STATUS REPORT ON LAW OF THE SEA CONFERENCE

HEARING

BEFORE THE

SUBCOMMITTEE ON MINERALS, MATERIALS AND FUELS

OF THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

UNITED STATES SENATE

NINETY-THIRD CONGRESS

FIRST SESSION

ON

STATUS REPORT ON LAW OF THE SEA CONFERENCE

SEPTEMBER 19, 1973

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STATUS REPORT ON LAW OF THE SEA CONFERENCE

WEDNESDAY, SEPTEMBER 19, 1973

U.S. SENATE,
SUBCOMMITTEE ON MINERALS, MATERIALS AND FUELS,
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met at 2 p.m. in room 3110, Dirksen Office Building, Hon. Lee Metcalf, chairman of the subcommittee, presiding.

Present: Senators Metcalf [presiding], Fannin, and Hansen.

Also present: Jerry T. Verkler, staff director; D. Michael Harvey, special counsel; Merrill W. Englund, special committee assistant for Outer Continental Shelf; and David P. Stang, deputy director, National Fuels and Energy Study.

Senator METCALF. The subcommittee will be in order.

OPENING STATEMENT OF HON. LEE METCALF, A U.S. SENATOR FROM THE STATE OF MONTANA

We are delighted to welcome this team to the hearings of the subcommittee. The last time the hearings were held I noted the absence of the all-American quarterback, Mr. Stevenson, who had been traded off and gone back to the private practice of law. I am glad to have you back on the team.

Before I ask you for your report, I have a couple of questions about the Law of the Sea Advisory Committee.

I have had some interest, as you know, in legislation providing that most of the executive branch advisory committee meetings be open.

I see by the Federal Register of September 14, 1973, that on September 21 and 22 you are holding a meeting of the Law of the Sea Advisory Committee and that the public interest requires that such discussions shall be withheld from disclosure and the meeting shall be a closed one.

Without objection, that will be made a part of the record at this point.

[The material from the Federal Register of September 14, 1973, follows:]

[Public Notice CM-64]

LAW OF THE SEA ADVISORY COMMITTEE

NOTICE OF CLOSED MEETING

In accordance with section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is given that the Law of the Sea Advisory Committee shall hold a meeting on Friday and Saturday, September 21 and 22. As it has

been determined that the meeting will involve discussion of law of the sea matters exempt from public disclosure under (5 U.S.C. 552(b)(1)) and that the public interest requires that such discussions be withheld from disclosure, the meeting shall be a closed one not open to the general public. The reason for this determination is that documents classified in accordance with Executive Order 11652 would be circulated and discussed.

Dated September 7, 1973.

MYRON H. NORDQUIST,
Executive Secretary.

[FR Doc. 73-19565 Filed 9-13-73 ; 8 :45 am]

Senator METCALF. In accordance with the statute, you did not have to go into the specifics when you decided a meeting in the public interest should be a closed one.

But, it bothers me that at this time, when you are just back from a virtually completely open international conference and you are having discussions with people in this country, that you should decide to have to have a secret meeting and you have to have the public barred and the press barred from your discussions.

Mr. Ambassador, I would like to have you explain in a little more detail to me why this meeting is closed and why it has to be a secret meeting.

Ambassador STEVENSON. Thank you very much, Mr. Chairman.

Senator METCALF. And then we will go into your prepared statement.

Ambassador STEVENSON. Let me say that I appreciate very much the opportunity to be back with you again. I hope now coming from New York I can do a little better than the all American Joe Namath did last Sunday night.

Senator METCALF. Joe Namath did not call a very good game.

Ambassador STEVENSON. But with respect to your question, it is important to bear in mind the composition of our advisory committee.

I think there is probably no advisory committee in the U.S. Government that is more broadly based. It is not like many advisory committees which just reflect a particular industry or a particular interest.

We have tried to include in that representatives of all of the interested groups from the environmentalists, to the scientists, to the hard minerals people. So, I think you have got a very good sampling of the public right in that committee.

Furthermore, we found out earlier in the game it was not useful to have meetings of the particular subcommittees of that group separately which would have given you just one industry point of view.

We have a very definite cross fertilization of views from all of the different people represented. So, I think this has been a very good way of keeping those who are most concerned informed on a very broad basis.

Now, the question of why the meeting should not be public. I think basically the reason is twofold. One, we are not only engaged in reporting what happened, and as far as that function is concerned I think both myself and John Moore and other members of our delegation will try very hard as we have in the past to give the fullest description of what in fact went on publicly at hearings like this and statements and so forth.

But the real utility to us of these meetings is to have very frank statements from the U.S. groups that are concerned with this as to future positions. And, we feel it is probably in many cases prejudicial to the U.S. interests and might be misinterpreted by foreign countries with which we are negotiating if the sort of discussion that we have with our own industry people were spread on the public record.

I think we can do a better job if both the Government participants and the public participants in this meeting are able to speak very candidly and not in effect be speaking to the public at large.

Now, as far as reporting to the public at large, we are certainly open to the way we can do this more effectively. In fact, we have been very much concerned about educating the public at large on the Law of the Sea issues because I think all of this delegation feels it is such a vital multilateral negotiation to the U.S. interests.

We are concerned that the public does not know more about it. We are certainly very interested and will do what we can in that area.

Senator METCALF. The reason I have been gesturing is that behind you is a clock that notifies us that a rollcall is going on.

I have been voting all day on the minority side. Since my vote is going to be one of a minority of 15 or so on some amendments, and in view of the fact that we have a very distinguished group here, I am not going to recess this committee. However, that is probably the reason that some of the other members of the committee are not here.

I could not disagree with you more, Mr. Ambassador, at this time when there is secrecy all over—and the Executive Department is under scrutiny.

It seems to me that even an appearance of secrecy, and I know under your supervision it is going to be a forthright discussion, is probably a bad goal. Going back to Pete Rozelle and our team sort of thing, you can remember when he suspended a couple of fine football players because they had gambled on games and they bet that they would win and there wasn't any suspicion that they had fixed the games or anything. It is just a matter that you can't have the suspicion that deals are being made behind closed doors.

In this case, literally billions of dollars of our natural resources are involved. And you came back from an international conference and hold a closed meeting.

It seems to me that this creates a very bad impression at this—to coin a phase—"point in time." So, I would hope that you would open up your advisory committee.

Ambassador STEVENSON. Certainly, Senator, we are always very influenced by your point of view and we would certainly take this into account.

Senator METCALF. You have just returned from the Seabed Committee meeting in Geneva. Now we want to know how you have gotten along with your work and what was accomplished and where we are going from here.

You have a prepared statement, Mr. Ambassador, and I will recognize you for that presentation.

STATEMENT OF AMBASSADOR JOHN R. STEVENSON, CHAIRMAN OF THE U.S. DELEGATION TO THE COMMITTEE ON PEACEFUL USES OF SEABED AND OCEAN FLOOR BEYOND LIMITS OF NATIONAL JURISDICTION; ACCOMPANIED BY JOHN NORTON MOORE, CHAIRMAN, NSC INTERAGENCY TASK FORCE ON THE LAW OF THE SEA; AMBASSADOR DONALD L. McKERNAN, SPECIAL ASSISTANT TO THE SECRETARY FOR FISHERIES AND WILDLIFE AND COORDINATOR OF OCEAN AFFAIRS, DEPARTMENT OF STATE; HOWARD W. POLLOCK, DEPUTY ADMINISTRATOR, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE; STUART P. FRENCH, DIRECTOR, LAW OF THE SEA TASK FORCE, DEPARTMENT OF DEFENSE; LEIGH S. RATINER, DIRECTOR, OFFICE OF OCEAN RESOURCES, DEPARTMENT OF THE INTERIOR; JOHN HARTZELL, DIRECTOR, OFFICE OF TRADE NEGOTIATIONS, DEPARTMENT OF THE TREASURY; AND CAPT. PAUL A. YOST, OFFICE OF THE CHIEF COUNSEL, U.S. COAST GUARD, DEPARTMENT OF TRANSPORTATION

Ambassador STEVENSON. Thank you very much, Mr. Chairman.

Before turning to that, Professor Moore pointed out to me that it has just been decided by the interagency task force to also invite congressional representatives to participate in the Advisory Committee meetings from now on.

Of course you also are aware that we have that very large both public and congressional participation in our delegation in Geneva.

Mr. Chairman, if I could now turn to my statement. It is a pleasure to be here today to report on the recent meeting of the United Nations Seabed Committee and the preparations for the Law of the Sea Conference.

I am accompanied by John Norton Moore, Chairman, NSC interagency task force on the law of the sea; Ambassador Donald L. McKernan, Special Assistant to the Secretary for Fisheries and Wildlife and Coordinator of Ocean Affairs, Department of State; Howard W. Pollock, Deputy Administrator, National Oceanic and Atmospheric Administration, Department of Commerce; Stuart P. French, Director, law of the sea task force, Department of Defense; Leigh S. Ratiner, Director, Office of Ocean Resources, Department of the Interior; John Hartzell, Director, Office of Trade Negotiations, Department of the Treasury; and Capt. Paul A. Yost, Office of the Chief Counsel, U.S. Coast Guard, Department of Transportation.

This committee, as well as other committees of the Senate and House of Representatives, has followed the course of the law of the sea negotiations closely for several years.

Senators and staff members present today from a number of committees were able to contribute to the work of our delegation in Geneva this summer.

I know that they, as well as their colleagues in both Houses of Congress, share our view of the importance to all Americans of going to the Conference with a strong, united, and well-prepared team.

Accordingly, I wish to stress how much we appreciate this interest, and the importance we attach to continuing and strengthening our consultations with Congress in the period ahead.

As you know, the executive branch has recently taken several steps to consolidate our efforts for the Conference. In addition to my appointment as Special Representative of the President, Prof. John Norton Moore has been appointed Chairman of the NSC interagency task force on the law of the sea, and will be working full time on the law of the sea negotiations.

We have established a new office for the law of the sea negotiations within the office of the Deputy Secretary of State in his capacity as Chairman of the NSC Undersecretaries' Committee.

This new office will include personnel among whose principal functions will be that of insuring that Members of Congress, members of the Law of the Sea Advisory Committee, and the public in general, are kept closely informed of developments and consulted on our approach.

Despite the heavy travel schedules and other demands on the time of those principally concerned with the substance of various issues, they will be devoting a substantially greater proportion of their time to insuring the substantive relevance and timeliness of these consultations.

In addition, as part of this effort to build the united team we need, we plan to invite the members designated by Congress to serve on our delegation to attend future meetings on the Law of the Sea Advisory Committee.

The strength of our constitutional system for assuring that all interests are properly understood and taken into account must not be misinterpreted by others as weakness or lack of determination.

Although an important first step was taken in this direction with the passage of Senate Resolution 82 and House Resolution 330, let us recognize that while we have together outlined our broad common goals, the real test of our common efforts will be our ability to realize these goals in concrete terms and harmonize them with the legitimate concerns of other countries.

Well over 100 countries will attend the Law of the Sea Conference, each with its own special problems, its own priorities, and its own perception of the issues.

Many difficult decisions will be required of our delegation, and our determination will be put to the test more than once.

The executive branch will work closely with Congress to insure that our efforts are equal to the challenge. I know that we can rely on this and other interested committees of Congress to join in this united effort.

Senator METCALF. Mr. Ambassador, I just want to make this statement for the record.

Senate Resolution 82 was just one of those things that happens by unanimous consent and without notice.

And while I am not going to make an issue of it, I am sure that there are many Members of Congress, including Members of the Senate—including me—who asked for some discussion and some dialogue prior to the passage of that resolution.

I just cannot let it go by that that is a unanimous agreement of the Senate as in your statement.

Ambassador STEVENSON. Thank you, Mr. Chairman. We have always taken notice and I will take notice in the statement of the very special guidance and cooperation we have gotten from this committee.

Needless to say, if there is to be a timely and successful Law of the Sea Conference, a similar spirit must emerge among the nations of the world.

Just as we in this country are finding means to harmonize a sometimes bewildering array of different interests in the oceans because we have all come to appreciate the urgent need, so the nations of the world can pull together as well in the common interest.

In the broadest sense, the job of the Seabed Committee was to lay the foundation for this essentially political process. And in the broadest sense, we believe this has been done.

A very important factor in solving any complex set of issues is identifying the interests that require accommodation and the alternatives available for doing so.

There can be little doubt that the records of the Seabed Committee make quite clear what various nations believe these interests are.

There is also little doubt as to the major alternatives available, although in some cases these alternatives have been prepared in a far more organized and usable form than in others.

What is lacking in the work of the Seabed Committee is, of course, agreement on single texts that resolve the major political issues.

It has been apparent for some time that most delegations believe this is the job for the Conference itself. Nevertheless, very widespread common understanding of the outlines of a broadly supported Law of the Sea Treaty has emerged.

In some cases, such as the 12-mile territorial sea, this has been made explicit. In others, it can be inferred. I would like to identify what some of the major elements appear to be:

One, a maximum limit of 12 miles for the breadth of the territorial sea.

Two, adequate guarantees of transit in straits used for international navigation.

Three, broad coastal state control over seabed and living resources beyond the territorial sea, coupled with provision for the interests of other states and the international community in general.

Four, a balancing of coastal state and international community interests in scientific research and the protection of the marine environment.

Five, an international regime and machinery for the deep seabed that accommodates the interests of consumers, as well as those of states having the capacity to exploit, with the desire for machinery with comprehensive powers.

Senator METCALF. I understand there are certain technical terms such as "international machinery" which you are defining.

Ambassador STEVENSON. Machinery does just mean an international organization that will provide institutions or agencies to do the job.

I must say the first time I heard the term, I thought I had gotten into an engineering meeting or something by mistake but it is common.

Senator METCALF. Thank you for bringing that out because some of us have not had the benefit of sitting in on some of these international conferences and do not know the lingo any more than we know what happens in the jargon of scientific communities or psychological associations, for example.

Ambassador STEVENSON. I spent 6 months in Washington before I knew what DOD meant.

There are, of course, other elements that delegations consider an essential part of an overall settlement. For example, the United States has stated that compulsory dispute settlement procedures are essential.

Certain island nations such as Indonesia and the Philippines have stressed recognition of the archipelago concept.

The archipelago concept, this is in the case of an island state. The island state is entitled to link the outermost extremities of its island chain and within that area exercise a very full jurisdiction, not only over resources but also sovereign navigation in the interest of maintaining the unity of the country.

And there are differences in the concept as to the extent of the transit of the area by outside shipping they will allow.

But the fundamental concept is the treating of waters within this area as part of the national jurisdiction, the national territory.

Senator METCALF. Or an inland sea, so to speak.

Ambassador STEVENSON. There has been a difference. Some of the exponents have talked about the area within being basically territorial sea, whereas others have talked about it being internal waters. And there has been disagreement as to whether or not there was right of innocent passage.

I think more recently, in terms of what was proposed in Geneva, they are talking about a completely different concept in which they are talking about archipelagic waters in which there would be some kind of transit, right of transit.

But this is certainly one of the areas of this concept with which we have difficulty in assuring that there are adequate guarantees for transit through the area.

A great deal of controversy has emerged on the issue of delimitation of the territorial sea and resource jurisdiction between neighboring states, and on the related problem of islands.

It should be noted that Ambassador Amerasinghe, the Chairman of the Seabed Committee, initiated informal meetings of representatives of different groups of states to discuss plans for the Conference and means of resolving the major substantive issues.

Many of those present took a very constructive approach. I think you will agree, Mr. Chairman, that this sort of development is of the utmost importance and delicacy.

It should also be noted that supporters of the exclusive economic zone and patrimonial sea worked quite intensively on means of integrating their approach to this concept.

While we, of course, have had certain difficulties with this approach, I believe most delegations concerned undertook these efforts in a constructive spirit in order to narrow and clarify the issues with a view to facilitating the negotiations.

There is widespread recognition that a repetition of the kind of unfortunate commitments and polarization that occurred in connection with the list of subjects and issues could jeopardize the Conference.

You will remember, Mr. Chairman, there was a great deal of time spent in agreeing on what the appropriate subjects and issues to be dealt with in the Conference would be.

Agreement was finally reached on that in the session of last year of the Summit Six.

Senator METCALF. May I interrupt for just a moment, Mr. Ambassador?

I hate to keep going back to the question on which I opened the hearing. But are you telling this committee that there are details and special provisions in your report that are so classified and so secret that we have to make arrangements to come down and talk to you about them?

Ambassador STEVENSON. No, Mr. Chairman. I think the arrangements could be that if your staff—we could make arrangements to——

Senator METCALF. Is it so voluminous that you don't want to bring it up here?

Ambassador STEVENSON. I certainly think it can be brought up here, absolutely.

Senator METCALF. It is not a matter of security, it is just a matter of the volume of the material, is that right?

Ambassador STEVENSON. I think in most cases. Obviously in some situations there may be where we have a delicate negotiating situation, which is why we would like to discuss it with you.

I don't think it would be of any interest to discuss it publicly. But, we would want to make that available to the Congress in whatever form that is most appropriate. In fact, I am told you now have copies of this report already.

Senator METCALF. Your staff work is better than ours, so it is on its way.

Thank you very much. I just reiterate the proposition that most of what we are talking about is the public's business and should be dealt with openly.

A long time ago somebody said "open covenants openly arrived at." I am glad it is on its way up. Maybe I will be able to wade through all of that.

Ambassador STEVENSON. We hope to be able to make this negotiation a model of that approach.

Senator METCALF. I think you are going to.

Ambassador STEVENSON. There is no doubt that all delegations worked harder and in a more businesslike fashion during the 8 weeks this summer than ever before.

Most major issues were discussed with precision, and views were exchanged with clarity and frankness. This in itself is a clear indication that delegations are far better prepared on the issues now and, as in the case of the Organization of African Unity and the Santo Domingo Conference, are actively coordinating detailed approaches.

Mr. Chairman, even a brief summary of the 8 weeks of work in the subcommittees and working groups would take considerable time.

Accordingly, I will just touch on some highlights and elaborate on some issues that have been of particular interest to this committee.

In addition, arrangements can be made for interested Members of Congress to read the somewhat more detailed internal report of our delegation.

The Seabed Committee made discernible progress in the preparation of draft treaty articles on the regime and machinery for the deep seabed.

A 33-member open-ended working group was established at the end of the spring 1972 Seabed Committee session to prepare articles on the seabed principles and machinery.

Since then, it has held 90 meetings and has produced over 50 draft treaty articles.

The working group was able to develop alternative and bracketed texts reflecting the broad range of views within the Seabed Committee.

In the closing weeks of the March session, the working group completed a second reading of the draft articles dealing with the international regime to govern deep seabed mineral exploitation and began the first reading of draft articles on the international machinery.

During the first 7 weeks of the July–August session, the working group continued consideration of these articles, which were contained in a working document prepared by its chairman.

The machinery articles proved to be more complex than those on the regime, although there have generally been only two or three divergent views on each important item.

Frequently alternatives on a number of different articles in fact relate to a difference of opinion on one major issue.

For example, a variety of alternative texts on different articles for the deep seabeds regime and machinery relate directly or indirectly to the issue of who may exploit deep seabed resources, on which four alternatives have been presented.

There were several major areas of concern arising during the recent session concerning deep seabeds. One such issue concerns the powers and functions of the Assembly and Council of the Authority.

The preponderant view among developing countries is that effective policymaking power in the new international organization should rest in the Assembly in which all parties are represented with one vote, while some developed countries maintain that the Council should exercise fundamental control over the operations of the Authority.

The United States explained its view that policy should largely be developed through a rulemaking procedure. Rules would be based on expert Commission regulations after consultation with contracting parties.

If approved by the Council, the rules would have to be reviewed by all contracting parties, and would not go into effect if one-third or more objected.

The United States expressed its willingness to give the Assembly broad recommendatory powers as an alternative to other delegations' desire to give the Assembly policymaking functions.

In explaining the U.S. position on the Council's role in the Authority, the United States stressed that the basic conditions and terms of resource extraction should be established in the treaty itself and

not left to an organ of the international authority to determine, so as to avoid a subjective and possibly discriminatory and unpredictable licensing policy.

One of the more difficult issues in the negotiation is the composition of the Council. Many developing countries have made it clear that they will strongly support a Council consisting of countries selected on an equitable geographical basis and in which decisions are made by a two-thirds majority.

The United States and several other industrialized countries, on the other hand, have stressed the need for some formula by which those countries which will have the greatest involvement in deep seabed mining will be assured that their views will be given proper weight.

The working group passed over the question without debate, simply including a set of alternative treaty articles reflecting various approaches for subsequent negotiation.

The system for resource exploitation is of course another major area of concern. Early in the session the Latin American States introduced, with the support of almost all developing countries participating in the working group, a proposal on the Enterprise concept.

In essence, this proposal would establish the Enterprise as the operating arm of the Authority exclusively empowered to exploit the deep seabed, either through service contracts or joint ventures with companies or States.

Throughout the discussions, the United States pointed out the practical advantages of its proposed licensing system versus the Enterprise approach.

Several new proposals as to who might exploit the seabed were submitted. These include two proposals by Australia and Canada, both of which lean heavily toward the Enterprise but permit the Authority to issue licenses for exploitation.

The United States and others continued to support a licensing system to the exclusion of other systems. In doing so, the United States stressed that the essential elements of any agreed resource management system were guaranteed access to the resources under reasonable conditions and nondiscriminatory rules and regulations which would assure the integrity of investments made in the area.

Virtually no substantive discussion took place on the issue of production controls, although alternative texts now appear which grant various organs of the Authority power over this question.

These proposals range from mere recommendatory power to power to reduce production and fix price levels. The United States took the position throughout that the International Authority should have no powers in the area of production controls.

The working group thoroughly discussed the question of the system for dispute settlement, and the U.S. proposal for a tribunal.

General attitudes expressed in the discussion indicate that many delegations favor creation of a tribunal to settle seabed disputes, although the scope of its powers and details of its organization remain controversial.

The concept of compulsory settlement of disputes was presented by the United States as one of the cornerstones of the Subcommittee I negotiations.

At the spring session of the Seabed Committee the United States proposed that the Conference consider the possibility of having those portions of the Law of the Sea Treaty affecting deep seabed mining go into effect on a provisional basis immediately following signature, without waiting for the treaty to enter into force which might be a matter of years.

The purpose of the U.S. proposal was to assure that seabed mining, when it begins, would be conducted under the internationally agreed regime.

The Seabed Committee requested the Secretary General to prepare a study on applicable precedents for the provisional application of treaties.

This study was prepared and circulated at the summer session. There was very little discussion of the U.S. proposal at this session, although several delegations indicated serious interest in the suggestion.

[The study referred to appears on page 590 of the appendix.]

There was wide support among all regional groups for a 12-mile territorial sea. However, a number of States conditioned their acceptance of the 12-mile figure on satisfactory settlement of other issues in an overall treaty.

Supporters of the OAU Declaration and the Santo Domingo Declaration explicitly conditioned acceptance of a 12-mile territorial sea on acceptance of a 200-mile economic zone or patrimonial sea.

The United States has repeatedly stated that our willingness to agree to a 12-mile territorial sea is contingent upon satisfactory provisions insuring free transit through and over straits used for international navigation.

Major maritime States, such as the United States, United Kingdom, France and the U.S.S.R., continued to stress the need for a guaranteed right of passage through and over straits used for international navigation.

Certain archipelago and straits states, supported by some others, continued to press for the application of the doctrine of innocent passage in the entire territorial sea, including straits overlapped by the territorial sea.

The vast majority of states, however, remained silent on this issue. In general, at this session, there seemed to be a better comprehension of the rationale behind the U.S. proposal and of the necessity for finding acceptable provisions on this issue in order to have a successful conference.

A 200-mile exclusive economic resource zone clearly had wide support. For example, such a zone was included in the OAU Declaration, the Santo Domingo Declaration and in a paper submitted by Norway and Canada.

Some States said that the starting point of negotiations had to be an exclusive economic zone.

Other states, while agreeing that coastal states should have exclusive resource management jurisdiction with respect to seabed resources, stressed the importance of international standards.

Moreover, while the need to protect coastal state interests with respect to fisheries was also widely accepted, other states opposed exclusive coastal state fisheries jurisdiction and felt it was unnecessary for the protection of coastal state interests.

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On July 18, 1973, the United States tabled draft articles which would give coastal States the exclusive right to explore and exploit seabed resources in the Coastal Seabed Economic Area.

Coastal nations would have to conform to international standards to prevent pollution and unjustifiable interference with other uses of the marine environment, although coastal nations could apply higher environmental standards to those activities under their jurisdiction.

Investment agreements regarding seabed resources would have to be observed strictly, and just and prompt compensation given in the event property were taken.

Some revenue sharing from mineral exploitation of the area and compulsory dispute settlement is contemplated.

In this connection, we should express our particular gratitude to this committee for the ideas it has developed on the coastal seabed problem over the past few years.

I believe the new articles make quite clear the considerable extent to which those ideas proved helpful to us.

The draft articles do not specify an inner or outer limit of the Coastal Seabed Economic Area. With respect to the inner limit, we noted that the area would be seaward of the 12-mile territorial sea, allowing for the fact that the Continental Shelf Convention already specifies the 200-meter depth figure.

With respect to the outer limit of the area, we noted that the preponderant view favored 200 miles. At the same time, we observed that a sizable number of delegations preferred, in addition to this mileage limit, an alternative seaward limit which would embrace the full continental margin where it extended beyond 200 miles.

States generally reacted favorably to the U.S. draft articles and introductory speech. In spite of this, we have experienced difficulty in getting other delegations to focus on the question of the international standards in the Coastal Seabed Economic Area.

Some African states were critical of the provision for protection of investment and compulsory dispute settlement.

In connection with the discussion of continental margin resources, there was considerable debate concerning the so-called concept of "acquired rights."

This concept referred to the fact that certain broad shelf countries such as Argentina, Australia, New Zealand, and Canada believe they already have and desire to retain exclusive rights to the resources of the continental margin where it extends beyond 200 miles.

African states, in particular, resisted this approach as being inconsistent with the OAU declaration. In addition, the acquisition of such rights was strongly opposed by landlocked and other geographically disadvantaged States who favored an intermediate zone with revenue sharing in any "acquired rights" areas.

In the context of broad coastal State control over coastal fisheries beyond the territorial sea, the United States continued to emphasize conservation, maximum utilization, and compulsory dispute settlement.

At the same time, we emphasized host State management and preferential rights with respect to anadromous stocks, and international management of highly migratory stocks.

At this session, the most meaningful point-by-point exchanges on fisheries took place in two informal meetings chaired by Canada on

behalf of six cosponsors of a draft fisheries proposal—Canada, India, Kenya, Madagascar, Senegal, and Sri Lanka.

There were detailed discussions on the issues of maximum utilization and conservation of fisheries resources. Emphasizing the equity of the maximum utilization concept, we underscored the world's need for high protein food from the sea.

We pointed out that fisheries are a renewable resource, and that food is wasted when a fish stock is underutilized. Canada, the United Kingdom, Ireland, and the United States supported host state control over anadromous fish stocks. Japan consistently disagreed.

The Soviet Union, Japan, and the United Kingdom were the leading advocates for distant water fishing rights in general.

On August 22 we stated that we were prepared to support provisional application for both deep seabeds and fisheries aspects of the treaty and to consider provisional application in connection with other aspects of the treaty as well.

In this connection I wish to emphasize that while the main purpose of provisional application is that of dealing with urgent problems during the period of time prior to ratification of the treaty by the necessary number of states, for our part we intend to seek appropriate congressional action in connection with provisional entry in force for the United States, and will consult with Congress on the most suitable way to accomplish this.

The U.S. delegation submitted a set of draft articles on the protection of the marine environment and the prevention of pollution.

The articles were designed to demonstrate that satisfactory arrangements for environmental protection and an accommodation of coastal state concerns could be achieved without undue prejudice to navigational rights.

In connection with proposals of others for comprehensive coastal state pollution jurisdiction in a 200-mile economic zone, the United States pointed out in a statement of August 13, 1973, that if jurisdiction for the protection of the marine environment were to extend generally to vessel-source pollution in a 200-mile zone, all seaborne commerce and other maritime traffic to and from most coastal states would, in effect, be subject to the control of another state.

We noted that since a majority of coastal states are in a geographic situation in which access to the open oceans would depend upon movement through another state's zone of jurisdiction, those states would, in effect, become "zone-locked."

The marine pollution working group used the treaty proposals presented by delegations as a basis for its work. In the March/April session articles were drafted on the general and particular obligations of states to protect and preserve the marine environment.

At this session, alternative texts were prepared on global and regional cooperation, and on the role of national and international standards for controlling land-based, seabed source, and vessel source pollution.

Agreed texts were provisionally adopted on monitoring and technical assistance. There was consideration of articles on the duty of States responsible to terminate activities violating the Convention and the method of determining whether a State had discharged its obligations under the Law of the Sea Convention.

On the question of standards with respect to seabed sources of marine pollution, the U.S. draft articles called for the establishment of and agreement to minimum international standards, and the right of coastal States to set higher standards for activities under their jurisdiction.

Alternative texts reflect the view of some States that there need not necessarily be minimum international standards and that primary responsibility for establishing seabed standards should lie with the coastal States.

On the question of standards for vessel-source pollution, the United States—both in an earlier working paper and in the draft articles—favored international standards, although States would also have jurisdiction to establish standards for ships flying their flag or entering their ports.

The United States also proposed that IMCO should have the primary responsibility for establishing such standards. Canada and Australia favor primary reliance on international standards, but advocate a right for the coastal State to establish supplemental standards for special circumstances or for situations in which, in their view, international standards are inadequate or nonexistent.

Some developing countries, notably Kenya and Tanzania, favored exclusive coastal State competence to set standards both for seabeds and vessels in their economic zone.

The Soviet Union argued that States have the right to establish standards only for their own vessels, but that such standards should not be lower than those agreed internationally.

The United States proposed several general articles on enforcement with respect to vessels based mainly on flag and port State competence, with bonding and other release measures.

In addition, the U.S. draft articles contain extraordinary coastal State rights in three situations:

One, a finding by the dispute settlement machinery of persistent flag State failure to enforce;

Two, a reasonable emergency enforcement measure to prevent, mitigate or eliminate imminent danger to its coast from a violation of applicable standards;

Three, intervention in circumstances spelled out in the 1969 Intervention Convention and its proposed protocol.

Canada, Australia, Kenya and Peru, supported by certain developing countries, argued for a general right of the coastal State to enforce standards within a broad zone adjacent to the territorial sea.

France and Japan proposed coastal State enforcement of international standards only against discharges or dumping in contravention of international rules in a zone beyond the territorial sea of unspecified breadth.

The Soviet Union opposed any coastal State right of enforcement beyond the territorial sea.

On July 20, we introduced draft articles on marine scientific research. The U.S. proposal calls for cooperation in facilitating research in the territorial sea and provides for a set of obligations for the conduct of research in areas beyond the territorial sea where the coastal State exercises jurisdiction over seabed resources and coastal fisheries.

This obligation would be in lieu of consent and would include advance notification, coastal State participation, flag State certification of the bona fides of the researcher, sharing of data and samples, assistance in interpreting the data, and compliance with international environmental standards.

In the Working Group, supporters of the exclusive economic zone tended to support a requirement for coastal State consent for research in the zone, stating that such an adjunct of sovereignty was necessary for consistency with the concept of an exclusive economic zone.

France, Mexico, Australia and Italy made suggestions which would qualify the right of the coastal State to refuse consent.

General debate on technology transfer was limited and inconclusive, with the United States reiterating its willingness to support technology transfer in the area of marine science.

Several developing countries indicated that their attitude toward the U.S. articles on scientific research would be influenced by our approach on technology transfer.

Throughout the session, in all subcommittees, we stressed that there was a need for an effective dispute settlement mechanism to insure that conflict could be avoided or resolved.

All draft articles introduced by us during this session contained a cross-reference to a section of the Law of the Sea treaty on dispute settlement.

We introduced general draft articles on dispute settlement on August 22. In a statement on the same day, we emphasized that a system of peaceful and compulsory dispute settlement was an essential aspect of any comprehensive settlement.

We indicated that a system was needed that insured, to the maximum extent possible, uniform interpretation and immediate access to dispute settlement machinery in urgent situations, while at the same time preserving the flexibility of States to agree to resolve disputes by a variety of means.

Thus, the U.S. articles reflected a system of settlement of disputes by any manner agreed to by the parties, with a Law of the Sea Tribunal to settle disputes if parties did not agree to another method.

The different degrees of progress made by the different working groups resulted from a variety of factors.

The Working Group on the deep seabeds regime was the first to be established, and had concrete texts prepared by the chairman. It clearly accomplished the most.

Procedural problems were largely overcome in the Subcommittee III Working Group on Marine Pollution and approximately half of the draft articles were placed in usable form for the Conference.

This Group did, of course, have a relatively narrow mandate and many fewer drafts to work with than, for example, the Working Group in Subcommittee II.

The Subcommittee III Working Group on scientific research started late in the session and little substantive progress was made.

A great deal of time was spent sorting out procedural problems as this Working Group had not established a work method before the start of this session.

Subcommittee II and its Working Group continued to face a variety of time-consuming procedural obstacles at this session.

Underlying the difficulties was the fact that unlike the other subcommittees, Subcommittee II has the broadest mandate for dealing with traditional law of the sea subjects upon which most States have strong, longstanding views.

Moreover, the questions of maritime commerce and navigation and straits passage affect the hard economic and security interests of States.

The large majority of delegations now appear to regard the Conference as the proper place to resolve the political problems that underlie the major difficulties in Subcommittee II as well as the other subcommittees.

They do not seem to wish any significant delay in beginning the Conference. In our closing statement in plenary, we strongly endorsed proceeding with the Conference on schedule.

It is our candid assessment that substantive progress has proceeded about as far as it can without intense political negotiation, but that for understandable reasons such negotiation is unlikely at any meeting believed to be preparatory or preliminary in character.

The United Nations General Assembly will begin its consideration of the Law of the Sea Conference in a few weeks.

It must decide fairly soon, for example, on invitations to the Conference since the organizational session is currently scheduled for November/December of this year.

In closing, Mr. Chairman, let me say that although we of course may not know until late in the Conference whether a broadly supported treaty will in fact be achieved, we move forward to the Conference with some measure of optimism because we are at this time confident of four essential points regarding the possibility of a timely and successful Conference.

The first is that a broad range of foreign countries have a clear understanding of the nature, importance, and diversity of the interests we believe a treaty must accommodate.

The second is that we believe we understand the interests and problems most other countries believe a treaty must accommodate.

The third point is that a growing number of nations with widely disparate interests and viewpoints understand the crucial need to agree on a treaty that will be ratified very widely among all groups of nations, and believe that this can be done.

The fourth, returning to the theme of my opening remarks, is that I am convinced that in cooperation with Congress and the public we can maintain the strength of purpose and breadth of vision necessary for the United States to exercise the leadership that others, whatever their interests, have every reason to expect is essential for success.

Thank you, Mr. Chairman.

Senator METCALF. Thank you, Mr. Ambassador.

I want to again express my appreciation that you are heading a delegation negotiating on these very important matters.

I know of no one in America who is more skilled or more able to handle this negotiation than you and the group of people you have gathered around you. Your reputation for fairness, dignity, and statesmanship extends well beyond the borders of this country.

You are doing an important and significant job. Nevertheless, I have some questions and I know that my colleagues have some questions

about the directions under which you are moving, the obligations that you hold to the administration.

I will defer to my colleagues, who have some questions, and I reserve mine and I will call upon Senator Fannin.

Senator FANNIN. Thank you, Mr. Chairman.

Mr. Ambassador, I join the chairman in commending you for assuming this very challenging assignment and I know you will carry through with expertise in this field of endeavor for which you are so ably equipped.

