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Authority EG 12958
By AR NARA Date 10/27DEPARTMENT OF STATE
Washington, D.C. 20520

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September 29, 1972

MEMORANDUM FOR MR. HENRY A. KISSINGER
THE WHITE HOUSESubject: NSDM 177: Law of the Sea and the
27th United Nations General Assembly

Attached is a Memorandum prepared by the Inter-Agency Task Force on the Law of the Sea in accordance with NSDM 177 of July 18, 1972. The Memorandum contains recommended instructions on the law of the sea item for the United States Delegation to the 27th United Nations General Assembly. A report on the July-August meeting of the U.N. Seabed Committee prepared by the Task Force is attached to the Memorandum. The Memorandum is being concurrently submitted to the various agencies for formal clearance.

John R. Stevenson
John R. Stevenson
Chairman, Inter-Agency
Task Force on the Law
of the Sea

Attachment:

Response to NSDM 177

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PA/HO Department of State
E.O. 12958, as amended
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NSDM 177: Law of the Sea and the 27th
 U.N. General Assembly

The President directed in NSDM 177 that the Inter-Agency Task Force on the Law of the Sea report on developments at the July-August United Nations Seabed Committee meeting and submit recommended instructions on the law of the sea item for the United States Delegation to the U.N. General Assembly. The Task Force Report describing the summer meeting is attached. The recommended instructions follow.

Introduction

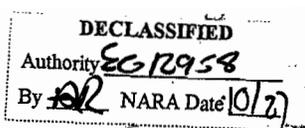
The current law of the sea negotiations began in 1967 with the formation of a U.N. committee to establish an international regime for the seabed beyond national jurisdiction and a joint U.S.- Soviet initiative with other countries to obtain international agreement on a 12-mile territorial sea and a right of free transit through and over international straits. These negotiations are now at a key juncture.

In 1970, the 25th U.N. General Assembly decided in Resolution 2750C to convene a Law of the Sea Conference in 1973 and charged the U.N. Seabed Committee with preparing it. The Seabed Committee held its fourth preparatory session this summer. The forthcoming General Assembly is responsible for reviewing the preparatory work and is authorized under the terms of the 1970 resolution to postpone the Conference if it finds the progress of the Committee's preparatory work to be insufficient. Since the President's Oceans Policy Statement of May 23, 1970, the U.S. has strongly urged an early date for the Conference. We originally favored 1972 but went along with 1973 when this matter was discussed at the General Assembly two years ago.

The basic question to be decided by the 27th General Assembly is whether a conference will or will not be convened in 1973 as scheduled. Accordingly, the primary issue presented for decision in this memorandum is what position the U.S. should take at the General Assembly regarding the timing of the Law of the Sea Conference. The General Assembly is expected to begin consideration of this item in November.

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The 27th General Assembly will also have to decide the questions of the location and agenda for a conference. Chile and Austria have each offered to host the Conference. With regard to the Conference agenda, the Seabed Committee this summer adopted a list of subjects and issues which is expected to be the basis of an agenda.

The issue of invitations to the Conference may be raised at the 27th UNGA. The USSR may insist that East Germany be invited to the Conference, as it did in the case of the Stockholm Environment Conference, and this could seriously disrupt consideration of the law of the sea item. However, on the basis of our discussions with the FRG, we believe that if the inner-German talks, which are now in progress, are concluded successfully before the German elections scheduled for mid-November then a formula for West and East German participation will probably be found. We are continuing to discuss this issue with our allies.

Background Regarding the Timing of a Conference

Without repeating the contents of the attached report, it is important to note that the summer meeting was marked by more serious substantive work and greater commitment to moving the negotiations forward than at any time in the Seabed Committee's prior work. Some progress was made on refining national positions and narrowing differences on some important questions of substance, but the negotiation of treaty articles has barely started. By the end of the summer, competing treaty texts had been tabled on issues such as the territorial sea, straits, fisheries, economic zone and seabeds.

There seems to be little doubt after the summer's meeting that a Law of the Sea Conference will take place. Nearly every nation represented on the Seabed Committee shared the view that a conference should be held as soon as substantive preparations permit, but there was virtually no support within the Committee for beginning a substantive conference next year. A few countries, most notably Peru and Ecuador, still made some attempt to delay progress in the negotiations. Their attitude and tactics found very little support among the other members of the Committee, including other Latin American States.

