra cost must be taken into account, depending upon the extent of offers made by the host country;

3. The manning table of the Secretariat of the Authority is lower than such specialized agencies as the World Intellectual Property Organization and the United Nations Environment Programme.

25. The majority of States, in commenting on the report, stressed the necessity for cost-efficiency of the new organization, and expressed the view that the report is a sound basis for a careful study by the Conference.

Other Matters

26. The First Committee provided opportunity for the discussion of all outstanding matters, including those never before dealt with under its mandate.

(i) The Site of the Authority

As I indicated above this matter was dealt with for the first time since the announcement at the Caracas Session of the candidacy of Jamaica, its formal endorsement by the Group of 77 and subsequent introduction of the subject in the Informal Single Negotiating Text. Article 156 (3) in the present Draft Convention shows that in addition to Jamaica, there are two other candidacies: in order of presentation, Malta and Fiji.

During the discussion the Jamaican delegation presented their case, concluding that construction work for receiving even the Preparatory Commission are well under way. The summary records of that meeting reflects the arguments and information presented by that delegation.

The delegation of Malta stated that they could not participate in the debate on the grounds that the First Committee was not the proper forum. There had been an agreement with the President and other candidates that a decision on the issue would be taken in Plenary at the tenth session. This view was broadly speaking supported by the Fiji delegation.

During the discussion, the Chairman of the Latin American Group, as well as other delegations from Latin America who spoke on this issue, many African countries and Yugoslavia spoke out in favour of Jamaica. A number of speakers did not find it expedient to declare a choice at this stage.

It is important to note from the debate that all three candidates declared that preparations were afoot to receive the Authority, although only Jamaica undertook to state details of such preparations.

(ii) Production policies

Although our main business at this session was to deal with the issue of the Preparatory Commission, I felt that delegations should be given an opportunity to raise any other issues which are of concern to them.

At the 50th meeting of the First Committee held on 19 March 1981, the delegation of Zambia, supported by the delegations of Zimbabwe and Zaire, made an appeal that the issue of production policies be examined. Intensive consultations at various levels, within and across interest groups, have since been launched and may be expected to continue at the resumed session.

The specific issues in question were the impact of the production limitation formula set out in article 151 of the Draft Convention on the existing and future land-based nickel, copper, cobalt and manganese industries and the measures for the protection of developing countries from adverse effects on their economies or on their export earnings likely to result from sea-bed mining.

(iii) Unfair Economic Practices

Among other matters, the delegation of Australia made a suggestion about provisions dealing with unfair economic practices which may cause injury to the trading interests of the economy of another State Party. An exchange of views took place during an informal meeting of the interested delegations and consultations on this issue are continuing.

(iv) Composition of the Council

During the session, I encourage continuing informal contacts between interested parties concerning the problem raised by some less developed western States concerning an increase in minimum representation for geographical groups in the Council. While these continue, I have nothing to report at this stage.

27. Finally I should like to conclude with the same concern I expressed at the commencement of this session. The First Committee has, for nearly a decade, grappled with perhaps the most complex problems that ever faced any Conference sponsored by the United Nations. It has had to achieve accommodation of global conflicts of interests, inspired by an incredible sense of dedication to the loftiest ideals of a generation desperate for international peace and security.

28. So far not a single nation, large or small, definitely not the rich, has been left out of the negotiating effort. The negotiating texts produced through the years have shown a clear attempt to meet the needs and interests of all States, and more realistically those of the industrialized States.

29. This Conference cannot at this late stage, when at least we have provoked passions of hope in the international community, afford to indulge in any exercise in futility or any backward or destructive step. We must at all cost preserve that which we have succeeded in accepting by consensus. The packages worked out may have been delicately put together; but it is clear that they are made strong by the consensus they enjoyed.

30. At the resumed session we must all bear this in mind. We must maintain our spirit of accommodation on outstanding issues and any pleas that may be made of additions. But what we must not do is to destroy directly or indirectly the results of our fruitful labours so far. It is in the fact of universal accommodation and compromise that our nations can hope to draw strength for individual survival.

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REPORT TO THE PLENARY BY AMBASSADOR ANDRES AGUILAR (VENEZUELA), CHAIRMAN OF THE SECOND COMMITTEE

1. During the first part of the tenth session, the Second Committee held four informal meetings. This served to meet the desire expressed by a number of delegations for an opportunity to refer to certain questions within the mandate of the Second Committee, that is to say, relating to parts II to X inclusive of the draft Convention on the Law of the Sea (informal text) (A/CONF.62/WP.10/Rev.3).

2. These meetings were held without any pre-established agenda, so that the delegations participating in them could express their views and present or reiterate informal suggestions for amendments with complete freedom on all issues and questions within the competence of the Committee, the sole exception being the problem of the delimitation of maritime space between States with opposite or adjacent coasts, because at this stage of the work of the Conference that matter is being dealt with by the two groups of countries directly concerned, which have established a procedure for consultations on the subject. I deemed it necessary, however, to point out at the first informal meeting that the Committee's work in this final phase of the Conference should be directed towards supplementing or improving the draft Convention (informal text), and not towards reopening discussion on the basic elements of the agreements reached after many years of effort.

3. Nearly all the informal suggestions considered at these meetings had already been submitted to the Committee at previous sessions. It should be noted, however, that on this occasion a revised version of one such suggestion was presented.

4. The number of statements made at these meetings totalled 119, and many of the articles in parts II to X of the draft Convention (informal text) were referred to or touched on. It may be said, however, that most of those statements focused on very few questions.

5. One of these questions, a very controversial one, was the subject of lengthy debate, during which detailed explanations of the various positions were given and alternative means of achieving reconciliation were suggested. In connexion with this question, a number of delegations requested the establishment of a

working group or the holding of consultations among the most interested delegations with a view to harmonizing the different positions. In response to that request, I carried out consultations on the subject and found that there was, at least for the present, no agreement on the establishment of a working, negotiating or consulting group for that purpose.

6. The informal suggestion presented in the Committee for the first time by one delegation was also given special attention in these discussions. The delegation making the suggestion announced at the end of the meetings that it would hold consultations with the other delegations which had shown an interest in it with a view to submitting to the Committee in due course, for its consideration, a precise formulation taking into account the comments that had been made on the subject.

7. During these meetings, the delegations interested in some of the informal suggestions made at previous sessions stated that they were continuing the consultations aimed at finding generally acceptable formulae.

8. As I said by way of summing up at the end of the last of these meetings, the following conclusions may be drawn from these discussions:

(a) There is a virtual consensus on the fact that it is not desirable or practical to reopen discussion on the basic Second Committee issues, which, while they do not in all cases represent a consensus, are the formulae that come closest to commanding general agreement and that have been arrived at through long and arduous negotiations.

(b) It is possible to introduce, at such time as the Conference may decide, minor changes designed to supplement, clarify or improve the draft Convention, always provided, of course, that they command the necessary support and will help to facilitate acceptance of the text by the largest possible number of delegations.

(c) Although some of the draft articles, as now worded, present difficulties of various kinds for some delegations, the draft as a whole is acceptable to the great majority of delegations. There are actually, in the view of a significant number of delegations, very few questions that require further discussion and negotiation.

9. Lastly, it seems to me appropriate to note in this report that as Chairman of the Second Committee I participated, along with the President of the Conference and the Chairman of the Drafting Committee, in three of the informal meetings of the Plenary to consider and adopt the recommendations of the Drafting Committee concerning parts II to X of the draft Convention on the Law of the Sea (informal text) (A/CONF.62/WP.10/Rev.3).

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REPORT OF THE CHAIRMAN OF THE THIRD COMMITTEE

1. I have the honour to report briefly to the Conference on the work of the Third Committee at the current session. It may be recalled at the outset that in my last report to the plenary (A/CONF.62/L.61 of 25 August 1980) that the substantive negotiations on part XII (Protection and preservation of the marine environment), part XIII (Marine scientific research), and part XIV (Development and transfer of marine technology) were completed. The results of these negotiations are reflected in the Informal Text of the draft Convention on the Law of the Sea (A/CONF.62/WP.10/Rev.3). It was also stated that the Third Committee had attained a level of agreement which could offer a substantially improved prospect for consensus. This assessment, which has emerged from the Third Committee's deliberations, was subsequently confirmed by the Conference itself at the end of the resumed ninth session.

2. At this session, an informal meeting of the Third Committee was held on 25 March 1981 in order to ascertain whether there were still any issues which could be discussed by the Committee.

3. I am now pleased to inform the Conference that the Third Committee reiterated its previous conclusion, namely, that the substantive negotiations had been completed. It was agreed that the draft Convention on the Law of the Sea with respect to parts XII, XIII and XIV constitute a compromise based on a sound balance which should not be upset by reopening issues which had already been extensively negotiated.

4. It was also agreed that if and when called upon by the Conference the Third Committee should be available to consider any issue within its terms of reference.

5. I wish to take this opportunity and place on record my appreciation of the excellent work done by the Drafting Committee, its language groups and the co-ordinators. On this occasion, I wish to extend my congratulations to the Chairman of the Drafting Committee, Mr. Beesley. The recommendations advanced by the Drafting Committee did not affect the substance of the text and altogether they constitute a distinct improvement from a drafting point of view.

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6. Since the recommendations of the Drafting Committee have been considered in informal meetings of the plenary, the adopted suggestions should be issued in a document in order to keep a clear record.

7. I would like to express my sincere gratitude to all the members of the Third Committee for their understanding and co-operation which has been the main feature of the atmosphere in the Committee throughout the long years of arduous negotiations.

8. Finally, I wish to pay special tribute to the Secretariat for their exemplary diligence, dedication and most valuable service rendered to the Committee and to its Chairman.

March 2, 1981

Report of the U.S. Delegation on the Meeting of the Drafting Committee of the Third UN Conference of the Law of the Sea
January 12 - March 2, 1981

Summary.

The Drafting Committee approved over a thousand amendments to the text of the Draft Convention on the Law of the Sea (Informal Text) (UN Doc. A/CONF.62/WP.10/Rev.3). These resulted from an article-by-article review of Second Committee texts (Parts II-X and Annexes I and II) and Third Committee texts (Parts XII-XIV). The amendments are technical and stylistic. They are designed to improve the style and clarity of the texts in each language and to enhance the concordance of texts in the six official languages.