I understand that a central issue between developing and developed countries on the deep seabed regime and machinery is who may exploit the area and that the developing countries and the United States have absolutely polar positions on this issue.

I have been told that the developing countries want to exert absolute control over both the exploration for and exploitation of seabed resources by means of a monopoly operating agency called the Enterprise and that the administration advocates a first come-first served licensing system.

Would you please explain this situation in detail to us and in particular tell us how this enormous gulf can be bridged in a Law of the Sea Conference while steadfastly protecting U.S. resource positions?

I am wondering if you can explain how this extreme polar division might be handled so as to avoid its being an almost insurmountable block to a timely and satisfactory treaty.

Ambassador STEVENSON. I would first like to express my appreciation to both the chairman and you for your expressions of confidence.

I will certainly do my best to meet the challenge which you have posed with respect to the issue which you have raised.

This is certainly one of the points where there is the greatest disagreement between the developed and the developing countries.

Your statement of the difference in the positions was substantially accurate. I think the developing country position involves, of course, in addition to the concept of exploitation by the international machinery, the concept that machinery or organization would enter into joint ventures or contracts with States or private enterprise to actually do the job.

So, it does not involve necessarily—and probably not at all—establishing an organization to carry on that exploitation.

Our own position has been, I think, quite clear in terms of wanting basically nondiscretionary licensing of States or enterprises that have the capacity to carry on this exploitation with the international communities' interests being met by revenue sharing and technical assistance and the possibility of any members of the international community participating in this activity.

I think that certainly the negotiations this summer—although they were much more implicit than explicit in this area—have served a very definite educational purpose in really defining more closely what the positions are, the developing countries finding out some of the practical difficulties with some of their more extreme proposals, and we hope that learning some of our proposals may in the final analysis be better for their own interest and the international community than their approach.

Now, I don't mean to minimize the problem, but I also think you must look at this issue in the context of an overall law of the sea settlement and that probably the issue which is of more importance to more countries than any other single issue is the question of coastal state resource jurisdiction where there is a good deal more of a measure of agreement than in this area.

So, I think, in looking at any issue in the law of the sea, you must look at it in terms of overall settlement.

Now, since I did not participate in all of the discussions of this very important topic this summer, I would like to take this opportunity to call on Mr. Ratiner, who is our representative in the working group, to amplify my remarks.

Senator METCALF. Mr. Ratiner.

Mr. RATINER. It is important to bear in mind, when discussing the Enterprise versus the licensing system, for the sake of convenience, we refer to the issue as who may exploit the area, and that is a fairly significant question.

In fact, the question is somewhat different. It is not really who may exploit the area because, under the Enterprise system, it is contemplated that the area will, in fact, be exploited by American, Japanese, German, French, or British companies under legal arrangements which we have come to call service contracts or joint ventures so that either the licensing system or the Enterprise system as proposed, there is a substantial likelihood that exploitation would actually take place by the same companies who would be obtaining licenses under the U.S. proposal.

However, I think it is important to point out that the real underlying issue as between the Enterprise and the licensing system is: When exploitation rights are granted, they can also be denied.

Under the Enterprise system, its present supporters believe they have a right when they want to to deny the opportunity to certain potential investors to carry out exploitation.

If they did carry out exploitation, they would choose who the exploiters would be under the licensing system as proposed by the United States.

There would be no discretion whatsoever in the international organization to decide whether or not a licensee obtained a license.

He would have to comply with certain internationally agreed rules, terms and conditions—and if he did comply, he would automatically be granted a license.

So I think a better way to put the question is whether the authority—that is the international management authority—would have the right to deny a license.

And on this very precise issue, the issue which I identify as the key issue in negotiations, there really has not been any substantive discussions.

Now, the reason for that I think is very simple. The Enterprise is still a very popular concept, that is, a skeleton that has the support of most developing countries. And the developing countries are still pushing that concept very hard.

But at the next stage of negotiations, I would suspect there would be an attempt made by the developing country leaders who want to see a

successful negotiation to themselves begin to identify what is the real underlying issue.

And only then will honest negotiations begin on the question of whether the international authority would or would not have the right to deny legal rights to American companies to exploit the seabed.

Thank you.

Senator FANNIN. You feel we are making progress in bridging this enormous gulf we talk about—we mentioned earlier.

I just don't follow how we are going to go along with your explanation that we are going to be protecting exactly what our whole licensing system anticipated.

Mr. RATINER. Senator, at that stage of the negotiations, if we are able to make our point, and we began to make a point this summer in Geneva, and if we get the sympathetic ear from some of the developing countries, we will begin to realize this is the real underlying issue.

Then we can begin negotiation about that issue. And if we arrive at a satisfactory political settlement on that issue, my guess is that the very large treaty which we negotiated this summer—overly large I might add—it is four times as long as it need be because it reflects four alternatives in every single issue in the draft treaty.

But my guess is, arriving at a settlement on that issue will substantially expedite our ability to negotiate a single version of this treaty.

Now, I cannot predict how easy it will be to arrive at a negotiated settlement on that issue but I want to stress it is that issue that is troubling subcommittee I, and I cannot be pessimistic about it since it has not been the subject of honest negotiations.

Senator METCALF. I am somewhat disturbed by your response, Mr. Ratiner. Under what conditions do you think American industry and American businessmen should be denied opportunity to go out and develop the resources of the seabed?

Mr. RATINER. Mr. Chairman, I think one very good example, and I am not favoring a system of denying licenses, but one very good example would be if an American businessman was not capable of carrying out the operations which he planned to carry out consistently.

Senator METCALF. Who makes that decision?

Mr. RATINER. The international authority would, sir. Consistent with the environmental prescriptions which would be attached to his license and his grant to legal rights he should not have the right to carry out his business in the deep seabed.

That is only one example of the kinds of things which legitimately should be proposed as conditions for obtaining legal rights.

We do it every day in the United States and I am sure we will want to do it in the deep seabeds as well.

Senator METCALF. Should we be doing the licensing and making that decision right here in the United States?

Mr. RATINER. If this were the United States we were talking about I would of course support that view.

Senator METCALF. But a whole lot of what we're talking belongs to the United States.

Mr. RATINER. The area of negotiation in subcommittee I is well beyond the claim of national jurisdiction, it is fully an international area and must be managed in accordance with an international arrangement.

Senator METCALF. Do you want to get into this, Mr. Ambassador?

Ambassador STEVENSON. Yes, I do, Mr. Chairman. It seems to me there may be some misunderstanding. I agree completely with Mr. Ratiner that the scope of the difference can be clearly exaggerated because both of the approaches are talking in terms of contractual arrangements and not on the one hand an international agency itself setting up a bureaucracy and an engineering capacity to engage in this.

I think that is very important. They have spelled out their Enterprise concept so it is clear they are talking about contractual arrangements with others who will do the work.

On the other hand, I felt he made quite clear this issue of denying the right to exploit is a very critical issue.

He was not saying that we were going to accept this proposal that there should be a discretionary right in the authority to decide who can and who cannot exploit.

I think it is very important that the question of licensing be nondiscretionary. Now, the fact that it is nondiscretionary does not mean that there should not be some standards with respect to it, and we feel it is important that those standards should be part of the treaty itself and to the maximum extent be agreed to beforehand so we know what those conditions are.

Senator METCALF. I was hoping that would be your response, that there would be standards applicable to everybody and criteria that every potential licensee would have to meet and there would be no international discrimination against our American business community.

Ambassador STEVENSON. That is very definitely our position, very strongly our position.

Senator METCALF. Thank you, Mr. Stevenson.

Senator FANNIN. Thank you, Mr. Stevenson, I am sure you have heard from me over S. 1134, the administration says the passage of this particular legislation would damage our negotiating position on the law of the sea.

However, it is difficult to imagine a more extreme position than those already taken by the developing countries.

Would you, Mr. Ambassador, explain how the passage and implementation of S. 1134 could lead to a more difficult situation than that which exists today?

Ambassador STEVENSON. Mr. Chairman, I think in the actual testimony on this legislation the executive branch's general position was made clear. So, I will limit myself to the specific question you raised as to the effect on the negotiations.

Senator METCALF. If the Senator would yield, other than the briefing document made available to the committee, it was only a one-paragraph letter informing us that the administration was opposed to the bill. That matter of clarification is not very much.

Do you have a report on our bill; we only have a report on the House bill?

Ambassador STEVENSON. Mr. Chairman, I believe comments by Mr. Brower, who was then the acting legal adviser and acting chairman of the interagency task force, with a supplemental statement by Mr. Ratiner, were submitted last March.

Certainly, if not, we will supply them for the record.

Senator METCALF. The supplementary statement then will be included in the record at this point so we may have it for reference.

[The document referred to follows:]

DEPARTMENT OF STATE

Washington, D.C. 20520

March 1, 1973

Honorable Henry M. Jackson
Chairman, Committee on Interior and
Insular Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In a letter to you on May 19, 1972, the Chairman of the Inter-Agency Law of the Sea Task Force indicated that the Executive Branch was not prepared at that time to state a position on S.2801, the "Deep Seabed Hard Mineral Resources Act". A bill identical to S.2801 has been re-introduced in this session of the Congress as H.R. 9. In his May 19th letter, the Chairman of the Task Force noted the connection of the bill with the Law of the Sea preparatory negotiations in the United Nations Seabed Committee, and said that we would report again on our views in the light of developments at the summer session of the Seabed Committee and the 27th United Nations General Assembly. This letter provides Executive Branch views on H.R. 9 supplemented by an appendix on the bill's mineral resource and technical aspects and their relationship to the negotiations.

By far the most important development at the 27th General Assembly regarding the Law of the Sea was the unanimous adoption of a Law of the Sea Conference Resolution. This resolution establishes a precise schedule for the Law of the Sea Conference and preparatory negotiations. Preparatory work in the UN Seabed Committee will be intensified in 1973, with provision for a five week session beginning in early March in New York and an eight week session beginning in early July in Geneva. The Resolution provides for convening a brief organizational session of the Law of the Sea Conference in New York in November/December 1973, and for convening a second session of the Conference, for the purpose of dealing with substantive matters, in Santiago, Chile in April/May 1974. There is also provision for such subsequent sessions of the Conference if necessary, as may be decided by the Conference with the approval

of the General Assembly, at a subsequent session or subsequent sessions no later than 1975.

The Resolution also provides for the General Assembly to review at its 28th session next fall the progress of preparatory work and, if necessary, to take measures to facilitate completion of the substantive work for the Conference and any other action it may deem appropriate. As a strictly legal matter, such a clause is unnecessary since the General Assembly has this authority in any event. Its inclusion made it easier to accommodate concerns about proceeding to a Conference in the absence of adequate preparation. Moreover, we and others have made it clear that we will wish to seek an adjustment in the schedule in order to ensure that there are more than eight weeks of work in 1974.

The present hope of a large majority of States is that the kind of schedule outlined in the Conference Resolution can be met. This conclusion is necessarily based upon the expectation of important accomplishments in the preparatory work of the Seabed Committee in 1973.

As significant as the content of the Conference Resolution was the fact that it was adopted unanimously. All groups involved in its negotiation expressed great sensitivity to the concerns of other States, and great efforts were devoted to arriving at a resolution which could command not merely a majority or a 2/3 majority, but general support. This augurs well for the future of Law of the Sea negotiations, since a successful Law of the Sea Conference will necessarily require a similar attitude of mutual respect and accommodation.

Although not directly relevant to the legislation before us, there were other developments in the General Assembly this year that wee less auspicious but which, nevertheless, merit reporting. A deep division of opinion developed regarding a request by certain land-locked and shelf-locked states for a study of the implications for the international seabed area of various proposed limits of national jurisdiction. It had been our hope that this issue could be resolved by negotiation and accommodation, but unfortunately, such an accommodation did not in fact occur until after a number of close votes and intense

debate. The ultimate result was the adoption of a revision of the land-locked/shelf-locked study resolution, as well as a companion resolution introduced by Peru calling for an analysis of the effect of different limits on coastal States. The U.S. has consistently supported reasonable requests for studies and information on Law of the Sea subjects, and in accordance with this policy we supported both the land-locked/shelf-locked proposal and the Peruvian proposal.

One other significant development at this General Assembly, fortunately in keeping with the spirit that dominated the negotiation of the Conference Resolution, was the fact that no new resolution calling for a moratorium on deep seabed activities was introduced. While it would not be accurate to interpret this as an indication that States supporting the earlier moratorium resolution have changed their opinion, we believe that the avoidance of a renewed and divisive debate on this subject was related to the general attempts to ensure the best possible atmosphere as we enter the final stage of preparatory work this year. Needless to say, our own opposition to the moratorium remains unchanged.

Turning to H.R. 9, the considerations expressed in our letter of May 19, 1972 on S.2801 (identical to H.R. 13904) remain applicable, and generally set forth the factors affecting our approach to H.R. 9. In the time that has elapsed, however, we have been able to give further cosideration to the matter in the light of international and domestic developments. We are accordingly in a position now to state a more definitive view on H.R. 9 and interim mining activities.

First, we adhere to the policy on this subject contained in the President's Oceans Policy Statement of May 23, 1970. We continue to believe that it is necessary to achieve timely widespread international agreement on outstanding Law of the Sea issues in order to save over two-thirds of the earth's surface from national conflict and rivalry, protect it from pollution, and put it to use for the benefit of all. It remains vital to all our national interests involved in the Law of the Sea Conference that the world agree on a treaty that will properly accommodate

the many and varied uses of ocean space including the seabeds. At the same time we believe that it is neither necessary nor desirable to try to halt exploration and exploitation of the seabeds beyond a depth of 200 meters during the negotiation process, provided that such activities are subject to the international regime to be agreed upon, which should include due protection of the integrity of investments made in the interim period.

Second, we believe that there is reason to expect that the schedule for the Law of the Sea Conference outlined in the Conference Resolution just passed by the General Assembly will be adhered to. As previously indicated, the preamble of the Conference Resolution expressly states the expectation that the Conference will complete its work in 1974 or at the very latest in 1975.

Third, we believe that with the Law of the Sea negotiations moving into a critical stage, it is necessary for States to be very careful to avoid actions that can have an adverse effect on the negotiating atmosphere. It is apparent that S.2801 (now H.R. 9), independent of the particular content or merits of the Bill, has become a symbol to many countries of defiance of the multilateral negotiating process. Regardless of our views on the intent and effect of the legislation, it may be argued by others that the legislation is similar to unilateral claims that we oppose and that are contrary to our security, navigation and resource interests, and moreover preempts the Law of the Sea Conference on this issue. It is well known that we have urged legislative restraint on other countries during the multilateral negotiating process even when they felt important interests were involved; we believe we should do the same so long as there are reasonable prospects for a timely and successful conference.

Fourth, we wish to insure that technology to mine the seabeds will be developed and that the United States will be able to look to seabed mineral resources as a new source of metals which would otherwise have to be imported with an attendant impact on our balance of payments and other interests.

Fifth, we also believe that a secure and stable investment climate must surround seabed mining activity under any new legal regime.

Sixth, we want to assure that all seabed mineral resource development will be compatible with sound environmental practices.

The adoption of the Conference Resolution indicates that we should distinguish between two different time periods. The first is the period between the present time and the conclusion of the Conference in 1974 or at the latest 1975. The second is the period between the end of the Conference and the entry into force of a treaty.

With respect to the second time period, we believe it may be desirable for the Law of the Sea Conference to provide at its conclusion for immediate provisional entry into force of some aspects of the international seabed regime. There is an excellent precedent for this in the Chicago Civil Aviation Convention of 1944, which is one of the most widely ratified treaties in the world. This approach can accommodate the fears of many states that the establishment of an interim regime might still not lead to the establishment of a permanent regime, since in fact what we would be doing would be to bring certain parts of the permanent regime and machinery into operation earlier on a provisional basis. It is our intention to make clear in the international negotiations the advantages of, and the need for, the entry into force of a viable provisional international regulatory system for the deep seabeds as part of the general Law of the Sea treaty settlement in a way that ensures that the provisional system will be part of, and not a substitute for, the permanent system.

We will spare no efforts to ensure that a successful Law of the Sea Conference can be concluded on schedule. However, this does not mean that we intend to focus our efforts exclusively on the Law of the Sea negotiations.

Prudence dictates that we also begin at once to formulate a legislative approach on a contingency basis for two reasons. First, it could conceivably become clear during the negotiations that we have no reasonable basis for expecting a timely and successful Law of the Sea Conference. Second, we can prepare for provisional entry into force of some aspects of the international seabed regime once it is signed. While the approach in H.R. 9 does not appear to us to be satisfactory, we intend to continue the useful discussions we have been having with

industry represntatives and members of the public on this issue with a view to formulating such an approach within the Administration.

Similarly, we have had interesting discussions of this problem with other nations. In this connection, it must be borne in mind that economic as well as poliical factors make it necessary that we understand and take into account the interests and views of other countries on this subject. United States companies will not be alone on the deep seabeds, nor will the United States be the only country affected by their activities. Thus, we also intend to continue our consultations with other interested States on this subject, and in particular with those States whose nationals may in the foreseeable future be in competition with our own companies.

In this process, we will try to be guided by the need to avoid taking any definitive steps which would make the U.N. negotiations more difficult for ourselves or other nations, as well as the need to provide the essential elements of the financial security which industry considers necessary.

Let me be quite clear about the timing of this course of action. First, we will commence work on alternative approaches immediately, and will concentrate on the period between signature and entry into force of the treaty; second, we will want to make a continuing assessment of the negotiations to determine if a timely and successful Conference will occur; and third, we will not ask Congress to pass alternative legislation for the period before the conclusion of the Conference if a timely and successful Conference is predictable.

Let me also be clear as to what we mean by a "timely and successful" Conference. We would not regard a Conference as timely unless the schedule referred to in the preamble of the Conference Resolution is adhered to: in other words, a Convention, including arrangements regarding the provisional application of the international seabeds regime, would be opened for signature in 1974 or, at the latest, in 1975. In practical terms, this means not later than the summer of 1975, since many delegates would have to be present when the U.N. General Assembly convenes in September.

Similarly, we could no longer regard the likely outcome of a Conference as successful should it become apparent that other States are not prepared to accommodate basic United States interests in a final Law of the Sea settlement. In our statement of August 10, 1972, before the U.N. Seabed Committee, we reiterated what those interests are. Three paragraphs from that statement follow:

"The views of my delegation on non-resource uses have been clearly stated on a number of occasions. It is our candid assessment that there is no possibility for agreement on a breadth of the territorial sea other than 12 nautical miles. The United States and others have also made it clear that their vital interests require that agreement on a 12-mile territorial sea be coupled with agreement on free transit of straits used for international navigation and these remain basic elements of our national policy which we will not sacrifice. We have, however, made clear that we are prepared to accommodate coastal State concerns regarding pollution and navigational safety in straits and have made proposals to that effect in Subcommittee II."

"The views of my delegation on resource issues have also been stated on a number of occasions. Unfortunately, some delegations appear to have the impression that maritime countries in general, and the United States in particular, can be expected to sacrifice in these negotiations basic elements of their national policy on resources. This is not true. The reality is that every nation represented here has basic interests in both resource and non-resource uses that require accommodation."

"Accordingly, we believe it is important to dispel any possible misconceptions that my government would agree to a monopoly by an international operating agency over deep seabed exploitation or to any type of economic zone that does not accommodate basic United States interests with respect to resources as well as navigation."

In another excerpt regarding the deep seabeds we stated: "An effective and equitable regime must protect not only the interests of the developing countries but also those of the developed countries by establishing reasonable and secure investment conditions for their nationals who will invest their capital and technology in the deep seabeds. In order to provide the necessary protections for all nations with important interests in the area, it is also necessary to establish a system of

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decision making which takes this into account and provides for compulsory settlement of disputes. We do not regard these objectives as inconsistent with the desire of other countries for equitable participation in deep seabed exploitation and its benefits."

For some time our experts have been engaged in a study of the economic implications of deep seabed mining legislation such as last session's S.2801 and the current session's H.R. 9. They are examining issues of resource management and development, as well as questions of political economy such as the design of arrangements to ensure efficient exploitation of ocean resources. Implications for tax, customs and development finance policies are also under review.

The technology of ocean bed mining is likely to develop rapidly, and new information continually challenges old hypotheses. It is therefore impossible to be definitive. Nevertheless, at this time we are prepared to give you a comprehensive but as yet still incomplete report of the Administrations' views on certain technical aspects of H.R. 9, particularly those related to resource management and development.

In reporting to you that the Administration is opposed to the enactment of H.R. 9, we want to make clear that this does not mean we are unalterably opposed to legislation of any sort, or that we intend to disregard the problem of interim mining. Any of a number of events could occur that would lead us to conclude that legislation was necessary, and we intend to prepare as quickly as possible for that contingency. Moreover, we wish to repeat that we continue to adhere to the President's statement that it is neither necessary nor desirable to try to halt exploration and exploitation of the seabeds beyond a depth of 200 meters during the negotiating process, provided that such activities are subject to the international regime to be agreed upon, which should include due protection of the integrity of investment made in the interim period. Our opposition to H.R. 9 in no way alters this.

We are deeply conscious of the fact that no decision we could have reached on this issue at this time could have been universally popular. Some who support the

moratorium may not agree with the policy we have set forth. Some who support the approach in H.R. 9 may be equally disappointed. For the present, we think the middle course we have outlined is best. We hope the Committee will agree. However, we fully understand that the Committee, like the Administration, may wish to pay close and continuing attention to developments that could alter this assessment. We pledge our full cooperation with the Committee in those efforts.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

Charles N. Brower

Charles N. Brower
Acting Legal Adviser and
Acting Chairman, Inter-Agency
Task Force on the Law of the Sea

APPENDIX

By
Leigh S. Ratiner
Director for Ocean Resources
Department of the Interior
on Behalf of the Interagency Task Force
on the Law of the Sea

This appendix is designed to supplement Mr. Brower's report of this date on behalf of the Executive Branch on H.R. 9.

In connection with the submission of its views on H.R. 9, the Administration has made a comprehensive, but as yet incomplete, review of its ocean mining resource policy and the relationship of that policy to the Law of the Sea Conference. In order to better create a framework for judging the merits of H.R. 9, we believe it is important to present relevant portions of such a review and to be fully responsive to the Committee's interest in this subject.

Several events have occurred in the past several months which enable us now to state a more comprehensive view of H.R. 9. First, the United Nations General Assembly has fixed a schedule for a Law of the Sea Conference. We are hopeful that schedule will be met and we have planned our future actions on the assumption that it will be met. Second, we have conducted consultations with those in United States industry who have an immediate and substantial interest in the commencement of deep ocean mining. This has been an important learning process for those of us in the Administration concerned with mineral resource development. We are, after all, considering the establishment of a fundamentally new metals industry based on untried technology and requiring

large amounts of capital. If this industry succeeds, it will be an important source of such primary metals as nickel, copper, manganese and cobalt which are now imported. Third, we have consulted with other nations interested in deep ocean mining, and have discussed the degree of encouragement they are giving or may give their industries pending a timely and successful conference.

Seen from the point of view of an industrialized country, the quest for energy and mineral resources is of great importance. Oil, gas, nickel and copper are commodities so basic to the continuous functioning of our society as we know it that it would be difficult to describe the state of affairs which would exist in our society and in other similarly situated societies were these commodities to be in short supply or obtainable only at substantially higher prices.

The Law of the Sea Conference gives us an opportunity to participate in the creation of a new legal order which would give greater assurance to the United States of the continuing availability of such seabed mineral resources. In the Conference, for example, we are prepared to agree that coastal states can exercise virtually exclusive management jurisdiction over seabed mineral resources adjacent to their coasts in a wide area, if, among other things, they agree to international standards to protect the integrity of foreign investment in

that area, to avoid interference with other uses of the marine environment, to protect the ocean from pollution, to ensure some sharing of revenue from the area for international purposes, and to accept a procedure for peaceful and compulsory settlement of disputes. If they do agree, one can see that as the growth of the offshore oil industry accelerates, our sources of supply will become more diversified and our sense of security as to the availability of those supplies will be enhanced, although of course coastal states will determine whether, by whom and under what conditions such exploitation can take place. Without a Law of the Sea Conference, we might either lose the opportunity to gain stable and reliable investment conditions with respect to that oil or risk conflict and dispute in defense of our own juridical position as to the legal validity of other countries' claims to the continental margin.

The area lying seaward of the continental margin, generally referred to as the deep seabed, is known to be rich in other mineral resources. For the moment very little is known about the subsurface potential of the deep seabed. With respect to the surface of the seabed, however, we know that extensive deposits of manganese nodules containing over 20 metallic elements are abundant. Principal metallic elements of interest are nickel and copper. Cobalt and manganese are also important components of manganese nodules, but are currently of less economic interest.

According to the Department of the Interior's figures, the total cost of importing these four metals in 1970 was almost $600 million. In that year we imported 85.7 percent of our manganese consumption at a cost of nearly $66 million; 92 percent of our cobalt at a cost of $26.5 million; and the equivalent of 100 percent of our primary nickel consumption at a cost of $426.5 million. Our net imports of copper in 1970 equaled only 6 percent of our primary consumption at a cost of approximately $71 million. It is possible that copper imports may rise gradually as the grade of our domestic ores decreases in the future and the cost of exploiting them increases.

American mining companies at present are considering production rates of about 1 to 3 million tons of manganese nodules per company per year. Based on our understanding of an average ore grade for mineable nodules which can be inferred from public statements by industry spokesmen, we can assume that potentially mineable nodules will contain at least 25 percent manganese, 1.25 percent nickel, 1 percent copper and 0.22 percent cobalt. On the basis of our present knowledge, it appears that in the early years after production begins there will be two 3 million tons per year production units and one 1 million ton per year production unit insofar as American industry is concerned.

In order to illustrate the relationship which manganese nodule production will have to the U.S. demand for the constituent metals as well as the level of our imports, we have selected 1975 as an arbitrary date for the figures which follow. It should be emphasized that 1975 is not the date we expect deep sea mining of this magnitude to occur.

If the three production units referred to above were recovering 100 percent of the metal in manganese nodules -- in fact, slightly less than 100 percent will be recovered -- nickel production would equal approximately 48 percent of projected U.S. primary nickel demand for 1975 and approximately 53 percent of our projected imports for 1975. Manganese would produce 12 percent of our estimated demand for 1975 and this would account for 12 percent of our imports. Copper would produce approximately 3 percent of our estimated demand for 1975 and this would account for approximately 41 percent of our projected imports. The situation with cobalt is substantially different. Deep sea production would equal 228 percent of our estimated demand and this would account for 296 percent of our projected imports in 1975.

The economics of nickel marketing will largely determine the economic future of all new ocean mining ventures. Copper production from nodules will be an important source of revenue to the producing firm, or firms, but only a small addition to world copper production. Cobalt is an important strategic

metal, but not used in large commerical quantities. The availability of a new and low-cost source of cobalt may increase its use, especially to the extent that it can be used in place of or in combination with nickel, but it cannot assume the initially critical role of nickel in limiting the size of a marine mining industry. With respect to manganese, we do not have sufficient information at this time as to the potential market for the high purity manganese which would result from the refining of manganese nodules in some metallurgical processes.

Although detailed information remains proprietary, it is generally accepted that two types of hydrometallurgical processes are currently being tested by prospective U.S. nodule miners. One would produce manganese, copper, cobalt and nickel, while the other would produce nickel, copper and cobalt. A minimum production unit of 1 million dry tons of nodules per year appears to be necessary for the four metal process, but 3 million tons per year may be minimal for the three metal process. These production unit sizes have been identified by industry through a combination of future market evaluations, design of optimal mining and extractive metallurgical systems and estimation of total system costs.

The foregoing represents a brief preliminary economic analysis of the importance of deep ocean mining. In order to illustrate these points in a more detailed fashion,

we have prepared a hypothetical schedule for nodule mining which is attached. Such a schedule demonstrates why nickel markets will govern the first years of growth for the deep sea mining industry.

It is clear that mineral resources of the ocean bottoms are of considerable importance to the United States, not only for the potential they offer of a secure source of metals necessary for our economic prosperity, but also for the accompanying benefits to our balance of payments position.

Accordingly, it is the Administration's policy to follow a course of action which will assure that these minerals are available for the future to American consumers and to United States industry. To satisfy this policy the arrangements for seabed mining must guarantee that (1) American companies are entitled to mine these minerals under conditions which assure a stable, secure, and fair investment climate; (2) the environment is protected from degradation, and (3) the public is assured a fair return for the disposition of such mineral resources.

These considerations alone may not demonstrate a need for urgency with respect to the development of the deep seabeds; however, other factors do create a degree of urgency. These involve our lead in prospecting, technology, and marketing, as well as the need to maintain industry initiative and momentum and the need to encourage pioneering industrial activity

which may give rise eventually to even greater mineral resources benefits in the oceans.

It is in the nature of our society and our economic system that the market place and potential for profit making stimulate technological initiative. We in the Government do not decide that a particular mineral resource is worth developing for our future needs and then develop the resource ourselves. Neither do we give direct subsidies to our mining industry so as to encourage them to enter a business which they have not deemed profitable. On the contrary, when industry finds that a market either exists or can be developed for a new product and that the market is sufficiently large to justify major investments with reasonable anticipation of profit, new technology is found and new resources are then developed. The public is clearly the beneficiary of this process. To keep this process going, however, Government must assure that it does not take actions which hamper this kind of industrial initiative with the attendant risk that the technology will never be developed or may be developed too late to be economically competitive.

Ocean mining is a very good example of this process. Existence of manganese nodules on the deep ocean bottoms has been known for over 100 years. No nation, including others who like ourselves depend substantially on nickel and copper,

has developed this resource. Neither capital nor technology was put into this resource until about 10 years ago when as a result of industry initiative the opportunity to develop and market the resource profitably was seized upon. Only then did the period of research, technology development and preliminary prospecting begin. Public reports of the amounts expended by three American companies so far indicate that approximately $90 million have already been invested to bring this new industry into being. In short, the initiative has been taken and the technology is being developed.

The technology which is currently being developed for nodule mining is extremely sophisticated and expensive. The oceanographic ship and its equipment used in the prospecting phase alone can cost $1,500-$4,000 per day, while the costs jump to $2,500-$5,000 per day when more intensive exploration work begins. Shipboard equipment must include highly complex devices for acoustical, optical and magnetic observation, together with grab samplers, prospecting dredges, and box and piston corers for sampling.

To our knowledge, there are three types of mining systems presently being considered for manganese nodule mining:

(a) Continuous path dredging involves a suspended conduit that connects a dredge head and the ship, which transverses the mine site, collecting ore over a certain sweep width.

(b) Fixed area dredging is conducted by a collecting device whose central portion remains stationary on the ocean bottom until ore lying within the radius of the sweeping device has been collected. During the process, the surface ship or platform remains stationary above.

(c) Continuous line bucket dredging involves a long continuous rope to which are attached dredge buckets. As the ship moves sideways, the loop of dredge buckets is dragged across the ocean bottom, scooping up ore.

Pilot tests of the continuous path dredging system and the continuous line bucket system have been conducted, but few of the results have been publicly released. The technological sophistication of all these mining devices will make them both expensive and design-sensitive to particular types of nodule deposits and surrounding topography.

Several metallurgical processes have been experimentally tried in the winning of metals from manganese nodules. To our knowledge, only hydrometallurgical techniques are presently being considered for commerical processing. The metallurgical process is specifically sensitive to such factors as the physical characteristics of the nodules, their iron content, trace metal content, assay or grade and detrital materials. Our consultations with industry have highlighted this critical aspect of nodule mining -- the degree to which both equipment development and type of metallurgical process are dependent upon definite knowledge of the mine site to be exploited.

From what we know, our technology, both in the systems which must be used to mine in approximately 15,000 feet of water where these nodules are found and in the metallurgical processes which must be used to win the metals, is advanced beyond the other two countries, Japan and Germany, who have also shown an immediate interest in deep sea mining. Nevertheless, our technological lead is fragile. If others exploit manganese nodules before we do and obtain an important marketing advantage, the resource will be developed but, at least for some time to come, we will still be importing it. Moreover, we may see our companies flee the United States to engage in joint ventures under the flags of other countries. This would decrease the possibility that manganese nodule mining would become a new United States industry.

It is, therefore, encumbent upon us to assure that corporate initiative and technological achievement are not stifled by our own actions. Indeed, it is important that corporate initiative be encouraged. If it is, we may begin to see production from ocean nodules as early as 1976 and substantial commerical production underway not later than 1980.

It has been argued that since we possess the technology and capital to mine manganese nodules and since we and a few

other industrialized countries are the principal world consumers of the metals contained in these nodules, our policy should reflect those facts exclusively, and we should move promptly to encourage our industry to enter the development phase. The freedom of the seas would permit American companies to mine this resource today, although there could be no legal assurance that other countries would respect all the rights and other elements necessary for a secure investment climate.

The Government must protect a variety of important interests in the development of ocean law including our mineral resource interests. We believe that only through a successful Law of the Sea Conference will the world achieve harmony and stability in the many new and varied uses of ocean space, including deep sea mining, which are developing right now. Haphazard development of international law in this area may not adequately protect our own or any other country's interests in navigation, pollution control, freedom of scientific research and the rational development of both living and mineral resources of the ocean and seabeds. To do this, the Conference cannot be regarded as a mechanism for confirming a patchwork of unilateral actions, but must achieve a rational solution of the underlying problems. The chances of doing this decrease as unilateral actions proliferate, and particularly as coastal State claims of jurisdiction far into the sea increase. It is not our

intention to regard unilateral actions by others as predetermining the outcome of the Conference and, so long as there is reason to believe that most Conference participants share this view, we should act accordingly.

A Law of the Sea Conference, in order to be successful, must be timely. Mr. Brower has indicated that we could not regard a Conference as timley if it would not meet the schedule set out in General Assembly Resoltuion 3029 (XXVII). On August 10, 1972, the Chairman of the United States Delegation to the United Nations Seabed Committee stated: "I cannot stress too strongly that none of us can or should stop technology and its use." It is our judgment that if this Conference schedule is met, it will be possible for the Conference to establish an international system without determining corporate initiatives and technological achievements. If it is not met, alternatives would be necessary.

After extensive consultations with industry and, in some cases, careful examination of their plans and achievements to date, we have reached the conclusion that one element overrides all others in corporate planning -- and it is precisely this consideration which has given rise to a bill like H.R. 9. The element I refer to is the willingness of the U.S. to engage in international negotiations with respect to deep seabed mineral resources, indicating a readiness to alter the freedom of the

seas principal insofar as it affects mining of seabed resources. Thus, the legal order upon which the investments would be made now may well be different from a still unknown legal order which might come into play at the time actual mining is underway. Not only might the new legal order directly affect the industry's investment by not recognizing its claims to exclusive mining rights over areas being commerically exploited, but it might also affect that investment indirectly by imposing regulations that significantly alter the economics of production.

If it were possible to ameliorate industry's concern that the negotiations may significantly jeopardize the integrity of these investments, we would expect that industry would continue its quest for this new mineral resource. Indeed it is this state of affairs which we believe is the factor most likely to deter corporate intiatives and challenge industry's ability to maintain the momentum of technological development and capital investment. We do not want this to occur. This is one reason why we attach such importance to adherence to the schedule for the Conference and to early evidence in the Seabed Committee of adequate support for the provisional application of the international regime from the time the Conference ends, of course as part of a Law of the Sea treaty settlement that accommodates all of our basic interests. Slippage on either of these points could necessitate a treaty article providing for protection of the integrity of deep seabed investments made before the end of the Conference, and require

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alternative approaches, possibly including some type of interim legislation.