Several delegations expressed reservations as to whether the progress of preparatory work to date justified a decision by this fall's UNGA on a date for convening a conference. The French delegate argued that discussion of a conference

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date was premature and expressed doubt that the Seabed Committee could within a year provide the Conference with an adequate working basis to ensure its success. The French view was explicitly endorsed by Peru, while Ecuador made similar arguments. The Soviet Union consistently stressed the need for further preparatory work to resolve the major substantive issues, but did not express a definite public position on the timing of the Conference. The Soviet Representative indicated privately that in his view it may be desirable to have a clear agreement on the general outline of the treaty before the formal Conference is held because the USSR might be outvoted at the Conference. To a lesser extent, the UK and Japan reflected concern over the lack of progress in the substantive preparations. However, the UK did not address the question of timing, and Japan publicly expressed the hope for an early conference. Apparently, the Japanese lean toward fixing a firm date for the substantive Conference in early 1974.

Some Latin Americans have urged pre-agreement on an outline of a final Law of the Sea settlement. The U.S. has approached this idea cautiously because of our concern that the outline might not hold firm, might encourage further demands at a conference, might encourage delay or simplistic solutions, and generally might be less favorable than a settlement reached at an early conference. Our own approach has been to narrow and refine the areas of disagreement to a minimal number of major issues which can be dealt with at the political level at the Conference, and thus in concept does not allow the firm predictability the Soviets contemplate. At the same time, the U.S. has emphasized that a final law of the sea settlement would have to accommodate certain basic U.S. Oceans Policy objectives.

With respect to the timing of a conference, members of the U.S. Delegation representing the petroleum, seabed minerals, and fishing industries strongly favored beginning the substantive sessions in 1973 and, at the latest, in 1974. This view has been endorsed by other industry members of the Law of the Sea Advisory Committee as well as members from the legal, academic, and scientific communities. Some specific arguments which these representatives made for holding an early Law of the Sea Conference are: the need to proceed with major investments in deep seabed mining, preferably regulated by an internationally agreed regime; the need for international agreement on straits to discourage unilateral action by straits States to regulate traffic

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through important international straits; and the need to head off unilateral coastal State pollution control restrictions on navigation and restrictions on the conduct of marine scientific research.

A majority of delegations which spoke at the summer meeting regarding the convening of a conference reacted favorably to a suggestion made first by Norway and Chile and endorsed by Committee Chairman Amerasinghe and the U.N. Undersecretary for Legal Affairs Stavropoulos. This proposal for action by the 27th UNGA contemplates two more preparatory sessions of the Seabed Committee in 1973, totaling thirteen weeks, followed by a brief organizational meeting of the Conference during or immediately prior to the 1973 28th General Assembly in New York for the purpose of naming officers for the Conference and establishing the committee framework for the Conference's work. Although the Conference would have formally begun in 1973, substantive work would begin in early 1974 at a time and place decided by the 27th General Assembly.

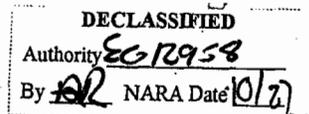
One, largely psychological, advantage of the Norwegian-Chilean proposal is that strictly speaking the timetable set in Resolution 2750C for convening a conference in 1973 would be met. In addition, thirteen weeks of additional preparatory meetings would take place under the pressure of a forthcoming full-scale diplomatic conference. This pressure could improve the chances for making greater progress in preparation because States would be encouraged to make necessary political decisions. It would also be possible to hold inter-sessional working group meetings to advance preparations for the substantive Conference in 1974.

On the basis of the above, the 27th General Assembly will in all probability be faced with choosing among three alternatives for the timing of a Law of the Sea Conference.

First, it could decide that the preparatory work had been insufficient to justify calling even an organizational conference in 1973, and that it is too early to fix any date for a conference. Therefore, a decision should be postponed until the 28th UNGA. This decision may be sought by France, Ecuador and Peru, and possibly the Soviet Union. (The Soviets and others may use the issue of inviting all states to the Conference as a lever in delaying a decision on a conference date.)

Second, the General Assembly could adopt the Norwegian-Chilean formula. Preliminary indications at the summer Seabed Committee meeting were that this approach

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would find considerable support in the General Assembly. A possible compromise was indicated by Brazil in making clear that it would go along with a resolution setting a definite date in 1974 for a conference but only if the resolution included a "condition subsequent," allowing a future General Assembly to reconsider the decision and, if appropriate, establish a new conference schedule.

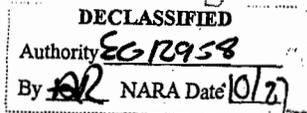
Third, the General Assembly could set a firm date in 1974 for the Conference to begin, without a prior organizational meeting. The first few days of the 1974 meeting would be devoted to organizational questions. The Japanese appear to favor this approach.