Because of time pressures, the Committee was able only to begin the process of an article-by-article review of First Committee texts (Parts XI and related annexes), and could not deal with the preamble, Part I (definitions) and the Informal Plenary texts (Parts XV to XVII). Attempts to prepare, and forward to the competent organ of the Conference, a list of technical questions that might have substantive implications did not succeed.

Despite a very intensive schedule frequently running from 9:00 a.m. to 10:00 p.m., the Drafting Committee still faces a large amount of work on deferred items with respect to texts on which recommendations have been made, and with respect to an initial review of texts on which no recommendations have been made.

Procedure.

The Drafting Committee and all its organs functioned by consensus. The Committee, chaired by Ambassador Beesley of Canada, has limited membership that does not include delegations that wish to, and might be expected to, participate in its work (e.g. China, France, and the U.K.). Moreover, it was recognized at an early stage that any attempt to do initial drafting work in several languages at once would lead to confusion. Accordingly, the Drafting Committee established six language groups, one for each of the official languages, all of which are open to all conference participants. The chairmen or coordinators of the language groups are as follows:

Arabic - Professor Yasseen (UAE)
Chinese - Dr. Ni (China)
English - Professor Osman (USA)
French - Professor Treves (Italy)
Russian - Dr. Yevseev (USSR)
Spanish - Dr. Lacleta (Spain); Alternate, Dr. Yturriaga (Spain); Ambassador Valencia (Ecuador)

Drafting proposals were first discussed in a language group. After discussion, each language group submitted its recommendations on the articles in question. These were then collated on an article-by-article basis in all six languages. Each language group then discussed the recommendations of the other language groups. All of this was accomplished without the need for interpretation.

The coordinators of the language groups then met together under the Chairman of the Drafting Committee to discuss all of the changes, with interpretation. These meetings were open to all participants, although discussion was usually carried on only by the coordinators. Once the coordinators approved recommendations in the six languages, they were forwarded to the Drafting Committee for action. At that point, most were approved without discussion.

The effect of this procedure is that every proposed drafting change in at least English, French and Spanish is scrutinized many times before it is finally recommended. A single objection or hesitation at any stage is sufficient to stop the proposal, despite the fact that the precise text in the language in question was never in fact negotiated closely, if at all. In part because it is the largest and most diverse of the groups, the English Language Group proved to be a substantial hurdle, particularly with respect to any change that would affect the English text.

Concordance.

Efforts to improve concordance among the six languages were initiated almost exclusively by the Arabic, Chinese, French, Russian and Spanish language groups with respect to their own language texts. While each worked largely from the English text, as the original text of negotiation, for political reasons this was not made explicit.

Each language group showed considerable deference to the stylistic preferences of the others, even where this resulted in an absence of strict linguistic concordance.

To cite one example, most of the rererences to coastal states in the Spanish text are in the plural; in the French text, many are in the singular. Any effort to achieve stylistic consistency in the English text on this kind of question was doomed to failure.

A very large percentage of the changes recommended by the Committee affect the Arabic, French and Spanish texts only. In essence, the respective language groups have been redcing what Secretariat personnel had been compelled to do on short notice when texts were originally issued. The Arabic Language Group faces the additional problem that earlier instruments on the Law of the Sea did not have official Arabic versions.

In order to ensure that the consideration of drafting changes not give rise to substantive implications or interpretive records, the Committee and its organs have followed the practice of avoiding records of discussion of drafting changes and the reasons therefor.

Working Atmosphere.

The atmosphere was highly professional and workmanlike throughout the seven weeks. There were few occasions on which the political or substantive differences between participating states or groups of states affected the work. The intense schedule created fatigue and strain but surprisingly little friction. While problems arose from time to time regarding the potentially substantive implications of a particular change, and while certain changes were rejected because one or more participants felt they might alter the substance, it appears that most, if not all, of the participants limited their proposals to drafting suggestions very narrowly defined.

Mixed questions of Drafting and Substance.

The Drafting Committee has yet to find a technique for dealing with, or even indicating that it has identified, a technical problem in the text whose resolution may have substantive, albiet non-controversial, implications. Its efforts on harmonization of terminology have already been hampered by this difficulty. At this meeting, the Committee was again unable to make recommendations on, or even refer to the continuing problems associated with the use of different words or phrases to deal with the same question in different parts of the Convention (e.g. the description

of ships entitled to sovereign immunity in articles 31, 32, 96 and 236) or technical problems arising from texts incorporated without negotiation from earlier treaties (e.g. the removal requirement in article 60(3)).

Throughout most of the session there was a great deal of talk about referring at least some of these questions to the competent Conference organ in a so-called "third basket." The coordinator of the English Language Group circulated a possible list of items (attached to this report). However, agreement could not be reached on doing this, nor could agreement be reached on a different kind of list simply enumerating items still pending.

Should this situation continue, the Conference may have to develop an alternate way of identifying, and disposing of, questions that are technical, non-political, and non-controversial. The problem is that if doing so requires an essentially open-ended meeting of a substantive committee, some delegations may prefer to avoid the risk that such a meeting would reopen substantive matters more broadly. Specific referrals from the Drafting Committee could have helped avoid open-ended agendas of the substantive committees.

Notes on Some Recommendations or Lack Thereof.

By their nature, drafting amendments on hundreds of articles cannot be summarized. The appended Drafting Committee Report is by its nature the essence of this report. Several points are however of some note.

The drafting recommendations for the English text emphasize the use of the present tense rather than the imperative "shall" except where the latter is essential to convey the meaning. Thus, for example, the standard terminology is "nothing in this article affects...", rather than "nothing in this article shall affect...".

Except where qualified by an adjective, the term "the provisions of" is generally removed. It has been retained in some places for reasons of style or simply because of oversight.

For the first time extensive work has been done on the more formidable of the long and repetitive texts on pollution (Part XII). This has resulted in some simplification and lightening of the texts, particularly in articles 211 (3), 220(3)(5) and (6), and 225.

Some of the recommended changes affect terminology in texts prepared by more than one main Committee. Should the Drafting Committee recommendations be reviewed in committee, and should some of these be rejected by one Main Committee but not another, there will be problems.

The Drafting Committee report contains an important disclaimer to the effect that no substantive implications should be drawn from the fact that the Committee made or failed to make a recommendation. In the limited time available, the Committee did what could be done most easily. In many situations lack of harmonization in a single language or lack of concordance among languages has been allowed to remain because it was not felt that the point was important enough to warrant the time it would take to deal with it, either because of the inherent complexity of the matter or because of the concerns of one or more participants.

Mutually cancelling objections were the most common problem. An example can be found in a comparison of Article 7, para. 6 with Article 47, para. 5. While both provisions set forth prohibitions that are in substance identical, the former uses the term "may not" while the latter uses the term "shall not". Supporters of the former generally oppose changes in terminology in texts drawn from the 1958 Geneva Conventions unless they are essential. Supporters of the latter generally oppose changes in the closely negotiated texts on archipelagic states unless they are essential. Functioning by consensus, the English Language Group was unable to recommend a change in either provision, although no participant suggested that there was any difference in meaning between the texts. The same kind of problem arose regarding the choice between deleting the words "which are" in article 37 or inserting them in other articles on straits.

There were serious problems in dealing with the English term "as appropriate" in other languages; in French, in particular, it was exceedingly difficult to achieve concordance. The words "facilities" and "maintenance" have also given rise to questionable translations.

Outstanding Problems.

As already noted, no means have been found for dealing with, or even referring to the Conference, the problems identified in the attached "third basket" list.

Work has just begun in the Language Groups on First Committee texts. Informal Plenary texts remain to be addressed.

In addition, a significant number of questions remain unresolved that relate to Second and Third Committee texts. Among them are the following:

1. Flag and Registry. The Second Committee texts, particularly Part VII on the High Seas, consistently refer to flag when referring to ships having the nationality of a state. This is Geneva Convention terminology. The Third Committee texts on pollution refer to both flag and registry with respect to both ships and aircraft. This is at best cumbersome and at worst a harbinger of legal confusion. The English Language Group has proposed that the texts be revised so as to use "flag" alone in connection with vessels and "registry" alone with aircraft. The Spanish Language Group has made a counter-proposal that the term "nationality" be used in connection with both. Either faces the prospect of Third Committee resistance on what is in fact a Second Committee issue.

2. Definition of the Area. The definition of the Area in Article 1, para. 1 bears no textual relationship to the Second Committee articles. It refers to the ocean floor, whereas articles 56 and 76, which also cover parts of the ocean floor, refer only to the seabed and subsoil. Moreover, the Convention does not indicate what is meant by the limits of national jurisdiction, since the term "national jurisdiction" is not used in any of the articles on the territorial sea, exclusive economic zone or continental shelf. In this connection it should be noted that the Convention therefore prohibits national claims beyond limits that are nowhere defined expressio verbis.

3. Government Non-Commercial Ships. Three different terms are used in four articles (31, 32, 96 and 236) to refer to ships entitled to sovereign immunity: one inherited from the 1958 Territorial Sea Convention, one from the 1958 High Seas Convention, and one from the 1973 Marine Pollution Convention.

4. Sealanes. The term sealanes is used in at least three substantially different contexts. Moreover, the term "sealanes and traffic separation schemes" is not the preferred technical terminology -- IMCO recommends "routeing systems."

5. Coastal State Obligations. The premise of the High Seas Convention (art. 10) and the carefully drafted articles drawn from it (arts. 94(5), 211 (2), etc.) is that a party to the Law of the Sea Convention may automatically be bound by an international safety or pollution standard arising from another instrument if that standard is "generally accepted." The words "generally accepted" are however omitted in connection with pollution from continental shelf and other coastal state seabed activities (article 208(3)) as well as dumping (article 210(6)). The result is a legal anomaly that could hurt the Convention and restrain efforts to promote the gradual elaboration of environmental recommendations and measures in UNEP and elsewhere.

6. Installations. A comparison of articles 60, 147, and Part XIII, Sec. 4 leaves one in doubt as to the significance of their divergent texts on the same subject. Moreover, the text of the removal requirement in article 60(3) was copied without negotiation from the 1958 Convention, and reflects neither state practice, nor modern technological and environmental considerations, nor the definition of "dumping" in art. 1. The notion that a "recommendation" of an international organization is sufficient to expand a safety zone (art.60(5)) and impede navigation is inconsistent with the rest of the Convention.