Reasonable prospects for the success of the Law of the Sea Conference must also exist in order to justify reliance on this schedule. Mr. Brower has defined what we mean by the term successful. If a month from now or a year from now success, as he defined it, appears unlikely, it would also appear counter-productive to run any risk of delay in ocean mining intiatives.

During our consultations with representatives of the industry, the question of security of tenure has repeatedly been emphasized. The merits of the industry's desire for secure tenure to a mine site should be viewed from the perspective of their financing requirements. It may be that the risk of interference with a mining operation through claim-jumping is relatively low in the light of both the high investment costs associated with this enterprise and the necessity for designing mining equipment and processing plants specifically tailored to a particular location. Nevertheless, the industry has continually maintained that in order to obtain capital from financial institutions, they must be able to demonstrate that they have acquired exclusive rights to the ore body upon which their investment is based.

H.R. 9 reflects industry's concerns in these respects but also goes far beyond them. As a general proposition, H.R. 9, if passed, would put the U.S. Government in the business of

regulating deep seabed mineral resource development and of encouraging other industrialized countries to join us in that venture. Should we engage in such an action, it would be the functional equivalent of pre-empting the Law of the Sea Conference on this issue. We do not believe that language to the contrary in Section 10a of H.R. 9 would avoid this problem. The international reaction might well be severe and any hope we and many other countries have for creating a stable and rational legal order for the development of ocean mineral resources and other ocean uses could be destroyed. Some nations that do not wish to negotiate the substance of their unilateral claims could more easily achieve their objectives while arguing that it is the U.S. that bears full responsibility for disrupting the negotiations.

The U.S. has committed itself to the proposition that the regulations and use of deep ocean mineral resources should be accomplished under an international agreement which in particular would be of benefit to the developing countries. This result would be rendered largely impossible if H.R. 9 were passed and seabed mining commenced pursuant to its terms. The Bill would establish the size of blocks which would be exploited, the length of time the miners could occupy their blocks, the fees which they would pay and the international procedure which would accord them exclusive legal rights. We believe these are the kinds of things which the world needs to establish by international agreement for the future development of seabed resources, and

which the United States does not need to do today. As I have previously pointed out, in our view, what the mining industry really needs now is some assurance that their continuing investments will not be jeopardized by a new treaty.

Putting to one side the fact that H.R. 9 is defective because it would have the effect of establishing a relatively permanent regime for deep sea mining, I may also say that I believe many of its specific provisions are premature. Several of them are similar to ones proposed in the U.S. Draft Convention on the International Seabed Area, and while they were carefully drawn on the basis of the best information available to serve as a starting point for negotiation, we recognize that they are subject to modification in the light of new knowledge and the international negotiations. As yet, provisions such as those relating to subsurface mining, block size and length of tenure, and work requirements and their magnitude have been little discussed by the U.N. Seabeds Committee because attention has focused on larger issues. Hence, we have little feel for the negotiability of such terms to other nations in the light of their own knowledge of the seabed and their own convictions with respect to a minerals allocation and management system. To adopt such terms in advance of such discussions might well prejudice our negotiating position and lead to later adoption of a much different system that would be difficult for us to adjust to or accept.

During the past year we have redoubled our efforts to gather as comprehensive a data base as possible in order to assure that the specific provisions which will ultimately emerge at the U.N. Law of the Sea Conference regarding the resource management system will be sound from a resource management perspective. We must bear in mind that deep sea mining is very much a new and untried industry and several years of development of seabed resources will be required before definitive decisions can be made with respect to all of the details of a licensing system. Nevertheless, the information we expect to obtain in the very near future is likely to give us a fairly firm idea of the kinds of detailed provisions which will be necessary to assure the resource manager's objectives. At the present time, however, we would not be prepared to finalize the specific arrangements which we think should be applicable to seabed mining. In short, we not only believe that provisions like those in H.R. 9 would tend to prejudice the detailed licensing system we wish to negotiate in the Law of the Sea Conference, but are also premature for now.

In order to make clear the detail and complexity of the decisions which a resource manager must make, I would like to set forth a few examples of areas in which further information would be useful.

First, Section 2(c) taken together with Section 4(a), would cause the Secretary of the Interior to issue licenses

for subsurface blocks of a specific size. Provided certain minimum annual expenditures were met, the legal rights granted pursuant to such licenses would be valid as long as commercial recovery occurred in that block. If it does not occur within 15 years the licensee would simply have occupied that block for 15 years and all other persons subject to the jurisdiction of the U.S. would have been precluded from doing so. We have concentrated our efforts so far on acquiring maximum information about manganese nodule deposits rather than on subsurface mineral deposits because only the former seem to be economically attractive enough for early exploitation. Accordingly, we would be most reluctant at this time to formulate final conclusions about the size of a block, the length of time needed to develop the block, the work requirements, and the environmental safeguards. Based on our current knowledge of subsurface mineral resources, the fees and royalities which the Government would no doubt require would bear no reasonable relationship to the resource potential or the technology needed to mine the area.

Section 2(c), taken together with other sections of the Bill, would establish that surface blocks should be 40,000 square kilometers and that these should be reduced to 10,000 square kilometers not later than the commencement of commercial recovery or 10 years, whichever occurs first. What this means is that deep sea miners under H.R. 9 would have 10 years to explore a 40,000 square kilometer block and the right to exploit the

resources of a 10,000 square kilometer area for as long as they wish, provided minerals are recovered at a substantial rate of production for the primary purpose of marketing or commercial use. I should point out, Mr. Chairman, that the U.S. draft seabeds treaty presented to the U.N. used the same figures. We used those figures, however, for the sake of discussion and have continued to study new information regarding the technology of deep sea mining.

Determination of a proper block size and the number of blocks of any given size which would be awarded to a single company is a complex decision.

Without going into great detail, it may be useful for the Committee to be aware of some of the variables which enter into such a determination. One should know much about the ore concentration and ore grade and its geographic and geological distribution, the efficiency of the mining recovery system, particularly the actual collection device, and the efficiency with which that device can sweep the bottom. All of these factors are directly related to the amount of production which a particular company wishes to achieve, that is, for reasons of either economy or size of production plant, companies may wish to produce anywhere from 1 to 3 million or more tons of nodules per year. We have been gathering a considerable amount of information pertaining to these factors. There is at this stage no reason to change our earlier view that block sizes should be in the neighborhood of 40,000

square kilometers for the exploration phase with mandatory reduction to 10,000 square kilometers when exploitation begins. We wish, however, to continue our information gathering and analysis before taking a definitive view on this very critical aspect of a leasing system, particularly in order to assure that determination of block sizes cannot be used as a device for discrimination between companies.

Our role in resource management is to assure sufficient rewards to private industry from resource exploitation so as to encourage the development of the resource. We should not, however, permit the exploitation of the resource to result in windfall rewards. The bulk of the rewards should be preserved to the public. The public's overall interest in sound conservation practices in developing the resources, sound environmental practice, fostering economic competition, assuring the availability of the resource as it is needed by the American consumer and obtaining revenues dictate that the rules and regulations for exploitation be carefully considered. Determination of the appropriate duration of a lease, the terms governing a lease, the size of the area mined, the methods used for mining it, the environmental effects of mining the ocean and processing on land, the financial burden which can be legitimately imposed on the miner to maximize revenues to the treasury all require that more information be available from industry. H.R. 9 reflects industry desires as to the details of a legal regime. The Government, however, will need additional time and further

consultations with industry before it is in a position to finalize its views.

To take another example, we have similar concerns with Section 7 of H.R. 9 which establishes the minimal annual expenditures which a licensee must make prior to achieving commerical recovery. The function of these expenditures, of course, is to ensure against speculative holding. Under H.R. 9 a company would need to spend $6,150,000 in order to hold a block for 15 years. Our preliminary understanding of the costs of exploration indicate that a reasonably diligent mining company would have to spend between $3,000,000 and $6,000,000 for the costs of on-site operations alone before achieving commerical recovery. Moreover, during the detailed exploration phase such a company would have to invest at least another $250,000,000 in order to assure itself that when commerical production commenced it had a production plant which would process the nodules and prepare them for the market place. Estimates vary widely as to the total cost of bringing manganese nodule production units into being. Such estimates vary between $250-400 million. Further analysis of the costs of operation and production will need to be accomplished in order to determine an appropriate relationship between these costs and necessary work requirements. We are not yet certain as to what minimum annual expenditures would be reasonable for this new and untried venture.

Still another example involves the time period available to bring an area into commercial production. H.R. 9 allows 15 years under Section 4(c) from the time the miner first receives exclusive exploration rights until he must be in commercial production. On the one hand we would want production to occur sufficiently rapidly so as to minimize the time period which any single company may have to exclusively occupy a mine site and on the other, the miner must have a long enough period to prove out his equipment and complete his detailed exploration. Further, he should have some leeway as to the precise year when market conditions would optimize sale of his product and not be forced into production in a year when the market is already saturated.

One of our objectives is the development of a deep sea mining industry based in the United States. H.R. 9 would force the U.S. Government to respect licenses granted to American companies, or their subsidiaries by any foreign country that qualifies as a "reciprocating state" under section 2(i).

I have only chosen to comment on certain aspects of H.R. 9 at this time and not to develop comprehensively our comments on the specifics of this Bill since our fundamental objection to it is that it would appear to establish a complete regulatory scheme for deep sea mining by the U.S. in contravention of our efforts in the United Nations.

Mr. Brower, in his report, stated that we will begin immediately to explore alternative approaches to that contained in H.R. 9. There are several situations which may arise to which our contingency efforts should be directed.

The first would be an assessment, which we do not now make, that neither a timely nor successful conclusion of the Law of the Sea Conference was possible. From a resource management perspective, legislation which might be designed for such a contingency should assure that:

1. Mineral resource development occurs at an economically efficient rate.
2. It occurs under rational rules and regulations.
3. Mineral resource development occurs in an environment sufficiently competitive to ensure that the bulk of economic rewards are passed through to the consumer and the general public.
4. Conditions under which development occurs are consistent with the U.S. need for a secure resource base.
5. Mineral resource development is consistent with our concerns for the ocean environment.

Under present international law and without the passage of legislation, the U.S. Government would apparently have little or no control whatever over deep sea mining beyond our territorial sea and contiguous zone.

In essence, then, legislation designed for such a contingency should take the form of regulation of industrial development. In view of the many unknown factors with respect to deep sea mining, such legislation, if enacted now, would have to allow for considerable discretion to the resource manager. Moreover, it would have to provide for very substantial data turnover requirements, since the sole source of information about the mineral resource, topography, mining recovery system and metallurgy would be the industry.

It is possible that we would conclude, however, that the success of a Conference as Mr. Brower defined it is unpredictable but that a timely Conference, including the timely provisional entry into force of the international regime, is impossible. To provide for such a situation we might consider various mechanisms, including possible alternative legislative approaches which might provide companies with a more secure basis for investment decisions. Such alternatives, however, would need to be fully discussed with other interested nations.

For the period following the conclusion of a successful Law of the Sea Conference, and before the treaty comes into force, a different kind of bill might have to be drafted. For example, legislation may be necessary to ensure U.S. participation in an adequate provisional system, since that system would have to enter into force at the conclusion of the Conference.

We have attempted to present to the Committee as comprehensive an explanation as possible of the Administration's views with respect to the new enterprise of deep sea mining. We are seriously committed to the development of this resource and fully appreciate the concerns of industry which have been manifested in the introduction of H.R. 9. I hope that the Committee will agree with us, however, that H.R. 9 is not the best way of achieving industry's objectives consistent with our overall national policy aims.

Our efforts to encourage the development of a new resource that is potentially of great benefit to the United States economy must be tempered by equally important considerations revolving around the complex international negotiation which the Law of the Sea Conference has become. Therefore, we will commence promptly to prepare alternative approaches, including legislation designed to meet the contingencies which Mr. Brower has previously described and upon which I have elaborated. We will do so vigorously, but with the clear understanding that it will be necessary to closely review the progress of the law of the sea negotiations in order to effectively coordinate our efforts.

We will only be successful in this task, however, if we continue our close cooperation and consultation with all of the U.S. companies involved so as to become thoroughly familiar with the technical and economic details of their proposed operations.

The Office of Management and Budget advises that there is no objection to the submission of this supplemental report from the point of view of the administration's program.

Attachment

HYPOTHETICAL MARKETING SITUATION FOR NICKEL

The purpose of this paper is first to indicate the potential importance of manganese-nodule nickel to world consumption of nickel in the foreseeable future; second, to indicate the critical nature of nickel marketing to the profitability of deep sea mining activity; and third, to demonstrate the likely effect which manganese nodule production will have in the foreseeable future on the markets for principal components of manganese nodules other than nickel.

Copper, nickel, cobalt and manganese are the four metals of primary commercial interest in ferromanganese nodules. Although detailed information remains proprietary, it is generally accepted that two types of hydrometallurgical processes are currently being tested by prospective U.S. nodule miners. One would produce manganese, copper, cobalt and nickel, while the other would produce only three metals, excluding manganese.

A minimum production unit of one million dry tons of nodules per year appears to be necessary for the four metal process, but the three metal process may require three million tons per year. These production unit sizes have been identified through consideration of the design of optimal mining and extractive metallurgical systems, estimates of total system costs and future market evaluations.

Currently, three U.S. firms are conducting serious research efforts in marine mining and nodule refining techniques. We can assume that one company will use a four metal refining process (producing one million tons of dry nodules per year) and that two will use a three metal process (producing three million tons per year). Assuming that all three companies are in commercial production by 1978, the potential importance of this hypothetical first generation industry to the world nickel market can be demonstrated [Table 1].

Our present understanding of marine miners' plans indicates that they will produce either three or four metals concurrently. Future metallurgical developments may enable the extraction on an economic scale of only the more valuable copper and nickel content of nodules. For the present, however, use of these techniques would require marketing of either three or four of the metal components. If one of these metals faces a difficult market situation and is an important source of revenue, the entire production process must be geared to market opportunities for that metal. Since nickel represents such a significant share of the gross value of marine mining production, and since its market opportunities may be restricted during the early phases of deep sea mining development by both the size and nature of nickel markets, it may be concluded that nickel will be the limiting factor on the growth of a marine mining industry for the foreseeable future.

TABLE 1

Relationship of Potential Marine Production to World Nickel Demand

1978 [1]

World demand for nickel	
(assuming 2.4% growth rate)[2]	1,840.2 million lbs.
(assuming 6.0% growth rate)[3]	2,426.2 million lbs.
Nickel production from 3-firm industry (7 million tons/yr)	175 million lbs.[4]
Marine nickel production as % of 1978 world demand	
(assuming 2.4% growth rate)	9.5 %
(assuming 6.0% growth rate)	7.2 %

1/ This date was arbitrarily selected as representing a year when it can be assumed, based on the present state of deep sea mining technology, that the three U.S. companies possessing a lead in marine mining technology will be in commercial production.

2/ Bureau of Mines projected rate of growth for total world nickel demand.

3/ Other sources, including industry spokesmen and the UN Secretary-General, project the rate of growth in nickel demand to be around 6%.

4/ From public statements of industry spokesmen, we have concluded that manganese nodules of current commercial interest will average 25% manganese, 1.25% nickel, 1% copper and .22% cobalt. Assuming these average ore grades and 100% metal recovery for simplicity, each ton of dry nodules could conceivably produce 500 lbs. of manganese, 25 lbs. of nickel, 20 lbs. of copper and 4.4 lbs. of cobalt.

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Tables 2a and 2b clearly demonstrate the importance of nickel to the gross revenues of deep sea mining. It is also obvious that manganese plays a critical role in the economics of the four metal process.

The Bureau of Mines has estimated, based on known production capacities and expansion plans announced by mining firms, that projected world supplies of nickel will approximately meet demand through the end of this decade. World production will increase through new developments or expansion of existing operations in Canada, New Caledonia, the Philippines, Indonesia, Australia, Brazil, Guatemala, the Dominican Republic and the USSR. In view of the potential for increased nickel supplies from deep sea mining, it is not certain that these expansion plans will in fact be implemented. Table 1 illustrates the possible share of world nickel demand which a hypothetical three-firm industry could meet in 1978.

Capital requirements for a deep sea mining operation are projected to be very high, and variable costs are as yet unknown. The important share of nickel in the gross value of production [Tables 2a and 2b], accompanied by the uncertainty of cost structures, may support the assumption that the marine mining industry, at least during its first generation, must be limited in size in order to avoid generating any downward pressure on current nickel prices.

TABLE 2a

Source of Revenues for Four Metal Producer [1]

	Output/year	Estimated Price [2]	Gross Value (millions)	% of Gross Value
Mn	250,000 tons*	$ 300.00/ton	$ 75	58.8
Ni	25,000,000 lbs.	1.40/lb	35	27.5
Cu	10,000 tons	1,120.00/ton	11.2	8.8
Co	4,400,000 lbs.	1.40/lb	6.2	4.9
		Total	$127.4	

TABLE 2b

Source of Revenues for Three Metal Producer

	Output/year	Estimated Price [2]	Gross Value (millions)	% of Gross Value
Ni	75,000,000 lbs.	$ 1.40/lb	$105.0	66.8
Cu	30,000 tons	1,120.00/ton	33.6	21.4
Co	13,200,000 lbs.	1.40/lb	18.5	11.8
		Total	$157.1	

*Short Tons

[1] While manganese extracted from marine nodules may be produced in various forms, this analysis assumes that the more valuable high purity manganese (rather than ferromanganese) is to be marketed by the hypothetical four metal producer.

[2] Estimated prices are based on the following projections:

Manganese - Market demand for high purity manganese is low at its current price of approximately $.30/lb. Accordingly, the estimated price in this analysis has been decreased by 50% ($.15/lb. or $300.00/ton) in order to hypothecate its marketability when produced on this scale.

Nickel - Current nickel prices range from $1.40-1.53/lb. Since estimated supplies appear adequate for projected nickel demand, a stability a current price levels can be assumed.

Copper - Copper is priced today at around $.56/lb. Discounting cyclical price variations, there are no predictions of significant long-term price fluctuations.

Cobalt - Since market opportunities for marine cobalt appear to be limited at current price levels [see Table 4], and since cobalt is a partial substitute for nickel, it is assumed in this analysis that the price of cobalt will become identical to that of nickel.

If they were to operate in a stable nickel market without creating downward pressure on prices, deep sea miners would have to match their output to the projected growth in world nickel demand. Table 3 illustrates the relationship of nickel produced from marine mining to the potential growth in world demand for nickel from 1975 to 1980. [Table 3]

While the size of the projected nickel market in relationship to marine nickel output could conceivably limit the growth of a deep sea mining industry, the nature of traditional nickel markets may also present a problem for the deep sea miner who seeks to enter them.

It should be noted that the geographic diversity in nickel production is not matched by corporate diversity. One major producer with subsidiaries and affiliates usually accounts for over 50 percent of free world production. In comparison, U.S. primary producers account for only 3 percent of free world nickel production. The domination of nickel markets by only a few producers indicates that competition -- even for the growth segment of future demand -- may be substantial for deep sea nickel. There can be no assurance that dominant existing producers will not adopt defensive marketing tactics in order to contest competition by deep sea mining.

The preceding analysis is realistic only on the assumption that current price levels of nickel must be maintained if the deep sea miner is to operate profitably. The crux of the problem is production costs. With no history of operation, and no large scale pilot projects tested, it is difficult to assess the extent to which marine mining can supplant high cost terrestrial nickel. If it becomes apparent that marine mining costs are substantially lower than that of land-based producers, it may be realistic to assume that marine miners will not limit their competitive efforts to fulfilling only the growth in nickel markets, but may compete in existing markets.

Table 3

Growth Segment of Projected World Nickel Demand
(million pounds)

Assuming a 2.4% growth rate:

	Estimated World Nickel Demand	Potential Market Growth During Year	Hypothetical Number of Firms Beginning Production	Additional Marine Nickel Output
1975	1713.9	41.1		
1976	1775.0	42.1		
1977	1797.1	43.1		
1978	1840.2	44.2	3 1/	175
1979	1884.4	45.2	1 2/	75
1980	1929.6	46.3	1	75

Assuming a 6.0% growth rate:

	Estimated World Nickel Demand	Potential Market Growth During Year	Hypothetical Number of Firms Beginning Production	Additional Marine Nickel Output
1975	2037.1	122.2		
1976	2159.3	129.6		
1977	2288.9	137.3		
1978	2426.2	145.6	3 1/	175
1979	2571.8	154.3	2 3/	150
1980	2726.1	163.6	2	150

1/ The hypothetical three firm industry used in Table 1.

2/ If a 2.4% rate of growth is assumed, the nickel output of one 3 million ton/year site would be in excess of growth segment.

3/ If a 6% growth rate is assumed, it is possible that two three million ton/year operations could commence production in 1979.

With respect to the other metal components which are won in presently known metallurgical processes for deep sea mining, Table 4 illustrates their potential effect on world markets.

While projected marine copper production would be an important source of revenue to a hypothetical industry, it would only account for approximately 0.5 percent of estimated 1978 world demand and would not be likely to even be a factor in determining world copper prices (See Table 4). Our present understanding of the economics of deep sea mining leads to the inevitable conclusion that marine copper production will be restricted for the foreseeable future by the marketability of marine nickel.

The situation with manganese and cobalt markets is substantially different. We cannot be certain of the effect of marine manganese production on world markets, since manganese in high purity form has never been used on such a large scale. To the extent that industry will use this more versatile form of manganese as a substitute for cheaper forms, a market will exist. It is important to note that only one U.S. company of the three which have publicly discussed their plans, has stated its intention to extract manganese from deep sea nodules.

Table 4

Relationship of Deep Sea Mining Production to Other Metal Markets

	Estimated 1978 World Demand	Production from Hypothetical 3-Firm Industry	Hypothetical Industry's % of 1978 World Demand	Growth Segment in World Markets During: 1978	1979	1980
Cu	12,634,100 ST[1/]	70,000 ST	.55%	532,500 ST	55,900 ST	580,400 ST
Mn	11,279,800 ST[2/]	250,000 ST	2.20%[3/]	315,800 ST	324,700 ST	333,800 ST
Co	61,840,000 lbs[4/]	31,000,000 lbs.	50.00%	494,720 lbs.	498,800 lbs.	502,800 lbs.

1/ Bureau of Mines estimates growth rate of 4.4%.

2/ Bureau of Mines estimates growth rate of 2.8%.

3/ In all likelihood, manganese produced in the first generation industry will be in high purity form. Therefore the 2.2% figure for marine mining's share of aggregate world demand for manganese may not be realistic.

4/ Bureau of Mines estimates growth rate of .8%.

As Table 4 demonstrates, the output of a three-firm hypothetical industry would represent about 50 percent of 1978 world demand for cobalt. The depressing effect of marine production on cobalt prices may accordingly be severe. It is estimated, however, that the price of cobalt will not fall below that of nickel, for which it is a partial substitute. To the extent that cobalt can be used in place of or in combination with nickel, world demand may increase.

Statement of the Honorable Charles N. Brower
Acting Legal Adviser, Department of State, and
Acting Chairman, Inter-Agency Task Force
on the Law of the Sea

Subcommittee on Oceanography
Committee on Merchant Marine and Fisheries
U.S. House of Representatives
March 1, 1973

MR. CHAIRMAN:

I am pleased to be here today to testify on behalf of the Executive Branch on H.R. 9. Accompanying me are representatives of the Departments of State, Commerce, Defense, Interior and Treasury. The Committee will recall that in our letter of May 19, 1972, we stated that the Executive Branch could not take a position on H.R. 13904 (identical to H.R. 9) at the time. We noted the connection with the Law of the Sea preparatory negotiations in the U.N. Seabed Committee and the 27th United Nations General Assembly.

On September 26, 1972 this Subcommittee was briefed on developments in the United Nations Seabed Committee this past summer. At this time we would like to supplement that with additional information on developments at the 27th session of the United Nations General Assembly.

By far the most important development was the unanimous adoption of a Law of the Sea Conference Resolution. This

resolution establishes a schedule for the Law of the Sea Conference and preparatory negotiations. Preparatory work in the UN Seabed Committee will be intensified in 1973, with provision for a 5 week session beginning in early March in New York and an 8 week session beginning in early July in Geneva. The Resolution provides for convening a brief organizational session of the Law of the Sea Conference in New York in November/December 1973, and for convening a second session of the Conference, for the purpose of dealing with substantive matters, in Santiago, Chile in April/May 1974. There is also provision for such subsequent sessions of the Conference, if necessary, as may be decided by the Conference with the approval of the General Assembly. In this connection I would note that in the preamble of the Conference Resolution the General Assembly expresses "the expectation that the conference may be concluded in 1974 and, if necessary as may be decided by the conference with the approval of the General Assembly, at a subsequent session or subsequent sessions no later than 1975."

The Resolution also provides for the General Assembly to review at its 28th session next fall the progress of preparatory work and, if necessary, to take measures to facilitate completion of the substantive work for the Conference and any other action it may deem appropriate. As a strictly legal matter, such a clause is unnecessary since the General Assembly has this authority in any event. Its inclusion made it easier to accommodate concerns about proceeding to a Conference in the absence

of adequate preparation. Moreover, we and others have made it clear that we will wish to seek an adjustment in the schedule in order to ensure that there are more than eight weeks of work in 1974.

I think it would be fair to say that the present hope of a large majority of States is that the kind of schedule outlined in the Conference Resolution can be met. It would equally be fair to say that this conclusion is necessarily based upon the expectation of important accomplishments in the preparatory work of the Seabed Committee in 1973.

As significant as the content of the Conference Resolution was the fact that it was adopted unanimously. All groups involved in its negotiation expressed great sensitivity to the concerns of other States, and great efforts were devoted to arriving at a resolution which could command not merely a majority or a 2/3 majority, but general support. This augurs well for the future of Law of the Sea negotiations, since a successful Law of the Sea Conference will necessarily require a similar attitude of mutual respect and accommodation.

Although not directly relevant to the legislation before us, there were other developments in the General Assembly this year that were less auspicious, and that I should report on. A deep division of opinion developed regarding a request by certain land-locked and shelf-locked states for a study of the implications for the international seabed area of various proposed limits of national jurisdiction. It had been our hope that this issue could be resolved by negotiation and accommodation, but

unfortunately, such an accommodation did not in fact occur until after a number of close votes and intense debate. The ultimate result was the adoption of a revision of the land-locked/shelf-locked study resolution, as well as a companion resolution introduced by Peru calling for an analysis of the effect of different limits on coastal states. The U.S. has consistently supported reasonable requests for studies and information on Law of the Sea subjects, and in accordance with this policy we supported both the land-locked/shelf-locked proposal and the Peruvian proposal.

One other significant development at this General Assembly, fortunately in keeping with the spirit that dominated the negotiation of the Conference Resolution, was the fact that no new resolution calling for a moratorium on deep seabed activities was introduced. While it would not be accurate to interpret this as an indication that States supporting the earlier moratorium resolution have changed their opinion, we believe that the avoidance of a renewed and divisive debate on this subject was related to the general attempts to ensure the best possible atmosphere as we enter the final stage of preparatory work this year. Needless to say, our own opposition to the moratorium remains unchanged.

Against this background, I would like to turn to the question of H.R. 9. The considerations expressed in our letter of May 19, 1972 on H.R. 13904 (identical to S.2801) remain applicable, and generally set forth the factors affecting

our approach to H.R. 9. In the time that has elapsed, however, we have been able to give further consideration to the matter in the light of international and domestic developments. We are accordingly in a position now to state a more definitive view on H.R. 9 and interim mining activities.

First, we adhere to the policy on this subject contained in the President's Oceans Policy Statement of May 23, 1970. We continue to believe that it is necessary to achieve timely widespread international agreement on outstanding Law of the Sea issues in order to save over two-thirds of the earth's surface from national conflict and rivalry, protect it from pollution, and put it to use for the benefit of all. It remains vital to all our national interests involved in the Law of the Sea Conference that the world agree on a treaty that will properly accommodate the many and varied uses of ocean space including the seabeds. At the same time we believe that it is neither necessary nor desirable to try to halt exploration and exploitation of the seabeds beyond a depth of 200 meters during the negotiation process, provided that such activities are subject to the international regime to be agreed upon, which should include due protection of the integrity of investments made in the interim period.

Second, we believe that there is reason to expect that the schedule for the Law of the Sea Conference outlined in the Conference Resolution just passed by the General Assembly will be adhered to. As I indicated, the preamble of the Conference

Resolution expressly states the expectation that the Conference will complete its work in 1974 or at the very latest in 1975.

Third, we believe that with the Law of the Sea negotiations moving into a critical stage, it is necessary for States to be very careful to avoid actions that can have an adverse effect on the negotiating atmosphere. It is apparent that S.2801 (now H.R. 9), independent of the particular content or merits of the Bill, has become a symbol to many countries of defiance of the multilateral negotiating process. Regardless of our views on the intent and effect of the legislation, it may be argued by others that the legislation is similar to unilateral claims that we oppose and that are contrary to our security, navigation and resource interests, and moreover pre-empt the Law of the Sea Conference on this issue. It is well known that we have urged legislative restraint on other countries during the multilateral negotiating process even when they felt important interests were involved; we believe we should do the same so long as there are reasonable prospects for a timely and successful conference.

Fourth, we wish to insure that technology to mine the seabeds will be developed and that the United States will be able to look to seabed mineral resources as a new source of metals which would otherwise have to be imported with an attendant impact on our balance of payments and other interests.

Fifth, we also believe that a secure and stable investment climate must surround seabed mining activity under any new legal regime.

Sixth, we want to assure that all seabed mineral resource development will be compatible with sound environmental practices.

The adoption of the Conference Resolution indicates that we should distinguish between two different time periods. The first is the period between the present time and the conclusion of the Conference in 1974 or at the latest 1975. The second is the period between the end of the Conference and the entry into force of a treaty.

With respect to the second time period, we believe it may be desirable for the Law of the Sea Conference to provide at its conclusion for immediate provisional entry into force of some aspects of the international seabed regime. There is an excellent precedent for this in the Chicago Civil Aviation Convention of 1944, which I might add is one of the most widely ratified treaties in the world. This approach can accommodate the fears of many states that the establishment of an interim regime might still not lead to the establishment of a permanent regime, since in fact what we would be doing would be to bring certain parts of the permanent regime and machinery into operation earlier on a provisional basis. It is our intention to make clear in the international negotiations

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the advantages of, and the need for, the entry into force of a viable provisional international regulatory system for the deep seabeds as part of the general Law of the Sea treaty settlement in a way that ensures that the provisional system will be part of, and not a substitute for, the permanent system.

Mr. Chairman, we will spare no efforts to ensure that a successful Law of the Sea Conference can be concluded on schedule. However, this does not mean that we intend to focus our efforts exclusively on the Law of the Sea negotiations.

Prudence dictates that we also begin at once to formulate a legislative approach on a contingency basis for two reasons. First, it could conceivably become clear during the negotiations that we have no reasonable basis for expecting a timely and successful Law of the Sea Conference. Second, as I have previously mentioned, we can prepare for provisional entry into force of some aspects of the international seabed regime once it is signed. While the approach in H.R. 9 does not appear to us to be satisfactory, we intend to continue the useful discussions we have been having with industry representatives and members of the public on this issue with a view to formulating such an approach within the Administration.

Similarly, we have had interesting discussions of this problem with other nations. In this connection, it must be

borne in mind that economic as well as political factors make it necessary that we understand and take into account the interests and views of other countries on this subject. United States companies will not be alone on the deep seabeds, nor will the United States be the only country affected by their activities. Thus, we also intend to continue our consultations with other interested States on this subject, and in particular with those States whose nationals may in the foreseeable future be in competition with our own companies.

In this process, we will try to be guided by the need to avoid taking any definitive steps which would make the U.N. negotiations more difficult for ourselves or other nations, as well as the need to provide the essential elements of the financial security which industry considers necessary.

Let me be quite clear about the timing of this course of action. First, we will commence work on alternative approaches immediately, and will concentrate on the period between signature and entry into force of the treaty; second we will want to make a continuing assessment of the negotiations to determine if a timely and successful Conference will occur; and third we will not ask Congress to pass alternative legislation for the period before the conclusion of the Conference if a timely and successful Conference is predictable.

Let me also be clear as to what we mean by a "timely and successful" Conference. We would not regard a Conference as timely unless the schedule referred to in the preamble of the

Conference Resolution is adhered to: in other words, a Convention, including arrangements regarding the provisional application of the international seabeds regime, would be opened for signature in 1974 or, at the latest, in 1975. In practical terms, this means not later than the summer of 1975, since many delegates would have to be present when the U.N. General Assembly convenes in September.

Similarly, we could no longer regard the likely outcome of a Conference as successful should it become apparent that other States are not prepared to accommodate basic United States interests in a final Law of the Sea settlement. In our statement of August 10, 1972, before the U.N. Seabed Committee, we reiterated what those interests are. With your permission, I would like to read three paragraphs from that statement:

"The views of my delegation on non-resource uses have been clearly stated on a number of occasions. It is our candid assessment that there is no possibility for agreement on a breadth of the territorial sea other than 12 nautical miles. The United States and others have also made it clear that their vital interests require that agreement on a 12-mile territorial sea be coupled with agreement on free transit of straits used for international navigation and these remain basic elements of our national policy which we will not sacrifice. We have, however, made clear that we are prepared to accommodate coastal State concerns regarding pollution and

navigational safety in straits and have made proposals to that effect in Subcommittee II."

"The views of my delegation on resource issues have also been stated on a number of occasions. Unfortunately, some delegations appear to have the impression that maritime countries in general, and the United States in particular, can be expected to sacrifice in these negotiations basic elements of their national policy on resources. This is not true. The reality is that every nation represented here has basic interests in both resource and non-resource uses that require accommodation."

"Accordingly, we believe it is important to dispel any possible misconceptions that my government would agree to a monopoly by an international operating agency over deep seabed exploitation or to any type of economic zone that does not accommodate basic United States interests with respect to resources as well as navigation."

I would also like to read another excerpt regarding the deep seabeds: "An effective and equitable regime must protect not only the interests of the developing countries but also those of the developed countries by establishing reasonable and secure investment conditions for their nationals who will invest their capital and technology in the deep seabeds. In order to provide the necessary protections for all nations with important interests in the area, it is also necessary to establish a system of decision making which takes this into account and provides for compulsory settlement of disputes. We do not regard

these objectives as inconsistent with the desire of other countries for equitable participation in deep seabed exploitation and its benefits."

Mr. Chairman, for some time our experts have been engaged in a study of the economic implications of deep seabed mining legislation such as last session's S.2801 and the current session's H.R. 9. They are examining issues of resource management and development, as well as questions of political economy such as the design of arrangements to ensure efficient exploitation of ocean resources. Implications for tax, customs and development finance policies are also under review.

The technology of ocean bed mining is likely to develop rapidly, and new information continually challenges old hypotheses. It is therefore impossible to be definitive. Nevertheless, at this time we are prepared to give you a comprehensive but as yet still incomplete report of the Administrations' views on certain technical aspects of H.R. 9, particularly those related to resource management and development.

Thus, Mr. Chairman, in reporting to you that the Administration is opposed to the enactment of H.R. 9, I wish to make clear that this does not mean we are unalterably opposed to legislation of any sort, or that we intend to disregard the problem of interim mining. Any of a number of events could occur that would lead us to conclude that legislation was necessary, and we intend to prepare as quickly as possible for that contingency. Moreover, I wish to repeat that we continue to adhere to the President's statement that it is neither

necessary nor desirable to try to halt exploration and exploitation of the seabeds beyond a depth of 200 meters during the negotiating process, provided that such activities are subject to the international regime to be agreed upon, which should include due protection of the integrity of investment made in the interim period. Our opposition to H.R. 9 in no way alters this.