The U.N. Seabed Committee has until now operated under a rule of consensus. At the Law of the Sea Conference, under normal procedural rules, a two-thirds vote would be necessary for the adoption of treaty articles. Accordingly, the principal risk in setting a specific conference date is that most major law of the sea issues are so contentious that if they are put to a vote prematurely, the Conference could fail or the U.S. could be outvoted on important issues. On the other hand, in the view of the Departments of State, Commerce and Interior, the principal risk in delaying the Conference is that unilateral claims and other trends could prejudice U.S. interests in using the oceans and the ability to achieve a widely accepted international agreement. The recommendations which follow are designed to balance these risks by providing for specific conference dates coupled with the opportunity for further preparatory work and review of the situation by next year's General Assembly if necessary.

Recommended Instructions

(1) The United States Delegation should support at the 27th U.N. General Assembly a resolution fixing a specific date and place for the Law of the Sea Conference, with two substantive sessions in 1974. The resolution should indicate that the first session would be the beginning of substantive work in the Conference, and the second would

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be for the purpose of completing the law of the sea treaty and opening it for signature.¹

(2) The U.S. Delegation should also support the inclusion of a provision in the resolution for an opening session of the Conference, primarily devoted to organizational matters and general debate, in the fall of 1973. This objective should be secondary to obtaining specific dates in 1974 for the beginning and end of substantive work.

(3) Since the substantive sessions of the Conference would not begin until 1974, the 28th General Assembly could postpone it without having any specific authority to this effect in a conference resolution. Nevertheless, in the opinion of the Law of the Sea Task Force, a broad measure of support for a conference resolution setting specific dates is very unlikely in the absence of an escape clause, along the lines of the provision in the 1970 U.N. General Assembly's conference resolution (2750C), permitting next year's UNGA to postpone the Law of the Sea Conference if it determines that the preparation has been insufficient. Accordingly, the U.S. should support the inclusion of such a clause in the conference resolution.¹

¹With respect to recommendations (1) and (3), the agencies do not agree on what the United States should do in the unlikely event that a widely supported conference resolution could be adopted without an escape clause. The Department of Defense representatives believe the U.S. should insist on such a clause, and vote against a resolution that does not contain one. In the view of the representatives of the Departments of State, Commerce and Interior, if there is general support for a conference resolution without an escape clause, and the final resolution contains no escape clause, the U.S. should vote in favor of the conference resolution. A further Task Force memorandum dealing with the reasons for this divergence of opinion, and the precise developments at the U.N. General Assembly, will be submitted in the unlikely event that a decision on this matter becomes necessary.

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(4) The U.S. Delegation should also support inclusion in the conference resolution of an accelerated schedule for the work of the Seabed Committee in 1973. In this connection, the resolution should express the General Assembly's desire to expedite preparatory work, specifically directing the Seabed Committee to arrange for such inter-sessional meetings and work as may be necessary to meet the conference deadline.

(5) With regard to conference site, we believe this issue to be secondary in importance to the achievement of an acceptable formula on conference dates and to the intensification of substantive preparatory work. Our preference is for the substantive sessions of the Law of the Sea Conference to take place at the permanent U.N. facilities in Geneva. Accordingly, the U.S. Delegation will work actively to obtain support for this position and will, in any event, try to bring about a situation in which the Conference would be held in a place other than Santiago, Chile. However, the U.S. Delegation will not let its position with regard to any particular site stand in the way of supporting an otherwise satisfactory conference resolution if that site obtains wide support in the UNGA and offers adequate conference facilities.

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LAW OF THE SEA TASK FORCE
REPORT OF THE JULY-AUGUST 1972
UN SEABED COMMITTEE MEETING

(Geneva 3844, August 18, 1972,
sent to all diplomatic posts)

1. SUMMARY. The 91-member UN Seabed Committee (SBC) met in Geneva July 17-August 18 for its fourth preparatory meeting for 1973 LOS Conference. The most important development came at the end of the session with final agreement on the comprehensive list of subjects and issues which should permit the Committee to proceed at the next meeting with negotiations on all issues before the SBC, including straits and resource issues. The Subcommittee I Working Group, dealing with basic articles on the seabed regime, began work on treaty drafting. The US Del worked closely on this with French, UK, USSR, and Japanese reps to coordinate tactics and positions. The Committee agreed to entrust the same Working Group with preparing draft articles on seabed machinery and organization. Subcommittee III established a working group to draft treaty articles on marine pollution but the working group held only organizational meetings. The US circulated a revised draft fisheries article incorporating modifications of US fisheries policy announced at the February-March meeting. The US gave policy statements on security and resource objectives, international standards for navigational safety in straits and congested areas, marine pollution and marine scientific research. Kenya circulated draft articles on an exclusive economic zone giving the coastal State exclusive rights over resources up to 200 miles. Generally, this meeting exhibited more constructive dedication to substantive work and a better cooperative spirit than prior sessions. Success in negotiating the comprehensive list of issues caused increased optimism with respect to the possibility of a successful LOS Conference which could begin with at least an organizational meeting in the fall of 1973. This cable summarizes developments at the July-August session. END SUMMARY

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