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December 18, 2008

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DEPARTMENT OF STATE

Washington, D.C. 20520

June 1, 1973

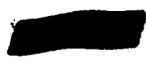
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Attention **MRS TROMBLY**
Keep this study together.

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MEMORANDUM FOR MR. HENRY A. KISSINGER
THE WHITE HOUSE

Subject: July-August 1973 Preparatory Meeting
For the Law of the Sea Conference

A report prepared by the Interagency Task Force on the Law of the Sea regarding the July 2 to August 24, 1973, Geneva preparatory meeting for the Law of the Sea Conference is attached. The report contains negotiating recommendations as requested in your memorandum of March 16, 1973. The report is being concurrently submitted to the various agencies for comment and clearance. The Department of the Treasury reserves its position on the report pending instructions.

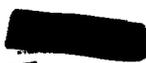
A Task Force report on the March-April 1973 meeting of the U.N. Seabed Committee is also attached.

The report containing recommendations is divided into seven sections, which I have outlined below. In view of earlier submissions on the Law of the Sea, additional background material has only been presented where new issues or additional facts are involved.

Section I. The Context of the Summer Session.
This section presents the setting for the July-August Seabed Committee meeting, particularly with regard to the timing of the Conference. The report identifies key issues which need to be resolved in order to achieve a successful overall treaty package. A general grouping of states according to their national interests (coastal, developed maritime, landlocked/shelf-locked, distant water fishing/developing) is outlined. It is suggested that our almost across-the-board interests should help us play a significant role in encouraging the emergence of a package accommodating our basic interests.

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Section II. Objectives for the Summer Session.

This section recommends four major objectives for the summer session: to begin to construct the outlines of a broad consensus compatible with the full range of basic U.S. interests; to form a broader common front of states with similar interests to demonstrate well in advance the futility of attempting to outvote the U.S., thus leaving adequate time for negotiation; to gain a better understanding of what may be acceptable to other states so that our instructions for the Conference can be formed in a manner that reduces the need for urgent high-level decisions in Washington during the Conference; and to ensure sufficient technical preparations so that the main issues are fairly clearly understood at the Conference and as many important issues as possible are settled in advance. On the straits issue, it is recommended that concentration be placed on the formation of a broad common front of states with similar interests, while continuing our dialogue with straits states and maintaining strong opposition to their innocent passage proposal. As to the question of coastal state resource jurisdiction, it is recommended that the U.S. work with the coastal state majority, in particular in private exploratory discussions with the moderate developing coastal states favoring a 200-mile resource zone on the substance of coastal state jurisdiction and on an overall Law of the Sea package involving the full range of U.S. interests. While maintaining our opposition to exclusive coastal state jurisdiction, we would not in those discussions indicate that we would oppose a 200-mile resource zone if our substantive interests were accommodated. At the same time, we would maintain close contact with the distant water fishing states and the landlocked/shelf-locked states that must eventually be brought along, and would remind the coastal states of that necessity.

Section III. Scientific Research. This section recommends that with respect to protecting our interest in maximum freedom of scientific research our major effort be to avoid a requirement of coastal state consent for research beyond the territorial sea and to demonstrate that developing and coastal state concerns can be accommodated without unnecessary restrictions on access. Scientific research conducted in areas of

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coastal state resource jurisdiction would be required to satisfy objective treaty standards. Compulsory dispute settlement procedures would assure the coastal state of compliance with these standards. To meet environmental concerns, the research vessel should meet exclusively international environmental standards, although coastal states could set higher standards for drilling. Low profile efforts would be made to limit the application of scientific research standards only to research concerning or affecting resources.

Section IV. Pollution. This section presents recommendations on vessel source pollution designed to support the U.S. position that vessel source pollution standards should be exclusively international. Measures designed to strengthen IMCO are outlined in order to respond to the need to demonstrate the adequacy of the system for promulgating international standards. To protect against abusive actions and ensure more responsible behavior, all pollution control actions undertaken pursuant to the LOS treaty would be subject to a satisfactory compulsory dispute mechanism to which immediate access can be had. It is suggested that existing rights, including those relating to the right of approach and port and flag state enforcement actions, be spelled out in the treaty. In recognition of the need for effective enforcement and the desire for coastal state pollution controls, a highly circumscribed coastal state enforcement right is recommended. The report recommends three pollution liability objectives, and ideas to achieve them are set out. Military vessels and aircraft would be exempt from the treaty's pollution control provisions.