We are deeply conscious of the fact that no decision we could have reached on this issue at this time could have been universally popular. Some who support the moratorium may not agree with the policy we have set forth. Some who support the approach in H.R. 9 may be equally disappointed. For the present, we think the middle course we have outlined is best. We hope the Committee will agree. However, we fully understand that the Committee, like the Administration, may wish to pay close and continuing attention to developments that could alter this assessment. We pleged our full cooperation with the Committee in those efforts.

Mr. Chairman, we will now proceed with the more detailed comments to which I referred, after which we will be pleased to answer any questions the Committee may have.

Thank you, Mr. Chairman.

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Twenty-seventh session
Agenda item 36

RESOLUTIONS ADOPTED BY THE GENERAL ASSEMBLY

[on the report of the First Committee (A/8949)]

3029 (XXVII). Reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction and use of their resources in the interests of mankind, and convening of a conference on the law of the sea

A

The General Assembly,

Recalling its resolutions 2467 (XXIII) of 21 December 1968, 2750 (XXV) of 17 December 1970 and 2881 (XXVI) of 21 December 1971,

Having considered the report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction on the work of its sessions in 1972, 1/

Noting with satisfaction the further progress made towards the preparations for a comprehensive international conference of plenipotentiaries on the law of the sea, including in particular acceptance of a list of subjects and issues relating to the law of the sea,

Reaffirming that the problems of ocean space are closely interrelated and need to be considered as a whole,

Recalling its decision, in resolution 2750 C (XXV), to convene a conference on the law of the sea in 1973,

Expressing the expectation that the conference may be concluded in 1974 and, if necessary, as may be decided by the conference with the approval of the General Assembly, at a subsequent session or subsequent sessions no later than 1975,

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1/ Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 21 (A/8721 and Corr.1).

Senator METCALF. I am sorry I interrupted you.

Ambassador STEVENSON. On the specific question of the effect of the negotiation, I think we have to recognize, No. 1, that while the U.S. Government has taken the position which I myself articulated in a letter to this committee on high seas principles, every country has a right to exploit the deep seabed until there is international agreement to the contrary, as long as we reasonably respect the rights of other countries.

That is clearly a very definite minority position in the international community. I think it is no exaggeration to say that all developing countries and even some developed countries disagree with us on that position.

We think we are right on the law, but you must take into account as a very definite political fact that the world is overwhelmingly opposed to us on this question.

Accordingly, if the U.S. Government, while we are in negotiation trying to reach international agreement which will then make this difference over the legal status at the present time irrelevant because if we agree on a regime which satisfies our different interests, this difference as to the existing law becomes strictly moot.

If while we are in the process of doing this, the U.S. Government goes beyond the position which I expressed of indicating the right of our nationals to do this and takes action which looks as if we are affirmatively supporting this action by financial assistance and also by provisions which look to other countries as if we are going beyond even our own existing view of the law in trying to give them exclusive rights in this area, this will have and has had a very definite effect on the willingness to negotiate in this context.

Now, it is obviously one thing to have the legislation under consideration as to something that might be adopted or which might in some variation be adopted if the international negotiations are not successful.

It is quite a different issue for that legislation to be actually adopted while we are in the process of attempting to negotiate another solution which basically avoids this problem.

Now, clearly the question is time, and that is the reason for the proposal which was made last March, in which John Moore as our representative in the committee last March announced to the Seabed Committee of trying to get this international regime in actual operation very promptly after the signature of the treaty, rather than waiting for a long period of time while ratification is obtained.

I think, Mr. Chairman, we should not underestimate the very great depth of feeling on this question, particularly among some of the more responsible developing countries, leaders who I think would like to work out that agreement with us.

Thank you, Mr. Chairman.

Senator FANNIN. Thank you, Mr. Ambassador.

You are talking about voting, we are rather accustomed to being outvoted in international organizations. I think that is almost a fact of life that we must face.

Will you discuss for us the major views, including the concepts of weighted voting in the Council. I am wondering how will these is-

sues be settled in time and fashioned so as to achieve a satisfactory treaty.

Ambassador STEVENSON. Senator, I think you identify the second really critical issue in the deep seabed negotiations. Certainly the arrangements by which such authority as deep seabed authority will have must be such as will give adequate assurances to countries such as ours which have the technical capacity to participate in this work.

Now, I think in this area that negotiations have really not progressed beyond the identification of different positions and awareness, I believe, on the part of the developing countries of how very critically we regard this question of having some machinery, some voting procedure which will adequately protect our interests.

I think there can be no mistake as to how strongly we feel that if the international community is to have the kind of international regime for the seabed that is in everyone's interest there must be adequate protection for our interests and those of like states, and that one nation, one vote—while this can have some role in the assembly in a recommendatory area, is not a satisfactory solution to the key decisions that will have to be made.

I think our position goes somewhat farther in that we would like to some extent reduce the importance of that voting procedure by including in the treaty itself a number of the key provisions which will reduce the necessary element of discretion, and where, if there has to be a change, it will be done through the amendment process in which we will participate with other states rather than simply by a voting decision in that organization itself.

Senator FANNIN. Thank you, Mr. Ambassador.

On your statement, page 19, you say:

> At the same time, we observed that a sizable number of delegations preferred, in addition to this mileage limit, an alternative seaward limit which would embrace the full continental margin where it extended beyond 200 miles.

I am sure you are aware that this committee under the leadership of Senator Metcalf is on record as declaring the United States under our understanding of international law already and presently has exclusive rights to the resources of the Continental Shelf at the seaward edge of the continental margin; is that right? Is that your understanding?

Ambassador STEVENSON. We are certainly aware of the committee's position and that it is also supported by a number of legal associations; yes.

Senator FANNIN. Thank you, Mr. Ambassador.

Senator METCALF. Mr. Hansen.

Senator HANSEN. I have several questions.

I am just wondering, Mr. Chairman, you have been very patient. I would be happy to yield to you. I have about five questions. I would be happy to submit them for the record.

Senator METCALF. I have about 55 questions. I suggested that if we can't reach all of the questions this afternoon, they can respond to written questions. And of course, I would hope that they would respond finally to the questions that were submitted to them in writing following our hearing in June.

How long ago was that? That was before you were sent out, Mr. Ambassador, but Mr. Moore was here and Mr. French and Mr.

Ratiner, they are old friends who were here, and we still have a lot of questions hanging in the air.

So I would be delighted if you would ask your half a dozen questions and I will ask half a dozen or so, and then I will submit others in writing, and your answers will go into the record.

Mr. Ambassador and Senator Hansen, we are trying to make a record that will not only be helpful to this committee but helpful to our delegates at international conferences to demonstrate the feeling of a cross section of some of the people in the Congress.

Believe me, all we want to do at this particular moment is help you in your negotiations. And the reason we are up here today is to ask you how you are getting along and how we can help you and help American businessmen who are already embarking upon some exploration. And I want to ask you about how it affects the balance of payments and other things.

So Senator Hansen, if you will go ahead, then I would hope that we will submit the questions, and we will have a more direct response than the last time.

Senator HANSEN. Mr. Chairman, I don't know what the time frame is here. It is 3:35 and I know these are very complicated and difficult questions with many ramifications. And yet I know how increasingly important they are.

Senator METCALF. Would you rather submit them?

Senator HANSEN. I would be happy to ask them, I just didn't want to take so much time.

Senator METCALF. I expect to be here for quite a while. I have already announced I am not going to answer any more rollcalls today because every time I go over there I am on the losing side.

Senator HANSEN. I am usually on the losing side, too, Mr. Chairman. I am glad to join with you.

Are there any hazards in the participation of the United States in the Law of the Sea Conference where the position of many small nonindustrial States are so different from ours? A corollary question and perhaps I could read along and then you may respond, or I would be glad to break it up.

Could a treaty result which the United States would in fact not ratify? How could this result be avoided? Would not the passage of S. 1134 in fact establish the firmness of our seabed position?

Now, I have asked so many questions, I will start again with the first one.

Are there any hazards in the participation of the United States in a Law of the Sea Conference where the position of many small nonindustrial states are so different from ours?

Ambassador STEVENSON. Senator, if I could take that question and your second question about what we can do to prevent an adverse treaty from resulting.

Certainly there is always a risk in any multilateral treaty negotiation that the result may not be entirely satisfactory to the United States.

I think the question that must always be asked is what is the alternative. And, I think the alternative is, in this area, one that none of us can contemplate with any equanimity because I think that the prospect is one of essential lawlessness for 70 percent of the world, and escalates

the bilateral conflict because there is no agreement over rights in the ocean.

You have even today Icelandic-United Kingdom disputes. We have continuing difficulties with our friends on the west coast, in Latin America; the Canadians and the Danes have difficulties over salmon.

Some of us have perhaps forgotten one of the key elements in the original Middle East dispute was a disagreement over the free transit question.

So that the alternative of not attempting a treaty is one that I think is that as just responsible citizens we cannot accept, that is not in any sense, an adequate answer.

But now having said that, that doesn't mean we are willing to accept any treaty and that we should not do our very best to get the best treaty we can possibly get.

And I think in that connection one of the really critical issues is the understanding on the part of the key leaders of the developing world that have the votes, that this treaty is not going to lead to the solution of these conflict problems which I have been discussing.

If the United States and other important developed and maritime countries are unwilling to go along with the treaty this is not a U.N. General Assembly resolution.

This is a situation where in order to have an effective international regime, you must not only have a treaty adopted at the Conference, but it must be accepted and ratified by the important members of the international community.

I do think that the more responsible developing country leaders are aware of this. On the other hand, I think it is something that we must constantly stress that the objective of this whole negotiation is something that is generally acceptable and that the mere question of a voting majority is essentially irrelevant to achieving the sort of multilateral lawmaking treaty for 70 percent of this globe that we are talking about.

Senator HANSEN. The third part of my question, Mr. Ambassador, is—perhaps I had better state it and then I am going to go over and vote.

Would not the passage of S. 1134 establish the firmness of our seabed position? I think you have touched on this in an earlier response to Senator Fannin.

Ambassador STEVENSON. I think I did answer that in response to the chairman.

Senator HANSEN. The next question then, I will read the full question and then it can be broken up into parts. I understand the progress on other issues such as fishing, coastal state economic zones, passage through straits, et cetera, in Subcommittee II has been almost nonexistent, that the work never proceeded sufficiently to draft any useful alternative treaty articles.

How can this lack of progress be compensated for? Aren't these issues alone apt to block achievement of a timely and satisfactory treaty?

Ambassador STEVENSON. I think the answer to that, Senator, is twofold. I think in the first place the issues that are being dealt with——

Senator METCALF. Mr. Ambassador, we are not paired on this vote so Senator Hansen and Senator Fannin are going over to vote. Please go ahead for the record.

Ambassador STEVENSON. I think I will. Now that I have the opportunity, I would rather do it now. I think there are two aspects to the problem of Subcommittee II which has been dealing with the traditional law of the sea topic of fisheries.

I think the first point is that not nearly as much technical preparation in terms of drafting articles is required in this area as in the seabed which is in the newly highly complicated area.

In point of fact we have drafted texts submitted by various delegations on practically all issues with which Subcommittee II has to deal.

The problem is not one of legal drafting. The problem is one of reaching agreement on certain of the critical issues.

And, these are not too many because once certain decisions have been taken the rest of it falls into place. On the other hand, these issues are the very heart of the negotiation.

Now, with respect to the extent of the progress on that negotiating level, I think last summer it is interesting in two respects.

One, as we pointed out in our statement, many countries were not prepared to negotiate because this was merely a preparatory session. They were waiting for the actual Conference.

On the other hand, you did have in the other discussions that took place in the working group and in some of the unofficial discussions a measure of agreement which, while not yet reflected in text, is certainly very substantial.

And, I think this is reflected in certain of the general points I made in my statement about areas of agreement.

I think certainly the 12-mile territorial sea is very generally accepted by those countries which were advocating control over navigation beyond 12 miles, and it has become more and more apparent that they have been isolated and they have had to put in their own positions with no support from others.

I think there has also been a very large measure of agreement with respect to the concept of broad coastal State economic jurisdiction.

There certainly remain problems to be negotiated in this area. Our own feeling is that coastal State resource management jurisdiction, while it should be exclusive as far as resource management, should be subject to the international standards which I referred to in my statement.

While with respect to the seabed minerals I think there is virtually complete agreement that the coastal States should have exclusive jurisdiction over these.

With respect to mineral resources the question of whether highly migratory species should be treated differently and the extent to which the coastal State is not taking all the fish it can take, if other States should have a right to, these issues are still with us.

But, it is all within the negotiating ball park. So, I think this area, on the one hand the 12-mile territorial sea, and on the other hand broad coastal State resource jurisdiction, is an area in which there has been very discernible progress and it may very well be the critical key to the negotiation because more countries are concerned with this issue than any other single issue.

I think its solution will make much easier the solution of difficult problems such as you and your colleagues raised, such as the deep

seabed on the one hand and the critical problem of transit through international straits on the other.

Senator METCALF. May I follow through a little bit on that?

In June, Professor Moore expressed, and I am quoting him, "cautious optimism about the prospects for a timely and successful conference."

At that time we had agreement on only 2 of the 21 texts drafted by Subcommittee I for the Seabed Treaty. We had agreement on 2 out of 21 from the subcommittee working on the international regime, and if I might add a new word, I have learned today, and machinery.

Yet to come are the texts from Subcommittee II and Subcommittee III—Subcommittee II is working on such problems as the territorial sea, the contiguous zone, straits used for international navigation, The Continental Shelf, the economic zone or preferential rights beyond the territorial sea, the high seas and the rights of land-locked and shelf-locked nations.

Subcommittee III is concerned with the preservation of the marine environment and scientific research. In June when Professor Moore testified, we were causiously optimistic on the basis of agreement on 2 texts out of perhaps 50.

How are we doing today?

Ambassador STEVENSON. I agree with Professor Moore, I am cautiously optimistic.

Senator METCALF. How many texts have we agreed to so far?

Ambassador STEVENSON. I will refer to Mr. Ratiner as far as the first subcommittee. But, if I may say so, I don't think that is a fair way to evaluate the progress.

Senator METCALF. Mr. Ambassador, I want to assure you that I don't want to be unfair. So, you tell us what would be a fair way to evaluate this matter.

Ambassador STEVENSON. I think basically in my full statement I did try to analyze the different extent of progress in the different committees. And, I think basically in the first subcommittee dealing with the subject of great importance to this committee, namely the deep seabed, that the technical preparation really has exceeded many peoples' expectations because in fact they have agreed on virtually everything in the sense of alternatives.

That working group has in fact considered the text for virtually every problem. Now, in some cases they have, in fact, I would suppose in a great majority of the cases they have not come up with a single text but they do have alternative texts which is basically the job they were supposed to do.

They were not supposed to arrive at agreement this summer.

Senator METCALF. They were not supposed to draft a treaty to be submitted for Senate approval. They were supposed to eliminate a whole lot of extraneous material.

Ambassador STEVENSON. Certain extraneous material and focus on the real issues. But, I think it is quite clear just as in this country I would not have been in a position last summer to have agreed on all of those.

I think it is fair to say that Subcommittee I did precisely the job it was supposed to do and perhaps better than many had ever thought it could do.

Now again, Subcommittee II, I would like to refer to my answer to Senator Hansen. I do think that Subcommittee II is basically dealing with a relatively limited number of critical issues and once we get agreement on those the technical drafting job is not going to be so difficult.

Subcommittee III on marine pollution is sort of in between, I think. In that respect I would like to ask Professor Moore, who headed our working subcommittee through to amplify our remarks.

Senator METCALF. We haven't heard from you yet, Professor Moore, so I would be delighted.

Professor MOORE. Thank you, Mr. Chairman.

Let me state at the outset my apologies for your not having received the answers to the questions.

Senator METCALF. Better apologize to the minority, it was questions from the minority side you had not responded to.

Professor MOORE. It is a question which I am happy to say the new office for sea negotiations would make a special point to see that all congressional inquiries are answered in a very timely fashion.

With respect to the cautious optimism I had last March, I still have that cautious optimism at this time. Like that of Ambassador Stevenson, I think the cautious optimism is based primarily on an overall sense of the developing consensus in some key areas, particularly on the breadth of the territorial sea at 12 miles and the sense that there would be broad economic jurisdiction in a number of respects beyond the territorial sea.

With respect to Subcommittee III's progress this summer, I think it is another subcommittee in which there was significant progress made.

There are now about 12 to 14 different provisions set out which form the basis for discussion at the conferences as convention articles, and of those only three or four have alternatives.

All of the others in Subcommittee III on the protection of marine environment issue are in fact agreed texts. So, unlike Subcommittee I, the initial premise in Subcommittee III was to try to reach a consensus wherever possible.

If it was not possible, as you might expect on some of the more controversial and important areas in which there were differences such as the question of competence to make standards for vessel source pollution beyond the territorial sea, and in those areas we do have alternative texts.

But, my assessment of the overall progress that has been made and where we stand today in the preparatory work is in fact useful to go to the conference and our cautious optimism of last March has been borne out again this summer.

Senator METCALF. May I address a question to Mr. Ratiner, Mr. Ambassador?

Ambassador STEVENSON. Certainly.

Senator METCALF. He went through with me some of the proposals and there were brackets around a lot of them and he explained the brackets, and he said he hoped this conference would remove some of the brackets.

How are you doing on removing some of the brackets, Mr. Ratiner?

Mr. RATINER. Mr. Chairman, we have adopted a new tactic in the Seabed Committee. The last time I appeared before you you went through each of the texts that we had worked on and you asked questions about them.

At this time we quadrupled the number of texts so it wouldn't be possible for you to ask questions about them.

Mr. Chairman, we adopted a new procedure this summer and it would be disingenuous of me to answer your question literally because we abandoned the use of square brackets.

We have no texts with square brackets except in unusual cases. The procedure this summer, and by the way, we moved our treaty from page 50 to page 135, in terms of the volume of the treaty the new procedure is whenever there is disagreement of substance an alternative text will be developed.

So, we now have for example article 32, alternative a, or b, or c, or d. What we have done is to make the treaty easier to read and reflect more clearly the areas which still require considerable negotiation.

It is very difficult to answer your question in terms of amount of work done. We have in fact completed the treaty albeit with a variety of alternatives appearing under each of the provisions.

Senator METCALF. I certainly don't criticize any way that you choose to approach this matter. I suggest that you look at our committee prints on strip mining in which we have alternatives in brackets and so forth.

So you no longer bracket language to indicate a multiplicity of questions that came out of the last meeting, is that right?

Mr. RATINER. Mr. Chairman, when I last appeared before you we discussed those treaty articles that dealt with the international regime and at that time I testified that this summer we would begin serious work on the international machinery.

We spent all of the summer developing basically from scratch all of the articles which would establish a new international organization, so we made no attempt to go back to the regime and eliminate brackets.

But, whether we attempted to complete and round out the entire treaty for both the regime and the machinery, and only at the next stage of negotiations will we begin to reduce the alternatives in the case of the machineries and reduce the brackets in the case of the regime.

Senator METCALF. So now we have at least a partial list containing bracketed or alternatives texts of the various alternatives that are going to be considered?

Mr. RATINER. That is correct, Mr. Chairman.

Senator METCALF. I am a member of the International Parliamentary Union Executive Committee for the Congress and we had expected to hold our next meeting at the invitation of the Government of Chile in Santiago.

We have canceled that in view of the latest political developments down there. Is Santiago the place to be for a Law of the Sea Conference scheduled for next spring?

Ambassador STEVENSON. Mr. Chairman, we supported the conference resolution by the General Assembly last year providing for the schedule of the conference with the substantive session to begin next spring in Santiago.

Our principal concern is that the conference schedule be adhered to and that the maximum progress be achieved. I think as yet we do not know what the position of the Government of Chile will be toward holding the conference.

Senator METCALF. Mr. Ambassador, early in your testimony you referred to a very widespread community understanding of the outline of a broadly supported law of the sea treaty. In the course of your testimony you listed five of the major elements. Could you be a little bit more specific as to the nature and understanding on points 3 through 5 dealing with coastal state resource control, pollution, scientific research, and seabed machinery?

Ambassador STEVENSON. Mr. Chairman, I think point 3 is a point that both Professor Moore and I were addressing, this area of coastal state resource management jurisdiction beyond the territorial sea, I think clearly of course two aspects to it, clearly with respect to seabed minerals there is very general agreement that the coastal state should have the exclusive control of the resource in the sense of deciding how and by whom it should be exploited, who will in fact get the resource.

I think the two negotiating issues are on the one hand whether the extent of this jurisdiction is 200 miles or 200 miles plus the edge of the margin.

That issue surfaced much more sharply this summer than it has before, but there was very general agreement this summer that that really was the issue, whether it be 200 miles or 200 miles plus the edge of the margin.

Senator METCALF. So the 12-mile territorial sea issue is not nearly as important as how far we go out on pollution, fisheries, and other things, isn't that right?

Ambassador STEVENSON. I think clearly there was much more agreement, as far as the seabed resources on the one hand, and the fact the coastal state should have this exclusive control, and secondly that it should extend to 200 miles or the edge of the margin, than there were in other areas.

So, I was dealing with that first. There was this very strong disagreement between those two positions because the African OAU had said there only should be 200 miles and nothing beyond, while a number of countries with extensive continental margins were favoring going beyond.

It was also suggested that one of the ways to bridge this gap was to provide for increased revenue sharing in the area beyond 200 miles. Now, that was one issue.

The other issue was a question involving these five international standards in this area that we were concerned with.

Now, in fisheries, as I said before, there was less general agreement on the details although I think there is very general agreement among most states, among coastal jurisdictions over a broad area, particularly with respect to coastal species of fish.

I think there is an increasing understanding of the problem that we encountered, in particular with respect to salmon and the scientific justification of having the State where these fish spawn control them, and in fact have most of the fishing take place on the return of these fish to the streams where they spawn.

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It is the only way that in fact conservation can be effectively pursued. Let me say also in this area about fisheries that there were some interesting working group discussions this summer both in the committee working group and in some informal discussions where there was considerable attempt to get at the underlying issues of what you were really trying to get at and not be so concerned with some of the legalisms.

And, I think I would like, if I might, Mr. Chairman, to ask Ambassador McKernan, who is our most distinguished Government scientist and administrator in this area, if he would comment a little bit on the progress made in the fisheries area.

Would that be appropriate, Mr. Chairman?

Senator METCALF. It certainly would be appropriate and, Ambassador, I would be delighted if you would weave your way through the legalism and give us a definitive discussion.

Ambassador MCKERNAN. Thank you, Mr. Chairman.

Senator Hansen mentioned a few minutes ago about the complexity or perhaps lack of progress in the area of fisheries. And of course on page 21 of Ambassador Stevenson's statement he referred to some of the exchanges that took place in fisheries.

It does seem to me that perhaps we had a more useful dialogue take place in fisheries in Subcommittee II than in perhaps any other issue.

And, as Ambassador Stevenson has said, there does appear to be some degree of agreement on a number of very important issues in the field of fisheries emerging.

Even nations who have the most highly developed distant water fisheries, nations such as the Soviet Union and Japan, who have literally hundreds of vessels fishing off the coast of other countries including our own of course, these nations have accepted the general principle of under certain circumstances coastal States should have a degree of preference over these resources.

And simply at the present time we were seeking, or at this last preparatory conference, we were seeking to get into the discussions as to how great a degree this particular preference might be on the one hand with the coastal States advocating exclusive control and on the other hand such nations as the Soviet Union and Japan with these highly developed distant water fisheries advocating certain limitations to this control.

But, there is emerging, as has been stated by Ambassador Stevenson today, there is emerging a picture that agreement can be reached in this area with some compromise on all sides.

Our own position of course has stressed the importance of coastal State control over coastal resources. Now, the developing nations advocate the same thing. They would do this through an exclusive resource zone or economic zone.

We have advocated doing this on a species basis but these are relatively minor differences in relation to the concept itself.

Incidentally, we attempted to elucidate that particular point that the issues themselves, though it is the degree of control, the resources involved were the important issues, and perhaps it was not quite so important as how you implemented this particular control.

I think it is fair to say that we did not have as much of the dialogue or as much discussion on negotiation as we on our delegation would have liked.

But, we did have a pretty fair discussion and it did seem to us that on one hand the developing nations, nations that had strongly advocated and used such terms as "exclusive resource zones", that they did show a willingness to eventually include elements that were not exclusive.

And, on the other hand, we were able to determine through these discussions both in the committee and in the corridors and so forth that other nations who had highly developed distant water fisheries were anxious to find a common ground here.

For our own part we did look for exceptions where resources migrated highly over oceanic expanses within areas close to the coastal countries and areas far away on the high seas.

And of course, we also suggested exceptions for such species as anadromous salmon where the host State or coastal country must invest large sums of money to maintain these resources.

I must say I would think my own judgment is that fisheries is one area, where as soon as we can get into the negotiation process itself, there is common ground emerging and progress was made in at least an understanding clearly of the differences and possible areas of agreement at this last session of the committee.

Thank you.

Senator METCALF. Now, Mr. Ambassador, Senator Magnuson and members of his Commerce Committee were invited to this hearing, and he is very much interested and concerned with fisheries.

We will call to his attention the transcript of your response. At this time I also want to make the point that we also invited members at the Foreign Relations Committee to participate. I had hoped that especially Senator Pell, who told me on the Senate floor that he would be present, would be here.

However, I know that Senator Magnuson is especially interested in the fisheries matter and that he may have some further questions to ask.

I propose to end this hearing in a little while. I have three or four more questions to ask and then I am going to propound and put the rest of them in a letter to you. Would that be satisfactory?

Senator HANSEN. Mr. Chairman, it would indeed be with me. I have three more questions, I would be happy to submit them in writing to the Ambassador and his staff if that would be satisfactory.

I think this is going to be—indeed it is a very important hearing record not only for the help that it may provide the administration, but as well to bring about a deeper understanding of the complexity of the problems involved insofar as legislation goes.

I can assure the Ambassador and others here that it will be read very carefully and I will be happy to submit my question in writing.

Senator FANNIN. Mr. Chairman, I would likewise like to submit some questions in writing. I do very much appreciate the manner in which Ambassador Stevenson and his colleagues have responded to those questions and to the statements which were made, and it has been very, very helpful and we will be very pleased to have answers to the questions.

Thank you.

[Subsequent to the hearing the following questions were submitted by Senators Fannin and Hansen and responses by Professor Moore.]

dps/S. 1134

June 13, 1973

Professor John Norton Moore
Counselor on International Law
Office of the Legal Adviser
Department of State
Room 6419 N.S.
Washington, D. C. 20520

Dear Professor Moore:

As a cosponsor of S. 1134 I regret not having had the opportunity to ask you questions during the hearings on that bill at which you appeared last Thursday and Friday. Enclosed is a list of questions which I would appreciate your completing within a week for inclusion in the record of the hearings.

Best wishes for successful negotiations this summer as the U. N. Seabed Committee meets to complete preparations for the 1974 Law of the Sea Conference.

Sincerely yours,

Paul Fannin
United States Senator

PFirds
Enclosure

1. Mr. Moore, are you familiar with the statement presented by the U.S. representative, the Honorable John R. Stevenson, to the U.N. Seabed Committee summer 1972 session outlining U.S. policy on basic aspects of the law of the sea negotiations?

2. Do the points made in Mr. Stevenson's statement still represent the U.S. position on these issues?

3. Are you optimistic that these policy goals can be satisfactorily negotiated in the U.N. Seabed Committee in time for a successful 1974 Conference?

4. Mr. Stevenson's August 10th remarks which I have mentioned address four specific points to be negotiated: straits, the seabed, resource zone management jurisdiction (including minerals and fuels), and fisheries.

(a) Turning to each of these in order, is it not true that Mr. Stevenson stated that "There is no possibility for agreement on a breadth of the territorial sea other than 12 nautical miles. . .agreement on a 12-mile territorial sea (must) be coupled with agreement on free transit of straits used for international navigation. . ."?

(b) On April 6th of this year, the Indonesian delegate informed Subcommittee II of the Seabed Committee that "His delegation could not accept the application of the so-called principle of 'free transit' to straits used for international navigation, since that would entail a loss of national sovereignty over the straits, which could then ultimately be assimilated to the status of the high seas." How do you think this position can be reconciled with stated United States policy?

(c) Mr. Abdel-Hamid of Egypt recently announced it the position of his delegation that ". . .the regime of innocent passage (as opposed to free transit) was the one through which both the objectives of the Charter could best be attained and their national security could be preserved without

(4(c))putting in jeopardy any of their national interests." How can this stand be reconciled with the U.S. position?

(d) According to the records of Subcommittee II, the delegate of Tanzania declared on April 2nd that ". . .his delegation did not accept that it was fair to deprive the coastal State of its sovereignty and place its vital security interests at the mercy of every State that used the strait. For that reason, it had categorically rejected nations of free transit and supported innocent passage. . .His delegation was convinced that free passage was sought not in the interests of international navigation, but in the military interests of two or three States." What do you feel can be done to resolve this dispute?

5(a) Is it not true that Mr. Stevenson stated as U.S. position on the seabed regime issue that ". . .my Government would (never) agree to a monopoly by an international operating agency over deep seabed exploitation. . ."?

(b) And is it not also true that the position of Senegal on that same issue is that "Firstly, since the resources of the seabed were the common heritage of mankind, they belonged to all States and it was for the Committee to decide how that heritage should be exploited. . .The Committee must state clearly that the common heritage of mankind should be exploited primarily for the benefit of developing countries for it was essential that the special interests of the developing countries should be stressed."? What do you see as the prospects for reconciling these two divergent views?

(c) The Latin American countries put the concept in more concrete form by presenting a working paper calling for an "enterprise" arrangement. The "enterprise" would constitute the organ of the international seabed authority which would be empowered "to undertake all technical, industrial or commercial activities relating to the exploration. . ." of the deep seabed and "exploitation of its resources. . .The enterprise shall have independent

legal personality. . ." Thus, any person or corporation wishing to participate in mining the deep seabed would be forced to subject himself to the terms and conditions laid down by the officers of the "enterprise," who presumably would have the authority to refuse to allow any participation, or at best a joint venture arrangement, the terms and conditions of which would lopsidedly favor the "enterprise." How do you feel this vast difference of opinion can be resolved?

(d) When he introduced the Latin American working paper on August 10, the Delegate of Trinidad and Tobago stated: ". . .a body should be created which would itself, as the agent of mankind, undertake direct scientific investigation of its resources on behalf of all mankind. It would be therefore more in consonance with the principle of the common heritage for such a body in the early stages to enter into joint ventures, production-sharing and profit-sharing arrangements with other entities--public or private, national or international--rather than to grant or issue licenses to such entities. The concept of a licensing or concession system is in our view inconsistent with the principle of the common heritage. The cosponsor(s). . .therefore reject it. In the partnership system envisaged, ownership of the area and its resources remains vested in mankind, on whose behalf the international body exercises exclusive jurisdiction over the area and its resources." What do you feel are the chances for reconciling this concept with U.S. policy goals?

(e) Is it not true that the Mexican delegate stated that ". . .The international community, as owner of the area and its resources, had the right to share directly in their development until it acquired the technical and financial means to exploit them by and for itself. There was nothing to justify a system of operating permits which would assign to legitimate owner the role of a mere spectator." How do you feel this issue can be resolved, especially in light of the relative advancement of U.S. interests in technology for exploiting seabed resources?

(f) The delegate of Ceylon has stated: "That the ability of the Authority to carry out exploration and exploitation on its own represented the highest expression of its central role as the administrator of the common heritage of mankind." How do you feel this issue can be resolved?

(g) Is it not true that the delegate of Iraq stated that "a purely mercantilist laissez-faire system of licenses could not be reconciled with the concept of common heritage."? What are the prospects for reconciling this position with U.S. policy?

(h) Is it not true that the Peruvian delegate stated that the major powers "Could not reconcile themselves to the idea of giving up, even in part, their monopoly of power, technology and capital, even in the case of resources which they themselves had agreed to consider as the common heritage of mankind."? How can differences of such major proportions be resolved satisfactorily?

(i) Is it not true that some of the developing countries tend toward the view that common heritage, as a matter of present international law, means that the resources of the deep seabed beyond the limits of national jurisdiction belong to mankind as a whole; that developing nations, collectively representing mankind, had the inherent right, through creation of a supranational operating agency, to reap the principal benefits of deep seabed minerals; and that no single nation now has any right to exploit the minerals of the deep seabed? Furthermore, is it not true that in the view of the developing countries, the developed countries had a concomitant duty within the meaning of common heritage to transfer their ocean resource technology to the developing countries who, collectively as its guardian, would apply it to the benefit of nations, party to the treaty, according to need? Presumably only developing countries would have such need. What are the prospects for successful resolution of this position with the U.S. position?

(j) Is it not true that the delegate of Chile stated that "The international machinery should have power to: explore and exploit, control production and market resources, control research and pollution, distribute profits, preserve the marine environment and promote the development of the area by planning and ensuring the transfer of science and technology."? How can this stand be reconciled with the U. S. position as stated by Mr. Stevenson?

6(a) It is my understanding that Mr. Stevenson stated, with respect to the resource zone issue, that "We can accept virtually complete coastal State resource management jurisdiction over resources in adjacent seabed areas if this jurisdiction is subject to international treaty limitations in five respects:

"(1) . . .the coastal State will ensure, subject to compulsory dispute settlement, that there is no unreasonable interference with navigation, overflight and other uses.

"(2) . . .minimum internationally agreed pollution standards apply even to areas in which the coastal State enjoys resource jurisdiction.

"(3) International treaty standards. . .protect the integrity of investment.

"(4) Treaty standards provide for sharing some of the revenues from continental margin minerals with the international community, particularly for the benefit of developing countries.

"(5) Adequate assurance (that treaty standards will be observed) is provided by an impartial procedure for the settlement of disputes."

Is this not still the United States position on this issue?

(b) Is it not true that the delegate of Brazil specified concerning this subject that ". . .it was not sufficient to recognize the rights of coastal States over the natural resources of the area and, for that purpose, to establish an exhaustive enumeration of the powers of the coastal State beyond a

(6(b)) narrow belt of sea. . . the logical approach, in the case of coast lines facing the open ocean, would be to extend the sovereignty of the coastal State up to 200 miles, subject only to certain limitations to be agreed upon as necessary in order to meet the international community's legitimate interests, which were essentially those protected by the 'jus communicationis'."? What are the possibilities for reconciling this viewpoint with the U.S. position?

7(a) With respect to the fisheries issue, Mr. Stevenson said that ". . . we can support broad coastal state jurisdiction over coastal and anadromous fisheries beyond the territorial sea subject to international standards designed to assure conservation, maximum utilization and equitable allocation of fisheries with compulsory dispute settlement, but with international regulation of highly migratory species such as tuna." Is this statement not still consistent with United States fisheries policy?

(b) Is it not true that the Moroccan delegate recently held that ". . . certain delegations had suggested that some coastal States were unable to exploit the fishing resources off their coasts and that distant States were therefore justified in coming to 'help' them to exploit those resources as quickly as possible. That theory was untenable. In fact, what was happening was that distant States whose populations did not suffer from protein deficiency sent powerful fishing fleets to exploit the resources of other States."? How can the disagreement between this viewpoint and the United States position be resolved?

DEPARTMENT OF STATE

Washington, D.C. 20520

NOVEMBER , 1973

Honorable Paul Fannin
Committee on Interior and
Insular Affairs
United States Senate
Washington, D. C. 20510

Dear Senator Fannin:

Enclosed herein are the coordinated responses of the National Security Council Interagency Task Force on the Law of the Sea to your questions covering the on-going Law of the Sea negotiations.

