

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

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INFORMATION

[Redacted]

July 8, 1975

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MEMORANDUM FOR:

THE PRESIDENT

FROM:

HENRY A. KISSINGER

SUBJECT:

Report on the Geneva Session of the
Third United Nations Conference on
the Law of the Sea

In response to NSDM 288, the Chairman of the NSC Under Secretaries Committee has forwarded to you a report on the second substantive session of the Third United Nations Conference on the Law of the Sea held in Geneva from March 17 to May 9, 1975 (Tab A).

Principal Developments at the Geneva Session

Although the Geneva session did not produce a treaty or agreed articles in any specific area, some progress was registered toward reaching a comprehensive international treaty, including:

-- distribution at the close of the session of a single negotiating text (Tab B) covering all Conference issues. While this text was not formally agreed to by the delegates, it will serve as the focus of further negotiations and will facilitate the work of the Conference which until now has had to deal with a multiplicity of proposals on treaty language. The introduction of a single negotiating text is generally considered the most important achievement of the Geneva session.

-- a general recognition in the Conference of a 12-mile territorial sea, a 200-mile economic zone with broad coastal state jurisdiction over the living and non-living resources of our coastal margin areas, free and unimpeded transit of straits used for international navigation, freedom of navigation in the economic zone, and a reasonable archipelago regime.

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-- a consensus to narrow the differences on such issues as the marine environment and dispute settlement machinery.

With respect to the future work program of the Conference, the decision was taken to recommend to the United Nations General Assembly that the next session be held in New York for an eight-week period beginning in late March 1976, with the possibility of an additional session in late 1976. Additionally, there was a consensus in the Conference that nations should continue to work together informally during the current inter-sessional period to define issues and narrow differences.

Problems and Issues

There are a number of important problems and issues that remain to be resolved during the present intersessional period and at the next negotiating session. Principal among these are:

-- reluctance on the part of many states, for a variety of different reasons, to accelerate the pace of the negotiations.

-- the degree of coastal state jurisdiction over marine scientific research conducted in the 200-mile economic zone by third parties. Many developing countries strongly support a consent regime for such research.

-- the nature, scope, structure and function of the new international organization dealing with the resources of the seabed -- principally, the manganese nodules -- beyond national jurisdiction.

The most difficult of these unresolved issues is the structure and functions of the new international organization for deep seabed mining. The U.S. objective in the negotiations on the deep seabed is to obtain a system which guarantees non-discriminatory access by U.S. firms to deep seabed minerals under reasonable conditions coupled with security of tenure, and with fair and reasonable rate of return on investment to deep seabed mining operators. Within this framework, we have sought to accommodate the often conflicting interests of all Conference participants.

The informal negotiating text relating to the deep seabed regime does not, however, meet these basic U.S. objectives. Many developing countries (often referred to as the "Group of 77") seek a strong international organization, with broad discretionary powers, which would directly

engage in deep seabed mining and which would be empowered to regulate production of minerals obtained from the ocean bottom for the protection of existing land-based producers of those minerals. Under the Group of 77 concept, individual states and their nationals would, in effect, be excluded from deep seabed mining operations, except under the most stringent and unattractive conditions.

Intersessional Issues

Because the Geneva session did not produce an agreed treaty, momentum is building both in the United States and in other countries to take unilateral action to protect national ocean interests. Iceland has already announced its intention to establish a 200-mile exclusive fishing zone this year; Mexico and Canada are expected to follow suit. In the United States, Congressional attention is centered on the following areas:

Fisheries Management. Passage this year of legislation establishing a 200-mile coastal fishing zone appears certain. Such legislation -- the Magnuson Bill -- was approved by the Senate toward the end of the 93rd Congress, but was not acted on by the House. Unilateral action by the United States in this area is likely to trigger a rash of similar claims -- possibly with greater territorial character -- by other nations, further complicating efforts to reach international agreement on a law of the sea treaty. Interdepartmental work on the tactical approach to be taken with the Congress on this issue is underway.

I believe our objective should be to reach a compromise with the Congress on the content and timing of fisheries legislation which substantially meets domestic needs for resource protection while not undermining our negotiating position in the Conference. In this regard, we might wish to support a domestic fisheries bill, if implementation of the legislation is delayed until after the close of the U.N. negotiating sessions in 1976.

Deep Seabed Mining. A number of committees in the Congress are seriously studying the question of legislation which would establish a national regime for deep seabed mining. Pressure for passage of such legislation is not strong in the Congress at this time but could be expected to increase sharply if the Law of the Sea Conference does not reach a position acceptable to the United States on this issue.

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Pollution Control. Senator Muskie has introduced a bill in the Senate which would extend U. S. jurisdiction over pollution standards and enforcement to 200 miles. As with the deep seabed mining legislation, the Muskie bill is not expected to gain wide support unless the Law of the Sea Conference fails to deal effectively with this problem.

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This memorandum is to advise you of the results of the Geneva session of the U. N. Law of the Sea Conference, and to review the intersessional issues expected to arise. There is no need for any action on your part at this time.