7. Function-less Articles. Possible candidates for this category include art. 85 (tunneling) (copied from Geneva) and 264 (a remnant that is the only general dispute settlement cross-reference of its kind in a substantive text).

8. Relationship between Third Committee Texts and those of the other Committees. Since the Third Committee was the first to complete work, some problems of integrating its texts with the rest of the Convention inevitably arise. Third Committee texts ignore the existence of archipelagic waters; do not match First Committee terminology on rules, regulations and procedures of the Authority or Second Committee terminology on nationality of ships; fail to cross-reference expressly the detailed provisions of Part XI and related annexes on transfer of technology; and incorrectly imply that only Part XI, and not even Parts XII and XIII apply to marine scientific research in the Area.

9. Verbosity. The Convention texts will be reproduced thousands of times in international and national instruments, books, and articles. Stripping the texts of repetitive litanies would help to prevent, reduce and control pollution.

Part XI.

The language groups have generally completed initial recommendations through article 149. The English Language Group has continued through article 151. However, the groups have not yet reviewed each others' proposals. Moreover, at least in the English Language Group, it was clear that the presence of technical personnel on delegations during the Tenth Session could facilitate work on certain articles either in a Drafting Committee or First Committee context.

Bernard H. Oxman
U.S. Representative

Attachments:
1) "Third Basket" list prepared by ELG Coordinator
2) ELGDC/13
3) Report of the Chairman of the Drafting Committee

Articles 16(2), 47(6), 75(2), 76(9), and 84(2)

Whether the word "deposit" in these articles should be replaced by a word such as "transmit" in light of the use of "deposit" and "depositary" in articles 306, 307, 308 and 319.

Articles 22, 41 and 53 (paras. 6-11)

Whether a reference to "routing systems" should where appropriate replace references to sealanes and traffic separation schemes in these provisions (while retaining the term sealanes where it is used in other contexts, such as the designation of sealanes and air routes for the exercise of the right of archipelagic sealanes passage under article 53, paras. 2-5 and 12, or in article 60, paragraph 7) (see letter of 23 May 1980 from the Secretary-General of the Inter-Governmental Maritime Consultative Organization, Appendix III, para 3(a)).

Articles 31, 32, 96 and 236

Whether the references in these articles to ships other than warships should be harmonized, for example by referring to ships owned or operated by a State and used for exclusively non-commercial purposes.

Article 36

Whether the text should be elaborated by adding a clause such as "; in such routes, the other relevant Parts of this Convention, including the provisions regarding the freedoms of navigation and overflight, apply."

Article 42(1)(b)

Whether the word "applicable" should be changed to "generally accepted" in this sub-paragraph to conform to related texts (see arts. 39(2), 41(3), and 211(2)). Whether the adjective "oily" should be deleted in the clause "oil, oily wastes and other noxious substances".

Article 60(3)

Whether a reference to artificial islands should be added to the second sentence.

Article 60(3)

Whether the exception to removal when navigation is not infringed should be expressly referred to in the second sentence, for example as authorized by generally accepted international standards or the competent international organization (see paragraph 5).

Article 60(5)

Whether the words "as recommended by" should be deleted in order to conform the text to other similar provisions affecting freedom of navigation in the Draft Convention.

Article 63(2)

Whether this paragraph should be harmonized with article 117 with respect to the duty to cooperate in taking measures to conserve living resources beyond and adjacent to the exclusive economic zone.

Article 73(1)

Whether this paragraph should refer to natural resources, whether living or non-living.

Article 85

Whether this article (copied from the 1958 Convention, which contained the exploitability criterion) should be omitted from the new Convention in light of the provisions regarding the exclusive economic zone, the continental shelf and the Area.

Article 208(3)

Whether the specific environmental obligations of the coastal State (in respect of its territorial sea, exclusive economic zone and continental shelf) under this paragraph should be expressly stated to arise only from international rules and standards that are generally accepted (see arts. 94(5), 211(2), etc.).

Article 210(6)

(Same general point as with respect to art. 208(3).)

Article 221

Whether this article should be amended to make the point that the words "beyond the territorial sea" do not affect the right of a State to take measures in its territorial sea.

Article 233

Whether this article should state that it is without prejudice to article 38(3).

Part XII

Whether a provision should be added applying Sections 5,6, and 7 to archipelagic waters.

ELGDC/13
25 February 1981

ORIGINAL: ENGLISH

DRAFTING COMMITTEE

Recommendations of the English Language Group to the Drafting Committee

A. GENERAL RECOMMENDATIONS

The English Language Group makes the following recommendations with respect to some of the General Comments contained in Informal Paper 19, to be implemented in the course of article-by-article review:

1. Throughout Part XI, where there is a reference to "this Part", this should include a reference to the annexes relating thereto. Since this matter pertains to several Parts of the Convention, the Group proposes the amendment to article 318 contained in Section B of this report.

2. The Group recommends that wherever "General" stands alone as a section or subsection heading, the word "Provisions" should be added to conform to the style of other Parts.

3. The Group recommends that everywhere there is a reference to "nodules", the reference should be to "polymetallic nodules".

4. The Group recommends that everywhere there is reference to "regulations" or "rules and regulations" of the Authority, the reference should be to "procedures" as well. Such reference should read, in all cases, as "rules, regulations and procedures of the Authority" or "its rules, regulations and procedures".

5. As to General Comment No.5, the English Language Group has deferred other aspects of this matter, but its General Recommendation 1 on page 1 of ELGDC/12 of 19 February, which reads as follows:

"1. The first letter of subparagraphs should not be capitalized (unless word is ordinarily capitalized or is the first word of a sentence)."

6. The Group recommends that where there is a reference to "protection of the marine environment", the reference should in principle be to "protection and preservation of the marine environment". However, the Group has not recommended this change in the chapeau of article 145 because of the way in which that clause is drafted.

7. The Group recommends that all titles of annexes should be in block capitals.

8. The Group recommends "immunities and privileges" appears, it should read "privileges and immunities".

9. The Group recommends that throughout Annex IV, where there is a reference to "Governing Board of the Enterprise", it should appear as "Governing Board".

B. SPECIFIC RECOMMENDATIONS

Article 318, line 3	-	Delete the full stop after annexes After annexes add and a reference to a Part of this Convention includes a reference to the annexes relating to that Part.
Article 133 (b), line 1	-	Replace Resources shall include by "Resources" includes
Article 133 (b), lines 3, 5, 6, 9, and 10	-	Replace surface by sea-bed
Article 134, paragraph 1	-	Replace shall apply by applies
Article 134, paragraphs 2, 3, and 4	-	Delete paragraphs 2, 3, and 4
and		
Article 84, paragraph 2 line 4	-	After United Nations add and the Secretary-General of the Authority
Article 137, paragraph 2, line 4	-	Replace minerals derived from the Area by minerals recovered from the Area

Article 137, paragraph 3, line 3	-	Replace minerals of the Area by minerals recovered from the Area
Article 139, title	-	Replace by Responsibility and Liability
Article 139, paragraph 1, lines 5 and 6	-	Replace shall be carried out by are carried out
Article 139, paragraph 1, line 11	-	After failure to comply add with this Part
Article 139, paragraph 2	-	Revise to read Two or more States Parties or international organizations acting together shall be jointly and severally responsible in accordance with paragraph 1
Article 140, title	-	Replace Mankind by mankind
Article 140, paragraph 1, line 6	-	Delete the before developing Add of before peoples
Article 142, paragraph 1, line 5	-	Replace resources by deposits
Article 142, paragraph 3, lines 7 and 8 line 8	-	Replace hazardous occurrences by hazards Delete any
		Authority and Zone should be capitalized in the French text when referring to the International Seabed Authority or to the International Seabed Area
Section 3, title	-	Revise to read MARINE SCIENTIFIC RESEARCH IN THE AREA
Article 143, paragraph (b) 3(iii), line 2	-	Delete activities of
Before Article 144	-	Insert new heading Section 3 bis* CONDUCT OF ACTIVITIES IN THE AREA
Article 144, paragraph 2, line 1	-	Delete the before States Parties

* Renumbering of sections would be done when full text is issued.

Article 144, paragraph 2(b), line 3	-	After particularly add by providing
line 6	-	Add for before their full participation
Article 145, chapeau, first sentence, lines 1-5	-	Revise to read Necessary measures shall be taken in accordance with this Convention to ensure effective protection for the marine environment from harmful effects which may arise from activities in the Area.
line 5	-	Replace that by this
line 6	-	Delete appropriate
lines 6 and 7	-	Replace for inter alia: by ,inter alia, for:
Article 146, line 2	-	Delete in order
line 3	-	Replace that by this
line 4	-	Delete appropriate
line 5	-	Replace reflected by embodied
line 6	-	Replace specific treaties by relevant treaties
	-	After treaties delete which may be applicable
Article 148, line 4	-	After in particular add to
line 6	-	Replace them, in overcoming by them with a view to overcoming
Before Article 149	-	Insert new heading Section 3ter*, ARCHAEOLOGICAL OBJECTS AND OBJECTS OF HISTORICAL ORIGIN FOUND IN THE AREA
Article 149, title	-	Revise to read Archaeological objects and objects of historical origin
Article 149, line 1	-	Replace All objects of an archaeological and historical nature by Archaeological objects and objects of historical origin

* Renumbering of sections would be done when full text is issued.

UNITED NATIONS

THIRD CONFERENCE
ON THE LAW OF THE SEA

Distr.
LIMITED

A/CONF.62/L.67
26 February 1981

ORIGINAL: ENGLISH

REPORT OF THE CHAIRMAN OF THE DRAFTING COMMITTEE

Meetings

1. An informal intersessional meeting of the Drafting Committee was held in New York from 12 January to 27 February 1981 in accordance with the decision taken by the Conference at its 141st meeting on 29 August 1980 1/ and on the basis of the time-table proposed by the Conference. The meeting was extended to 2 March 1981. The Drafting Committee conducted an article by article textual review of the Draft Convention on the Law of the Sea (Informal Text) 2/ and directed its attention in particular to:

(1) continuing the process of harmonization of words, expressions and terminology recurring in the Draft Convention;

(2) considering drafting and editorial points relating to the Draft Convention; and

(3) improving concordance of the Arabic, Chinese, English, French, Russian, and Spanish texts of the Draft Convention.