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely yours,

Marshall Wright

Marshall Wright
Assistant Secretary for
Congressional Relations

Enclosure: As stated

DEPARTMENT OF STATE
Washington, D.C. 20520

[illegible] 1973

Honorable Paul Fannin
Committee on Interior and
Insular Affairs
United States Senate
Washington, D. C. 20510

Dear Senator Fannin:

Thank you for your letter of June 18, 1973 in which you forwarded for comment questions concerning the speech given by Ambassador Stevenson before the U.N. Seabeds Committee in the spring of 1973.

My apologies for the delay in responding to your questions. However, I hope that the following answers will help compensate for whatever inconvenience may have been caused by the delay involved in marshalling the information requested.

With warm regards.

Sincerely,

John Norton Moore

John Norton Moore
Chairman, the NSC Interagency
Task Force on the Law of the
Sea and Deputy Special Representative of the President for
the Law of the Sea Conference

Enclosures: As stated

1. Yes.

2. Ambassador Stevenson's statement of August 10, 1972 remains our policy in the Law of the Sea negotiations. It should, however, be read in conjunction with our statements at the March/April meeting in New York and this past summer in Geneva, copies of which are attached. You will note that in addition to these new statements, we have proposed new draft treaty articles which more precisely reflect our current thinking. I should emphasize, however, that we have not altered our fundamental position as reflected in that August 10, 1972 statement.

3. A substantive session of the Conference is currently scheduled to convene for ten weeks in May, June and July 1974 with provision for subsequent meetings if necessary, no later than 1975. It is difficult to phrase our assessment either in terms of optimism or pessimism. We will continue to negotiate seriously and will keep under review the question whether the negotiations are leading to a result which satisfies our basic policy objectives.

4. (a) Yes, Mr. Stevenson indicated that it was our candid assessment that no possibility for agreement on a breadth of territorial sea broader than 12 miles existed. He indicated that the U.S. and other states have made it clear that our vital interests require that such an agreement be coupled with agreement on free transit of straits used for international navigation. It should also be noted that certain developing coastal States have conditioned their acceptance of a 12-mile territorial sea on broad coastal state economic jurisdiction beyond this limit.

(b) (c) (d) Statements which portray free transit as entailing a loss of sovereignty by coastal states are at variance with existing law and fact. The international community presently is entitled to exercise high seas rights in international straits which would be overlapped by territorial sea if a limit of 12 miles is reached by agreement. Our territorial sea and free transit proposals would give coastal states rights which they do not now have in such straits, while preserving for the international community only the right of transit from

the conglomerate of high seas rights now being exercised. This transit right would be coupled with safety and liability provisions designed to meet the legitimate concerns of coastal states. It is our belief that our proposal fully protects both the interests of coastal States and the international community, and is achievable in the negotiating process.

5. (a) Mr. Stevenson stated that we would not agree to a monopoly by an international operating agency over deep seabed exploitation or to any type of economic zone that does not accommodate basic United States interests with respect to resources as well as navigation.

(b) through (j) The question of the meaning of "common heritage of mankind" is one on which there have been differences of opinion. The term derives from United Nations General Assembly Resolutions. The U.S. does not believe that "common heritage" means that resources beyond the limits of national jurisdiction belong to mankind as a whole, that is that the resources are common property, or that they must be exploited only by an international organization. In our view, affirmation that the resources are the common heritage of mankind means that they must be treated in a way which will benefit mankind as a whole. It is therefore possible to reconcile these positions, since we envision the establishment of an international regime and machinery to ensure that the deep seabed resources will be used for the benefit of all contracting states. In addition, we have proposed that the regime provide for the collection of mineral royalties to be used for international community purposes, particularly economic assistance to developing countries. Thus, in implementation of the "common heritage" principle, we believe that an accommodation of views is possible.

The most significant difference exists with respect to whether or not the international authority would actually engage in exploration and exploitation itself. In our opinion, the most effective system for the rational exploitation of resources can be achieved by providing the international authority with the capability to license others rather than endorsing it with the capability to exploit directly.

6. (a) The U.S. position is still reflected by Mr. Stevenson's August 10, 1972 statement.

(b) The extension of coastal State sovereignty over a large area if qualified by only limited international rights in navigation has the potential of impairing those rights. Moreover, it is inimical to the interests of all nations in other uses of the oceans and fails to accommodate the needs of land-locked and shelf-locked states. Coastal state resource jurisdiction tempered by international standards provides a reasonable balance of competing interests.

7. (a) & (b) Mr. Stevenson's statement is a partial summary of the U.S. fisheries position. This position is based on a species rather than a zonal approach. Our proposal is designed to provide clear coastal state control over coastal and anadromous stocks of fish. Highly migratory species such as tuna would be regulated by international bodies in which interested coastal and fishing states could participate. Coastal state control over coastal and anadromous stocks would extend as far offshore as each stock ranges. Each coastal state would have a preferential right to that portion of the maximum sustainable yield that it could catch. The remaining portion would be open to harvest by fishermen of other nations, subject to nondiscriminatory coastal state conservation measures and reasonable management fees fixed in accordance with international standards. The extent to which coastal state preference would reduce traditional distant-water fishing would be determined on the basis of a formula to be negotiated at the Law of the Sea Conference.

The U.S. proposal permits the expansion of coastal state fishing up to the maximum sustainable yield of each particular stock. Nevertheless, it would seem best for the protein needs of all countries in the meantime to promote full utilization of the available catch. We will continue a dialogue with developing countries at upcoming meetings to promote understanding of our proposal.

4.-7. These questions correctly indicate that on a wide variety of important issues, strongly held disparate opinions exist. On the question of straits, resource zones, fisheries and the deep seabeds the range of proposals in the Seabed Committee is wide. The dynamics of multilateral negotiations are quite complex and we will be attempting to determine whether these apparent widespread differences of view which you have identified are more apparent than real. One thing is already clear to us--in some major areas which you have mentioned, differences appear to be greater than they are because of the use of shorthand terminology. For example, the term "exclusive economic zone" has been a proposal in this negotiation. We have always interpreted "exclusive enonomic zone" as a concept which precludes our position that a coastal state's resource jurisdiction should be limited by international standards. However, we see some recognition of international elements in discussions with the representatives of certain proponents of the exclusive economic zone. This, of course, does not meet our difficulties with this concept. Another example is that in the deep seabeds negotiations, we have discovered that the concept of the Enterprise, while in very important respects is different from the licensing system proposed by the United States, in certain other respects bears a certain similarity to our own proposals. Under both systems, for example, the international Authority has the exclusive right to issue legal instruments which grant private companies the right to mine the seabed resources. Some developing country proponents of the Enterprise have indicated that such rights to mine the resources should be granted pursuant to rules and regulations established in the treaty itself. In discussions with them on the content of such rules and regulations we find views are not as divisive as one might expect from the philosophical differences apparent between the supporters of the Enterprise and the supporters of a licensing system. The negotiations this summer have made much more vivid these areas of similarity as well as some of the very important areas of difference which still exist.

Accordingly, we would be reluctant to conclude that because public positions are stated in extreme terms on conceptual matters, the real negotiating parameters are that widely disparate.

Attachments: As stated

DEPARTMENT OF STATE

Washington, D.C. 20520

NOVEMBER [illegible], 1973

Honorable Clifford P. Hansen
Committee on Interior and
Insular Affairs
United States Senate
Washington, D. C. 20510

Dear Senator Hansen:

Enclosed herein are the coordinated responses of the National Security Council Interagency Task Force on the Law of the Sea to your questions covering the ongoing Law of the Sea negotiations.

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely yours,

Marshall Wright

Marshall Wright
Assistant Secretary for
Congressional Relations

Enclosure:

As stated

DEPARTMENT OF STATE

Washington, D.C. 20520

November 2, 1973

Honorable Clifford P. Hansen
Committee on Interior and
Insular Affairs
United States Senate
Washington, D. C. 20510

Dear Senator Hansen:

Thank you for your letter in which you forwarded for comment questions concerning the Report of the National Petroleum Council in relation to the U.S. position at the Third U.N. Conference on the Law of the Sea.

My apologies for the delay in responding to your questions. However, I hope that the following answers will help compensate for whatever inconvenience may have been caused by the delay involved in marshalling the information requested. Enclosed are the questions presented with the response given immediately after each question.

With best regards.

Sincerely,

John Norton Moore

John Norton Moore
Chairman, the NSC Interagency Task Force on the Law of the Sea and Deputy Special Representative of the President for the Law of the Sea Conference

Enclosures: As stated

1. Question: Are you familiar with the recently released report of the National Petroleum Council entitled "Law of the Sea: Particular Aspects Affecting the Petroleum Industry"?

Response: We are familiar with this document, have studied it and have found it to be most useful.

2. Question: At the conclusion of Chapter 1 of that report, it states that in the opinion of the National Petroleum Council the interests of the international community and the United States "would be better served by departing from the earlier use of terms regarding navigation such as 'innocent passage' and 'free transit', insofar as commercial navigation is concerned." In other words, there should be different standards for commercial vessels, including tankers, than for military vessels. What is your opinion of this recommendation?

Response: According to the paragraph of the NPC report to which you refer, the underlying reason for NPC's suggestion that we depart from use of terms such as "innocent passage" and "free transit" is to allow an approach which describes the nature of the navigational right rather than referring to a formula or label. We agree that specific labels are not crucial as long as basic navigational needs and objectives are clearly understood and accommodated. Certain phrases have an established meaning in international law or serve as a shorthand reference to concepts embodying many elements. Insofar as terms presently in use are ambiguous or are subject to differing interpretations, it would be useful to clarify them. However, we feel that to change terminology at this point could create confusion and delay. Terminology should, of course, not be considered a substitute for substance, that is a clear understanding of navigational rights.

3. Question: In Chapter 2 of the NPC report three specific recommendations are made related to stable investment conditions: one pertaining to integrity of agreement between a state and a foreign investor; another pertaining to integrity of agreement between an international organization and an operator; and a third

relating to procedures following possible expropriation of investments. How do you feel about those recommendations?

Response: On July 18, 1973 the United States Representative to the U.N. Seabed Committee delivered a statement and introduced draft treaty articles on the "coastal seabed economic area." This statement and the articles deal with the question of integrity of investment and reflect our policy on the subject. We believe this policy is substantially consistent with the recommendations of the National Petroleum Council. The statement and articles are attached and we would refer you in particular to pages 5-7 of the statement and Article 2(d) of the articles.

4. Question: In Chapter 3 of the NPC report, a series of recommendations is made pertaining to seabed pollution control standards and settlement of pollution control disputes. How do you feel about these recommendations?

Response: To assure uniform standards and adequate pollution control, it is important that international standards be developed for prevention of pollution from seabed exploration and exploitation. Such standards will require more detail than can be resolved in the Law of the Sea Conference itself, and will require continuing review. Thus, an international organization would appear to be the best forum for development of such regulations. Article 23 of our Draft Seabed Convention submitted by the United States specified that the International Seabed Resource Authority will prescribe rules and recommended practices to protect the marine environment against pollution arising from exploration and exploitation activities. In addition, we believe that coastal States should also have authority to prescribe higher standards for those areas of the seabed over which they have resource jurisdiction. In this way, the coastal state can protect its resource and other interests as it deems appropriate. Such a right vested in the coastal state would not interfere with the rights of other States in the area. The U.S. also supports application to such pollution control disputes of the dispute settlement mechanism developed under the Convention.

5. Question: In Chapter 4, which pertains to the accommodation of uses or, as is otherwise often stated--the multiple use concept--the NPC recommends that the international authority develop standards for resolving conflicts among uses and that the Convention and other international law be resorted to in order to reach accommodation in the event of conflict. How do you feel about that recommendation?

Response: We share the view that international standards be developed for the resolution of conflicts between competing uses of the same area. Our July 18 statement reflects this policy. For example, we stated on page 3 of that statement:

> "From the point of view of my government, a new Law of the Sea Treaty would not be adequate if it gave to coastal States comprehensive seabed economic jurisdiction without providing for protection of the rights of other States in the seabed economic area of coastal States. We believe these rights must not only be clearly provided for in the Law of the Sea Treaty but that a system should be established which will assure that the coastal State does not go beyond its seabed economic rights or unjustifiably interfere with other activities conducted in the area of superjacent waters by other States. In this negotiation, we are now dealing with large areas of ocean space in which intense activity, some of which will not be resource oriented, will occur in the future--activity of interest both to the coastal State and other States. We believe, therefore, that in the interests of worldwide agreement on the rights of coastal States there must be co-relative duties assumed by the coastal State to assure a harmonious accommodation of interests."

This policy approach is reflected in the draft articles attached to our July 18 statement and in particular we would refer you to Articles 2 and 4.

6. Question: Perhaps one of the most important chapters of the NPC report is Chapter 5, which pertains to dispute settlement. The report contains five specific recommendations regarding dispute settlement with a heavy emphasis on the need that compulsory dispute settlement mechanisms be established. I strongly feel that such compulsory dispute settlement mechanisms must be established, but I note that draft article 21, prepared by the Subcommittee I working group on dispute settlement, has not yet even begun to take shape. What is your feeling about how we can reach international agreement on compulsory dispute settlement provisions?

Response: It is our view that compulsory settlement of disputes is an essential element of a comprehensive settlement on the Law of the Sea. In previous years in the Seabed Committee we have proposed compulsory dispute settlement in a variety of ways. For example, our draft fisheries articles have from the beginning incorporated the concept of compulsory arbitration. Our draft seabed treaty of 1970 included the concept of dispute settlement and also the creation of a Tribunal to settle such disputes. During the summer session in Geneva we placed the greatest importance on dispute settlement. In our statements on pollution, scientific research, the deep seabeds, navigational rights, fisheries and the coastal state's economic jurisdiction (including offshore installations) we emphasized our view that compulsory settlement of disputes was essential.

Moreover, in addition to the foregoing actions, on the 22nd of August 1973 in conjunction with a statement made in the Main Committee by the U.S. Representative, we introduced draft treaty articles for a separate chapter of the comprehensive Law of the Sea treaty which would deal with the compulsory settlement of disputes and the establishment of a new Law of the Sea Tribunal.

With respect to your precise question--"how can we reach international agreement on compulsory dispute settlement provisions?"--we believe a combination of things must be done. First, it must be clearly understood at the Law of the Sea Conference that we regard such provisions as of the greatest importance to a final settlement. There is no substitute in negotiations like

these for firm national commitment to the achievement of certain specified goals. Second, we must understand and deal with the feelings of other countries about compulsory dispute settlement. This involves patient discussion and negotiation. It involves the creation of a climate of opinion in which all nations recognize that their vital interests in the oceans are best protected by impartial dispute settlement mechanisms and not by the threat or use of force. We believe the world is coming to understand the essential interdependence of nations and this increasing awareness will inevitably lead to the conclusion that peaceful means must be found for accommodating different interpretations of international law. There is no other acceptable way of settling disputes which will contribute to world peace.

Senator METCALF. You have been most helpful. Your prepared statement was a response to this committee's inquiry on how you got along at the last Seabed Committee meeting.

And, of course, I want to thank you for the courtesies that were extended to the representatives of this committee at Geneva, in contrast to some previous sessions.

I am a little bit concerned about a couple of other things. Since this is an open session I would like to have a response to a couple of other questions because the written answers will only appear in the printed record several weeks from now.

I turn to revenue sharing, Mr. Ambassador. This committee has been insisting that the Government of the United States has jurisdiction to the edge of our continental margin.

In other words, the land out to the margin is American public land exactly the same as the BLM land or the national forest land and so forth, within the confines of the United States.

And, we insist that Congress has exclusive jurisdiction over the disposal of these lands the same as we have jurisdiction over the disposal of any other public lands and we have jurisdiction over the disposal of the revenue from these lands.

Now, how can we say that by treaty we are going to share with other nations and other regimes the income from lands that belong to the United States and are exclusively within the province and under the Constitution within the control of the Congress of the United States?

Ambassador STEVENSON. Thank you, Mr. Chairman.

I think there are two points I would like to discuss. First is the question of the constitutional and legislative aspects of revenue sharing is something that we within Government have under consideration with the appropriate agencies with which we will certainly want to work very closely with the Congress on.

Second, if I may express a view which at least goes back to the time when I was Legal Advisor, and may no longer reflect the official position, but I think it should be in the record alongside the position you expressed so we can understand what the legal issues are, and it isn't quite as black and white a case as it may seem.

Senator METCALF. Please, I asked a question, and I am not asserting that that is the final legal answer. I just want you to explain to us.

Ambassador STEVENSON. The other side to the coin is if you accept your initial premise which clearly reflects the point of view of this committee which understands and which has support of a number of legal organizations that in fact the United States right now has sovereignty over to the edge of the margin then clearly you bring into play a number of constitutional and other legal provisions which would lead to certain conclusions.

Senator METCALF. Very interesting.

Ambassador STEVENSON. The other aspect is that not all other international lawyers or governments have agreed with that position. Everyone has agreed, at least everyone that has been a party to the continental shelf convention to 200 meters. But, the area from 200 meters, the edge of the margin, is an area which has been in dispute as to the legal position and the U.S. executive branch has not taken a definitive position on that pending the attempt to resolve by international agreement this question which many felt was left to a certain

extent not precise by the 1958 convention, because, while it did talk about going out as far as you could exploit, it did talk about adjacency, an adjacent area, and there has been no agreement as to what you mean by adjacency.

I don't want to belabor this question. I remember very well the discussions we have had before we had a common executive branch position on this question before your committee.

So, I think this committee's records probably show better than anywhere else where the legal points of view are. But, for my present purpose the only point I want to make is that where the legal position is uncertain and you enter into an international agreement to settle that uncertainty just as in private practice the settlement in effect can really replace what was the former legal situation.

And, therefore, I think the whole question will be whether this is a situation such as we have had many times in our history where we have a boundary dispute.

Now, the fact that we settle a boundary dispute or something else involving an international arrangement by a treaty which is ratified, which includes as one of the terms of settlement, something such as revenue sharing poses quite a different legal question from simply saying this is part of our territory which we are disposing of, some of our property which we are disposing of. Because in fact, the opposite point of view would be to say, well, there is a dispute as to this property and we are settling and one of the terms of the settlement is some kind of revenue sharing.

Now, let me say again I am not endorsing that point of view but I am laying before you the legal issue we will have to consider.

Senator METCALF. But, Mr. Ambassador, you have jumped over a whole raft of legal issues. We have a man from Butte, Mont. who on a motorcycle jumps over all sorts of trucks and so forth, Evil Knievel, and you have done even better than he.

You are assuming that the Senate has ratified a treaty and that we are sitting around talking about people getting licenses and then going out exploiting the seabeds. But no treaty has been presented to or approved by the Senate.

Perhaps it is true that we have to end lawsuits some time and maybe the way to do it in this case is to say the boundary dispute is over and we will agree with other nations that the boundary is here.

But, while that is pending, what happens?

Ambassador STEVENSON. I think, Mr. Chairman, our whole thinking in terms of revenue sharing was simply that this would be——

Senator METCALF. Finally resolved by treaty and confirmation of a treaty?

Ambassador STEVENSON. That is correct. Now, the question of provisional application of the treaty is a separate question and here again I think we have made it clear that we want to work very closely with Congress as to how provisional application should take place.

That could involve ratification, it could involve joint action of the two Houses of Congress. But, one thing is very clear, it must involve congressional participation.

There is no thought here of a Presidential Executive agreement. We are talking about acting jointly with Congress in both the short run and the long run.

Senator METCALF. I am glad to have that reassurance, and I have many of the same misgivings about the final resolution of these legal questions that you have. They are important questions and I hope they will be finally resolved.

I have one final question for Mr. Ratiner.

In the latest issue of Newsweek an Israeli posed for an Arab picture on the front. In an article in that magazine Mr. Ratiner was quoted as saying what this committee has continued to reiterate.

He is talking about the technology for the development of nodules on the ocean floor. He says, "Our lead is fragile." And then he says, "If others exploit manganese nodules before we do and obtain a marketing advantage, we will still be importing it."

This committee has continued to insist that we have a technological advantage, we have people who are ready and willing to go out on the ocean floor and develop the nodules for minerals that are in short supply and that it is a part of the Administration that has kept them from proceeding.

And then Mr. Ratiner tells us that well, if we don't do something about it right away we may lose the technological lead that we have and that Japan, Germany, and some of the others will get way ahead of us.

How can you say that Congress should not pass some legislation permitting the development of the seabeds under the technology that we have at the present time, recognizing our balance-of-payments problem and that our fragile lead may be dissipated while we argue in international conferences?

Mr. RATINER. Mr. Chairman, I have already received a poison pen letter because of that statement. I am glad to have some support for the statement.

Senator METCALF. Congratulations, join the club.

Mr. RATINER. Mr. Chairman, first let me say I do not believe that if the Law of the Sea Conference occurs on time with a successful treaty in 1975 that we will have lost the technological lead which we now enjoy.

I am of the view that that lead will be maintained and retained, even if I may find in saying so that I am in disagreement with some members of the industry.

Mr. Chairman, the statement in Newsweek, and I am sure we are all accustomed to it, was quoted out of context. First it comes to my March 1 testimony and after having made that remark about our technological lead and how important it is to assure that we do not stifle corporate initiative and technological advancement I went on a few lines later which seemed to have escaped the Newsweek reporter to say the following:

"The Government must protect a variety of important interests in the development of ocean law, including our mineral resource interests. We believe that only through a successful Law of the Sea Conference will the world achieve harmony and stability in the many new and varied uses of ocean space, including deep sea mining, which we are developing right now.

I think if they had quoted that latter sentence I would not have gotten the poison pen letter.

Thank you, sir.

Senator METCALF. Mr. Ambassador, as you know since you have worked very closely with the staff of this committee, I asked that question to try to complete the record.

I have a bill—this same article says the bill seems to be dead in the Senate. Maybe that is wishful thinking on the part of the author of the article. The bill is not dead unless we get some timely and equitable agreement on American rights and responsibilities on, in and under two-thirds of earth.

As far as this committee is concerned, I think we still insist that we should develop seabed resources just as we develop the other resources of the United States. And, we are going to insist that we have an opportunity to do so.

At the same time we are still trying be cooperate with you, Mr. Ambassador, and your administration in getting an international agreement.

So, Senator Fannin, you, and I, and other members of this committee are going to keep an oversight, we are going to continue to be concerned and interested.

We hope you will be reporting to us, we hope we can correct any record that is made as far as misinterpretation of your staff remarks is concerned.

But we will continue to do what we can to protect our American interests and our American resources.

Senator FANNIN. Mr. Chairman, I want to commend you for the leadership you have given in respect to attaining these goals which you have outlined.

I think you are right, the time is rapidly passing by and it is very important that we do go forward. And, I definitely will support the chairman in that regard and I commend you highly for carrying this load and it certainly has been in many cases a very heavy one.

Senator METCALF. We have some other questions to submit in writing. They and your answers will go into the record. You know about some of them because I informed you about the balance-of-payment problems.

Mr. Ambassador, we are trying to make a record and we will try to give you some tools which you can work with in your international negotiations.

We want to cooperate with you and we want to save American resources for the United States. Thank you very much for coming up and devoting the whole afternoon to answering our questions.

Ambassador STEVENSON. Thank you, Mr. Chairman, we are delighted to be here and I appreciate everything your committee has done to help us.

[Subsequent to the hearing the following questions were submitted by Senator Metcalf and responses by Ambassador Stevenson.]

LEE METCALF
MONTANA

COMMITTEES:
INTERIOR AND INSULAR AFFAIRS
GOVERNMENT OPERATIONS

United States Senate

WASHINGTON, D.C. 20510

Dear Friend:

Since you have expressed an interest in this subject, I hope the attached will be helpful.

Lee Metcalf

United States Senate

COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
WASHINGTON, D.C. 20510

1 October 1973

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Ambassador John R. Stevenson, Chairman
U. S. Delegation to the Committee on
Peaceful Uses of the Seabed and
Ocean Floor Beyond the Limits of
National Jurisdiction
U. S. Department of State
Washington, D.C. 20520

Dear Ambassador Stevenson:

As I told you at our hearings the other day, I believe it to be in the best interests of the United States that you continue to head our delegation in these vital negotiations.

Following are some questions which I had before me at the Subcommittee hearing on the progress-status report on the status of the Law of the Sea Conference scheduled to begin at the United Nations this winter and to continue in Santiago, Chile, next spring.

Some of these questions are mine. Others were drafted by staff and other observers officially a part of your delegation. As they may overlap, feel free to combine them. This letter, the attached questions, and your answers will be printed as part of our hearing record.

I would like to have your reply in time to have these hearings printed and available for such use as you may see fit to make of them in New York this winter. We are prepared to print our hearings as soon as possible after we receive your reply.

Very truly yours,

ORIGINAL SIGNED BY
LEE METCALF

Lee Metcalf, Chairman
Subcommittee on Minerals,
Materials and Fuels

Enclosures

Questions submitted by Senator Lee Metcalf, Chairman, Subcommittee on Minerals, Materials and Fuels, Senate Committee on Interior and Insular Affairs, to Ambassador John R. Stevenson, Chairman, U. S. Delegation to the Committee on Peaceful Uses of the Seabed and Ocean Floor Beyond the Limits of National Jurisdiction, U. S. Department of State

1 October 1973

No. 1

The Seabed Committee has some 90 members. If and when there is a Law of the Sea Conference, it will be open to all 130 or so members of the United Nations. It seems to me that we're having enough trouble with the 90 who have at least some familiarity with the problems. How are the new boys on the block -- with almost enough votes to prevent agreement in a conference which requires a two-thirds majority for approval -- going to be brought up-to-date?

No. 2

From our observers at Geneva this past summer, I understand that the Micronesians have a particular problem in connection with the seabed. As you know, the Committee on Interior and Insular Affairs wears at least two hats -- one covers the Trust Territories. So do our Administrative agencies. Can you tell me if our delegation is in a position to represent the interests of the Micronesians? If not, how would the Micronesians be able to state their case to the Conference?

No. 3

How long do we expect our mining industry to wait for any acceptable agreement? Isn't it true that certain countries such as Canada (and even the United States) have begun to issue oil leases beyond the 200-meter isobath? Doesn't this indicate that the energy interests of the world cannot wait for the United Nations to agree to a settlement?

No. 4

What is the Seabed conference schedule? New York this winter, when? What about next year? What about the future of the U. N. Seabed Committee? In light of Chairman Amerasinghe's closing statement to the Seabeds Committee at the end of August 1973, and keeping in mind the considerable repressed opinion in that Committee that preparation was insufficient, what creditable expectations remain for an early Conference and agreement? Do you think that the political will to agree exists in the Committee?

Is it likely that future preparatory sessions will be scheduled before the Law of the Sea Conference takes place -- even if such sessions may be labeled differently? If such sessions do not take place, how can a Conference be approached with any hope of success? What will the effect of the Chilean troubles have on the Conference? Has it not now become apparent that the Conference has in fact been delayed? In view of all these problems, is a successful (from the U. S. viewpoint including ratification) Conference likely to be completed in 1975? What are the chances that such a Conference cannot be completed before the end of 1976? Do you believe there is any chance of not reaching final agreement in even 1977?

If there is no Santiago, or no agreement is reached in Santiago, speculation has it that the next chapter in this saga will be on to Vienna in 1975. I've seen the film "Around the World in Eighty Days." There are those who say the Administration is doing an around the world in eighty years. How long do we wait?

No. 5

As the Seabed Committee wound up in Geneva late in August, I understand some delegates were suggesting that it was not the purpose of these meetings to iron out as many differences in treaty language as possible but rather to define the various positions and make the position of each nation known to all the others -- presumably so that all that would have to be done in Santiago would be for the voting blocs to sit down behind closed doors and make deals. This is not my impression of what we have been trying to do for the past two and one-half years -- but, at least, do we have all the positions on record?

Are recorded positions alone enough preparation to sit down and make deals?

No. 6

Over the past few years, it seems to me, the United States has made an all-out effort to reach international agreement. On the basis of my own observation, based upon testimony before Committees of which I am a member, based upon reports from trusted staff members, based upon information from observers at six United Nations Seabed Committee meetings, it is apparent you have done your best and that we have failed.

If this is the case, failure is understandable. If they voted in the Seabed Committee, we would have one vote -- and one vote out of 90 is no majority. And that vote will shrink in a Law of the Sea Conference attended by representatives of some 130 nations.

If and when it becomes obvious to Administration spokesmen that we are not going to be able to secure international agreement in this vital area, are we prepared to walk away from a conference instead of continuing an exercise in futility?

In his letter to Senator Fulbright, last March, Mr. Brower said: "Prudence dictates that we also begin at once to formulate a legislative approach."

In June, Mr. Ratiner told this subcommittee that you are working on it -- that the first step was an environmental impact statement. How are you doing on formulating a legislative approach and/or an environmental impact statement?

What has the Administration been doing to prepare alternatives, if a treaty cannot be implemented even provisionally in 1975, to encourage the recovery of seabed resources? Are detailed and concrete modifications to S. 1134 prepared? Does the Administration have an alternative interim solution developed? If so, what is it?

No. 7

At Geneva in 1972, you said that -- "some delegations appear to have the impression that maritime countries in general, and the United States in particular, can be expected to sacrifice in these negotiations basic elements of their national policy on resources. This is not true."

In the knowledge that our hearings will be printed, presumably available and read by delegates from other nations -- can you tell me what are the irreducible minimums that the United States must get out of this conference?

(more)

No. 8

Whatever happened to the draft treaty of 1970 -- with its trusteeship zone and appendices, including one on mining? Is it still U. S. policy?

No. 9

Do you think the 200-mile exclusive economic zone can achieve a two-thirds majority vote in a Law of the Sea Conference? How about a 200-meter zone? Are there particular problems with separating the seabed minerals from the living resources and the water column?

No. 10

We come now to the compulsory dispute settlement issue. We're increasingly dependent on imported oil and minerals. At the same time, American corporate properties are being nationalized -- expropriated -- or taken over under the polite name of "participation" -- around the world. The question here is not whether individual countries have the right under international law to take over these properties. Rather it is whether there shall be objective, equitable, compulsory settlement of disputes. Isn't this one of the non-negotiable items on our agenda?

Would you discuss what progress has been made toward compulsory dispute settlement concepts, both in coastal and international waters, being acceptable to other States? What appears to be acceptable to developing Nation-States and to other developed countries?

No. 11

In a law review article, a committee staff member, Mr. David P. Stang, summarizes what he calls "the major unresolved issues reflected in two documents." The documents are the "principles draft" prepared by the working group of Subcommittee Number One and the "list" adopted by the full Committee.

I attach excerpts from the Stang Article. Please comment on both the form and the substance of this summary. Do you agree that this is a fair summary of the issues? What is the U. S. position on each?

No. 12

My attention has been called to an address entitled "Sounding Our Ocean Future." It was presented by the NOAA Administrator, Dr. Robert White to the Conference on the Oceans and National Economic Development, sponsored by the National Oceanic and Atmospheric Administration, in Seattle on 17 July. I realize that you were in Geneva at that time, and Doctor White's address may have escaped your attention.

I have taken excerpts from that speech, which are attached.

I'll appreciate your views on Doctor White's reference to what he calls the "ocean balance of payments."

For example, he says that "our adverse balance of payments in ocean and potential ocean products and services is a number almost equal to the total U. S. balance of payments deficit, and it is growing in many important areas."

Please give me your thoughts on this.

(more)

EXCERPTS FROM "SOUNDING OUR OCEAN FUTURE," AN ADDRESS BY DR. ROBERT M. WHITE, ADMINISTRATOR, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, U. S. DEPARTMENT OF COMMERCE, AT THE NOAA CONFERENCE ON THE OCEANS AND NATIONAL ECONOMIC DEVELOPMENT, 17 JULY 1973, SEATTLE, WASHINGTON.

". . . Has anybody ever looked at something we might call the ocean balance of payments as one way to keep score on how we are doing? Such a concept has its deficiencies, but it is at least an intriguing way to demonstrate our dependence upon the oceans in quantitative terms. It also offers a way of expressing the importance of the oceans in terms which we can hope will speak to those we must convince.

"As you know, the Commerce Department constitutes, among other things, an impressive resource of statistics on virtually every aspect of the national economy. I have turned to our Bureau of Competitive Assessment and Business Policy for an estimate of the total 1972 factors contributing to what we might call an ocean balance of payments value. This figure includes not only the balance from existing trade in ocean products and services, but also in certain commodities where ocean resources -- were they exploited, which they are not now -- could provide important relief.

"In developing these figures, we discovered that traditional Federal statistical reporting and analysis techniques are not always ocean-oriented. An analytical purist might consider the ocean balance of payments figure a kind of statistical bouillabiasse, but it will serve to make the point.

"To put this figure in perspective, I must remind you that the total U. S. balance of payments deficit in calendar year 1972 was $10.3 billion. Our adverse balance of trade alone was $6.9 billion.

"It is abundantly clear that with our rising dependence upon foreign sources of raw materials and fuels, we should seek as a matter of general national policy to reduce this adverse balance. We have seen the economic effects of this drain.

"The numbers I have been able to assemble indicate that the U. S. 'ocean balance of payments' deficit for 1972 was more than $8 billion. I doubt further study would prove it smaller, but I should not be surprised if it were larger.

"Let us examine some of the more significant elements of this total. The largest single deficit account is petroleum -- both crude and refined products -- with an adverse balance of slightly over $4 billion. In view of the present energy crisis and the higher prices being charged for foreign oil, it will be even larger for 1973. As for the 1980's -- the estimates are staggering.

"The adverse balance for natural gas in 1972 was $400 million; by 1980 this total may rise as high as $4 billion, depending upon the quantity of liquified natural gas we import and the price we pay for it.

"You may be shocked to find that the 1972 adverse balance in fish and fish products was $1.3 billion -- up 43 per cent over 1971 and up 318 per cent over 1960. We have no hard figures on the balance in fishing gear, marine electronics and the like, but you may be sure it is substantial.

"Here are some other figures:

" -- For ocean freight charges, an adverse balance of approximately $1.2 billion.

" -- For Americans traveling from U. S. ports on foreign cruise ships, approximately $263 million.

(more)

" -- For those raw materials we would expect to get from mining manganese nodules on the ocean floor -- their copper, nickel, cobalt and other content: The 1972 adverse balance was some $1,074 million.

"I am not suggesting that the solution to all our raw materials and balance of payments problems reside in the oceans. Clearly, in the case of oil, U. S. offshore production cannot be increased to wipe out the deficit -- even if it were desirable, which it may not be. However, when roadblocks to expanded production are removed, which President Nixon has ordered done, we will ease substantially the dollar drain from this source.

"The balance of payments, of course, cannot be the only consideration in adopting a policy aimed at the substitution of deep-sea resources for imports. Our national decisions must consider the impact of reduced buying on the economics of developing countries, balancing the interests and rights of the whole international community in the resources beneath the non-sovereign high seas.

"But let us not lose sight of the fact -- that our adverse balance of payments in ocean and potential ocean products and services is a number almost equal to the total U. S. balance of payments deficit, and it is growing in many important areas. . ."

# # #

EXCERPTS FROM LAW REVIEW ARTICLE ENTITLED "OCEAN POLEMICS," BY DAVID P. STANG, ASSISTANT MINORITY COUNSEL, SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS -- SEPTEMBER, 1973.

"1. The limits of the territorial sea* and navigational rights of vessels and aircraft, in and over international straits which are contained within the territorial sea of coastal states.

"2. The limits of coastal state jurisdiction** over resources of the seabed adjacent to and beyond the territorial sea and the nature and limitations of coastal state jurisdictional authority in such areas.

"3. The nature of fishing rights which coastal countries may obtain in high seas areas adjacent to their coasts to regulate the activities of foreign fishing fleets, the distance from the coastline in which such coastal nation rights would apply,** and the substantive limitations on such coastal country rights.