Section V. Provisional Application of the Treaty. This section presents recommendations on the provisional application of the treaty in the period between signature and its entry into force. The U.S. has already proposed such application for the deep seabeds regime and machinery. Provisional application of other aspects of the treaty, it is believed, would be in the interest of the U.S., provided it were done in a way which encourages prompt ratification of the treaty. Support for provisional application would be indicated in light of its effect on substantive objectives and relevant tactical circumstances.

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Section VI. Seabeds Resources: The Intermediate Zone and the Continental Shelf Convention. This section discusses the relationship between our intermediate zone proposal and the exclusive economic zone advocated by certain states, and proposes that the five points in the President's Oceans Policy Statement be made applicable to all seabed resources under coastal state jurisdiction beyond the territorial sea, but with our interim leasing policy continuing to apply only beyond a depth of 200 meters. Flexibility on whether revenue sharing should begin at 200 meters or at 12 miles (coupled with a grandfather clause) is recommended.

Section VII. Compulsory Dispute Settlement. This section recommends that major emphasis be placed on compulsory dispute settlement as a general principle applicable to all disputes arising out of the treaty. Acceptance of the principle of compulsory dispute settlement is regarded as essential to a successful Conference by the U.S. Government Departments and Agencies on the Task Force and affected industries.

Charles N. Brower

Charles N. Brower
 Acting Chairman, Interagency
 Task Force on the Law of the
 Sea

Attachments:

1. Summer Session Recommendations Report
2. Report on March-April 1973 Session

Drafted: ^{rise} L/OA:HDCamitta: bdf

Clearance: ^{not all} L - Mr. Moore Commerce - Mr. Taft
 on report L/OA - Mr. Oxman NSF - Mr. Wulf
 S/FW-COA - Mr. Brittin Transportation - Capt. Yost
 IO/UNP- Mr. McIntyre Treasury - Mr. Goodman
 SCI/EN - Amb. Coerr CEQ - Mr. Cook
 DOD - Mr. Dugger Interior - Mr. Ratiner

REPORT ON THE MARCH/APRIL, 1973, MEETING OF THE
U.N. SEABED COMMITTEE

Summary

The U.N. Seabed Committee completed its fifth session in preparation for the third U.N. Conference on the Law of the Sea which is scheduled to commence in New York with a two week organizational session during November/December 1973. The substantive phase of the Conference will take place in Santiago, Chile over an eight week period starting in April, 1974. The latest preparatory meeting lasted from March 5 to April 6 and was characterized by a business-like atmosphere and slow but perceptible progress. It now seems clear that the commitment to holding the Conference on schedule is increasing. The preparatory committee is generally moving beyond general debate and procedural wrangling to structured discussion on specific issues in working groups and informal drafting groups. Thus far these groups are preparing for presentation at the Conference draft treaty articles with alternative or bracketed texts where differences exist on the seabed regime and machinery and marine pollution. While the debate and the preparation of articles have served to focus and sharpen positions, the difficult negotiations and accommodations still lie ahead. At this meeting, the United States continued to press for acceptance of the positions it had proposed at previous sessions of the Committee. In support of this objective, the United States delegation made several statements and circulated two working papers. There follows a brief report on the highlights of this session.

Procedural Developments

An important feature of the March/April meeting was the consensus which emerged on a variety of procedural matters which facilitated the negotiations and opened the way for more intensive work and drafting. Early in the session, the Main Committee agreed on the allocation of subjects and issues contained in the list of subjects and issues adopted last summer. Under this arrangement, Subcommittees I and III will consider items specifically within their mandate and Subcommittee II will discuss all other items on the list except for "peaceful uses" which will be dealt with by the Main Committee.