2. There were 240 meetings of the language groups open to all delegations, 33 meetings of the co-ordinators of the language groups under the direction of the Chairman of the Drafting Committee and 14 meetings of the Drafting Committee as a whole. Representatives of 50 delegations participated in the meetings, and the Drafting Committee maintained its previously established informal working methods, but altered the procedures for the meeting of the co-ordinators of the language groups under the direction of the Chairman of the Drafting Committee by opening such meetings to all members of the Drafting Committee and all members of the language groups.

Documentation

3. The Drafting Committee had before it the Draft Convention on the Law of the Sea (Informal Text); it also had before it a concordance text of the Draft

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1/ A/CONF.62/SR.141, p. 15.

2/ A/CONF.62/WP.10/Rev.3.

Convention in the six official languages of the Conference: Arabic, Chinese, English, French, Russian and Spanish; 3/ a series of informal papers prepared by the Secretariat; a series of papers embodying proposals of a drafting nature arising out of the consideration by the respective language groups of the Draft Convention; and a series of documents outlining the recommendations of the co-ordinators of the language groups under the direction of the Chairman of the Drafting Committee. The documentation prepared during the intersessional meeting was extensive, and the pace of work and volume of documentation were without precedent in the history of the Conference. The Drafting Committee expresses its appreciation to the Special Representative of the Secretary-General, the Secretary of the Committee and the other members of the Secretariat for their truly remarkable and tireless efforts throughout the intersessional meeting. The availability of a computerized text greatly facilitated the task of identifying and dealing with recurring words and phrases.

Textual review progress

4. The complexity and importance of the task of the Drafting Committee, coupled with the extraordinary volume of documentation, made it necessary from the opening days of the meeting for the language groups, the co-ordinators and the Drafting Committee to maintain an intensive schedule of meetings in the early morning hours, evenings, week-ends, holidays and luncheon periods in addition to the regular meetings during United Nations working hours. As a consequence, the Drafting Committee was able to carry out an article by article textual review of Parts II to X and annexes 1 and 2, and Parts XII to XIV. The recommendations on these Parts which the Drafting Committee has adopted in the course of this meeting are set out in addendum 1 to this report. Other matters regarding these Parts are still under review. During the final two weeks of the session, the Drafting Committee began its article by article textual review of Part XI, in accordance with the time-table proposed by the Conference. Progress has been made by the language groups in the preparation of the article by article textual review of Part XI by the Drafting Committee. For lack of time it did not prove possible to commence an article by article textual review of the Preamble, Part I (Use of Terms), Part XV (Settlement of Disputes), Part XVI (General Provisions) and Part XVII (Final Clauses) and the related annexes. A list of the Informal Papers and Language Group Recommendations is set out in addendum 2 to this report.

5. Because of the large volume of work, the Drafting Committee concentrated on those drafting suggestions that could be prepared and considered most expeditiously. The fact that the Committee decided to propose or not to propose a drafting change does not imply either agreement or disagreement with reasons proferred therefor orally or in writing, nor does it imply any conclusion regarding the meaning of any existing text. Moreover, the decision to propose, or not to propose, harmonization of or a distinction between terms used in different provisions implies no conclusion as to whether the terms have the same or a different meaning.

3/ A/CONF.62/DC/WP.2.

6. In order to ensure that the consideration of drafting changes not give rise to substantive implications or interpretive records, the Committee and its organs have followed the practice of avoiding records of discussion of drafting changes and the reasons therefor.

7. It should be noted that a number of recommendations made in this report are applicable to the texts prepared in more than one main committee of the Conference. Agreement to such recommendations was premised on their application to all relevant parts of the Draft Convention and not on a partial or selective basis.

8. It should also be noted that, with respect to the requirement for concordance of the six official language texts of the draft Convention, the Drafting Committee sought to improve linguistic concordance, to the extent possible, and juridical concordance in all cases.

Future work

9. It is recommended that the Drafting Committee meet during the tenth session of the Conference with a view to early completion of its work.

APPENDIX 2

Letter of March 16, 1981, From Secretary of State Alexander M. Haig to Hon. T. T. B. Koh, Ambassador to Singapore and Permanent Representative to the United Nations

March 16, 1981

His Excellency
Tommy T.B. Koh Thong Bee,
Ambassador of Singapore and
Permanent Representative to the United Nations

Dear Mr. Ambassador:

It was with great pleasure that I learned of your election on March 13 as President of the Third United Nations Conference on the Law of the Sea. Your long and close association with the Conference and grasp of issues have earned you the respect of your colleagues. I highly congratulate you upon your election to this important post and extend to you my pledge that the United States delegation will cooperate with you in the discharge of your duties.

I know that you are aware of the review which is being conducted of the Draft Convention on the Law of the Sea. It is only natural that the new Administration should have the opportunity to fully consider the complex questions involved in that document. Because the tenth session was scheduled to start so soon after the new Administration took office, it proved impossible to review thoroughly the issues prior to March 9. As you know, the concerns of the Administration relate in particular to deep seabed mining issues.

Please accept the assurance of my high personal regard and my best wishes for success.

Sincerely,

Alexander M. Haig, Jr.

APPENDIX 3

Letter of March 18, 1981, From Ambassador T. T. B. Koh to Secretary of State Alexander M. Haig

March 18, 81.

H.E. Mr Alexander M Haig, Jr
The Secretary of State
Washington

Dear Mr Secretary,

Thank you very much for your letter dated 16 March 1981, congratulating me on my election to the presidency of the 3rd UN Conference on the Law of the Sea. I deeply appreciate your pledge that the United States delegation will cooperate with me in the discharge of my duties. The United States delegation, during the past three administrations, has always played a very constructive role in the negotiations at the Conference. I am sure that I can expect the United States delegation, under the Reagan Administration to continue that tradition.

I understand the need for the new Administration to undertake a thorough review of the draft convention. It is a pity that the review could not be completed before the 9th of March. It is also a pity that your delegation did not tell us earlier that you need more time to complete your review. If you had done so the conference would have been prepared to change the dates of the session in order to accommodate you.

I wish to make two requests. First, I request that the process of review be completed as soon as possible and, in any case, not later than June this year. It is the collective will of the conference to complete our work this year. In order to do so, and given the fact that you are not in a position to conclude our negotiations at the current session, we shall have to hold a final resumed session this summer. My second request is that whilst the review is taking place, the Reagan Administration should make an authoritative statement affirming that it is working towards the objective of a generally acceptable convention on the law of the sea, that it continues to uphold the principle that the resources of the international area of the seabed and ocean floor constitute the common heritage of mankind and that it stands by the compromise proposals enunciated by Secretary Kissinger in 1976 on the international regime for the exploration and exploitation of the resources of the international area of the seabed and ocean floor.

Finally, I want to emphasise that the present package of compromise proposals contained in Part XI of the draft convention, on seabed mining, is very delicately balanced. The compromise proposals contain many concessions from the Group of 77. If the US delegation seeks to re-open negotiations on this package, it is likely that the package will fall apart and the concessions which the US delegation has won from the Group of 77 over the last 7 years will be lost.

Please accept Excellency, the assurances of my highest consideration.

T.T.B. KOH

APPENDIX 4

LETTER OF JUNE 10, 1981, FROM JAMES L. MALONE, SPECIAL REPRESENTATIVE OF THE PRESIDENT FOR THE LAW OF THE SEA, REGARDING SECRETARY OF STATE HAIG'S RESPONSE TO AMBASSADOR KOH

DEPARTMENT OF STATE

Washington, D.C. 20520

RECEIVED

JUN 12 1981

COMMITTEE ON FOREIGN AFFAIRS

June 10, 1981

The Honorable
Clement J. Zablocki, Chairman,
Committee on Foreign Affairs,
House of Representatives.

Dear Mr. Chairman:

Enclosed please find the corrected transcript of my recent testimony before the Foreign Affairs Committee.

As you requested, I am also enclosing a copy of the U.S. Delegation Report from the Tenth Session of the Law of the Sea Conference and a list of the advisers and experts who are members of the delegation. The advisers are all government employees and the experts are all private citizens who participate in sessions of the conference on a part time basis without compensation.

In regard to your request regarding Ambassasdor Koh's letter to Secretary Haig the decision was made not to send a written reply because I wanted to and did see Ambassador Koh in person while the Conference was still in session.

The answers to the supplementary written questions submitted by you, Mr. Broomfield and Mr. Leach have been sent out for clearance by other Departments and Agencies and will be forwarded to you as soon as possible.

Sincerely,

James L. Malone

James L. Malone
Special Representative of the President
for Law of the Sea

APPENDIX 5

LETTER OF MARCH 26, 1981, FROM GEN. E. C. MEYER, CHIEF OF STAFF, U.S. ARMY, TO HON. BENJAMIN A. GILMAN

UNITED STATES ARMY
THE CHIEF OF STAFF

26 MAR 1981

The Honorable Benjamin Gilman
Minority Member
Committee on Foreign Affairs
House of Representatives
Washington, DC 20515

Dear Mr. Gilman:

Thank you for your letter of March 19, 1981, expressing your views and those of other members of the House of Representatives on the status of the Law of the Sea Conference.

The purpose of the well-publicized decision to review the Law of the Sea Draft Treaty Text would appear to be a thorough review to determine if the treaty is in the net national interest. I agree with you that US security interests, among others, are an important aspect of the emerging treaty and should be carefully considered.

In that regard, the generally accepted consensus is that the trend in customary international law is to restrict free transit of the oceans by expansion of the territorial sea from 3 to 12 nautical miles. This expansion of the territorial sea would close 116 straits to navigation, except innocent passage, which does not include submerged transit or overflight. The draft treaty would appear to preserve the right of submerged transit and overflight through these key straits by a new regime called transit passage. A similar new regime could also preserve navigational and overflight rights through archipelagoes, another area in which there is a trend in customary international law toward restriction of free passage. On balance, it appears that an international standard codifying such freedoms would be desirable.

The Army will, of course, seek to ensure that our security interests are properly considered in the ongoing review of the Law of the Sea Draft Treaty Text.