"4. The measures which coastal countries may take in high seas areas adjacent to their coasts to protect themselves against marine pollution caused by foreign nations or their nationals, the distance from the coastline in which such coastal nation rights would apply, and the substantive limitations on such coastal nation rights.

"5. The measures which coastal countries may take in high seas areas adjacent to their coasts to regulate the conduct by foreign nationals of scientific research on the high seas and underlying seabed, the distance from the coastline in which such coastal country rights would apply, and the substantive limitations on such coastal country rights.

"6. The rights of individual countries and their nationals to explore and exploit the natural resources of the seabed beyond the limits of national jurisdiction, the rules and conditions under which such exploration and exploitation would take place, and the institutional and legal means of administering such exploration and exploitation, and of distributing benefits resulting from such activities (revenue sharing), and of resolving disputes arising from such activities."

"* Although not expressly stated in Seabed Committee reports, general agreement did seem to be emerging that the territorial sea should be limited to twelve miles. But agreement on this issue by developing coastal states was clearly predicated on the understanding that their resource interests in areas adjacent to their coasts would be adequately protected.

"** A consensus has begun to develop on a 200-mile limit regarding coastal state resources jurisdiction. Coastal states with continental margins extending beyond 200 miles, however, seem to prefer that their entire continental margins be included within the limits of coastal state jurisdiction. The limits question, however, remains largely unresolved because of continuing differences over the "mix" of coastal state rights and duties with respect to other states' rights and duties regarding resource matters in such areas."

# # #

Also, Mr. Edward Wenk, Presidential Advisor and Executive Director of the Stratton Commission, has written in his book The Politics of the Ocean (page 324), that oceans policy relating to mining in the last years of the 1960's was not guided by adequate study of the balance of payments impacts. Did the U. S. Government, prior to introduction of its 1970 Draft Seabeds Treaty, conduct a thorough and comprehensive study of the existing and potential economic contribution to the national economy made by the domestic marine resource industries? In the light of new developments such as in the hard minerals industry, has any new study been commissioned to this end? If so, are these studies available to Congress?

Specifically, has the Treasury Department or the Commerce Department produced any studies computing the impact on our balance of payments position which could be made by a successful domestic industry producing copper, nickel, manganese and cobalt from manganese nodules? Is this study available to Congress?

If the U. S. agrees to a monopoly International Operating Regime with its built-in proclivity for protectionism or to a mixed regime of licensing and operations by the International Seabeds Authority, to what extent will the U. S. balance of payments be affected? Similarly, what objective measurements have you obtained to show the effect of each policy option on our security of supply of the relavent metals?

No. 13

In a final law of the sea treaty, how will the various conflicting interests of coastal and technologically advanced states be accommodated with those of the international community and less developed states on the specific subjects of coastal resources, pollution, scientific research, and the deep sea bed, as you suggest is necessary for a broadly supported treaty?

No. 14

What is your current thinking on revenue sharing and what expression of interest and support for this concept can you report from the summer session?

No. 15

In August 1972 you referred to the concept of revenue sharing as "the equal distribution of benefits from the seabeds." This past July, however, you called it a "method of achieving equity in a final law of the sea treaty" and referred to the role of revenue sharing as "an overall political settlement" of law of the sea issues. Does this indicate a new executive branch view on the rationale for the revenue sharing proposal?

No. 16

In your statement you indicate that one of the purposes of provisional application of the treaty prior to ratification, was to assure that seabed mining would be conducted under an internationally agreed regime. How do you expect to handle mining operations that have begun prior to agreement on a treaty text -- with or without S. 1134 type legislation?

(more)

No. 17

You indicated that it is the Administrations belief that the conference schedule should be adhered to since little more progress can be made without political negotiations taking place. Do you believe that all of the necessary compromises could occur with equality in the planned eight week conference session? If not, what do you consider to be the latest acceptable date for an agreement?

No. 18

It appears that the U. S. and the LDCs are far apart in their ideas for an acceptable deep seabed regime. What incentive do the LDCs have to compromise with us? What justification do you have for telling our potential deep sea miners to hold up exploiting if we are still so far apart on a regime that will be acceptable to them?

No. 19

Have there been any economic impact studies to determine the net economic result to each and every major segment of the U. S. economy by the various proposals which are being advanced by the U.S.?

To be more specific -- do you have studies showing what the dollar effect is on the mining industry and oil industry by those positions the U. S. advances -- which effect that area of the economy?

Do you have such studies on the fishing industry?

If the position advocated by the U. S. delegation were adopted and became part of the treaty, what would be the result on costs of oil, materials, food to the U. S. taxpayer -- consumer.

No. 20

Consultations among and between regional groups of Developing Countries outside the Seabed Committee forum have strengthened the political base for Coastal State economic jurisdiction over a broad marine zone. The U. S. delegation has indicated this as a fact and as a change of position has indicated its willingness to accept the trend provided certain international standards and protections are maintained in that zone. The original U. S. proposals for a strong International Seabeds Authority on the deep seabeds were put forth as a "bargaining chip" to purchase a narrow Coastal State zone of jurisdiction. Is there any advantage to the U. S. to maintain its thrust for a strong ISA in the face of this "broad shelf" consensus? By doing so, are we not giving something away for nothing?

No. 21

On 28 July 1972, President Nixon sent Congress a message concerning an agreement with Brazil. It recognized on an interim basis the broad shelf claims of Brazil. Under this agreement the U. S. must make large payments and must exercise our police powers against U. S. citizens in protection of Brazilian territorial claims beyond the three- or twelve-mile limit. By this agreement, is not the U. S. itself endorsing unilateral acts and conducting Law-of-the-Sea negotiations outside the forum of the United Nations? This is not by any means an isolated example

(more)

of U. S. action outside the bogged-down Seabeds Committee. How can the State Department justify its position on S. 1134 in the face of this type of bilateralism and recognition of unilateralism?

No. 22

Does the U. S. delegation see in the proliferation of alternative texts, a statement of common ideas or a multiplicity of irreconcilable positions?

No. 23

At the July-August 1973 Seabeds Committee meeting in Geneva, there was some opinion expressed that the Enterprise and Licensing systems were closer together substantively than they were emotionally. Can the U. S. agree to any system whereby the International Seabeds Authority functions as both the administrator and the operator? Can such an arrangement function without discrimination to competing State or private enterprise?

No. 24

Do you believe it is possible to receive a two-thirds majority vote on any of the positions advanced by the United States? If so, which ones?

No. 25

Do you think that it will be possible to include objective ocean mining regulations in the body of the agreed treaty? Is it acceptable as has been suggested in some quarters to grant broad discretionary powers of administration and regulation to the International Seabeds Authority in lieu of detailed provisions relating to resource management?

No. 26

With regard to your proposals that the International Regime should be put into immediate force and effect upon signature at the Conference:

Do you think it wise to subject U. S. ocean operations to such a regime before Congress has had an opportunity to review the results of the Conference during its ratification process? Suppose Congress declines ratificatio2?

Keeping in mind that such a Provisional Regime will require domestic legislation to implement it, have you begun to formulate this legislation so that it is available on your 1974-75 timetable for agreement? Does the cautious optimism you have expressed cover the drafting and enactment of legislation in the year and a quarter remaining on your schedule?

No. 27

The marine hard minerals industry alleges that many provisions of the U. S. Draft Seabeds Treaty are individually more burdensome than their land counterparts or are unique burdens which have been imposed by the Treaty despite their absence in general terrestrial resource management practice around the world. Examples include the complex system of fees, taxes, rents, front-end bonuses and high royalties, the stringent relinquishment system, the lack of provision for exclusivity in manganese nodule licenses, the requirement to obtain a reconnaissance permit, the abnormally short production period, the stringent information transfer provision. Industry spokesmen find it hard

(more)

to believe that these provisions would encourage a new industry. Has the Administration attempted a review of these provisions and, if so, has that review resulted in a modified policy for U. S. delegation use at the Law of the Sea Conference?

No. 28

With closed frontiers, expanding industry, and the increasing land use problems, should not U. S. environmental conservation policy and practices be tailored to the most efficient and least destructive resource recovery activity? In this regard might not ocean mining for U.S. mineral requirements be an objective to be pursued with more vigor than is apparent at the United Nations in order to mitigate strip and open pit mining effects in our own mining states?

No. 29

I understand that a central issue between developing and developed countries on the deep seabed regime and machinery is "Who may exploit the area" and that the developing countries and the United States have absolutely opposite positions on this issue. I understand that the developing countries want to exert absolute control over both the exploration for and development of seabed resources by means of a monopoly operating agency called the Enterprise and that the Administration advocates a first-come-first-served licensing system. Will you please explain this situation in some detail and in particular give us your views on how this gulf can be bridged in the Law of the Sea Conference while protecting United States resource interests? Can there be a compromise between these two extremes?

No. 30

Administration witnesses have said that the passage of S. 1134 would damage our negotiating position on the law of the sea. However, it is difficult to imagine more extreme positions than those already taken. How would the enactment of S. 1134 lead to a more difficult situation than that which exists?

No. 31

When Administration witnesses appeared before this Committee in June, great emphasis was placed on the concept of a provisional regime. We'd like to know what substantive discussions took place in Geneva regarding this concept and what the outlook is? Could you brief us on the work done by the Administration to develop its provisional regime idea more fully and clearly? Has the Administration given thought to specific legislation -- including protections against the possibility of the treaty itself not being ratified by the U. S. or never coming into effective force as a treaty, and protection for investments made during such a provisional period.

No. 32

What are the major divergent views on the relative powers of the proposed Seabed Assembly and the Council -- including concepts of weighted voting in the Council? Is it your opinion that these extremes will meet in the middle and soon enough for a timely international agreement?

(more)

No. 33

Are there hazards in the participation of the United States in an Law of the Sea Conference where the positions of the majority of non-industrial States are so different from ours? Out of such a conference, couldn't there be a treaty which the U. S. would not ratify. How can we avoid this? Would not the passage of S. 1134 in fact establish the firmness of our seabed position?

No. 34

We understand that the progress on other issues, such as fishing, Coastal State economic zone, passage through straits, etc., in Subcommittee II has been almost non-existent, that the work never proceeded sufficiently to draft any useful alternative treaty articles. How can this lack of progress be compensated for? Aren't there issues alone apt to block achievement of a timely and satisfactory treaty?

No. 35

We understand that the State Department has begun to prepare an environmental impact statement on all Law of the Sea issues which would be discussed at the 1974 Law of the Sea Conference. Will you explain what authority is contained within this National Environmental Policy Act which creates a duty to prepare an impact statement, the geographical scope of which extends within the water column beyond the territorial sea and on the seabed beyond the seward limits of the continental shelf?

# # # #

DEPARTMENT OF STATE

Washington, D.C. 20520

November 9, 1973

Honorable Lee Metcalf
Committee on Interior and
Insular Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Metcalf:

Thank you for your letter of October 1, 1973 that followed up the Law of the Sea hearings of the Subcommittee on Minerals, Materials and Fuels held on September 19, 1973. I sincerely appreciated your kind comment regarding my heading of the Law of the Sea negotiations. Attached to this letter are the responses to the questions you asked in your October 1 letter. To facilitate an orderly reply, each question posed is followed with the response given immediately thereafter.

Senator Hansen also asked three questions that arose out of the hearing in a letter addressed to me on September 20, 1973. These three questions were nearly identical in content to questions Number 26 and 31 in your consolidated series. Hence, by separate letter, I am also sending the responses prepared to questions Number 26 and 31 to Senator Hansen.

If I can be of further assistance to you or the Subcommittee please feel free to call upon me.

Sincerely,

John R. Stevenson

John R. Stevenson
Special Representative of
the President for the Law of
the Sea Conference

1. Question: The Seabed Committee has some 90 members. If and when there is a Law of the Sea Conference, it will be open to all 130 or so members of the United Nations. It seems to me that we're having enough trouble with the 90 who have at least some familiarity with the problems. How are the new boys on the block -- with almost enough votes to prevent agreement in a conference which requires a two-thirds majority for approval -- going to be brought up-to-date?

Response: Approximately 145 countries will be invited to the Law of the Sea Conference. Not all of the nations invited are likely to attend. However some 30 to 40 nations in addition to the 90 members of the Seabed Committee are expected to participate. A number of these countries have attended the preparatory meetings of the Seabed Committee as observers. During the July/August 1973 session, for example, observers from 15 non-Seabed Committee members were in attendance.

New participants in the Law of the Sea (LOS) negotiations -- like all invitees -- will receive the complete records of the Seabed Committee and any other preparatory documentation prepared in advance of the Conference. All new participants will also be given the opportunity to make general statements on their law of the sea policy at Conference sessions. Provision may be made for such general statements at the fall organizational session of the Conference.

While it is always conceivable that individual States that have not participated in the work of the Seabed Committee will bring to the Conference their own unique perspectives on the law of the sea, we are fairly confident that the entire spectrum of general views have been represented in the Seabed Committee's preparatory work. Hence there appears to be little possibility that the new members of the Conference will hold views widely disparate from those presently contained in the documentation.

2. Question: From our observers at Geneva this past summer, I understand that the Micronesians have a particular problem in connection with the seabed. As you know, the Committee on Interior and Insular Affairs wears at least two hats -- one covers the Trust Territories. So do our Administrative agencies. Can you tell me if our delegation is in a position to represent the interests of the Micronesians? If not, how would the Micronesians be able to state their case to the Conference?

Response: In recognition of our responsibilities as Trusteeship power, we have engaged in consultations with Micronesian representatives to explore the possibility for accommodating our respective positions. We have further agreed that if such accommodation is not possible, we will ensure that their views are brought to the attention of the LOS Conference in a timely and appropriate fashion. In the most recent consultations, a team representing various U. S. Government agencies on the Law of the Sea Task Force visited Micronesia, October 23-27. This visit will be followed by a return trip to Washington by representatives of the Congress of Micronesia prior to the opening of the LOS Conference.

3. Question: How long do we expect our mining industry to wait for any acceptable agreement? Isn't it true that certain countries such as Canada (and even the United States) have begun to issue oil leases beyond the 200-meter isobath? Doesn't this indicate that the energy interests of the world cannot wait for the United Nations to agree to a settlement?

Response: This question concerns two different types of mining activity. With respect to petroleum leasing beyond the 200 meter isobath, the Department of the Interior, pursuant to the President's Energy Policy Statement of June 29, 1973, has issued a call for nominations for offshore areas beyond the 200 meter isobath, and in the normal course of events will be holding a lease sale or sales for oil and gas in selected areas beyond the 200 meter isobath. The negotiations on the Law of the Sea are not interfering with the development of the outer continental shelf beyond 200 meters. To the extent that Law of the Sea issues have become confused with our offshore leasing policy, the Department of the Interior has recently issued a notice in the Federal Register, a copy of which is attached, which should clarify any confusion.

With respect to hard mineral mining on the deep seabed, we have not asked our mining industry to wait for an international agreement. As you know, the United States Government does not have the legal authority to issue leases in that area in the absence of new legislation, though it is our view that United States citizens have the right to mine that area under present international law and do not need a license or permit from their government. We advised the Senate Interior Committee of our position on the passage of certain interim legislation in a letter to the Chairman on March 1, 1973.

Insofar as we are aware, no American mining company will be prepared to begin production of deep sea hard minerals earlier than the projected time for conclusion of the Law of the Sea Conference. In addition, we have, as you know, proposed the provisional entry into force of the Law of the Sea Treaty. If this proposal is accepted, we may succeed in reducing to a matter of a few months time necessary after concluding the Law of the Sea Treaty to enable deep sea miners to obtain internationally recognized, exclusive rights to mine selected areas of the deep seabed.

4. Question: What is the Seabed conference schedule? New York this winter, when? What about next year? What about the future of the U. N. SeabedCommittee? In light of Chairman Amerasinghe's closing statement to the Seabeds Committee at the end of August 1973, and keeping in mind the considerable repressed opinion in that Committee that preparation was insufficient, what creditable expectations remain for an early Conference and agreement? Do you think that the political will to agree exists in the Committee?

Is it likely that future preparatory sessions will be scheduled before the Law of the Sea Conference takes place -- even if such sessions may be labeled differently? If such sessions do not take place, how can a Conference be approached with any hope of success? What will the effect of the Chilean troubles have on the Conference? Has it not now become apparent that the Conference has in fact been delayed? In view of all these problems, is a successful (from the U. S. viewpoing including ratification) Conference likely to be completed in 1975? What are the chances that such a Conference cannot be completed before the end of 1976? Do you believe there is any chance of not reaching final agreement in even 1977?

If there is no Santiago, or no agreement is reached in Santiago, speculation has it that the next chapter in this saga will be on to Vienna in 1975. I've seen the film "Around the World in Eighty Days." There are those who say the Administration is doing an around the world in eighty years. How long do we wait?

Response: Attached is a copy of the LOS Conference resolution adopted by the UNGA's First Committee on October 26. The resolution has not as yet been given final approval in Plenary though it is virtually certain to obtain it within the next few weeks.

The answers to most of the questions you pose regarding Conference schedule are answered in the resolution itself. However, several additional points should be noted.

The Conference has not been delayed and the substantive session is now scheduled to convene in the summer of 1974, rather than April, as originally contemplated. However, this year's resolution calls for ten weeks of substantive work in 1974 rather than the eight weeks previously envisaged. Paragraph 5 of the resolution does allow for additional preparatory work prior to the convening of the ten week substantive session.

The resolution reiterates the expectation that any second substantive session of the LOS Conference be convened not later than 1975. We continue to support a "timely" LOS Conference and by "timely" we mean a Conference which concludes not later than 1975. We would hope that ratification of the resulting LOS Convention would take place rapidly. However, several years may certainly elapse between signature of a treaty and its entry into force. To provide for this interim period we have proposed that certain key sections of the treaty -- specifically those dealing with the deep seabed regime and fisheries -- enter into force on a provisional basis immediately upon signature. Whilethere appears to be some interest in provisional application, and a study of precedents has been completed by the Secretariat, detailed discussion of this issue has not been held on the international level.

5. Question: As the Seabed Committee wound up in Geneva late in August, I understand some delegates were suggesting that it was not the purpose of these meetings to iron out as many differences in treaty language as possible but rather to define the various positions and make the position of each nation known to all the others -- presumably so that all that would have to be done in Santiago would be for the voting blocs to sit down behind closed doors and make deals. This is not my impression of what we have been trying to do for the past two and one-half years -- but, at least, do we have all the positions on record?

Are recorded positions alone enough preparation to sit down and make deals?

Response: In our opinion, the definition of positions alone is not sufficient preparation for final negotiations. We view the goal of the preparatory meetings as having been twofold: to reduce the number of disputed issues and to draft actual treaty language for use in the final negotiating process. The product of preparatory negotiations should be agreed treaty language in as many areas as possible, and where agreement is not possible to define alternate and bracketed treaty texts. Of course the accurate definition and thorough understanding of national positions is an essential element in both the achievement of agreed language and in final negotiating decisions. To the extent that positions are explored and understood, the groundwork can be laid for more detailed drafting and final compromises. As you are aware, at this summer's meeting the Subcommittee made varying degrees of progress on drafting and refinement of language. Subcommittee I was able to develop alternative and bracketed texts with generally agreed language. In the process the issues on which there are fundamental differences, as well as those on which there is agreement, have been highlighted. The Subcommittee III Working Group on Marine Pollution placed approximately half of its draft articles in acceptable form for the Conference. However, the Subcommittee III Working Group on Scientific Research and Subcommittee II were not as successful in reducing disputed issues and drafting agreed treaty text. It should be noted that while the issues dealt with in Subcommittee II are very complex the actual treaty provisions needed to resolve them are relatively simple to draft once the political decisions have been negotiated.

6. Question: Over the past few years, it seems to me, the United States has made an all-out effort to reach international agreement. On the basis of my own observation, based upon testimony before Committees of which I am a member, based upon reports from trusted staff members, based upon information from observers at six United Nations Seabed Committee meetings, it is apparent you have done your best and that we have failed

If this is the case, failure is understandable. If they voted in the Seabed Committee, we would have one vote -- and one vote out of 90 is no majority. And that vote will shrink in a Law of the Sea Conference attended by representatives of some 130 nations.

If and when it becomes obvious to Administration spokesmen that we are not going to be able to secure international agreement in this vital area, are we prepared to walk away from a conference instead of continuing an exercise in futility?

In his letter to Senator Fulbright, last March, Mr. Brower said: "Prudence dictates that we also begin at once to formulate a legislative approach."

In June, Mr. Ratiner told this subcommittee that you are working on it -- that the first step was an environmental impact statement. How are you doing on formulating a legislative approach and/or an environmental impact statement?

What has the Administration been doing to prepare alternatives, if a treaty cannot be implemented even provisionally in 1975, to encourage the recovery of seabed resources? Are detailed and concrete modifications to S. 1134 prepared? Does the Administration have an alternative interim solution developed? If so, what is it?

Response: We do not agree that we have failed in an all-out effort to reach international agreement on the Law of the Sea. Negotiation of a treaty as complex and important as the Law of the Sea with more than 140 countries, is a painstaking and time consuming process. This negotiation deals with issues which are not only of fundamental importance to each sovereign State on their own merits, but some transcend the interests of individual States. For example, one of the principal difficulties in Subcommittee I is the fact that we are trying to accommodate the disparate views which the developing countries of the world and the developed countries of the world have in respect of their overall relationships to each other regarding foreign affairs and particularly foreign economic affairs. The developing countries perceive that the opportunity is now available to them to bring about a new basis in international law for doing business with the industrially advanced countries in respect of resources. On the other hand, the industrially advanced countries themselves concerned with the need to supply their economies with important commodities do not believe that the approach pursued by the developing countries will meet their national interests. It is one function of the Law of the Sea Conference to attempt a rapprochement on this important question and it is too early for us to agree that we have either failed or succeeded in that effort.

You raise the question of our unprotected voting position in the Conference -- that is, we have one vote which will be quite small in a Conference of over 140 nations. Numerically that is true. As a matter of practical negotiating strength, however, we doubt that such a voting picture is accurate. It is clear that we probably can be out-voted in most issues in the Law of the Sea Conference. The real question, however, is will we be out-voted. It is our belief that most of the countries that will be represented in the Law of the Sea Conference are keenly aware of the importance of a genuine accommodation of all States' interests in the Law of the Sea.

In particular, we believe most such countries are aware of the unique role which the United States plays in these negotiations and will play in the future of ocean development after a treaty is negotiated. We doubt, therefore, that any responsible nation will, in moving to the crucial stage of negotiations ahead, attempt to use its voting power to force decisions which will make it difficult or impossible for the United States to become a party to this new Convention. Hence, in answer to the question raised in your third paragraph, it is our view that it still remains possible to secure international agreement in this vital area on terms acceptable to the Administration, Congress and the public. Of course, we are prepared to walk away from the Conference when it is obvious that this will not be possible. We have not, however, reached such a conclusion at a time when serious negotiations are about to begin.

The most difficult issue connected with the preparation of alternative legislation is the preparation of an environmental impact statement. Drafting of a bill will take considerably less time, money and effort than the drafting of such an impact statement. Our progress on the preparation of an impact statement is not as rapid as we would have liked, but within the limits of available manpower and funds, we think we are doing well. The Departments of Interior and Commerce have jointly been working on such a statement concerning deep seabed mining for about one year and the NSC Interagency Task Force has recently begun consideration of the issues relating to an overall impact statement.

You have inquiried whether detailed and concrete modifications to S. 1134 have been prepared. They have not. If the Administration were to determine that the Law of the Sea Conference would be neither timely nor successful, this determination could probably not be made before the end of the summer of 1974. Draft bills originated in the Administration on a subject as fraught with political sensitivities

as this one, in our view, can easily acquire a life of their own, mislead other nations and result in harm to our negotiating effort. We have, on the other hand, studied S. 1134 with considerable care, commented on it in our March 1 testimony and would be prepared on fairly short notice to draft an alternative bill should that prove necessary. We cannot at this time discuss the substance of the alternative legislative approach for the reasons we have already given.

7. Question: At Geneva in 1972, you said -- "some delegations appear to have the impression that maritime countries in general, and the United States in particular, can be expected to sacrifice in these negotiations basic elements of their national policy on resources. This is not true."

In the knowledge that your hearings will be printed, presumably available and read by delegates from other nations -- can you tell me what are the irreducible minimums that the United States must get out of this conference?

Response: The United States is presently participating in one of the most widely attended and important multilateral negotiations ever held under the aegis of the United Nations. The issues involved are complex and interrelated. Consequently, we do not believe that it would facilitate the achievement of United States objectives to attempt to state publicly what the irreducible minimums are that we could accept at the Third Conference on the Law of the Sea.

8. Question: Whatever happened to the draft treaty of 1970 -- with its trusteeship zone and appendices, including one on mining? Is it still U. S. policy?

Response: The appendices to the draft 1970 treaty never had the status of "US policy". The appendices were submitted as a working paper for discussion purposes. Based on discussions both within the United States and with other countries in the Law of the Sea negotiations, we have concluded that the appendices would benefit from substantial revision. Such a revision will have to take into accound our present knowledge of the economics and technology of hard minerals industry, as well as the views of other nations in the Law of the Sea negotiations.

In many respects we believe the rules may serve as the medium for bringing together what seem to be widely disparate views on the overall skeleton or structure of the resource management system.

We are giving careful and close attention to this matter and would be happy to discuss it with the Committee in more detail in Executive Session if the Chairman wishes to do so.

With respect to the trusteeship zone, the United States has announced a new position. That position is contained in a statement given by the President's Special Representative for the Law of the Sea Conference to the Seabed Committee on July 18, 1973. Attached to that statement are draft treaty articles entitled "The Coastal Seabed Economic Area." These articles in essence represent a substitute for the trusteeship zone proposal. The statement and the draft articles are attached.

9. Question: Do you think the 200-mile exclusive economic zone can achieve a two-thirds majority vote in a Law of the Sea Conference? How about a 200-meter zone? Are there particular problems with separating the seabed minerals from the living resources and the water column?

Response: There is wide support in the Seabeds Committee for a 200 mile exclusive economic zone, particularly among the developing countries and the Latin American states. Such a zonal concept has been included in regional documents such as the OAU Resolution and the Declaration of Santo Domingo, as well as in various darft articles that have been submitted to the Seabeds Committee. The 200 meter concept has far less support, and indeed the issue at this time seems to be whether to restrict coastal state jurisdiction to 200 miles or allow it to extend even further to the edge of the margin. The move to wider jurisdiction has been resisted to some extent by both the African group and the land-locked and shelf-locked nations who may feel that jurisdiction beyond 200 miles will cut down on economic benefits which they would receive as a result of revenue sharing arrangements for the international seabeds area. In spite of the foregoing discussion, the question of whether an exclusive economic zone of 200 miles or perhaps wider will achieve a two-thirds majority vote in the Law of the Sea Conference seems unclear at this time, particularly in view of the fact that there will be some forty or more nations represented who have not been members of the Seabeds Committee.

The United States feels that there are no particular problems with separating the seabeds minerals from the living resources of the water column. To the contrary, the United States has consistently proposed that they must be treated separately. We have submitted

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draft articles which reflect this view, and continue to feel that a functional approach should be used in the management of living resources as elsewhere in the negotiations. Establishment of a zone does not adequately begin to protect our anadromous species, many of which migrate outside of 200 miles, nor does it provide a logical base for the conservation and utilization of highly migratory species such as tuna.

10. Question: We come now to the compulsory dispute settlement issue. We're increasingly dependent on imported oil and minerals. At the same time, American corporate properties are being nationalized -- expropriated -- or taken over under the polite name of "participation" -- around the world. The question here is not whether individual countries have the right under international law to take over these properties. Rather it is whether there shall be objective, equitable, compulsory settlement of disputes. Isn't this one of the non-negotiable items on our agenda?

Would you discuss what progress has been made toward compulsory dispute settlement concepts, both in coastal and international waters, being acceptable to other states? What appears to be acceptable to developing Nation-States and to other developed countries?

Response: The concept of compulsory dispute settlement has been an element in several of our proposals, including the establishment of a regime and machinery for the international seabed area, for fisheries, for a Coastal Seabed Economic Area, for conduct of scientific research and for marine pollution.

On August 22, 1973 in the Seabed Committee the U. S. introduced a specific set of draft articles to effectuate a dispute settlement mechanism. At the current time we are in the process of ascertaining the opinions and views of other countries on these articles. Thus, it is too early for us to have a definitive view of the actual support for compulsory settlement of dispute procedures. In the statement which accompanied the articles, the U. S. emphasized that a system of peaceful and compulsory dispute settlement was an essential aspect of a comprehensive Law of the Sea settlement. The U. S. proposal is designed to ensure, to the maximum extent possible, immediate access to dispute settlement machinery in urgent situations while at the same time preserving the flexibility of States to agree to resolve disputes by a variety of means. While a few nations spoke in the Seabed Committee indicating some

reservations on certain aspects of our proposal, it should be noted that a number of member countries have indicated the importance they attach to compulsory dispute settlement in the context of an overall treaty.

11. Question: In a law review article, a committee staff member, Mr. David P. Stang, summarizes what he calls "the major unresolved issues reflected in two documents." The documents are the "principles draft" prepared by the working group of Subcommittee Number One and the "list" adopted by the full Committee.

I attach excerpts from the Stang Article. Please comment on both the form and the substance of this summary. Do you agree that this is a fair summary of the issues? What is the U.S. position on each?

EXCERPTS FROM LAW REVIEW ARTICLE ENTITLED "OCEAN POLEMICS," BY DAVID P. STANG, ASSISTANT MINORITY COUNSEL, SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, SEPTEMBER, 1973

"1. The limits of the territorial sea* and navigational rights of vessels and aircraft, in and over international straits which are contained within the territorial sea of coastal states.

"2. The limits of coastal state jurisdiction** over resources of the seabed adjacent to and beyond the territorial sea and the nature and limitations of coastal state jurisdictional authority in such areas.

"* Although not expressly stated in Seabed Committee reports, general agreement did seem to be emerging that the territorial sea should be limited to twelve miles. But agreement on this issue by developing coastal states was clearly predicted on the understanding that their resource interests in areas adjacent to their coasts would be adequately protected.

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"** A consensus has begun to develop/a 200-mile limit regarding coastal state resources jurisdiction. Coastal states with continental margins extending beyond 200 miles, however, seem to prefer that their entire continental margins be included within the limits of coastal state jurisdiction. The limits question, however, remains largely unresolved because of continuing differences over the "mix" of coastal state rights and duties with respect to other states' rights and duties regarding resource matters in such areas."

"3. The nature of fishing rights which coastal countries may obtain in high seas areas adjacent to their coasts to regulate the activities of foreign fishing fleets, the distance from the coastline in which such coastal nation rights would apply, ** and the substantive limitations on such coastal country rights.

"4. The measures which coastal countries may take in high seas areas adjacent to their coasts to protect themselves against marine pollution caused by foreign nations or their nationals, the distance from the coastline in which such coastal nation rights would apply, and the substantive limitations on such coastal nation rights.

"5. The measures which coastal countries may take in high seas areas adjacent to their coasts to regulate the conduct by foreign nationals of scientific research on the high seas and underlying seabed, the distance from the coastline in which such coastal country rights would apply, and the substantive limitations on such coastal country rights.

"6. The rights of individual countries and their nationals to explore and exploit the natural resources of the seabed beyond the limits of national jurisdiction, the rules and conditions under which such exploration and exploitation would take place, and the institutional and legal means of administering such exploration and exploitation, and of distributing benefits resulting from such activities, (revenue sharing), and of resolving disputes arising from such activities."

Response: The six issues referred to and described in the Stang article are a generally complete statement of the principal issues in the negotiation. We do not think it would be useful to suggest minor changes in the language which Mr. Stang has used to describe the issues. By-and-large we agree that they reflect the principal negotiating problems. Our position on each of these has previously been made available to the Committee although we have not attempted to compile in a single document a summary. Indeed, we would be reluctant to prepare such a summary for public use because in the act of summarizing, other nations might be led to believe that we have changed our negotiating position on one or another of the issues. We take great care in presenting our position on these issues to put the statement of the United States view as succinctly as it is possible to do so without misleading other countries. Accordingly, we would refer you to our several public statements before the Seabed Committee on these issues, all of which have been previously furnished to the

Committee. To the extent recent statements do not modify earlier explanations of our position, those earlier explanations in general still reflect our views.

12. Question: My attention has been called to an address entitled "Sounding Our Ocean Future." It was presented by the NOAA Administrator, Dr. Robert White to the Conference on the Oceans and National Economic Development, sponsored by the National Oceanic and Atmospheric Administration, in Seattle on 17 July. I realize that you were in Geneva at that time, and Doctor White's address may have escaped your attention.

Excerpts from that speech are attached.

I'll appreciate your views on Doctor White's reference to what he calls the "ocean balance of payments."

For example, he says that "our adverse balance of payments in ocean and potential ocean products and services is a number almost equal to the total U. S. balance of payments deficit, and it is growing in many important areas."

Also, Mr. Edward Wenk, Presidential Advisor and Executive Director of the Stratton Commission, has written in his book The Politics of the Ocean (page 324), that oceans policy relating to mining in the last years of the 1960's was not guided by adequate study of the balance of payments impacts. Did the U. S. Government, prior to introduction of its 1970 Draft Seabeds Treaty, conduct a thorough and comprehensive study of the existing and potential economic contribution to the national economy made by the domestic marine resource industries? In the light of new developments such as in the hard minerals industry, has any new study been commissioned to this end? If so, are these studies available to Congress.

Specifically, has the Treasury Department or the Commerce Department produced any studies computing the impact on our balance of payments position which could be made by a successful domestic industry producing copper, nickel, manganese and cobalt from manganese nodules? Is this study available to Congress.

If the U. S. agrees to a monopoly International Operating Regime with its built-in proclivity for protectionism or to a mixed regime of licensing and operations by the International Seabeds Authority, to what extent will the U. S. balance of payments be affected? Similarly, what objective measurements have you obtained to show the effect of each policy option on our security of supply of the relavent metals?

EXCERPTS FROM "SOUNDING OUR OCEAN FUTURE," AN ADDRESS BY DR. ROBERT M. WHITE, ADMINISTRATOR, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE, AT THE NOAA CONFERENCE ON THE OCEANS AND NATIONAL ECONOMIC DEVELOPMENT, JULY 17, 1973, SEATTLE, WASHINGTON.

"...Has anybody ever looked at something we might call the ocean balance of payments as one way to keep score on how we are doing? Such a concept has its deficiencies, but it is at least an intriguing way to demonstrate our dependence upon the oceans in quantitative terms. It also offers a way of expressing the importance of the oceans in terms which we can hope will speak to those we must convince.

"As you know, the Commerce Department constitutes, among other things, an impressive resource of statistics on virtually every aspect of the national economy. I have turned to our Bureau of Competitive Assessment and Business Policy for an estimate of the total 1972 factors contributing to what we might call an ocean balance of payments value. This figure includes not only the balance from existing trade in ocean products and services, but also in certain commodities where ocean resources -- were they exploited, which they are not now -- could provide important relief.

"In developing these figures, we discovered that traditional Federal statistical reporting and analysis techniques are not always ocean-oriented. An analytical purist might consider the ocean balance of payments figure a kind of statistical bouillabiasse, but it will serve to make the point.

"To put this figure in perspective, I must remind you that the total U.S. balance of payments deficit in calendar year 1972 was $10.3 billion. Our adverse balance of trade alone was $6.9 billion.

"It is abundantly clear that with our rising dependence upon foreign sources of raw materials and fuels, we should seek as a matter of general national policy to reduce this adverse balance. We have seen the economic effects of this drain.