Subcommittee I will prepare draft treaty articles on the international regime and machinery for the seabed; Subcommittee III will deal with preservation of the marine environment and scientific research; and Subcommittee II will be handling issues such as the territorial sea, the contiguous zone, straits used for international navigation, the continental shelf, exclusive economic zone beyond the territorial sea, coastal state preferential rights or other non-exclusive jurisdiction over resources beyond the territorial sea, the high seas, the rights of land-locked countries, shelf-locked countries and broad-shelf states, archipelagos and natural and artificial islands.

Two new working groups were established at the March/April session so that there are now four in existence. The first working group had been created in March 1972 to deal with the seabed regime and machinery. Towards the end of last summer's meeting, a second working group was established in Subcommittee III to consider preservation of the marine environment. This session, a third working group of the whole was established in Subcommittee II under the Chairmanship of Ambassador Kedadi of Tunisia to consider the territorial sea, contiguous zone, straits, continental shelf, exclusive economic zone and preferential state rights - not necessarily in that order. The remaining Subcommittee II items on the list of subjects and issues would be dealt with after the working group had completed its discussion on these issues.

While it consumed most of the first three weeks of the session to reach agreement on the formation of a working group in Subcommittee II, the selection of a Chairman, and the basic division of subjects for its consideration, the achievement of this arrangement marked the overcoming of a major psychological obstacle as Subcommittee II had long been the focal point of delaying tactics by those who viewed time as being on their side. The selection of an African Chairman was strongly resisted by the Eastern European block which felt that it should have the Chairmanship. The strength of the group of 77 on procedural issues was once again demonstrated by their ability to secure one of their members to head this important working group. As part of the compromise on this matter, the Eastern European bloc was given a chairmanship of a second working group in Subcommittee III.

On the last day of the March/April meeting, the Chairman of the Seabed Committee, Ambassador Amerasinghe, circulated a paper on the administration and organization of the Conference. He stated that he intended to initiate a series of informal consultations prior to the summer

meeting in order to determine which arrangements would be appropriate, mentioning specifically such questions as Conference officers, a representative of the Secretary General, the decision-making procedures, and voting. On the voting issue he suggested that the Committee articles might be adopted by a simple majority and that at the plenary stage a 2/3 majority might be appropriate.

Territorial Sea and Straits

In August 1972 the Soviet Union circulated a draft article providing for freedom of transit through straits used for international navigation and at this session submitted a draft treaty article providing for a 12-mile territorial sea. In contrast to the US and Soviet position on a special regime for straits used for international navigation, eight States (Spain, Morocco, Philippines, Indonesia, Greece, Cyprus, Yemen and Malaysia) proposed draft articles concerning the territorial sea and straits. These articles do not recognize any special right of transit in straits used for international navigation different from the doctrine of innocent passage in the territorial sea. Moreover, they define the concept of innocent passage in a more restrictive and subjective manner than presently exists under international law. The proposal represented a coalition between hard-line strait states and archipelago states; however the draft was also supported by Peru, Sri Lanka and Cyprus. It was reported that Egypt, while supporting the draft in the Committee, did not consider the draft had gone far enough. The United States expressed deep dissatisfaction with the draft articles and reiterated its strongly held position that US vital interests require agreement on a 12-mile territorial sea coupled with free and unimpeded transit through and over straits used for international navigation. We stressed that the question of straits transit must be considered separately from that of passage generally in the territorial sea. The UK firmly endorsed the US position but reserved comment on the question of strict liability for damage caused by vessels or aircraft in violation of certain IMCO or ICAO standards. The Soviet Union also spoke in support of its straits proposal, which differs from our own in that it would only apply to those straits which connect areas of the high seas, thereby exempting Tiran and a part of Pemba Channel. France and Kuwait also supported free transit although Kuwait made it clear that freedom of transit did not, in its view, include freedom of overflight. Thailand and Zaire indicated that innocent passage would be inadequate for

their individual geographic circumstances while a number of other states, including Madagascar and Tunisia, spoke in favor of the concept of innocent passage. Both Norway and Denmark endorsed the concept of a special regime for straits different from that of passage in the territorial sea.