Sincerely,

E. C. MEYER
General, United States Army
Chief of Staff

APPENDIX 6

Letter of April 2, 1981, From Adm. T. B. Hayward, Chief of Naval Operations, U.S. Navy, to Hon. Benjamin A. Gilman

CHIEF OF NAVAL OPERATIONS

2 April 1981

Dear Mr. Gilman,

This is in further response to your 19 March letter expressing your concerns about the Administration's decision to conduct a full fledged policy review of U.S. participation in the Law of the Sea Negotiations.

I can assure you that the Navy is sensitive to the importance of retaining adequate safeguards for essential navigational rights in the draft Treaty, and will work to that end in the ongoing review process.

Thank you for advising me of your interest in these important international negotiations.

Sincerely,

T. B. HAYWARD
Admiral, U.S. Navy

The Honorable Benjamin Gilman
House of Representatives
Washington, D.C. 20515

APPENDIX 7

LETTER OF APRIL 3, 1981, FROM GEN. LEW ALLEN, JR., CHIEF OF STAFF, U.S. AIR FORCE, TO HON. BENJAMIN A. GILMAN

DEPARTMENT OF THE AIR FORCE
OFFICE OF THE CHIEF OF STAFF
UNITED STATES AIR FORCE
WASHINGTON, D.C. 20330

3 APR 1981

Honorable Benjamin Gilman
Committee on Foreign Affairs
House of Representatives
Washington, D. C. 20515

Dear Mr. Gilman

Thank you for the invitation to comment on your remarks about the Law of the Sea Treaty and the letter to Secretary Haig from you and other members of Congress which appeared in the Congressional Record on March 12, 1981.

The Air Force has a vital interest in the development of a Law of the Sea Treaty. We have long been concerned about access to airspace over the oceans and above international straits and archipelagic waters.

We are confident that the Administration's review of the draft Treaty will take into full account the need to preserve the mobility of United States armed forces on, under and over the oceans and international waterways. You may be assured that these interests will be given foremost consideration by the Air Force.

Sincerely

LEW ALLEN JR, General, USAF
Chief of Staff

APPENDIX 8

Letter of March 6, 1981, From Members of Congress to Secretary of State Haig, and Response of April 3, 1981, From James L. Malone

Congress of the United States
Committee on Foreign Affairs
House of Representatives
Washington, D.C. 20515

March 6, 1981

Honorable Alexander Haig
Secretary of State
Department of State
Washington, D.C. 20520

Dear Mr. Secretary:

As interested Members of Congress actively involved in the U.S. negotiations on the Third UN Conference on the Law of the Sea, we understand your prerogative to undertake a full-fledged review of U.S. policy in the Conference. However, since the draft convention was carefully considered and worded, we had hoped that this administration could go to the 10th session without such a review. In this regard, we would have preferred to have been consulted on your decision rather than learning about it through a Department press release and subsequent Washington Post and New York Times articles.

In undertaking your review, we believe that you will reach the conclusion that the present text, now referred to as the Draft Convention, is essentially the basis for a sound Treaty. The negotiations have been difficult, delicate, and prolonged. The present text has been worked on by three administrations and in a strictly bi-partisan manner. It reflects a series of important political compromises that the majority of U.S. interest groups involved in the negotiations had agreed upon. The text stands at a point where U.S. national defense, security, economic and environmental and political-legal interests are effectively protected. It would be most unfortunate to see the work on this draft convention undone at this juncture due to the loud voice of only one of those domestic groups.

We have looked forward to the 10th session to bring resolution of the few remaining issues: preparatory investment protection, the participation of entities other than states and the creation of the Preparatory Commission that would, in turn, develop the rules and regulations under which U.S. and foreign companies would operate under the International Seabed Authority. We are concerned that the recent press articles may make the prospect of resolving these issues much more difficult.

Beyond this, we believe it would be a mistake for a U.S. policy review to result in reopening negotiations on the fundamental principles now reflected in the carefully balanced parts of the present text. These principles go to the heart of vital U.S. security interests, notably the freedom of navigation and overflight of international straits, a uniform breadth of the territorial seas, the optimum use and conservation of fisheries, the establishment and legal status of the economic resource zone, marine boundary delimitation, dispute settlement and marine environmental and scientific protection.

We respectfully request to consult with you or whomever you designate on the matter of U.S. policy in this Conference at your earliest convenience.

Sincerely yours,

Clement J. Zablocki, Chairman
Committee on Foreign Affairs

Benjamin A. Gilman, Minority Member
Subcommittee on International Economic Policy and Trade

Jonathan B. Bingham, Chairman
Subcommittee on International Economic Policy and Trade

Joel Pritchard, Minority Member
Subcommittee on International Operations

Berkley Bedell
Member of Congress

Jim Leach, Ranking Minority Member
Subcommittee on Human Rights and International Organizations

Don Bonker, Chairman
Subcommittee on Human Rights and International Organizations

Paul N. McCloskey, Jr., Ranking Minority Member
Subcommittee on Merchant Marine, House Merchant Marine and Fisheries Committee

DEPARTMENT OF STATE

Washington, D.C. 20520

April 3, 1981

Dear Mr. Chairman:

I am pleased to reply to your recent letter to Secretary Haig, in which you and several other Members of Congress expressed concern regarding the U.S. posture at the Third United Nations Conference on the Law of the Sea. We believe it is vital that a thorough review of all provisions of the Draft Convention be completed to assess overall U.S. interests in the Treaty. I realize that this will require some delay in proceeding with the negotiations, however I believe that as a result of this review we will be in a position to more adequately represent U.S. interests.

As part of the review process, I am anxious to have the benefit of your advice. I would welcome an opportunity to meet with you at your convenience to discuss your views. As your letter suggests, these issues are of paramount importance, and I look forward to consulting with you in the near future.

Sincerely yours,

James L. Malone
Special Representative of
the President to the Third
United Nations Conference
on the Law of the Sea

The Honorable
Clement J. Zablocki,
Chairman,
Committee on Foreign Affairs,
House of Representatives.

APPENDIX 9

List of Members of the U.S. Department of State Public Advisory Committee on the U.N. Conference on the Law of the Sea

[A] AC;PubChair;202-466-4700;SC Exp

Ambassador Elliot L. Richardson
Milbank, Tweed, Hadley, & McCloy
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

[A] AC;Petro;805-961-4483;SC Exp 3/31/81

Dr. Tanya M. Atwater
Department of Geological Sciences
University of California
Santa Barbara, Calif. 93106

[A] AC;PetroChair;212-398-2532;SC Exp 11/30/80

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Chief Economist
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Washington, D.C. 20036

[A] AC;Petro;315-858-0030;SC Exp 6/30/81

Mr. Richard Young
Attorney & Counsellor at Law
P.O. Box 15
Van Hornesville, New York 13475

[A] AC;HardMin;202-331-8900;SC Exp 6/30/81

Mr. Charles F. Cook, Jr.
Vice President
American Mining Congress
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APPENDIX 10

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APPENDIX 11

Additional Questions Submitted in Writing for the Record by Chairman Zablocki and Administration Responses

1. What was the outcome of the discussions on the resolution creating the Prepatory Commission? Was the resolution adopted?

A. The Preparatory Commission draft resolution and related issues were the subject of extended discussion at the New York session which ended in April of this year. The four major topics discussed were:

-- the status of the rules and regulations produced by the Prepcom; that is, should they be binding on the Authority until and unless changed or be recommendatory only;

-- decision making in the Prepcom; should it be by consensus or some lesser majority, and the related question of who should decide how the Prepcom makes its decisions, the Prepcom itself or the Conference by means of the Prepcom resolution;

-- the "ticket of admission" to the Prepcom; must a state have signed the Convention in order to participate in the Prepcom, or should signature of the Final Act of the Conference be enough;

-- financial and administrative support for the Prepcom; who should provide the funds and the secretariat services to the Prepcom?

Although there was an extensive exchange of views on these topics, no consensus emerged and no new text was put

forward. It is not anticipated that the Prepcom resolution will be adopted until the final session of the Conference.

2. What is the U.S. position on participation in the Prepcom?

A. This is one of the questions that will be decided as a result of our policy review. At present we do not have a position.

3. What is the status of the negotiation on preparatory investment protection?

A. Preparatory Investment Protection was one of the items generally considered to be on the agenda for the Tenth Session of the Law of the Sea Conference in New York. After the United States announced its new position, however, the developing countries made clear early in the session that they were unwilling to discuss the subject until the United States had completed its review and was ready to resume negotiations.

4. Will you elaborate on the work of the Drafting Committee at the Tenth Session? What are the prospects for completing its work by the end of the August session?

A. The Drafting Committee began its work this year in January, and met up to, during, and for one week after the negotiating session. The Herculean task of harmonizing the texts both "vertically", that is making each article in the text consistent in usage, punctuation, etc., with the others, and "horizontally", that is attempting to make the texts in each of the six official languages as close to one another in

meaning as possible, went quite well. The Drafting Committee is well advanced with respect to all parts of the treaty text, with the exception of the seabed mining and dispute settlement provisions. These, however, constitute a very large portion of the text and pose special problems of complexity and technical usage not found to the same degree in other parts. Some progress was made in the seabed mining texts, but dispute settlement was left largely alone, with the intention of concentrating on it during the first three weeks of the Drafting Committee Session which begins in late June. The second two weeks of the session will concentrate on seabed mining, and it is anticipated that the Committee may again meet during the negotiating session. The objective is to complete a first reading of the entire text by beginning of the negotiating session in early August.

The work of the Drafting Committee will never be completed in a literal sense. In a treaty text this large, there will always be room for improvement. The Committee will end its work when the Conference, as a political matter, decides the text is ready for adoption.

5. A few years ago there was a short-lived rumor that the U.S. and others might try to develop a mini-treaty. What are the major differences between a comprehensive treaty and a mini-treaty?

A. In the general nomenclature, a comprehensive treaty refers to treaty negotiated in the Third United Nations Conference on the Law of the Sea, covering the entire spectrum of LOS interests. A mini-treaty is usually thought of as limited to a particular subject such as seabed mining. It would be negotiated among a smaller group of countries than participate in UNCLOS III, but would be open to accession by any country that wished to become a party.

6. Does the United States support a parallel system for mining nodules in the deep seabed?

A. This is one of the questions that will be decided as a result of our policy review. At present we do not have a position.

7. I understand that foreign delegates -- our allies as well as friends in the third world -- may be willing to tolerate minor changes in some parts of the text, but are apprehensive and very concerned about major changes. What would a major change be? A minor change?