"The numbers I have been able to assemble indicate that the U.S. 'ocean balance of payments' deficit for 1972 was more than $8 billion. I doubt further study would prove it smaller, but I should not be surprised if it were larger.

"Let us examine some of the more significant elements of this total. The largest single deficit account is petroleum -- both crude and refined products -- with an adverse balance of slightly over $4 billion. In view of the present energy crisis and the higher prices being charged for foreign oil, it will be even larger for 1973. As for the 1980's -- the estimates are staggering.

"The adverse balance for natural gas in 1972 was $400 million; by 1980 this total may rise as high as $4 billion, depending upon the quantity of liquified natural gas we import and the price we pay for it.

"You may be shocked to find that the 1972 adverse balance in fish and fish products was $1.3 billion -- up 43 per cent over 1971 and up 318 per cent over 1960. We have no hard figures on the balance in fishing gear, marine electronics and the like, but you may be sure it is substantial.

"Here are some other figures:

"...for ocean freight charges, an adverse balance of approximately $1.2 billion.

" - For Americans traveling from U.S. ports on foreign cruise ships, approximately $263 million.

" - For those raw materials we would expect to get from mining manganese nodules on the ocean floor -- their copper, nickel, cobalt and other content: The 1972 adverse balance was some $1,074 million.

"I am not suggesting that the solution to all our raw materials and balance of payments problems reside in the oceans. Clearly, in the case of oil, U.S. offshore production cannot be increased to wipe out the deficit -- even if it were desirable, which it may not be. However, when roadblocks to expanded production are removed, which President Nixon has ordered done, we will ease substantially the dollar drain from this source.

"The balance of payments, of course, cannot be the only consideration in adopting a policy aimed at the substitution of deep-sea resources for imports. Our national decisions must consider the impact of reduced buying on the economics of developing countries, balancing the interests and rights of the whole international community in the resources beneath the non-sovereign high seas.

"But let us not lose sight of the fact -- that our adverse balance of payments in ocean and potential ocean products and services is a number almost equal to the total U. S. balance of payments deficit, and it is growing in many important areas. . . "

Response: "Ocean balance of payments" - This phrase, and the general concept, was developed by Dr. White as a way of dramatizing the economic importance of the oceans from a number of viewpoints--resources currently being obtained from the sea, such as fish and oil resources which could conceivably be obtained from the sea, or the seabed, such as additional fish and petroleum, and metals such as cobalt, copper, manganese and nickel. The concept also includes costs related to the use of the oceans, such as travel on foreign vessels, shipping on foreign vessels, and the purchase of foreign-made equipment, such as pleasure boats, for use on the oceans.

Apart from the intended impact of the phrase in focusing attention on the economic value of the oceans, the concept has its deficiencies, as Dr. White noted, and is therefore, not meant to be related rigorously to other parameters in an analytical sense.

With regard to the seabed beyond national jurisdiction, the establishment of an International Operating Monopoly to exploit the manganese nodule deposits of deep seabed is not considered an acceptable option by the Administration. Based on the discussions which took place in Subcommittee I this summer, however, we have come to the understanding that the real issue in dispute is not whether the Authority will be empowered to itself exploit the deep seabeds but whether it will be empowered to determine who receives mining rights and under what conditions these rights are granted.

With specific regard to cobalt, copper, manganese and nickel, the effect on the U. S. annual import balance during the period 1970-72 is indicated by the following table.

U. S. Imports for Consumption
1970-72 Average

Nickel	$420,063,000
Copper	377,166,000
Manganese	36,884,000
Cobalt	28,092,000
	$862,205,000

Source: U. S. Bureau of the Census

Some preliminary and tentative estimates have been made of the impact of nodule production on projected U. S. total import requirements of the above four metals based on assumptions regarding the number of U. S. firms that would be in commercial operation by the early 1980's and their production capacities. It was concluded that the market situation would differ for each metal . In cobalt, the U. S. would not only meet its entire needs but might also have an exportable surplus. In nickel, the import deficit could be reduced by about one third. In manganese, the import deficit could be reduced by about 15%. In copper, the seabed supplies could reduce the import deficit by about 15%.

Estimates of the possible value of this production must be viewed purely as rough order of magnitude, since they are subject to assumptions about market prices seven years hence. Nevertheless some price assumptions were made which are believed to be conservative and on this basis the output of these metals from the seabed was estimated as possibly commanding a total market value of around $428 million per year in the early 1980's, distributed as follows:

Nickel	$243, 210, 000
Copper	74, 590, 000
Manganese	66, 980, 000
Cobalt	43, 560, 000
	$428, 330, 000

To further refine the balance of payment effect, account would have to be taken of fees or royalties, if any, paid to an international authority, as well as of expenditures for foreign equipment, supplies, labor and services.

To the extent that metals from the seabed were produced with dollar expenditures and brought to the United States for sale, there would be a definite favorable impact on the U. S. balance of payments.

It should be noted that the metals and minerals concerned are in good supply from various world sources. The attached table shows the principal sources of current supplies from abroad. Considering the availability and diversity of such sources, and the relative quantities producible from land based as compared with seabed sources, the various policy options with respect to deep seabed development are not believed to have a determining effect on our security of supply during times of peace. Obviously mining operations on the open sea would be highly vulnerable in times of war.

U. S. Imports by Country of Origin
1970-72 Average
(Short Tons, Metal Content)

Manganese Ore

Brazil	273, 365
Gabon	261, 341
South Africa	74, 216
India	16, 902
Ghana	32, 016
Angola	33, 799
Zaire	75, 160
All Others	92, 676
Total	859, 475

Ferro-Manganese

Belgium/Luxembourg	3, 111
West Germany	2, 810
France	75, 861
India	17, 195
Italy	1, 295
Japan	10, 102
Mozambique	3, 216
Norway	11, 463
South Africa	95, 200
Sweden	3, 820
Brazil	1, 531
All Others	1, 556
Total	227, 160

Copper

Chile	75. 554
Peru	101, 894
Canada	127, 718
South Africa	24, 600
All Others	59, 430
Total	389, 192

Cobalt

Belgium/Luxembourg	1, 900
Canada	358
Finland	493
Norway	418
Zaire	2, 652
All Others	445
Total	6, 266

Nickel

Canada	126, 465
Norway	13, 096
South Africa	3, 532
U. K.	3, 701
All Others	10, 009
Total	156, 803

13. Question: In a final law of the sea treaty, how will the various conflicting interests of coastal and technologically advanced states be accommodated with those of the international community and less developed states on the specific subjects of coastal resources, pollution, scientific research, and the deep seabed, as you suggest is necessary for a broadly supported treaty.

Response: Final resolution of the varied and extremely complex issues to be addressed at the LOS Conference will require protracted and difficult negotiation. On some issues there is deep cleavage between developed and developing countries. Other issues, however, are not characterized by polarization by these two sides. Neither developing nor developed groups reflect homogeneous view points and each group is divided on many key issues.

There will be a great number of possible negotiating alliances at the Conference. This projected diversity contributes not only to the complexity of the negotiations, but also creates impetus for the kind of compromise package necessary for a successful Conference.

During the preliminary stages of the negotiation there has been little incentive for most participants to abandon their maximum bargaining position. We believe that with the advent of substantive Conference work the real bargaining on all sides will begin. We continue to believe that there exists sufficient good faith and commitment to a workable LOS treaty to justify cautious optimism about the outcome of the Conference.

The outlines of what might be the final compromise are not yet clear. However, the discussions to date indicate at least broad consensus on:

(1) A 12-mile territorial sea, assuming certain other conditions are met at the same time; the U. S. willingness to accept a 12-mile territorial sea is conditioned on recognition of free transit through and over straits used for international navigation.

(2) Freedom of navigation on the surface, submerged and in the air beyond 12 miles.

(3) Broad coastal State jurisdiction over coastal fisheries and seabed resources beyond 12 miles as part of an overall settlement.

(4) An international regime and machinery for the seabed beyond the limits of coastal State economic jurisdiction.

There are also certain key unsettled issues which include:

(a) The extent and nature of coastal State economic jurisdiction, including whether it should be exclusive or subject to international standards and accountability and whether special treatment should be given to fisheries such as tuna and salmon.

(b) Free transit through and over international straits.

(c) The nature of the international regime and machinery in the seabed area beyond coastal State jurisdiction; whether the international agency should have broad discretionary powers to determine who exploits the deep seabed and under what conditions or whether it would not have such powers but be granted only limited regulatory functions.

(d) Authority to prescribe and enforce standards to control pollution from vessels, particularly a jurisdictional system which will both effectively protect the marine environment and preserve the freedom of navigation, while meeting genuine coastal State concerns.

(e) The problem of maintaining a high degree of freedom of scientific research.

(f) The question of compulsory dispute settlement.

14. Question: What is your current thinking on revenue sharing and what expression of interest and support for this concept can you report from the summer session?

Response: As proposed by the United States, revenue sharing would be applicable to both the International Seabed Resource Authority and to the Coastal Seabed Economic Area. In general our revenue sharing proposals are designed to ensure an equitable distribution of benefits from the seabeds. The revenues would be used for international community purposes, for the benefit of states irrespective of location, whether landlocked or coastal, and with particular consideration for the interests and needs of the developing countries. In terms of reaching a negotiated settlement, revenue sharing can provide a means for an equitable settlement of differences between States seeking broad and States seeking narrow limits of resource jurisdiction. In this connection,

the benefits of revenue sharing are particularly strong in helping to meet the interests of landlocked states, states with narrow shelves and those with little petroleum potential on their shelves. We were gratified this summer to see that the concept of revenue sharing was beginning to get serious attention by some States as a way of resolving differences among States seeking varying limits of resource jurisdiction.

15. Question: In August 1972 you referred to the concept of revenue sharing as "the equal distribution of benefits from the seabeds." This past July, however, you called it a "method of achieving equity in a final law of the sea treaty" and referred to the role of revenue sharing as "an overall political settlement" of law of the sea issues. Does this indicate a new executive branch view on the rationale for the revenue sharing proposal?

Response: These descriptions of the concept of revenue sharing do not indicate a new Executive Branch view on the rationale for the revenue sharing proposal. Instead they reflect the fact that revenue sharing serves a number of important purposes in a comprehensive law of the sea settlement. First, revenue sharing is a means for realization of the concept of the "common heritage of mankind" for seabed resources in areas beyond the limits of national jurisdiction. Second, revenue sharing provides a fund which would be available for international community purposes, with particular regard for the economic needs of the developing countries. Third, revenue sharing is an international aspect of resource jurisdiction in the Coastal State Seabed Economic Area which may provide a means of resolving differences between states seeking narrow vs. broad resource jurisdiction limits. This benefit of revenue sharing accrues because it provides a means for the equitable settlement of interests among coastal vs. landlocked states, among States having broad vs. narrow shelves, and among States with varying potentials for exploitation of petroleum and other resources on their shelves.

16. Question: In your statement you indicate that one of the purposes of provisional application of the treaty prior to ratification, was to assure that seabed mining would be conducted under an internationally agreed regime. How do you expect to handle mining operations that have begun prior to agreement on a treaty text -- with or without S. 1134 type legislation?

Response: We do not expect actual commercial production of deep sea hard minerals to begin prior to agreement on a Law of the Sea Treaty. We have, however, clearly in mind, the fact that American companies have together already invested substantial sums of money with a view toward the commencement of commercial operations. We will spare no effort in these negotiations to assure that that investment is protected.

17. Question. You indicated that it is the Administration's belief that the conference schedule should be adhered to since little more progress can be made without political negotiations taking place. Do you believe that all of the necessary compromises could occur with equality in the planned eight-week conference session? If not, what do you consider to be the latest acceptable date for an agreement?

Response. The General Assembly will, in the course of the next several weeks, convene the Law of the Sea Conference. A ten-week session of political negotiations is planned for 1974 with possible additional sessions if necessary to conclude not later than 1975. We cannot, at this time, predict whether all of the necessary compromises will occur in 1974. For our part, we would like to conclude the Law of the Sea Treaty in 1974. Our ability to do so in 1974, however, is contingent upon an equal showing of negotiating will by all other countries. If that is present, we will complete our work in 1974. If our willingness to conclude an agreement is not met by an equivalent attitude by all other countries, it will clearly not be possible for us to conclude the agreement in 1974.

18. Question. It appears that the U.S. and the LDC's are far apart in their ideas for an acceptable deep seabed regime. What incentive do the LDC's have to compromise with us? What justification do you have for telling our potential deep sea miners to hold up exploiting if we are still so far apart on a regime that will be acceptable to them?

Response. One incentive which developing countries have to agree with us on a deep seabed regime is the fact that we have, together with a few other countries, the capital and technology to bring the ideal of the common heritage of mankind to fruition. Other factors, too, will play an important role in bringing about the necessary compromises. As we have previously pointed out in our answer to question six, a final Law of the Sea Treaty will probably only be satisfactory to the world community if it is a genuine accommodation which assures equity for us as well as others. Moreover, recognition by the United States of rights which other nations wish to establish can only be achieved in a Law of the Sea Conference which is widely ratified by all of the countries whose interests are principally affected. Various

countries with strongly held negotiating objectives in the Law of the Sea Conference cannot expect the United States and other countries to recognize the rights they seek in the absence of a satisfactory multilateral settlement. We continue to oppose unilateral coastal State solutions to the Law of the Sea problems. Moreover, we believe that most countries, from the perspective of their own national interests, also perceive that a secure system of legal rights and obligations which is equitable can only be achieved through negotiation and not through the bilatral, ad hoc interaction of sovereign States or the use of force.

19. Question. Have there been any economic impact studies to determine the net economic result to each and every major segment of the U. S. economy by the various proposals which are being advanced by the U. S. ?

To be more specific--do you have studies showing what the dollar effect is on the mining industry and oil industry by those positions the U. S. advances--which affect that area of the economy? Do you have such studies on the fishing industry?

If the position advocated by the U. S. delegation were adopted and became part of the treaty, what would be the result on costs of oil, materials, food to the U. S. taxpayer -- consumer.

Response. As described in the response to question twelve, some estimates have been made with regard to the dollar effect of seabed metal mining. However, the petroleum resources have as yet been described only by geological analogy, rather than through exploratory drilling. In the absence of hard information obtained from actual drilling and exploitation, it is not felt possible to attempt to quantify the dollar effect on the oil industry, although it is expected that a substantial contribution can be made to the U. S. oil supply from offshore sources.

The U. S. position with respect to seabed resources, both petroleum and metallic, is to assure access to United States firms to areas of the seabed that would be designated as being beyond national jurisdiction, and under terms conducive to economic exploitation and not less favorable than those afforded to potential exploiters of other nationalities.

The seabed area which will remain under national jurisdiction has yet to be completely defined, although we are currently relying on the terms of the Continental Shelf Convention of 1958. However, in areas under national jurisdiction, U. S. firms would of course be given appropriate national treatment.

In the absence of actual experience in the exploitation of seabed resources, it is impossible to judge the cost of production of the various resources, or to predict the affect on world prices of such production.

However, to the extent that the resources are produced under competitive conditions, they will of course contribute to insuring adequate supplies to meet consumption demand at the prevailing market price. Accordingly, we have no reason to believe that the U. S. consumer would not benefit fully from the exploitation of seabed resources under the positions being advocated by the U. S. delegation.

An economic study examining the impact the current U. S. fisheries proposal will have on the national fishing industry and the economic consequences on food supply, balance of payments, employment, etc., is currently in preparation by National Oceanic and Atmospheric Administration and will be taken into account in the final overall preparation of the U. S. LOS position at the LOS conference to take place in Caracas, Venezuela, in the spring of 1974.

20. Question. Consultations among and between regional groups of Developing Countries outside the Seabed Committee forum have strengthened the political base for Coastal State economic jurisdiction over a broad marine zone. The U. S. delegation has indicated this as a fact and as a change of position has indicated its willingness to accept the trend provided certain international standards and protections are maintained in that zone. The original U. S. proposals for a strong International Seabeds Authority on the deep seabeds were put forth as a "bargaining chip" to purchase a narrow Coastal State zone of jurisdiction. Is there any advantage to the U. S. to maintain its thrust for a strong ISA in the face of this "broad shelf" consensus? By doing so, are we not giving something away for nothing?

Response. A review of the various treaty proposals on the table and debate in the Seabed Committee would clearly indicate that the United States proposal for an international seabed Authority is a carefully balanced proposal designed to avoid domination of the internal workings of an international Authority by any large group of States. Of all the proposals on the table, the United States treaty is possibly the only one which takes into account the views and desires of most countries and attempts to maintain a dynamic balance within the organization. We would not have characterized the U. S. proposal as either a strong or weak Authority but rather as a balanced Authority which has some freedom to act within the confines of a strictly drawn charter. Hence, we do not describe our position as giving something away. Rather, we think it more accurate to describe it as protecting the important political and economic interests of all States.

21. Question. On 28 July 1972, President Nixon sent Congress a message concerning an agreement with Brazil. It recognized on an interim basis the broad shelf claims of Brazil. Under this agreement the U. S. must make large payments and must exercise our police powers against U. S. citizens in protection of Brazilian territorial claims beyond the three- or twelve-mile limit. By this agreement, is not the U. S. itself endorsing unilateral acts and conducting Law of the Sea negotiations outside the forum of the United Nations? This is not by any means an isolated example of U. S. action outside the bogged-down Seabeds Committee. How can the State Department justify its position on S. 1134 in the face of this type of bilateralism and recognition of unilateralism?

Response. We do not feel that the Brazilian shrimp agreement recognizes Brazil's 200-mile territorial sea claim. The agreement itself contains a clear disclaimer to this effect, and the substance of the agreement in no way implies such recognition. The purpose of the Brazil shrimp agreement is not jurisdictional in character, but rather it is designed to protect a fishery resource which is of great interest to both countries. The resource itself lies partly within the recognized territorial waters of another country, as well as on the high seas. We feel that the content of the agreement is consistent with that purpose. The payment which the United States makes to the Government of Brazil is considered a reasonable fee for the enforcement services which

they provide to implement the terms of the agreement. These enforcement actions are limited in nature and the right to trial and punishment is entirely in the hands of the United States. It is our view that the Brazil shrimp agreement is the type of agreement which we would consider entering into with any country with whom we shared a common conservation problem, regardless of whether their juridical positions coincided with our own. We do not feel that this agreement is an endorsement of unilateral action, nor is it a circumvention of the LOS negotiations.

22. Question. Does the U. S. delegation see in the proliferation of alternative texts a statement of common ideas or a multiplicity of irreconcilable positions?

Response. Alternative texts in some areas represent areas of fundamental differences; in others they are differing statements of what basically appears to be common ground. There is broad international agreement in a number of areas, such as a 12-mile territorial sea subject to certain conditions; broad coastal State jurisdiction over resources with some international treaty limitations; protection of navigation and other high seas freedoms; and the establishment of an International Seabed Resource Authority (ISRA). Within these areas of agreement, however, there are many issues on which differences of opinion exist. For instance with respect to ISRA, there are different views on issues such as what should be the powers of the Assembly vs. the powers of the Council, and on the exact nature of the system for resource exploitation. It should be noted that to some extent, alternative treaty articles are the result of a Subcommittee decision not to debate certain issues due to factors of timing and due to the preparatory nature of the meetings. Thus, alternative text language may, at this stage of the negotiations, reflect a number of positions upon which negotiations will be held in the Conference itself.

23. Question. At the July-August 1973 Seabeds Committee meeting in Geneva, there was some opinion expressed that the Enterprise and Licensing systems were closer together substantively than they were emotionally. Can the U. S. agree to any system whereby the International Seabeds Authority functions as both the administrator and the operator? Can such an arrangement function without discrimination to competing State or private enterprise?

Response. We do not believe that the United States should agree to a system whereby the international Authority functions as both the administrator of the seabed and the operator. We do not believe that such an arrangement could function without discrimination. If a treaty were to include provision for the international Authority to itself engage in commercial ventures, it would be essential to include provisions which would insulate the commercial operation from the administrative. Care should be taken, however to avoid semantic problems. Even under the United States proposal, only the international Authority is capable of disposing of the right to mine in the deep seabed. Hence, under both the Enterprise system and the Licensing system, it is the international Authority alone which issues the legal right to carry on commercial activities. Whether this limited amount of commonality will help show the way toward negotiating compromises remains to be seen. An equally important difference between the two systems is that under the Enterprise approach the Authority would have the discretion to either discriminate against States or private enterprise in the issuance of legal rights or prohibit them entirely. Under the licensing systems that have been formulated by us and a few other delegations, the Authority would not have such discretion. This difference, in our view, goes to the heart of the negotiations in Subcommittee I.

24. Question. Do you believe it is possible to receive a two-thirds majority vote on any of the positions advanced by the United States? If so, which ones?

Response. As has been indicated above, there are certain issues on which broad agreement already exists in the negotiations. Moreover, participants in the current United Nations General Assembly meeting have entered into a gentleman's agreement which expresses the view that nations should make every effort to reach agreement on substantive matters by way of consensus and that there should be no voting on such matters until all efforts at consensus have been exhausted. This agreement demonstrates the importance attached to the achievement of a widely acceptable law of the sea agreement.

We certainly believe that it is possible to receive a two-thirds majority vote on all of the basic objectives advanced by the United States as part of a comprehensive Law of the Sea agreement. At the same time, we recognize that States must be prepared to

consider some modification of their positions in order for meaningful negotiations to take place. The precise outcome in all cases cannot be predicted at this time. However, we are confident that the necessary support can be obtained at the Conference for achievement of basic U. S. substantive objectives.

25. Question. Do you think that it will be possible to include objective ocean mining regulations in the body of the agreed treaty? Is it acceptable as has been suggested in some quarters to grant broad discretionary powers of administration and regulation to the International Seabeds Authority in lieu of detailed provisions relating to resource management?

Response. It is possible, in our view, to include objective ocean mining regulations in the body of the agreed treaty. Based on our experience this summer in Subcommittee I, we have concluded that there is fairly widespread support for this view. We do not regard the giving of broad discretionary powers of administration and regulation to the Authority as acceptable and we recognize that to avoid doing so, we must include detailed provisions limiting and specifying those powers. As pointed out earlier, this will be a principal focus of our attention in the next phase of the negotiations.

26. Question. With regard to your proposals that the International Regime should be put into immediate force and effect upon signature at the Conference:

Do you think it wise to subject U. S. ocean operations to such a regime before Congress has had an opportunity to review the results of the Conference durings its ratification process? Suppose Congress declines ratification?

Keeping in mind that such a Provisional Regime will require domestic legislation to implement it, are you drafting this legislation so that it is available on your 1974-75 timetable for agreements? Does the cautious optimism you have expressed cover the drafting and enactment of legislation in the year-and-a-quarter remaining on your schedule?

Response. It is our view that if a successful agreement is reached in the Law of the Sea Conference, it would be in the best interests of the United States and all States in the international community to implement certain aspects of that treaty as quickly as possible. We believe that Congress must play a significant role in the process of achieving provisional application. As such, we plan to be in close consultation with Congress with respect to all aspects of the negotiations during the period of preparation as well as the actual Conference itself. Furthermore, we also plan to consult with Congress as to the most appropriate means and timing for achievement of provisional application. In our internal planning, we are seeking to follow a timetable which would allow provisional application as soon as possible after agreement on the overall Law of the Sea treaty is reached.

27. Question. The marine hard minerals industry alleges that many provisions of the U. S. Draft Seabeds Treaty are individually more burdensome than their land counterparts or are unique burdens which have been imposed by the Treaty despite their absence in general terrestrial resource management practice around the world. Examples include the complex system of fees, taxes, rents, front-end bonuses and high royalties the stringent relinquishment system, the lack of provision for exclusivity in manganese nodule licenses, the requirement to obtain a reconnaissance permit, the abnormally short production period, the stringent information transfer provision. Industry spokesmen find it hard to believe that these provisions would encourage a new industry. Has the Administration attempted a review of these provisions and, if so, has that review resulted in a modified policy for U. S. delegation use at the Law of the Sea Conference?

Response. The Administration has under review the provisions of the U. S. draft seabeds treaty which have been criticized by our hard minerals industry. We have not yet made a determination to modify our policy in any particular respect but may well do so in some respects. We agree in general that at least in the first generation of deep sea mining rules should be formulated so as not to pose clear disincentives to major investment as necessary. We may not necessarily agree with industry as to

which rules or financial provisions would have that effect. We will continue to consult with industry as we have for the past several years with a view toward finding the best possible formula seen from their perspective as well as the perspective of the U. S. resource manager and the international community.

28. Question. With closed frontiers, expanding industry, and the increasing land use problems, should not U. S. environmental conservation policy and practices be tailored to the most efficient and least destructive resource recovery activity? In this regard might not ocean mining for U. S. mineral requirements be an objective to be pursued with more vigor than is apparent at the United Nations in order to mitigate strip and open pit mining affects in our own mining states?

Response. We are pursuing a negotiation of a regime for ocean mining vigorously in the United Nations. We recognize that there are environmental benefits to be gained from ocean mining as opposed to land mining.

29. Question. I understand that a central issue between developing and developed countries on the deep seabed regime and machinery is "who may exploit the area" and that the developing countries and the United States have absolutely opposite positions on this issue. I understand that the developing countries want to exert absolute control over both the exploration for and development of seabed resources by means of a monopoly operating agency called the Enterprise and that the Administration advocates a first-come-first-served licensing system. Will you please explain this situation in some detail and in particular give us your views on how this gulf can be bridged in the Law of the Sea Conference while protecting United States resource interests? Can there be a compromise between these two extremes?

Response. We have in our answer to question 23 pointed out what we think is the area of principal commonality between the supporters of a monopoly Enterprise and the supporters of a Licensing system. We have also pointed out what we think are the principal differences between the two. In the negotiations this past summer in Geneva, we made these same points and suggested that in the negotiation of rules and regulations which could accompany either of the two

approaches, we might find a way of bridging the gulf rather than to continue to debate at a conceptual level. We think our appeal in this regard was well received and at the next stage of negotiations we will begin to explore on a more practical level some of the issues which need to be addressed. We are not prepared to comment at this time on possible compromises between these two extremes. We will, of course, keep the Committee advised of our efforts and would be happy to explain our approach more fully in Executive Session.

30. Question: Administrative witnesses have said that passage of S. 1134 would damage our negotiating position on the law of the sea. However, it is difficult to imagine more extreme positions than those already taken. How would the enactment of S. 1134 lead to a more difficult situation than that which exists?

Response. We remain of the view that enactment of S. 1134 at this time would be seen by most countries, including many of our close friends in the negotiations, as a preemptive move which would call into question whether we were engaged in a bona fide negotiation, even though such action, in our view, would not be contrary to international law. We agree that there are times in a negotiation when a nation's bargaining hand is strengthened by such preemptive moves. This is probably more true in bilateral negotiations than in global negotiations where the attitudes of countries toward some of the principal actors in the negotiations may be much more important than are the attitudes in a bilateral negotiation where group pressure and collective action are not possible. We believe the Law of the Sea negotiation is a good example of the kind of multilateral negotiation where our own negotiating objectives would be imperiled by preemptive unilateral action, and accordingly, we have rejected the concept until such time as we conclude that we can no longer engage in good faith negotiations and must act to protect our national interests outside of the negotiating forum.

31. Question. When Administration witnesses appeared before this Committee in June, great emphasis was placed on the concept of a provisional regime. We would like to know what substantive discussions took place in Geneva regarding this concept and what the outlook is? Could you brief us on the work done by the Administration to develop its provisional regime idea more fully and clearly? Has the Administration given thought to specific

legislation--including protections against the possibility of the treaty itself not being ratified by the U. S. or never coming into effective force as a treaty, and protection for investments made during such a provisional period.

Response. The United States did not encourage substantial discussions of the concept of provisional regime in Geneva last summer except to point out that we would be willing to have the concept of provisional regime apply both to the deep seabeds and fisheries if not to other areas as well. Under the auspicies of the NSC Interagency Task Force on the Law of the Sea, several departments are now doing the research necessary to develop a comprehensive and detailed position on provisional regime. We are considering a great variety of issues including the ones you mentioned. We are not yet prepared at this time to brief the Committee on the work we have done to date. We hope, however, to develop a detailed and comprehensive position before the substantive negotiations begin in Caracas in 1974 and will discuss this matter with concerned Congressional committees well in advance.

32. Question. What are the major divergent views on the relative powers of the proposed Seabed Assembly and the Council--including concepts of weighted voting in the Council? Is it your opinion that these extremes will meet in the middle and soon enough for a timely international agreement?

Response. In response to question 20, we discussed the major views on the relative powers of the Assembly and the Council. With respect to weighted voting in the Council, our own position is strongly held and well known as are the positions of other countries. The question of voting in the Council is undoubtedly one of the most important in the negotiation and will be one of those questions probably left to the very end of the negotiations before political compromises can occur. If the international community wishes to have a final settlement of the Law of the Sea, this issue will be solved in time. If nations cannot bring themselves to make the necessary compromises, it will probably be difficult, if not impossible to succeed in our efforts. We cannot predict the outcome of issues such as this, we can only recognize their fundamental importance to the success or failure of the negotiations.

33. Question. Are there hazards in the participation of the United States in a Law of the Sea Conference where the positions of the majority of non-industrial States are so different from ours? Out of such a conference, could not there be a treaty which the U. S. would not ratify. How can we avoid this? Would not the passage of S. 1134 in fact establish the firmness of our seabed position.

Response. There is always a certain amount of risk involved in participating in a widely attended multilateral conference where a complex variety of important issues must be resolved. The best way to ensure that the results of the Law of the Sea Conference are acceptable to the United States is to negotiate an overall treaty which protects all our major national interests. The Executive Branch has testified before the Congress on many occasions to the effect that we do not believe the passage of S. 1134 or similar legislation at this time would facilitate the conclusion of a satisfactory Law of the Sea Treaty.

34. Question. We understand that the progress on other issues, such as fishing, Coastal State economic zone, passage through straits, etc., in Subcommittee II has been almost non-existent, that the work never proceeded sufficiently to draft any useful alternative treaty articles. How can this lack of progress be compensated for? Aren't these issues alone apt to block achievement of a timely and satisfactory treaty?

Response. The pace of work toward the development of alternative treaty texts has been slower in Subcommittee II than in Subcommittee I. This is largely due to the fact that the mandate of Subcommittee II includes traditional law of the sea subjects upon which many States have well-developed, long-standing positions. It is generally recognized that the issues in Subcommittee II involve numerous important economic, security and political interests. In that sense, agreement on the Subcommittee II issues may well be the key to a timely and satisfactory treaty.

At the July-August 1973 U. N. Seabed Committee meeting there was a profusion of alternative treaty texts submitted by States on virtually every issue under consideration in Subcommittee II. Consequently, the raw material for an orderly treaty on Subcommittee II subjects is available. The next step is to combine and reduce alternatives and this process has begun.

35. Question. We understand that the State Department has begun to prepare an environmental impact statement on all Law of the Sea issues which would be discussed at the 1974 Law of the Sea Conference. Will you explain what authority is contained within this National Environmental Policy Act which creates a duty to prepare an impact statement, the geographical scope of which extends within the water column beyond the territorial sea and on the seabed beyond the seward limits of the continental shelf?

Response. The plans of the Interagency Task Force on the Law of the Sea concerning the preparations of an environmental impact statement are presently being formulated. The National Environmental Policy Act of 1971 (P. L. 91-190) requires that every Federal Agency "shall include in every recommendation and report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment a detailed statement..." In our judgment ratification and implementation of the Law of the Sea Convention would fit into that category of Federal actions requiring an environmental impact statement. Such questions as the timing, scope and detail of an environmental impact statement are now under consideration by the Task Force and we expect to formulate a more definitive policy in the near future.

Attachments: As stated

UNITED STATES MISSION

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PRESS RELEASE

July 18, 1973

The United States today proposed global agreement on the rights and duties of States in a broad area of the seabeds off the coast. The proposal was made in the U.N. Seabed Committee, which is preparing for a comprehensive conference on the Law of the Sea next spring in Santiago. The United States draft articles were introduced in a statement by the Honorable John R. Stevenson, Special Representative of the President for the Law of the Sea Conference and Chairman of the U. S. Delegation.

The draft articles would give coastal nations the exclusive right to explore and exploit seabed resources principally petroleum and natural gas, in an area to be called the Coastal Seabed Economic Area. The articles do not deal with fisheries which are the subject of a previous United States proposal. Under the new articles, coastal nations would also have the exclusive right to authorize and regulate all drilling as well as the construction, operation, and use of offshore installations, such as offshore ports and airports, affecting their economic interests in the area and the waters above. Reasonable safety zones could be established around offshore installations to protect persons, property, and the marine environment.

At the same time, the articles also emphasize the duties of coastal nations. The activities under their jurisdiction would have to conform to international standards to prevent pollution and unjustifiable interference with other uses of the marine environment, although coastal nations could apply higher environmental standards to those activities if they choose. "While giving coastal nations complete discretion to decide the terms and conditions for foreign investment, the articles would require that agreements for such investment be strictly observed according to their terms, and that there be just compensation in the event property of foreign investors is taken." It is also proposed that some revenues from mineral exploitation of the area should

be shared "as a reasonable method for achieving equity in a final Law of the Sea Treaty." Compulsory settlement of disputes arising under the articles is contemplated, which Mr. Stevenson called "the foundation of a new world order in ocean space."

The draft articles are based on the main points of President Nixon's Ocean Policy Statement of May 23, 1970, as elaborated by the U.S. Delegation since that time. While they do not include specific proposed limits for the Coastal Seabed Economic Area, Mr. Stevenson noted the "preponderant view" among other nations that "the outer boundary should be fixed in terms of a mileage distance with 200 miles the generally preferred figure," but that "a sizeable number of delegations would prefer in addition to this mileage limit an alternative seaward limit which would embrace the continental margin where it extends beyond 200 miles."

With respect to the landward limit of the Coastal Seabed Economic Area, Mr. Stevenson noted the main issues involved. At the present time, coastal States have exclusive rights to seabed resources beyond the territorial sea under the Continental Shelf Convention at least until the waters reach a depth of 200 meters. However, the extent of those rights is not agreed and the duties elaborated in the Continental Shelf Convention are "less satisfactory" than those in the proposed Coastal Seabed Economic Area. Accordingly, Mr. Stevenson noted that beginning the Coastal Seabed Economic Area at the outer limit of the proposed 12-mile territorial sea would conform to "simplicity and logic" and would be desirable in connection with the duties spelled out, but "allowance may have to be made for the fact that" the Continental Shelf Convention already specifies the 200-meter depth figure.

In the course of discussion of these issues, Mr. Stevenson made reference to an overall law of the sea settlement which would deal with many other issues in addition to seabed resources. Thus, in the context of referring to the proposed 12-mile limit for the territorial sea, he reaffirmed the United States position that its willingness to move to a 12-mile territorial sea is conditioned on international guarantees of free transit through and over straits used for international navigation.

UNITED STATES MISSION

U.S. INFORMATION SERVICE
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PRESS RELEASE

STATEMENT BY
THE HONORABLE JOHN R. STEVENSON
CHAIRMAN OF THE UNITED STATES DELEGATION
TO THE
COMMITTEE ON THE PEACEFUL USES OF THE SEABED AND
THE OCEAN FLOOR BEYOND THE LIMITS
OF NATIONAL JURISDICTION

SUBCOMMITTEE II - July 18, 1973

Mr. Chairman:

Almost a year ago, in a statement before the Main Committee, my delegation said that the United States "can accept virtually complete coastal State resource management jurisdiction over resources in adjacent seabed areas if this jurisdiction is subject to international treaty limitations in five respects." We also noted that the negotiating positions of various states "are now substantially closer together than their juridical positions" and we noted with interest the contribution to our work made by the Santo Domingo Conference of Caribbean States and the Yaounde Seminar of African countries. We now also have before us the Declaration on the Issues of the Law of the Sea of the Organization of African Unity. In addition, States have continued to express negotiating positions on the question of coastal resources which indicate that there is indeed a basis for believing that further progress can be made and a successful Conference achieved.