Four archipelagic states (Philippines, Fiji, Mauritius and Indonesia) introduced a draft paper on archipelagic principles. These principles would give an archipelagic state sovereignty over the waters within the archipelago. The territorial sea would be drawn from the baselines delimiting the enclosed "archipelagic waters." Innocent passage would be permitted in such waters through sealanes designated by the archipelagic state.

The acceptance of a 12-mile territorial sea continued to gather support at this session although many states are tying their agreement on 12 miles to a satisfactory settlement on a broad coastal state economic jurisdiction beyond 12 miles. This broad coastal jurisdiction was often expressed in terms of an economic zone or a patrimonial sea. Interestingly, the clustering of states favoring 12 miles may be having effects on the negotiating positions of states claiming broader territorial sea breadths. Nigeria, for example, stated that although it had a 30-mile territorial sea, it would be willing seriously to consider acceptance of a 12-mile territorial sea if that were embodied in a general convention. Even Peru and Chile spoke favorably of Uruguayan legislation which designates two zones within the "territorial sea". Under the legislation, in the first 12-mile zone, the regime of innocent passage would be applicable. In the second zone of 12 to 200 miles, there would be freedom of navigation and overflight.

In the discussions on the subject of the territorial sea, it emerged that a number of countries were concerned about the jurisdictional issues affecting islands. Turkey and Greece engaged in an extended exchange which related to the troublesome problem of the Greek islands off the Turkish coast. A number of other states such as Italy, Tunisia, Denmark and Venezuela also expressed concern with this problem. Part of the difficulty relates to the question of how much resource jurisdiction these islands should be given in light of the fact that they are often on the continental shelf of another state. States with foreign islands off their coasts may have some interest in narrow territorial sea limits. For example, foreign islands,

which are clearly entitled to a territorial sea under international law, could lead to a disproportionately large loss of territorial sea area which otherwise would go to the coastal State.

Resource Zones and Fisheries

Venezuela, with Mexico and Colombia as co-sponsors, introduced draft treaty articles based on the Santo Domingo Declaration. The articles provide for a 12-mile territorial sea and the equivalent of an exclusive economic zone beyond this territorial sea up to 200-miles. In the patrimonial sea area, there would be freedom of navigation and overflight. In commenting on the articles, Ambassador Castenada of Mexico made a special point of emphasizing that coastal State rights were limited to specific functions in the patrimonial sea. Australia expressed support for a 200-mile fisheries zone, as well as an exclusive economic or patrimonial sea, the breadth of which was undelimited. Ambassador Harry also appeared to endorse the Santo Domingo articles as a basis for discussion. Several delegations noted the similarity between the Santo Domingo articles and the Kenyan draft proposal which provides for an exclusive economic zone.

The United States delegation spoke on several occasions in support of the species approach on fisheries. We also made a detailed statement and circulated a working paper on the special management problems of tuna and anadromous fisheries. The Japanese and Soviets continued strongly to resist zonal approaches on fisheries. The Japanese, in particular, spoke against coastal State management of salmon. The Soviets offered developing countries assistance in improving their fisheries capabilities. Tanzania rejected coastal States preferential rights for coastal stocks as inadequate and endorsed the exclusive economic zone approach. Liberia also spoke in favor of the Kenyan proposal for an exclusive economic zone although the Liberians suggested that there should be international standards for navigation.

Marine Pollution

The working group on marine pollution in Subcommittee III met on fifteen occasions during the March/April session. It began discussion of proposals formally submitted by Australia, Canada, USSR and Malta regarding the preservation of the marine environment and the prevention of marine pollution. These discussions focused on the following

subjects: a general obligation to preserve and protect the marine environment; a general obligation of states to adopt measures to prevent pollution of the marine environment irrespective of the source of pollution; an obligation of states to adopt measures to prevent pollution of the marine environment irrespective of the source of pollution; an obligation of states to prevent damage from marine pollution; a particular obligation of states to adopt specific measures in connection with certain sources of marine pollution and their relation between such measures and generally accepted international standards; and international cooperation and technical assistance. In addition, the working group considered the right of states to exploit their own resources in conformity with the obligation to preserve and protect the marine environment as well as a number of relevant subjects contained in the proposals that were discussed. Much of the substantive work at the March/April session was accomplished in a small, informal working group. This informal working group, in which the United States played an active role, met and consulted twelve times and produced a number of texts based on the draft proposals before the Subcommittee, as well as on the comments of the working group members.