A. Whether a particular amendment is major or minor is always a subjective judgment. However, one might consider that a major change would be the elimination of the provisions relating to the production limitation or technology transfer including the Brazil Clause. A minor change would be an amendment to the voting formula which would guarantee the U.S. the same representation as the USSR, or clarifying the language to assure text that liberation movements such, as the PLO, will not obtain a share of the revenues of the

International Seabed Authority.

8. I understand that you have transferred the Department's Law of the Sea Office from the Office of Deputy Secretary of State to the Bureau of Ocean, Environment and Scientific Afairs, what was (were) the reason(s) for doing this? How do you plan to organize the activities of the office within the Bureau?

A. D/LOS was transferred to OES as part of a decision by the Department of State to place responsibility for negotiating agreements in the functional bureaus rather than in special offices. OES is the oceans bureau in the Department of State. No final decision has been made on the organization of OES/LOS, but we anticipate that it will retain most of its existing structure, changed where appropriate to respond to the evolving requirements of the LOS negotiations.

9. On page 5, you call the enterprise a "supranational mining company". My understanding of the idea, "supranational," is that governments have given up authority to a supranational entity that then has power to do certain things. The European Coal and Steel Community (ECSC) is an example because it has authority to tax coal and steel producers in the 9 members of the European Communities.

The Enterprise does not have power to tax, does it? Isn't it true that the Enterprise is the operating arm of the proposed Seabed Authority and that the Enterprise's activities are to be governed by decisions of the Council and the Assembly of the Authority?

A. It is difficult to choose an appropriate adjective to describe the Enterprise' juridical status. "Supranational", meaning transcending national boundaries, authority or interests seemed to me fairly close to the mark.

The Enterprise does not have taxing authority.

The relationship of the Governing Board of the Enterprise and the Council and Assembly under the current text of the Authority is very complex. The Council has the power to issue directions, but need not do so. If the Council chooses not to restrain the Enterprise, the Enterprise's potential range of action is very wide. Under the current Council composition and voting structure, we would have to depend upon developing countries to help us impose that restraint. On the record to date, the extent to which they would be willing to do so is open to serious question.

10. On page 5, you state that the Enterprise could eventually monopolize production of seabed minerals. How is this possible in view of the fact that the proposed seabed authority is to be structured according to a parallel system on which there is substantial consensus and which, in turn means that the third world is not likely to seek a monolopy?

A. The Enterprise could establish a dominant position in, and eventually monopolize seabed mining in two ways. First, under the current text, it has many advantages over the "private side" of the parallel system, such as free, prospected mine-sites, access, the right to purchase if necessary, the most advanced seabed mining technology, interest free and guaranteed loans for an initial mining operation, a ten-year holiday from the payment of proceeds to the Authority, probable exemption from taxes in countries where its processing

plants will be located, exemption from anti-density and anti-monopoly provisions, special advantages under the production ceiling, etc. The Enterprise could use these advantages to dominate the field in short order. Second, the developing countries will be in a position at the review conference to vote through and then to bring into force any changes in the seabed mining texts they wish. Even if the United States and other developed countries were to take the very serious step of denouncing the treaty, rather than be governed by the revised treaty, the Enterprise could still be put in a position by the developing countries to dominate seabed mining, especially if developed states were then unwilling to spend the necessary political and financial capital that would be needed to compete with it. Third, U.S. ocean mining companies say they will not invest under the Draft Convention. The leaves the field to the Enterprise (see attached correspondence).

11. On page 5 (paragraph 2), you say the text guarantees access to privately-owned technology by any developing country planning to go into seabed mining. This is the so-called Brazil clause, which the U.S. and others oppose. Therefore, I question whether the text in fact "guarantees" such access to privately-owned technology.

The fact that we have in the past opposed the Brazil Clause, and likely will continue to do so, does not expunge it from the text. All previous efforts to have it deleted have failed. As the text currently stands, I believe my

characterization of the Brazil Clause's effect is accurate.

12. Page 6 (paragraph 1) you refer to the composition of the Council saying the USSR and its allies have three guaranteed seats, but the U.S. must compete with its allies to be represented. The implication of the way you word this is that the Soviet bloc is the winner and the West and the U.S. the losers. However, this statement is not quite accurate is it? The Soviets must compete among their Eastern Bloc allies for their three seats; in addition, the Western allies would have at least 6 or 7 seats under the present draft convention. These are seats for major consumers and investors. Since the U.S. is both a major consumer and investor, I fail to understand how you can imply the U.S. will have no seat.

A. I did not mean to imply that the United States would necessarily not have a seat. We may well obtain a seat, at least on the first Council (we are subject to being rotated out thereafter). The point is that in the current text the Soviet Union is given special treatment explicitly based on its ideology and political/economic system that is not given the United States. We have to engage in a true competition for our seat; they do not.

13. Page 7 (paragraph 1) You say that the present text imposes revenue-sharing obligtions on seabed mining companies which would significantly increase the costs of mining. Isn't it true that such obligations may provide reduced profits, but probably not increase costs of mining per se?

A. This seems to be a semantic question. If the costs of doing business are considered to include payments to governmental authorities for the right to continue in business, then financial arrangements to the Authority clearly increase costs over what they otherwise would have been. If the revenue sharing payments are not considered a cost, but are

carried as a separate item, then "costs" are not increased. In either case, though, the bottom line is the same.

14. Do all the members and advisors to the U.S. delegation to the Law of the Sea Conference have security clearances. What level of clearance. Does Mr. Ratiner have a security clearance, and if so, what level?

A. Yes. All members and advisors have security clearances of one type or another.

Mr. Leigh Ratiner, who is an "expert" member of the delegation, has an oral clearance to the Secret level, which was given orally on April 9, 1981. It was applied for on March 13, 1981. The formal written clearance is still being processed by the State Department's Office of Security.

Additional Questions Submitted in Writing for the Record by Hon. William S. Broomfield and Administration Responses

1. In the Administration's review of the Law of the Sea Treaty negotiating text, are the individuals conducting the current review the same as those who participated in the earlier negotiations?

A. We are endeavoring to take a fresh look at the product of the negotiations. The review is under the direction of the Administration's new policy team, most of whom have not participated before in the Law of the Sea Conference. At the same time, most of the staff level personnel engaged in the review have been involved previously in one capacity or another.

2. How long do you expect the review to take?

A. It is unrealistic to place an artificial deadline on the review process. The issues involved are complex. The Draft Convention, including over 300 articles and eight annexes, deals with a broad range of subjects of great importance to the Congress, affected domestic interests and other countries. We will need time for a meaningful dialogue with the Congress and with the private sector. We will also need time to ensure that the views of other countries, particularly our allies, are properly reflected in the review process. Taking all those factors into account, we expect to finish the review in the autumn of 1981.

3. What are the prospects for substantive changes in the treaty text once the review is finished?

A. Because we will not know until the review is completed how many changes will be necessary and how fundamental they will be, it is difficult to predict what the receptivity of the Conference will be to any changes we may propose.

4. With all the difficulties you have mentioned with the current text, do you believe it is likely that the Administration will decide that some of these provisions are acceptable?

A. Because the review is currently analyzing these provisions, I would not want to prejudge the outcome. The problems we have cited, however, are those that on their face appear harmful to the U.S. interests. They are the ones which we have been advised by members of Congress would preclude the treaty's acceptance by the Senate or House.

5. In balancing national security interests, what is the view of the Department of Defense in terms of the need for a reliable supply of strategic minerals vs. navigation rights through international waters? Can one be balanced against the other?

A. The Department of Defense (DOD) considers that the fundamental security objective of U.S. law of the sea policy is to maximize operational mobility and flexibility of U.S. forces through, over, and under the world's oceans. This vital interest in retaining navigational rights, particularly in chokepoints such as archipelagoes and straits used for international navigation, reflects DOD's active concern for the maintenance of sea lines of communication open to commerce

of strategic importance, as well as for the unrestricted freedom to deploy forces worldwide in times of international crises. This need for the preservation of traditional navigational freedoms -- in the face of ever-increasing exclusive maritime claims by coastal states -- is directly related to the achievement of a reliable supply of numerous strategic minerals which, for the U.S., depends on the unimpeded flow of oceanic commerce from foreign landbased sources. DOD regards access to such strategic materials, and those on and under the seabed, as an important security objective. Insofar as navigation rights through and over the world's oceans are directly related to a reliable supply of a broad range of critical materials from foreign sources, DOD concerns with mobility and access to minerals are identical.

The balancing of national objectives in law of the sea policy will be a function of the latter stages of the Administration review of the draft Convention. Current seabed mining projections have identified four metals to be derived from seabed production. In weighing competing national objectives, the potential availability of these four minerals from seabased sources must be viewed in light both of the need for other critical resources which are imported by means of the sea lines of communication and of other national interests in law of the sea.

6. The previous Administration contended that details governing the operation of the Seabed Authority could be worked out after the Treaty text was agreed to, but before it was ratified. Considering the significant interests at stake, is it reasonable to leave such details to a Seabed Authority Preparatory Commission instead of working them out before the final text is agreed to?

A. The answer to this question depends largely on one's definition of the word "detail." It may not be possible for the Conference, as currently constituted to create a highly specific mining regime, with every contingency covered and every rule and regulation laid out. Some sort of technically-oriented body may be needed to do this work. On the other hand, some of the things left to the Preparatory Comission under the current text are not what I would call details. For example, the decision-making procedures of the Legal and Technical Commission with respect to the sufficiency of applications for mining contracts are left to "rules and regulations" to be drafted by the Prepcom.

The Preparatory Commission approach has a long history in international negotiations, but it certainly isn't the only one that might work in this situation. We will be looking at all the possibilities in the course of the review.

7. Is a Law of the Sea Treaty essential or can the interest in deep seabed mining be preserved under the existing U.S. deep seabed mining law?

This is a major issue to be evaluated in the review. The

seabed mining industry has unanimiously advised us that they could not invest under the terms of the Draft Convention, even with the improvements sought by the previous Administration. Therefore, an important part of the review will be to determine what measures must be taken to enable U.S. companies to invest and to compete in this new industry.

8. Many critics have complained that U.S. mining interests scuttled the treaty negotiations because they didn't want a treaty?

