

DECLASSIFIED
Authority EG 12958
By AR NARA Date 10/27DECLASSIFIED
PA/HO Department of State
E.O. 12958, as amended
July 12, 2005

MEMORANDUM

NATIONAL SECURITY COUNCIL

7213

~~CONFIDENTIAL~~ACTION

October 19, 1972

MEMORANDUM FOR: MR. KISSINGER

FROM: Helmut Sonnenfeldt (A. Denis Clift) *DC*

SUBJECT: Law of the Sea Instructions, 27th Session,
U.N. General Assembly

I. Introduction and Summary

In response to NSDM 177, the Interagency Law of the Sea Task Force has submitted (Tab B) recommended law of the sea instructions for the U.S. Delegation to the 27th U.N. General Assembly.

The Departments of State, Defense, Commerce and Interior additionally have submitted memoranda (at Tab C) concurring with the task force's recommendations -- the Defense concurrence with qualifications. The primary issue requiring decision is the position the U.S. Delegation should take regarding the timing of the Law of the Sea Conference. (A debate on substantial law of the sea issues is not anticipated during the current UNGA session.)

II. Background

Resolution 2750C, adopted by the UNGA in 1970, set 1973 as the tentative date for the Conference, charging the U.N. Seabed Committee with preparations and authorizing the current session of the UNGA to review the Committee's work and to postpone the Conference if it finds the preparatory work to be insufficient.

The Seabed Committee, as noted in the task force report at Tab B, held its fourth preparatory session during July and August 1972. That session included international agreement on the "Comprehensive List of Issues" to be considered at the Conference, a step forward breaking a procedural log jam in the Committee's work and causing most members of the Committee to assume that it will now be possible to go ahead with the Conference in the 1973-1974 timeframe.

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SUBJECT TO GENERAL DECLASSIFICATION
SCHEDULE OF EXECUTIVE ORDER 11652
AUTOMATICALLY DOWNGRADED AT TWO
YEAR INTERVALS AND DECLASSIFIED ON DEC. 31, 78

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At present, competing treaty texts have been tabled on issues such as the breadth of the territorial sea, freedom of passage through international straits, fisheries and seabed resources. Some progress has been made on refining national positions and narrowing differences on questions of substance, but negotiation of treaty articles has barely begun.

III. Task Force Recommendations

The Departments of State, Defense, Commerce and Interior have reviewed the recommendations of the Interagency Law of the Sea Task Force and are generally agreed that the U.S. Delegation to the 27th Session of the United Nations General Assembly should support a resolution:

- fixing a specific date and place for the Law of the Sea Conference, with two substantive sessions in 1974;
- providing for an opening session of the Conference, devoted primarily to organizational matters, in the fall of 1973;
- calling for an accelerated schedule of work by the U.N. Seabed Committee during 1973 in preparation for the Conference; and
- stating that if the U.N. General Assembly, at its 28th Session, determines the progress of the preparatory work by the Seabed Committee to be insufficient, it may decide to postpone the Conference.

The Department of Defense attaches importance to the last of these provisions, believing that it is once again important to have an "escape clause" included in the U.N. resolution permitting the United States to make a thorough review of progress following the 1973 preparatory sessions before firmly committing the United States to a substantive Conference. (It is probable that other nations will also want such a clause included. As stated in the task force report, several countries have expressed concern over the relative lack of progress in substantive preparations for the Conference, and they can be expected to request that the UNGA again review progress at its 28th Session.)

Other Issues

- Location of the Conference: Both Austria and Chile have indicated that they would be pleased to serve as host to the Law of the Sea Conference. U.S. interagency preference (correctly so, in my

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opinion) is for the substantive sessions of the Conference to take place in Geneva. The U.S. Delegation plans to 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.

-- Conference Participation: The issue of invitations to the Conference may be raised at the 27th UNGA. The Soviet Union may insist that East Germany be invited to the Conference, as it did in the case of the Stockholm Environmental Conference, and this could disrupt consideration of the law of the sea issue. (This, of course, will be affected by the results of the inner-German talks and subsequent moves relating to the participation of East and West Germany in the U.N. If all goes well on this front, the participation problem may be avoided in the law of the sea forum.)

IV. Required Action

The memorandum for your signature to the President would review the law of the sea issues requiring decision, the background and the interagency recommendations. It would also forward for the President's review a recommended decision memorandum setting forth the necessary instructions for the U.S. Delegation to the 27th U.N. General Assembly. The NSDM would also direct the Law of the Sea Task Force to report on the results of the 27th UNGA and to submit recommended instructions for the next meeting of the U.N. Seabed Committee.

RECOMMENDATION

- 1) That you sign the memorandum for the President at Tab A.
- 2) With the President's approval, that you sign the accompanying NSDM.

CONCURRENCE: Richard T. Kennedy *RK*

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