The United States submitted a draft working paper on the need for exclusively international standards for the control of pollution from ships and during the later stages of the March/April session, the working group began a preliminary discussion of these issues. The US position of exclusively international pollution standards for vessels was opposed by the majority of nations in the working group including Canada, Australia, Ghana, Kenya, Malta, Peru, Trinidad and Tobago, India, Egypt, Tanzania, and New Zealand. A number of objections focused on the inability of existing international regulation-making organizations to be responsive to coastal states needs in a timely manner as well as the desires of coastal states to have the right to enforce environmental standards. Our position was supported by the USSR, the UK, Norway, Japan, Greece, Denmark and Liberia.

Scientific Research

The new working group on scientific research which was established at the end of the March/April session, will begin its deliberations in July under the Chairmanship of the Polish representatives. This working group will

also deal with the issue of transfer of technology to developing countries. The United States spoke on the benefits derived from obtaining world-wide geological knowledge obtained from freedom of scientific research in the oceans. The President of the National Academy of Sciences delivered an address on the need to maintain freedom of fundamental oceanographic research. An exhibit of the Deep Sea Drilling Project, sponsored by the National Science Foundation, was displayed in the UN Conference area. In addition, the Woods Hole Oceanographic Institute made a research vessel available for a tour by all Seabed Committee Delegates.

The Soviet Union, with the co-sponsorship of the Ukraine, Poland and Bulgaria, submitted draft treaty articles on marine scientific research. Their fourteen articles reflect a position of maximizing the freedom of scientific investigations in the oceans other than in the territorial sea or on the continental shelf. They provide that scientific research shall not be subjected to unjustified interference, nor shall scientific research itself cause unjustifiable interference with traditional high seas activities. The representative of Malta also introduced draft articles on scientific research which were intended to avoid abuse by either commercial ventures or coastal State controls. The articles go into considerable detail and contemplate a relationship between the international institutions to be established and the conduct of scientific investigations in the oceans.

In other statements, Chile suggested that scientific research needed to be carefully controlled within national jurisdiction and that it also be regulated in the area beyond national jurisdiction. Mexico and Colombia's positions were more moderate on the subject. The UK indicated that it was unnecessary to negotiate on scientific research and that only deep drilling in the seabed presented pollution dangers which needed to be regulated.

Seabeds

The principal US initiative at the March/April meeting was a proposal for the provisional entry into force of the international regime and machinery for deep seabed development. Provisional entry into force under the US proposal would enable our mining companies to begin exploitation of manganese nodules under a provisional

regime that protects their rights after agreement at the Conference was reached but before the Convention received the necessary number of ratifications to enter into force. The United States proposal was well-received. Over 20 delegations spoke to the Proposal and, of these, 17 expressed interest in pursuing the concept. No state was opposed, although the PRC indicated that the approach was "not helpful". As a corollary to its initiative on provisional application, the United States also proposed a study by the Secretary General of past instances where multilateral regimes have entered into force on a provisional basis. This study suggestion was unanimously approved by the Main Committee and will be prepared by the Secretariat for the use of the Seabed Committee at the July/August session.

Negotiations on an international regime for the seabed have progressed further than those on any other subject in the Seabed Committee and this momentum was maintained at the recent session. The working group of Subcommittee I continued to function effectively under the Chairmanship of Christopher Pinto of Sri Lanka. During the fourth week, the second reading of draft treaty articles on seabed regime principles was completed and consideration was shifted to articles on the international machinery for the seabed.