-- First of all, the negotiations have not been scuttled, have they? And secondly, isn't it correct that the mining industry wants a treaty for the purpose of ensuring its rights to make so as to protect its investment?

A. You are quite right in saying the negotiations have not been scuttled. The decision to conduct the review was made to enable the Administration to consider carefully its law of the sea interests before the Conference adopted a final treaty text. Prominent Members of Congress and representatives of the oceans mining industry, the financial community, the academic community, the petroleum industry, the aerospace industry, and marine scientists advised us of serious problems raised by Draft Convention.

The seabed mining industry would prefer a multilateral treaty accepted by a large number of nations to protect its interests. But in order to protect those interests, such a treaty must establish a regime capable of attracting investment.

Our first impressions are that the Draft Convention fails to do this.

9. Do you believe the deep seabed provisions in the negotiating text reflect an interest in developing the deep seabed minerals or actually serve to prevent that development?

-- Do you believe it is the intention of the developing nations to use this portion of the LOS Treaty to achieve a massive transfer of aid?

A. Certainly the current provisions are not "pro-development." On the contrary, their tone and content are aimed at regulating and restricting seabed mining so as to mitigate what are considered by the developing states to be negative consequences of the formation of a new industry - an industry that otherwise would be controlled by developed states and operated according to their economic and political principles.

The New International Economic Order, upon which much of the rhetoric and many of the substantive provisions of the seabed mining text is based, is aimed at effecting a massive flow of real assets from the North to the South by changing the terms of trade in goods, services and technology between the two groups of nations.

10. Aside from the comments in Committee III, how strong was the feeling that reopening negotiations in some area would jeopardize compromises already achieved in other areas?

A. As indicated in the formal statement, the chairman of Committee III at the one meeting of the Committee stated that reopening negotiations on pollution or scientific research

would jeopardize the "delicate compromise" reflected in the Draft Convention. This concern was reiterated by two delegations during that meeting and by several other delegations, privately.

11. What is the status of deep seabed legislation in other nations, like West Germany, Japan, France and the United Kingdom?

A. The Federal Republic of Germany enacted ocean mining legislation last summer. In the United Kingdom, an ocean mining Bill has been passed by the House of Lords and is ready for a vote in the House of Commons. France has recently issued a decree, which we have under study. Other Western European countries and Japan have expressed interest, but have made no decision to enact legislation.

12. What effect was there on the deep seabed negotiatons as a result of the legistation passed by the Congress last year?

A. It is difficult to determine. Some believe it had no effect, because the legislation had been before the Congress for so long that its enactment was almost anticlimactic. Others believe that some of the amendments to the LOS text achieved last year could not have been accomplished without the legislation's enactment. The one point that is clear is that the legislation's enactment had no detrimental effect on the negotiations.

13. What is the long-range outlook for deep sea mining as potential for return on investment for private enterprises and as the source of revenue for the International Seabed Authority?

It is impossible to predict with certainty the return on

capital invested in seabed mining because the seabed mining industry is still in the development stage, seabed mining consortia are unlikely to commence full scale commercial operations for a number of years, and future prices of constituent metals are unknown. It is just as difficult to determine the revenues which miners will share with the International Seabed Authority since (1) it is too early to estimate the number of mine sites which will be operating in the seabeds at any one time; and (2) the structure of the revenue-sharing provisions in the Law of the Sea Treaty is roughly based on profitability and return on capital, which can not be accurately estimated.

The best source of information on the financial aspects of seabed mining is "A Cost Model of Deep Ocean Mining and Associated Regulatory Issues" developed at the Massachusetts Institute of Technology. Since the model is based on a number of assumptions, however, the U.S. delegation to the Law of the Sea Conference has been careful to use this model only to measure the relative impact of various policies and revenue-sharing proposals on seabed mining and Authority revenues; the model can not be used with any high level of confidence to predict actual returns on investment or actual Authority revenues.

14. How will deep seabed mining work in reality?

-- Will mineral exporting countries seek to block seabed mining to keep their own prices high?

-- What kind of safeguards are there in the Authority to promote a fair and orderly development of seabed resources so that the United States will not have to be captive to a few mineral exporting nations?

A. Up to this point, it has not proven possible for producers of the four metals found in commercial quantities in polymetallic nudules to maintain artificially high prices for an extended period of time. Efforts by INCO to set and maintain a producer price for nickel were abandoned in the mid-1970s under pressure of increased world supplies, multiplying sources, and soft demand. CIPEC, the copper exporter's group, has tried unsuccessfully for several years to restrain exports during periods of low copper prices. A multiplicity of manganese suppliers, control of some important sources by steel companies, and the ability and willingness up to this point of South Africa to provide increasing quantities of manganese at stable prices have kept prices comparatively low. Efforts by Zaire and Zambia during the past two years to restrict exports of cobalt and thus to increase prices have broken down under the pressure of their need for foreign exchange, decreased demand due to substitution efforts and the global recession, and the opening of new sources of supply.

One would expect that mineral-exporting countries would seek to delay and limit seabed mining. The current text reflects their efforts.

A major task of that part of the review devoted to seabed mining will be to analyze the current text to see to what extent it contains the kinds of safeguards you mention. We

should perhaps speak in terms of rights and freedoms, not safeguards. What we are seeking is affirmation of the freedom of people from all nations, including ours, to conduct seabed mining so long as it is done in a way that respects other legitimate interests.

15. What provisions are made for adequately protecting American technological advances from transfer to the Authority?

A. The provisions of the Draft Convention that directly relate to the transfer of proprietary technology to the Enterprise and developing states are contained in Annex III, article 5. Under this article, a miner or technology supplier may be required to sell mining technology as a condition of the contract. The article places a number of restrictions on when and under what conditions a company may be required to make a sale. The need for the technology transfer provisions and the degree to which U.S. technology would be protected are under examination as part of the Administration's review of the Draft Convention. The specific restrictions on transfer provided in article 5 are:

- Transfer can only be required if the Enterprise determines that the technology, or equally efficient and useful technology, is unavailable on fair and reasonable commercial terms and conditions;
- Transfer cannot be required if the owner does not have the legal right to transfer the technology, such as in the case of export restrictions under the Export Administration Act;
- If the technology supplier and the Enterprise cannot reach

agreement over the terms and conditions of transfer, including secrecy requirements and restrictions on resale, the dispute will be resolved by commercial arbitration which will approve the technology supplier's offer if it is shown to fall within the range of fair and reasonable commercial terms and conditions;

- The transfer obligations are not included in contracts signed 10 years or later after the Enterprise begins commercial productions;
- Transfers to developing states are subject to the same restrictions as to the Enterprise. In addition, such transfers can only be required for use in the site provided for the Authority by the contractor; transfers cannot be required if the Enterprise has previously required the transfer of the same technology (But the converse is not true. The Enterprise may seek techology already transferred to developing states); and, further transfers to third states or nationals of such states are not allowed.
- The Enterprise may, if unable to buy it commercially, call on governments of states parties to help it obtain processing technology.

16. How intent are Third World nations on assuring P.L.O participation in the Law of the Sea treaty?

A. This is very difficult to judge. The Arab group strongly supports the P.L.O.'s participation. The consensus procedures of the Group of 77 appear to put the entire group behind the P.L.O. The Third World's behavior in other U.N. fora would

suggest that it will continue to press for P.L.O. participation.

17. How will rights to ocean resources be shared with landlocked countries?

A. Under the draft treaty,, landlocked states have the right to participate in the surplus of living (fisheries) resources of the exclusive economic zones of coastal states in their region or sub-region. However, this right is highly qualified and may only be exercised through the negotiation of bilateral, sub-regional, or regional agreements.

In regard to the resources of the deep seabed, landlocked states under the current text share the benefits of mining activities and other payments and contributions according to a formula established by the Assembly of the International Seabed Authority. This formula must take into particular consideration the needs of developing states and peoples who have attained full independencce, or other self-governing status. (e.g., national liberation groups)

18. Have the negotiations truly yielded a better balance of interests between the Enterprise and the private companies who will be developing the deep seabed mineral resources?

A. This depends on one's viewpoint. The trend of the negotiations has been to increase the advantages given to the Enterprise while imposing continually increasing burdens on private investment. The Enterprise enjoys advantages written into the treaty of guaranteed capital, free prospected mine sites, access to private firms' technology and knowhow, an absolute priority for a production allocation, a ten year tax

holiday, and various privileges and immunities not enjoyed by private firms.

19. How do you expect the issue of "grandfather rights" to be resolved?

-- Will it simply be acceptance of the "preparatory investment protection "proposal or some other proposal to ensure the rights of those already investing in seabed mining?

A. Title II of the Deep Seabed Hard Mineral Resources Act imposes an obligation on the Administration to protect the rights of U.S. citizens who commence ocean mining under the domestic law. We will honor that obligation. Whether or not the "preparatory investment protection" proposal of the previous administration would accomplish this will be the subject of intensive scrutiny in our current review.

20. What happens if a successfully negotiated treaty is not ratified by the United States?

-- How wouuld that affect the operations of the Deep Seabed Authority and those private enterprises operating under the U.S. deep seabed mining law?

A. The U.S. is not bound by a treaty it signs but does not ratify. Only through a treaty which enters into force for the U.S. will there be any limitations on the right of U.S. miners to mine the deep seabed as an exercise of their high seas freedoms under existing international law. If a Law of the Sea Treaty is not ratified by the United States, mining companies would be free to proceed with their operations under licenses and permits issued by NOAA.

21. What are your views of the American deep seabed mining industry's actions and reactions in the latest round of negotiations?

-- Have their suggestions and input been considered and have they been constructive?

A. We have endeavored to consider the views of all interest groups in developing our approach to the Law of the Sea negotiations. The ocean mining industry has been very constructive in calling our attention to obstacles to investment in the present text and the proposed solutions. Some of our difficulties with the present text, however, are much broader than those of concern to any one affected group. The precedents created by the treaty's institutional arrangements and its political principles are of particular concern as they may adversely affect our ability to protect our overall national interests.

22. A number of people representing the deep sea mining industry appear to be troubled by the concept of the Enterprise as the operating organ of the International Seabed authority. They are convinced that only through competition will the minerals of the seabed be made available to mankind in the most economical and efficient manner and in abundance. To them the consequences of the regulator being a competitor are obvious, as they feel there is a natural tendency to favor "your own", and an international bureaucracy like the one envisioned by treaty negotiators would not be immune from such an inclination. In this connection, the current treaty negotiating text calls for extensive privileges and immunities for the Enterprise as against private parties. Is this kind of competition in our national interest?