Mr. Chairman, we look forward to discussion in the Working Group of Subcommittee II on the question of fisheries. Our own proposal on fisheries was submitted last August, and of course is not affected by the proposals we are making today regarding the seabeds.

During July, the Working Group of Subcommittee II has debated item five on the list of subjects and issues--the continental shelf, and related matters regarding economic jurisdiction over seabed resources. We found that debate to be a helpful and useful exchange of views. We were impressed with

the efforts of all delegations to engage in a structured, reasoned and temperate discussion on the question of the continental shelf and seabed resources. We are most encouraged by the fairly widespread agreement that has emerged in the Working Group on certain fundamental issues with respect to seabed resources, and would like to address some of these issues in connection with the introduction of our draft articles.

There is no question but that most States believe that the coastal State should have exclusive rights over the natural resources of the coastal seabed and subsoil. Thus, the coastal State should determine if exploration and exploitation will take place, who shall do it and on what terms and conditions. We agree that the coastal State should have such full resource management jurisdiction over such coastal seabed resources. We do so, however, subject to the conditions which I will elaborate in this statement. These conditions are designed to ensure that coastal State rights are accompanied by corresponding duties to protect the interests of other States and the international community in general.

We also note the preponderant view that the outer boundary of the coastal State's seabed economic jurisdiction should be fixed in terms of a mileage distance with 200 miles the generally preferred figure. However, a sizeable number of delegations would appear to prefer, in addition to this mileage limit, an alternative seaward limit which would embrace the continental margin where it extends beyond 200 miles. My delegation would welcome the opportunity for continuing consultations with other States on the outer boundary. It should be clear, however, that if the outer boundary of coastal State economic resource jurisdiction is to include the entire continental margin, a precise method of delimiting that area will have to be found.

In this connection, Mr. Chairman, I would like to repeat the comment that I made in the working group when this issue of whether the outer boundary should extend beyond 200 miles to the edge of the margin was discussed. I indicated my concern that a number of countries advocating a uniform 200 mile boundary were suggesting that the issue be considered in terms of "compensation" to the coastal State for renouncing its rights in the continental margin beyond 200 miles. I am not at all clear what form this "compensation" could take and do not see this as an effective way of obtaining the general agreement of coastal States with a wide margin, nor of satisfying the aspirations of the land-locked and

shelf-locked countries. I suggested that we devote more attention to the converse, i.e., recognition of broad coastal State resource management rights, but with provision for an equitable accommodation of other States' interests through measures such as revenue sharing which are consistent with coastal State resource management.

From the point of view of my government, a new Law of the Sea Treaty would not be adequate if it gave to coastal States comprehensive seabed economic jurisdiction without providing for protection of the rights of other States in the seabed economic area of coastal States. We believe these rights must not only be clearly provided for in the Law of the Sea Treaty but that a system should be established which will assure that the coastal State does not go beyond its seabed economic rights or unjustifiably interfere with other activities conducted in the area or superjacent waters by other States. In this negotiation, we are now dealing with large areas of ocean space in which intense activity, some of which will not be resource oriented, will occur in the future -- activity of interest both to the coastal State and other States. We believe, therefore, that in the interests of worldwide agreement on the rights of coastal States there must be corelative duties assumed by the coastal State to assure an harmonious accommodation of interests.

In order to make clear our views on this subject, my delegation introduced draft treaty articles entitled "The Rights and Duties of States in the Coastal Seabed Economic Area" several days ago. With your indulgence, Mr. Chairman, I would like to take this opportunity to comment on some of the provisions of these draft articles.

Article 1 (1) would assure the coastal State that it has the exclusive right to explore and exploit as well as to authorize the exploration and exploitation of the natural resources of the seabed and subsoil within the coastal seabed economic area. This would appear to be one of the principal economic negotiating objectives of the majority of coastal States and in particular of the coastal developing countries.

Article 1 (2) deals with the question of the delimitation of the boundaries of the seabed economic area. I have previously discussed our views on the outer boundary. With respect to the inner boundary of the area, my delegation recognizes that simplicity and logic would call for the coastal State's economic rights and duties to commence at the edge of the territorial sea. Moreover, it would be desirable for the substance of the duties of the coastal State, which I will describe in connection with Article 2 of our draft articles, to apply to the widest possible area. Nevertheless, we

recognize that allowance may have to be made for the fact that the Geneva Convention on the Continental Shelf already provides coastal States with the sovereign right to explore and exploit the resources of the shelf to the depth of 200 meters with a somewhat different, and in our view less satisfactory, provision for the protection of other interests in, and uses of, the area than is provided in our draft articles. Not infrequently this 200 meter depth is seaward of 12 miles. Hence, there may be some States which will not wish to subject the area between 12 miles and 200 meters to a new legal regime, or they may object to the application, in that area, of one or more of the international standards we propose -- for example, revenue sharing. If this turns out to be the case, there may still be other methods of accommodating coastal States' interests in the area between 12 miles and 200 meters which would not conflict with a new single inner limit of 12 miles.

We welcome active consultation with other delegations on this question.

In equating the territorial sea with 12 miles for the purpose of dicussing the application of these draft Articles, I should reaffirm our position that our willingness to move to a 12 mile territorial sea is conditioned on international guarantee of free transit through and over straits used for international navigation.

Article 1 (3): The purpose of this paragraph is to ensure that the coastal State has the exclusive right to authorize and regulate the construction, operation and use of offshore installations which affect its economic interests not only in the coastal seabed economic area, but also in the superjacent waters. This is to assure that as the world community begins to develop new uses for ocean space such as the construction of offshore ports, power plants, airports and the like, the coastal State will have all necessary jurisdiction over them, even if they are not attached to the seabed. Article 1 (3) also provides for an exclusive coastal State right in the coastal seabed economic area to authorize and regulate drilling not related to resources, since such drilling is not covered by the coastal State's resource jurisdiction under Article 1 (1).

Article 1 (4) provides the coastal State first with the right to establish reasonable safety zones around the offshore installations affecting its economic interests and second, with the right to take appropriate measures to protect persons, property and the marine environment within such zones. To protect international community interests and the rights of other States in making use of the area, particularly with respect to freedom of navigation, the Article requires that the breadth of the zones as determined by the coastal State conform to international standards which are in existence or which may be established in the future by IMCO.

Article 2 expresses the substance of the coastal State's duties. It provides the protection of the rights of all other States in the coastal seabed economic area. It is designed to reflect our view that if coastal States are to be given such broad economic jurisdiction, this jurisdiction must be balanced so as to assure harmony with the interest of other States in the same area. In this connection, it is important to bear in mind that coastal States are not only affected by seabed activities off their own coasts, but are also affected by the exercise of jurisdiction over similar activities off the coasts of other States.

Article 2 (a) reaffirms the customary international law requirement that activities such as those described in Article 1 may not unjustifiably interfere with other uses of the area. The coastal State would ensure compliance with international standards to prevent such interference.

Article 2 (b) provides, in effect, that every coastal State should have the duty to meet international standards designed to ensure that as it satisfies its economic objectives it does not, in doing so, damage either the marine environment or the coastlines of other States. For example, drilling within one coastal State's seabed economic area can, if not conducted with adequate safeguards, damage the waters beyond and the shores of other coastal States. Thus, another coastal State may suffer environmental damage, economic damage, or both. If the coastal State alone were to determine whether its own rules and regulations for oil drilling were adequate, this would not provide a satisfactory objective guarantee to the international community and other coastal States. On the other hand, we recognize that minimum standards may not be satisfactory to the coastal State. Therefore, we have provided in Article 1 (6) that the coastal State may apply higher standards if it chooses.

Article 2 (d) relates to what we have called integrity of investment. While giving coastal nations complete discretion to decide the terms and conditions of foreign investment, the articles would require that agreements for such investment be strictly observed according to their terms, and that there be just compensation in the event property of foreign investors is taken.

Mr. Chairman, all of us recognize the extent to which nations of the world have in recent years grown increasingly

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inter-dependent economically and otherwise. It is this inter-dependence -- this mutual reliance of States on each other for the efficient functioning of their societies -- that makes us believe that it is in everyone's interest that relationships freely entered into with respect to the exploitation of coastal State seabed resources be respected. It is on the basis of these relationships that expectations are created and plans made; disruption of agreed relationships can accordingly have far-reaching implications for States as well as private parties.

I must emphasize, Mr. Chairman, that we are in no sense seeking to qualify the coastal State's exclusive resource management jurisdiction. The coastal State can exclude all foreign investment if it so elects. If it determines that it is in the coastal State's interest that other nations or their nationals be given the right to explore and exploit the resources of the coastal State, either alone or in joint ventures with the coastal State or its nationals, the coastal State will alone decide, in negotiations with others, what the terms and conditions and duration of such arrangements will be. Our proposal is simply that when those arrangements have been completed and other nations rely upon them, the coastal State should be obligated to observe them.

Mr. Chairman, with specific reference to the petroleum of the seabed, I would observe that while stability of freely negotiated contractual arrangements for the supply of petroleum is important to oil importing countries, it also should be of concern to seabed producers.

We have studied the trends of capital investments by petroleum industries of developed countries and have noted during the past few years a decided shift in investment patterns. Increasingly, albeit at higher costs both to the producer and the customer, massive investments of capital have moved to higher cost areas in which petroleum companies believed they were more assured of a continuity of supply.

This is underscored, moreover, by the enormous demands that offshore exploration and exploitation will make upon the capital available for this development in the years to come. Recent estimates suggest that the overall capital requirements of the petroleum industry may far exceed what can be generated internally.

Accordingly we believe that producing countries will best serve their own interests in attracting the capital and technology necessary for offshore development if stability of contractual arrangements is achieved through a principle such as that set forth in Article 2 (d). It would seem likely that a country that has accepted a treaty obligation to ensure such stability will be substantially more attractive to international sources of capital and entrepreneurial talent.

Article 2 (e) raises the question of revenue sharing which has been with this Committee from the very beginning of its negotiations in Rio de Janeiro in 1968. My government first proposed revenue sharing in President Nixon's Oceans Policy Statement of May 23, 1970. We believe it is a reasonable method for achieving equity in a final Law of the Sea Treaty -- not only for landlocked and shelflocked countries, but for those countries who have continental margins but which will find little oil there and for those countries which seek to broaden jurisdiction over the resources of the continental margin. Revenue sharing is, in our view, an important element in an overall comprehensive settlement of the law of the sea issues which, as I indicated earlier, could have specific application to the problem of resolving the issue of the outer limit of coastal State resource jurisdiction. We note that to date few nations have spoken in support of this concept. We hope that situation will change and that at a future stage of our negotiations we will be able to begin to discuss specific formulas for revenue sharing. We do not see, Mr. Chairman, how we will reach the state of discussing specific revenue sharing arrangements until nations have some better idea of the role which revenue sharing will play in an overall political settlement of the many issues in this negotiation.

Article 4 makes clear that nothing in these Articles is to affect rights of freedom of navigation and overflight and rights to carry on other activities in accordance with international law unless otherwise expressly provided in the Convention. The meaning of the Article is clear, as is its importance.

For my government, Mr. Chairman, Article 5 on the compulsory settlement of disputes goes to the core of this negotiation. It is the foundation of a new world order in ocean space. If nations cannot agree to settle their disputes peacefully and be bound to do so and to obey the decisions which are given, then all the standards and the rights and duties of States which will be elaborated in this treaty will be of little practical value. If we are to establish new relationships for the conduct of our affairs in the oceans, those new relationships must include a system which

will permit all of us to settle our differences on the basis of our rights and duties under a new comprehensive treaty without resort to the use of force and without political confrontation. This objective is, after all, the real reason for this negotiation. Without this new treaty and a system for the compulsory settlement of disputes arising under the treaty, international law will leave us with few satisfactory alternatives to assure that what we all agree to will in fact be respected. For our part, Mr. Chairman, we could not agree to a great many of the things we have ourselves proposed for a new Law of the Sea Convention in the absence of a general system of compulsory dispute settlement for ocean uses. When we speak of an overall comprehensive Law of the Sea settlement, Mr. Chairman, this issue is very much in the forefront of our minds.

In closing, Mr. Chairman, my delegation would like to emphasize that we have observed a growing rapprochement on the question of seabed economic rights in coastal areas. We are very pleased at this, because it would appear that coastal State resource jurisdiction is more important to a larger number of delegations than any other issue. We believe, moreover, that a satisfactory accommodation of interests in this area should facilitate an overall settlement in which differences with respect to the deep seabed regime and transit through international straits are more easily resolved.

We still feel, however, that while there has been increasing appreciation of the desirability of broad coastal State seabed resource management, there has been inadequate consideration of the international standards which should accompany that jurisdiction in order to provide an appropriate balance of coastal and other interests.

We look forward to discussing these proposals and the proposals of other delegations on this subject in the course of the coming weeks. The possibilities for achieving a satisfactory treaty on the Law of the Sea in 1974 in Santiago will be substantially enhanced if our discussions this summer prove fruitful.

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A/AC.138/SC.II/L.35
16 July 1973

UNITED STATES OF AMERICA: DRAFT ARTICLES FOR A CHAPTER ON THE RIGHTS AND DUTIES OF STATES IN THE COASTAL SEABED ECONOMIC AREA*/

ARTICLE 1

1. The coastal State shall have the exclusive right to explore and exploit and authorize the exploration and exploitation of the natural resources of the seabed and subsoil in accordance with its own laws and regulations in the Coastal Seabed Economic Area.

2. The Coastal Seabed Economic Area is the area of the seabed which is

(a) seaward of ____; and
(b) landward of an outer boundary of ____

3. The coastal State shall in addition have the exclusive right to authorize and regulate in the Coastal Seabed Economic Area or the superjacent waters:

(a) the construction, operation and use of offshore installations affecting its economic interests, and
(b) drilling for purposes other than exploration and exploitation of resources.

4. The coastal State may, where necessary, establish reasonable safety zones around such offshore installations in which it may take appropriate measures to protect persons, property, and the marine environment. Such safety zones shall be designed to ensure that they are reasonably related to the nature and function of the installation. The breadth of the safety zones shall be determined by the coastal State and shall conform to international standards in existence or to be established pursuant to Article 3.

5. (a) For the purposes of this Chapter, the term "installations" refers to all offshore facilities, installations, or devices other than those which are mobile in their normal mode of operation at sea.

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*/ This Chapter deals with seabeds resources, and does not deal with fisheries. The proposal of the United States with respect to fisheries beyond the territorial sea was introduced in Subcommittee II on 4 August 1972 (A/AC.138/SC.II/SR.40) (Official Records of the General Assembly, Twenty-seventh session, Supplement No. 21, A/8721)

(b) Installations do not possess the status of islands. They have no territorial sea or Coastal Seabed Economic Area of their own, and their presence does not affect the delimitation of the territorial sea of the coastal State.

6. The coastal State may, with respect to the activities set forth in this Article, apply standards for the protection of the marine environment higher than those required by applicable international standards pursuant to Article 2.

7. The coastal State may, with respect to the activities set forth in this Article, take all necessary measures to ensure compliance with its laws and regulations subject to the provisions of this Chapter.

ARTICLE 2

The coastal State, in exercising the rights referred to in Article 1, shall ensure that its laws and regulations, and any other actions it takes pursuant thereto in the Coastal Seabed Economic Area, are in strict conformity with the provisions of this Chapter and other applicable provisions of this Convention, and in particular:

(a) the coastal State shall ensure that there is no unjustifiable interference with other activities in the marine environment, and shall ensure compliance with international standards in existence or promulgated by the Authority or the Inter-Governmental Maritime Consultative Organization, as appropriate, to prevent such interference;

(b) the coastal State shall take appropriate measures to prevent pollution of the marine environment from the activities set forth in Article 1 and shall ensure compliance with international standards in existence or promulgated by the Authority or the Inter-Governmental Maritime Consultative Organization, as appropriate, to prevent such pollution;

(c) the coastal State shall not impede, and shall co-operate with the Authority in the exercise of its inspection functions in connection with subparagraph (b) above;

(d) the coastal State shall ensure that licenses, leases, or other contractual arrangements which it enters into with the agencies or instrumentalities of other States, or with natural or juridical persons which are not nationals of the coastal State, for the purpose of exploring for or exploiting seabed resources are strictly observed according to their terms. Property of such agencies, instrumentalities or persons shall not be taken except for a public purpose, on a non-discriminatory basis, nor shall it be taken without the prompt payment of just compensation. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken and adequate provision shall have been made at or prior to the time of the taking to ensure compliance with the provisions of this paragraph;

(e) the coastal State shall make available in accordance with the provisions of Article ____, such share of revenues in respect of mineral resource exploitation from such part of the Coastal Seabed Economic Area as is specified in that Article.

ARTICLE 3

1. All activities in the marine environment shall be conducted with reasonable regard to the rights of the coastal State referred to in Article 1.

2. States shall ensure compliance with international standards in existence or to be promulgated by Inter-Governmental Maritime Consultative Organization in consultation with the Authority:

(a) regarding the breadth, if any, of safety zones around offshore installations;

(b) regarding navigation outside the safety zones, but in the vicinity of offshore installations.

ARTICLE 4*/

Nothing in this Chapter shall affect the rights of freedom of navigation and overflight and other rights to carry on activities unrelated to seabed resource exploration and exploitation in accordance with general principles of international law, except as otherwise specifically provided in this Convention.

*/ It is assumed that the general articles of the Law of the Sea Convention will contain an article such as Article 4 applicable to all areas beyond the territorial sea. Such an article would obviate the need for several articles making the same point here and in other chapters of the Convention.

ARTICLE 5

Any dispute with respect to the interpretation or application of the provisions of this Chapter shall, if requested by either party to the dispute, be resolved by the compulsory dispute settlement procedures contained in Article ____, of Chapter ____.

UNITED STATES MISSION

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PRESS RELEASE

STATEMENT BY
JOHN NORTON MOORE
VICE CHAIRMAN OF THE UNITED STATES DELEGATION
TO THE
COMMITTEE ON THE PEACEFUL USES OF THE
SEABED AND THE OCEAN FLOOR BEYOND THE
LIMITS OF NATIONAL JURISDICTION

Subcommittee III -- July 18, 1973

Mr. Chairman:

The problem of marine pollution extends to all of the world's oceans and directly affects each of us. The oceans are a major part of the global ecosystem and their degradation can threaten the health and well-being of everyone. Actions taken by the international community in recent conferences indicate a recognition of this fact and a pledge to take all necessary measures to prevent marine pollution. These actions also indicate increasing recognition that the problem of marine pollution is a global problem requiring a truly international solution. We must also recognize that the many new and intensified ocean uses to be considered by the Law of the Sea Conference may pose significant risks of environmental damage which must be dealth with promptly and effectively. To meet these needs, my delegation has prepared and distributed to this Committee in document number A/AC.138/SC.III/L.40 draft articles for the protection of the marine environment.

The Law of the Sea Conference can and must establish an adequate jurisdictional basis for a coordinated international response to global marine environment problems. Such an adequate basis requires an understanding of the diverse threats to the marine environment and the need for a response tailored to each. Problems raised by

vessel-source pollution are fundamentally different from those raised by land based sources or seabed resource activities and they require different solutions. An adequate basis also requires that we differentiate between jurisdiction to set standards and jurisdiction to enforce such standards. For example, jurisdiction to set vessel construction standards may raise quite different considerations than jurisdiction to enforce such standards. Again, Mr. Chairman, these differences require different solutions. My delegation has sought in its draft articles to meet these points.

The first section of our draft articles refers to basic obligations to protect the marine environment. The second section states the competence of international organizations and States to establish standards for dealing with a variety of problems concerning protection of the marine environment. The third and fourth sections set out a general basis for enforcement with respect to these problems, including a system of cooperative enforcement involving flag States, port States, and coastal States. The fifth section gives the coastal States rights to take action in extraordinary situations to protect against environmental threats to their interests. Finally, Mr. Chairman, the articles contain important new procedural provisions, provisions relating to liability and provisions for compulsory settlement of disputes.

Taking up each of these sections in turn, the first section takes note of the work of the working group of this Subcommittee in dealing with the basic obligation to protect the marine environment. Thus, the draft articles build on the work already done by the Working Group.

In the second section dealing with jurisdiction to establish standards, we differentiate between pollution from vessels and pollution from activities under coastal State jurisdiction in the Coastal Seabed Economic Area, such as resource exploration and exploitation and construction and operation of offshore facilities.

As to seabed-source pollution, we provide that the International Seabed Resource Authority to be set up under the Convention should establish standards for activities under coastal State jurisdiction in the Coastal Seabed Economic Area and for those activities which the Authority controls in the area beyond. These standards will ensure effective measures to control such pollution. Since, of course, the coastal State will have primary responsibility

for the management and control of seabed exploration and exploitation activities, coastal States should have the right to establish stricter standards for such activities under their jurisdiction in the Coastal Seabed Economic Area.

Mr. Chairman, during the March/April meeting of the Seabed Committee, my delegation introduced a working paper on the question of the competence to set standards for control of pollution from vessels. We have discussed in the Working Group the reasons supporting our conclusion in that paper that standards for vessel source pollution must be internationally established and we need not elaborate those reasons again here. My delegation, however, would like to thank the members of the Subcommittee who have commented on our working paper.

Mr. Chairman, because of its technical competence and experience we believe that IMCO should be designated as the international organization responsible for establishing these international standards for vessel-source pollution. We are sensitive to the views expressed by some delegations who have felt that the IMCO treaty process has not always moved rapidly enough to deal with newly-emerging problems; that the environmental expertise of IMCO should be strengthened; or that the structure was not sufficiently open to concerned States who would like to participate. Recently, we have put forward in the IMCO Council a proposal for changing the IMCO structure to create a new Marine Environment Protection Committee for dealing with vessel-source pollution. This proposal would ensure that new technology and new problems are adequately and rapidly dealt with and that all nations interested in participating in the setting of such standards would have an opportunity to do so. There are two points I would like to stress in this connection:

First, membership in the Committee will be open so that any concerned State would be able to participate equally in the formulation of regulations;

And second, the new Committee will be empowered to adopt regulations and to circulate them directly to Governments without the review or approval of the IMCO Assembly or Council. Such regulations would then come into effect automatically unless objected to by a specified number or category of States.

Returning to the draft articles introduced by my delegation today, Mr. Chairman, the articles also specifically provide for the international establishment of special standards for special areas and problems. We recognize the need for such special standards in order to cope effectively with special ecological circumstances of particular regions and thus we have emphasized the need to respond to these needs. Also, I should note that the proposed Marine Environment Protection Committee would have regional subcommittees to consider and develop solutions for regional problems. Of related interest, the articles also provide for cooperation among the various international organizations active in the environment field, including the United Nations Environment Program.

In addition to establishing international competence to make standards for vessel source pollution, the draft articles do provide for two situations in which States would also have the authority on their own to set stricter standards for such pollution. Port States, in accordance with their general right to regulate vessels entering their ports would be able to apply higher standards to such vessels and, of course, flag States would continue to be able to do so for their own flag vessels.

Turning to the problem of enforcement, the sections on enforcement, Sections C,D,E, and F, of the draft articles are intended to provide adequate enforcement authority to cope with the variety of pollution problems arising from seabed activities and from vessels.

With respect to pollution from seabed activities, the coastal State is given complete authority to enforce both its own and international standards for those activities under its jurisdiction in the Coastal Seabed Economic Area. Such activities are essentially under the management and control of the coastal State and it should thus also have the authority and responsibility to ensure that such activities do not pollute the marine environment. Since the coastal State is not the only State that may be damaged or affected by pollution from such seabed activities, we have provided for international inspection to ensure compliance with the international standards.

With respect to pollution from vessels, flag States, port States, and coastal States would all share specified enforcement rights and duties. Moreover, we have provided that States may, by agreement, authorize other States to act for them in carrying out these rights and duties.

First, the flag State would continue to have enforcement responsibility over its vessels although such authority would not be exclusive. It would also assume a specific obligation to enforce international standards against vessels flying its flag, subject to a right in other States to resort to compulsory dispute settlement procedures to make certain that this obligation is fully met.

Second, the port State could enforce pollution control standards against vessels using its ports. In this connection, I would like to emphasize that we provide, in Article VII, that the port State can take enforcement action with respect to violations regardless of where they took place.

Finally, the coastal State will have rights and mechanisms that will fully protect its environmental interests. The draft articles contain methods for dealing with the four major marine pollution problems facing coastal States: Serious maritime casualties off its coast; violations of international standards presenting imminent danger of major harmful consequences to the coastal State; persistent and unreasonable failure of a State to enforce the international standards with respect to vessels flying its flag; and, also, general violations of the standards.

Maritime casualties may threaten major harmful consequences to the coastal State. We feel that the coastal State should be able to take direct action to prevent, mitigate, or eliminate any such problem off its coast. The 1969 Intervention Convention provides such a right with respect to oil pollution and it is presently being expanded to apply to other substances. Certainly all coastal States must be able to act in such situations without delay.

There is also another type of situation in which coastal States should be able to take direct action. In the case of a violation of the international standards which is sufficiently serious to produce imminent danger of major harmful damage, the coastal State should also be allowed to take direct enforcement measures, including detention or, where absolutely necessary, arrest, in order to prevent, mitigate or eliminate the danger. This right goes substantially beyond that of the Intervention Convention since it is quite possible to have a serious pollution problem without the occurrence of a maritime casualty.

To adequately protect coastal States, we must also eliminate persistent and unreasonable flag State failure to enforce the applicable standards. To achieve this, in addition to providing for general enforcement actions by other States, we provide a right for any State, coastal or not, to lodge a complaint with the dispute settlement machinery to the effect that a particular flag State has unreasonably and persistently failed to enforce the international standards. If the complaint is upheld, the dispute settlement machinery may then specify additional enforcement measures which may be taken by coastal States against all vessels of that flag violating the international standards. Such measures could include measures to be taken by coastal States on the high seas. Since such measures could be taken until the flag State itself undertakes continuing effective enforcement, the new right will create a strong inducement for flag states to effectively control their vessels.

Finally, we have set up a general system, in Sections D and F, to deal with ordinary violations in an effective manner. Under this system, any coastal State which suspects a violation of the international standards, for example an oil discharge, may request the suspected vessel to give information specifying its name, next ports of call and other relevant information. The vessel is required under the draft articles to supply the information. If the vessel is headed for a port in the coastal State, the

enforcement vessel can then request an immediate on-board inspection and can deny port entry if the request is refused. If, however, the suspected vessel is headed elsewhere, the coastal State may forward evidence to a port of call of the vessel or to the flag State, whichever it wishes. Whichever State is notified, port State or flag State, is required to undertake an investigation in which the coastal State has a right to participate. If the investigation reveals a violation, then the port State may institute proceedings and if the port State does not do so, the flag State must. In this connection, we propose an article requiring adequate penalties. I would also like to emphasize again that the flag State obligations to institute proceedings and to ensure adequate penalties are enforcable through compulsory dispute settlement.

Mr. Chairman, we believe that this system will provide an effective enforcement regime which will ensure that violations are deterred. It will also provide effective protection for those States which may not have a large capability for offshore enforcement. At the same time, through reasonable procedures such as bonding, we ensure that voyages can continue after necessary investigations are carried out so long as there would be no unreasonable threat to the marine environment.

The draft also includes articles relating to the issues of State responsibility, penalties, liability for unreasonable enforcement measures, multiple proceedings and cooperation. Most of these articles are self-explanatory and we will make any necessary additional comments on them when they are discussed in the Working Group.

Finally, the draft articles provide for compulsory dispute settlement so that all States, coastal and non-coastal, will have adequate remedies to ensure compliance with all aspects of these new procedures and responsibilities. A major interest which all nations share is to reach agreement on a Law of the Sea Convention which will minimize uncertainty and potential conflict among nations. If the rights and duties of States to be elaborated in the Convention are to be meaningful, we must agree to settle all disputes peacefully. The United States could not, in fact, agree to many proposals we have made ourselves in the Seabed Committee if there is no general system of compulsory dispute settlement.

Mr. Chairman, I would like to add a few additional comments relating to the proposal recently made by the United States for establishing a new Marine Environment

Protection Committee in IMCO. I have attached a copy of that proposal for the information of the members of the Committee.

First, the proposal does not in any way detract from the jurisdiction of the Seabed Committee or prejudice the options of the Law of the Sea Conference regarding the jurisdiction of States. The Law of the Sea Conference will be a Plenipotentiary Conference charged with determining the basic jurisdictional framework for protection of the marine environment and that competence cannot in any way be altered by actions in another forum. Regardless of our differences on coastal State jurisdiction, we all agree that there must be strong international standards. Our proposal in IMCO is designed to ensure that those international standards are expeditiously and effectively established and we believe that we should move vigorously in every forum to achieve these ends.

Second, the proposal marks a step forward toward a more open system of establishing international standards for vessel source pollution -- a system in which States affected by such standards would be able to participate in setting them. Membership in the new Committee will be open so that any concerned State could participate equally in the formulation of standards. States representing all major community interests at stake including protection of the marine environment and navigational interests could thus participate in the decision process.

Again, Mr. Chairman, let me emphasize that the standards adopted by the new committee will be directly circulated to States party to the relevant convention and will not be subject to review by the IMCO Council or Assembly. Such standards would come into effect automatically unless objected to by a certain number or category of States. This is essential if standards and regulations are to be rapidly brought into force in response to changes in technology or new knowledge about the marine environment.

Third, there can be no question but that IMCO has broad authority to deal with vessel source pollution problems. The IMCO Charter clearly authorizes such activities and the historical practice of IMCO strongly supports it. IMCO has been active in the field of vessel pollution control since its inception. Conventions concluded under its auspices include the 1962, 1969 and 1971 Amendments to the 1954 Oil Pollution Convention, the Civil Liability and Compensation Fund Conventions, as well as the draft articles prepared for the October Marine Pollution Conference. Many States have participated in this work of IMCO and are parties to one or more of these Conventions.

In closing, Mr. Chairman, the Law of the Sea Conference will establish the basic jurisdictional framework for the protection of the marine environment well into the 21st Century. It is incumbent upon all of us to ensure a forward looking framework which will effectively protect that environment. My delegation has tabled today draft articles which we believe will ensure such a framework. We believe also that they will fully protect the interests of coastal States as well as maritime nations and other members of the international community. We should remember in this connection that all nations, whether coastal States, maritime nations, or both, have a common interest in effective protection of the marine environment. And all nations have a common interest in avoiding unnecessary increases in transportation costs and unnecessary sources of potential disagreement among nations. The challenge for this Committee, is to find a framework which will bring together all nations in recognizing these common interests. We hope, Mr. Chairman, that the draft articles which we have submitted today will assist in meeting this challenge.

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UNITED STATES DRAFT ARTICLES ON THE PROTECTION OF THE MARINE ENVIRONMENT AND THE PREVENTION OF MARINE POLLUTION

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Section 4: Obligations to Protect the Marine Environment

Article I: General Obligation

Article II: Particular Obligations

(Two articles on these subjects were discussed during the March/April meeting of the Seabed Committee. We take note of those drafts and the footnotes and will, of course, participate in the later consideration of them in the Working Group and the Subcommittee.)

Section B: Competence to Establish Standards to Protect the Marine Environment

Article III: International Standards in General

1. The Authority established by Chapter ____ of this Convention shall have primary responsibility for establishing, as soon as possible and to the extent they are not in existence, international standards with respect to the seabeds.

2. The Intergovernmental Maritime Consultative Organization shall have primary responsibility for establishing, as soon as possible and to the extent they are not in existence, international standards with respect to vessels.

3. Such standards may include special standards for special areas and problems, taking into account particular ecological circumstances.

4. These organizations shall cooperate with each other, other international organizations in the field, and the United Nations Environment Program.

Article IV: The Right and Duty to Implement Standards

States shall adopt laws and regulations implementing international standards in respect of marine based sources of pollution of the marine environment or may adopt and implement higher standards:

(a) in the exercise of their rights in the /Coastal Seabed Economic Area/ with respect to the activities set forth in Chapter _____, Article ____ of this Convention;

(b) for vessels entering their ports and offshore facilities;

(c) for their nationals, natural or juridical, and vessels registered in their territory or flying their flag.

Section C: General Competence to Enforce Standards to Protect the Marine Environment

Article V: Enforcement Instrumentalities

For the purposes of this Chapter, a State shall act through duly authorized government vessels, aircraft, or officials. Any State may, by agreement, authorize one or more other States to act for it in taking pollution enforcement measures and shall so inform other States through IMCO, or directly.

Article VI: Enforcement in the /Coastal Seabed Economic Area_/

1. In the exercise of its rights in the /Coastal Seabed Economic Area_/ pursuant to Chapter _____, the coastal State shall enforce the standards applicable in accordance with the provisions of this Chapter to the activities set forth in Chapter _____, Article _____ of this Convention.

2. The Authority established in Chapter _____, may inspect, in accordance with Article _____, the activities specified in paragraph one of this Article, in cooperation with the coastal State, to ensure that the activities are being conducted in compliance with the standards applicable in accordance with the provisions of this Chapter.

Article VII: Ordinary Enforcement Against Vessels

1. A State shall enforce standards applicable in accordance with the provisions of this Chapter to vessels registered in its territory or flying its flag (such State is hereinafter referred to as the "flag State").

2. A State may enforce standards applicable in accordance with the provisions of this Chapter to:

(a) vessels using its ports or offshore facilities irrespective of where the violation occurred, provided, however, that such proceedings are commenced no later than /three years/ after such violation occurred (such State is hereinafter referred to as the "port State").

(b) vessels in its territorial sea for violations therein, except as otherwise provided in this Convention.

Section D: Cooperative Enforcement Measures Against Vessels

Article VIII: The Right to Monitor

A vessel within or beyond the territorial sea shall upon request by any duly authorized government vessel, aircraft or official in the vicinity which has reason to suspect a violation of the applicable international standards, give information specifying its name, State of registry, next scheduled ports of call, and any other information required to be given by the applicable international standards.

Article IX: Denial of Port Entry

Any State may inform a vessel at any time that it will be denied entry to its ports for non-compliance with any of its environmental requirements or its refusal to allow an immediate on-board inspection to determine the source of possible pollution. Any State may, by agreement, authorize one or more other States to act for it in this respect and shall so inform other States through IMCO, or directly.

Article X: The Duty to Notify

If a State has reason to suspect a violation of the applicable international standards, it shall notify the flag State or the State of one of the next ports of call or both, of the alleged violation and forward the available evidence.

Article XI: Port State Duties

Upon receipt of such notification of the alleged violation, the port State shall undertake, upon arrival of the vessel if within six months of the alleged violation, an immediate and

thorough investigation. The port State shall promptly inform the flag State and the notifying State of the results of the investigation and its actions including a statement as to whether it intends to institute proceedings and the result of any such proceedings.

Article XII: Flag State Duties

Upon receipt of notification if within six months of an alleged violation, the flag State shall undertake an immediate and thorough investigation. If the result of its or a port State's investigation indicates that a violation has occurred, the flag State shall institute proceedings against the vessel, its operator, its master, or its owner, provided that it shall not be required to do so if proceedings have already taken place in respect of that violation. The flag State shall inform the notifying State and any other State which could institute proceedings of its decisions and actions.

Article XIII: Participation in Investigations

A notifying State may participate in any investigation undertaken pursuant to its notification. A flag State may designate an observer for any investigation involving one of its flag vessels. An expert or experts designated by IMCO shall be permitted to participate in any investigation if so requested by a State concerned and such expert or experts may file a separate report with IMCO.