In the working group discussions on the preparation of alternative draft treaty article texts, the Soviet Union, Canada, and Australia indicated that they had "no objection" to giving the Authority the power to exploit the area when the Authority was financially and technology capable of doing so, and, in the Soviet view, as long as the rights of states to exploit the area were protected. From an opposite perspective, Latin American supporters of the Enterprise concept indicated that their position did not contemplate exclusive exploitation by the Authority. Chile and Peru acknowledged that deep seabed mining would not have significant adverse economic effects on developing countries during its early years, although they supported empowering the Authority to control economic implications for developing countries producers as a precautionary measure. These concessions may demonstrate the emergence of a willingness to reach compromises, at least in some areas, in the process of drafting alternative texts. The merging of positions in this matter should substantially reduce the time it will take to make decisions at the Conference.

Efforts in the Subcommittee I working group to produce agreed texts on Article XIV (Due Regard to the Rights, etc. of coastal states) were unsuccessful. The clear implication of the resulting debate was that in

conflicts between coastal States and the international community, coastal States should receive priority. Moreover, developing coastal State dominance was reconfirmed during the debate on Article XIX (Access to and from the Area) in which the landlocked and shelflocked participation was neither effective nor cohesive.

Position of China

The representatives of the People's Republic of China were far more active in this session of the UN Seabeds Committee than previously. The PRC has become increasingly involved since joining the Committee in March, 1972. At this session, they made five major statements on the Law of the Sea which were clearly intended to appeal to the developing countries and to oppose the US and Soviet proposals. They tended to endorse the more extreme positions of the "Third World" and they were one of the few delegations to speak out strongly against the "superpowers", although their attacks were directed principally against the Soviets. They attacked the four Geneva Conventions on the Law of the Sea on the basis that most countries had not participated in their formulation. They asserted that coastal States could unilaterally set their limits for the territorial sea and for economic zones. They maintain that pure science does not exist and that coastal State consent would be mandatory within national jurisdiction. The Chinese charged that the two superpowers wanted narrow limits to dominate the oceans militarily and to plunder the resources of the oceans without regard to the interests of developing coastal States. In spite of the PRC desire to play a leading role in the Law of the Sea deliberations, there was little evidence at this session that they were exerting great influence among the developing countries. The Soviets tended to escalate the political nature of the confrontation by having the head of their Delegation respond to the Chinese attacks. The United States took a low-key approach in responding to the Chinese charges. On the few occasions when we did reply, we stated that we regretted the tone of their remarks which we did not find helpful in advancing the work of the Committee.

Other Developments

The landlocked and shelf-locked block did not appear to be functioning as effectively at the March/April session taking into account their rather remarkable display of cohesiveness and discipline at the last UN General Assembly. However the group did meet regularly and they

did stagger the presentation of statements which promoted the agreed objectives of their group. Some of their difficulties may have resulted from the wide range of issues which must necessarily be covered during Seabed Committee meetings.

The United States continued to work closely on seabed questions with the Group of Five which includes the US, the USSR, Japan, the UK and France. It was agreed that the Group of Five would meet before the summer meeting of the UN Seabed Committee. (These discussions have now been scheduled for the latter part of May and early part of June in London.) The Group of Five will be considering not only seabed matters but also other issues such as a coordinated position on straits, marine pollution, scientific research and tactics at the summer meeting. The Group of Five coordination on contentious issues in the working group in Subcommittee I once again proved very useful. We intend to continue to work more closely with these delegations in the months ahead on certain issues.

Technology transfer continues to be an issue raised by many developing countries in relation to scientific research. As mentioned above, during the concluding days of the March session, a working group on scientific research was established which subsequently had the issue of technology transfer added to its mandate. Although general debate on scientific research in Subcommittee III has concluded, it is anticipated general debate on technology transfer will continue before it is dealt with in the working group.

Congressional Participation

Senators Stevens and Pell and Congressmen Mailliard and Fraser attended portions of the March Seabed Committee meeting. Congressional interest appears to be increasing on the Law of the Sea negotiations. In this regard, the House of Representatives overwhelmingly passed a resolution endorsing the objectives of President Nixon's Oceans Policy Statement of May 23 and commended the work of the US Delegation to the Seabed Committee. A parallel resolution is pending in the Senate.