A. The effect of the Enterprise and its advantages on the ability of U.S. companies to participate competitively in ocean mining is being analyzed in the review. At a minimum,

it is not in our national interest to create an Enterprise with such great advantage that private investors are unable to compete effectively.

23. It it accurate to say that this Administration will be a party to a Law of the Sea Treaty which does not contain "grandfather rights" -- the rights to continue operations previously begun under the same basic ground rules as existed before the Treaty?

... If not, how would the Administation reconcile Title II of the deep seabed legislation which states the intent of Congress that any Law of the Sea Convention should provide grandfather protection?

A. The Administration could not accept a treaty that did not satisfy Title II of the deep seabed mining law.

24. What is your reaction to the contention from elements in the industrial, scientific and academic communities that "no treaty is better that the proposed one"?

A. The value of a treaty to any particular interest group can be assessed only by comparing it to the situation without a treaty. For example, the scientific community must decide whether it would fare better on the basis of negotiated agreements on a bilateral or multilateral basis with individual coastal states each with varying claims of competence over MSR or to have the consent regime coupled with the limitations on coastal state control provided by the treaty. So far, many scientists who have participated in the negotiations have opted for the treaty. Many elements of the industrial community have come down the other way, while the opinions of academics have varied.

As part of the review, the Administration is considering all options, including the possibility that overall U.S. interests will be better served without a Law of the Sea Treaty.

25. To make any headway during the next round of talks, you obviously will need the assistance of the more moderate Third World nations.

... Which ones in particular, are you counting on?

... On the other side of the coin, which countries have proven to be the most intractable?

A. Assuming that after the review we conclude that we should continue to pursue the current approach aimed at concluding a single comprehensive treaty dealing with all oceans uses, we shall seek constructive relationships with all important participants in the Conference. Depending on the types of changes we would be seeking in the text, the negotiating task could be quite difficult. To identify, even before we know our own position, which countries would be likely to be helpful and which difficult is really quite impossible. Even if this could be done, giving the "kiss of death" to those countries we believe might be helpful by identifying them would only make them less effective in our behalf.

26. Would it be fair to say that much of the disagreement to date in the treaty talks can be attributed to the difference of interest and ideologies between the advanced maritime states, which have the technology and capital to exploit the seas now, and the developing nations which possess numerical strength at the conference but wish to delay exploitation to share fully in its benefits as a right unrelated to risk and capital participation?

... Have developed mineral exporting nations, Canada and the Soviet Union particularly, obstructed agreement on deep seabed mining?

A. Your characterization of the respective positions of the Western developed states and the developing states in the seabed mining part of the negotiations is accurate.

Canada has sought protection for its domestic nickel mining industry in the treaty text through the production limit. It is not possible to say to what extent Canadian efforts have obstructed agreement on the seabed mining text as a whole, but certainly their actions have not made the task of our negotiators easier over the past few years.

The Soviet Union has not posed severe obstacles to reaching agreement on seabed mining with the developing states.

27. What happens if a successfully negotiated treaty is not ratified by certain important nations, including this one?

A. As I stated in my answer to question twenty, if a treaty does not enter into force for the U.S., our miners could mine the deep seabed pursuant to our domestic legislation so long as such mining does not interfere with the exercise of high seas freedoms by the nationals of other countries. If other industrialized countries do not ratify the treaty, the same is true for their nationals.

28. Would it be fair to say that one of the most notable effects of negotiations so far has been the movement towards increased coastal state jurisdiction through the very considerable extension of national boundaries seaward?

A. The evolution of state practice and the negotiating texts has shown some considerable interrelationalship. The

question of whether or not the current navigation texts are satisfactory is to be answered in the review.

29. It appears that control of deep sea mining is turning out to be the biggest stumbling block of the entire conference. The developing countries seem to believe tht they can participate in the development of undersea resources only through an International Seabed Authority and its Enterprise or its forced joint ventures with captive private companies. Moreover, they propose that the business arm of the authority, called the "Enterprise," ultimately undertake all exploration and exploitation of the deep sea. Obviously, such a Third World position is completely unacceptable to the U.S. and other industrialized countries.

... Given the fact of life, what are the Third World nations doing to reach a compromise in this area of negotiations that our own private companies would be willing to live with?

A. Until recently, the developing countries were justified in believing that the United States and other Western nations would eventually sign a treaty along the lines of the current text. There, therefore, was no incentive for them to make any fundamental concessions. They concentrated instead on making the text as advantageous to them as possible. The possibility now exists that the United States will decide not to sign a seabed mining text as disadvantageous to our economic, political and security interests as the current one, and will instead press for substantial changes in the text that will require the developing states to make what they will perceive as concessions. If this occurs, it will indeed be interesting to see just how far the developing states will be willing to go to accommodate our needs. Of course, there remains the option of abandoning the treaty.

30. Should alternatives to a comprehensive Law of the Sea Treaty also be explored by the U.S.?

... In this context, what do you think of exploring the possibility of arranging regional agreements and strengthening functional organizations such as IMCO and the regional fishery commmissions.

A. The entire range of alternative approaches to protecting our oceans interests are being examined in the review. I wouldn't want to comment on specific examples at this time, but the ones you mention are among those to be considered.

31. What is the strategic importance of deep ocean mining to the United States?

A. We are at present heavily dependent on imports of supplies of three of the four strategic metals (cobalt, nickel, and manganese) found in significant quantities in polymetallic nodules. The extent to which we are vulnerable to supply interruptions in these three metals varies, with nickel and manganese supplies fairly secure in the near term, while cobalt supplies are relatively more vulnerable. Over time, this situation will undoubtedly change, but we can not project with certainty how it will change.

The development of seabed mining in the coming decades will create an additional source of these metals, thus reducing the level of vulnerability that would otherwise exist.

Experience teaches that opening the frontier represented by the deep seabed through seabed mining will reveal other

opportunities for resource exploitation. The importance of these as yet unmade discoveries can not, of course, yet be assessed.

32. It is my understanding that nickel, copper, cobalt and manganese are the principal metals to be found in the seabeds.

... Is it true that if U.S. companies began mining these metals within the next several years, the U.S. could become a net exporter of these materials by the year 2000.

A. It is risky to make predictions based on multiple variables and contingencies. However, I think it is safe to say that we could easily become net exporters of cobalt, could near self-sufficiency in copper on a net basis, and reduce import dependence on nickel to a significant degree. Predictions about manganese are even more difficult because the plans of the seabed mining consortia are unclear with respect to production of manganese.

33. What has been the reaction of the American deep sea mining industry to this latest round of negotiations?

A. The industry in general welcomed our decision to review the current text. Current plans do not call for substantial investments to be made in the next few years, so the industry is happily willing to wait a little longer for a seabed mining regime that is workable and will encourage investment. They have deep concerns relating to the current text which need to be met, and would not have been pleased to see negotiations come to a close if the possibility still existed that further negotiation in UNCLOS or in another forum could produce a substantially better result.

APPENDIX 13

Additional Questions Submitted in Writing for the Record by Hon. Jim Leach and Administration Responses

1. On page 3 of Ambassador Malone's opening statement, he alludes to the longstanding and widely held assumption that, "a successful (LOS) treaty must be based on a package deal." Does this mean that the Administration already accepts the principle that a comprehensive treaty -- as opposed to a piecemeal approach to the various elements of the draft treaty -- is the only viable approach if the decision is made to pursue negotiations?

A. The passage you quote from my testimony was with reference to the current U.N. LOS Conference. Within the context of that negotiation, there is widespread consensus that any treaty it produces will have to be a comprehensive package, dealing with all uses of the oceans. Other approaches using other forums may also be successful vehicles for protecting and advancing our oceans interests. We do not rule out at this stage of the review process the possibility that an issue by issue approach using several forums may be the best way to deal with these questions.

2. It is my understanding that the military chiefs of each of our principal services have expressed their satisfaction that the draft treaty furthers U.S. security objectives. If it is to be inferred from U.S. military leaders that the existing draft treaty is in the U.S. national security interest, what are the main drawbacks perceived in the present draft which outweigh our national security?

A. All aspects of the current treaty text, including those relating directly or indirectly to national security, will be subject to analysis and assessment in the review. But granting, arguendo, that military security interests are

protected under the current text, one can point to several aspects of the text, especially in the seabed mining text, that many commentators have criticized as contrary to our interests. A number of these are identified in my testimony of April 29. The weights to be accorded the various interests engaged in the law of the sea area are to be determined in the review. It is not possible for me at this point to say whether or not one set of interests outweighs another.

3. What would be the loss to our negotiating posture by an Administration commitment which at least accepted the desirability of a treaty (something which Ambassador Malone refused to do in his testimony)?

A. The objective of the review will go down to the bedrock level of analysis of our law of the sea interests and then work up. The question of the forum in which we pursue our interests and the nature of the agreement(s) we should seek have direct impact on the probability that we will achieve an optimal result. These questions have not yet been addressed in the review, and at this point it is necessary to keep all options open.

4. There seems to be considerable question whether U.S. companies which might otherwise mine the seabed could in the absence of a treaty obtain necessary financing, insurance, and other guarantees. Does the Administration believe that U.S. companies would effectively proceed to mine the ocean in the absence of an international treaty?

A. We do not know precisely under what set of economic,

legal, and political circumstances one or another U.S. firm would choose to invest in seabed mining. This is a business judgment we are not empowered or equipped to make. We do believe, however, that to the extent that the sum of political, legal, and economic risks external to the market and technical risks are reduced, the chances that a firm would decide to make the very large investment associated with seabed mining are increased.

5. What is the view of the Administration toward the principle -- long established by all parties to the talks -- that the sea's resources are the common heritage of mankind?

The often-repeated view of the United States, stated first when the Common Heritage Resolution was adopted by the U.N. General Assembly in 1970, is that the common heritage idea with respect to the seabed is to be given meaning and expression in a generally accepted international agreement. Prior to the entry of such an agreement into force for the United States, the common heritage idea is an empty vessel, devoid of juridical content. In our view, what many governments now call the "common heritage principle", no matter how defined, does not yet apply to the seabeds. The regime of the high seas prevails.

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