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FROM : Department of State

SUBJECT : Law of the Sea: Instruction for US Delegation

REF : USUN 2099

DATE: SEP 30 11 02 AM '70

This Airgram provides guidance for the US Delegation to the General Assembly on the US position on Law of the Sea (LOS).

Background

1. A number of issues involving the territorial seas, straits, fisheries, seabeds (including boundaries) and marine pollution resulting from seabed exploration and exploitation are before the 25th General Assembly. We have maintained that the territorial sea, straits and fisheries issues should be treated as a separate package apart from seabed issues. However, most international pressures are in the direction of a single LOS conference rather than separate conferences. This is evident from the responses to the SYG's inquiry to UN members (A/7925, July 17, 1970 and Addendum of August 27, 1970). Since it appears that continued opposition to the single conference concept will make more difficult achievement of our substantive goals, this instruction must start from a realistic acceptance that if there is to be a conference on the matters in which we have substantial interests, it will have to be a single conference. Moreover, we anticipate that our acceptance of this idea will produce a more favorable negotiating climate.

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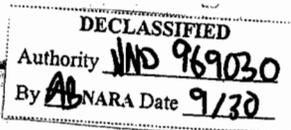
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2. Acceptance of the concept of a single conference and our willingness to follow this approach is based upon the idea of successive or concurrent sessions, or meetings of committees or working groups, under the umbrella of a single LOS conference. Our views with respect to the handling of the issues in "manageable packages" were indicated in the Legal Adviser's speech of February 18, 1970 in Philadelphia.

3. Time is of the essence in consideration of all LOS issues. Exploitation of deep seabeds even beyond continental margins is rapidly approaching. Exploitation by technologically advanced nations may take place even in areas far distant from their shores; a seabeds regime treaty is becoming a necessity. Territorial sea, straits and fisheries questions even more urgently require resolution if we are to avoid worldwide unilateral 200 mile territorial seas (or possibly greater). These could otherwise become, to the extreme detriment of US interests, a grim reality in the new few years.

4. Although the Seabeds Committee has not proved to be an effective organ, it seems best to assume that it will continue at least for another year and that it will be desirable, therefore, to link its work to that of the LOS Conference in as constructive a manner as possible.

5. We recognize that the timetable set forth in the US position below will be difficult to obtain agreement on. Nevertheless, in view of the urgency of the problems, it is worth a strong effort by the Delegation to achieve agreement on this timetable if at all possible.

UNITED STATES POSITION

1. The Delegation should strive to obtain a General Assembly resolution or resolutions providing for the following. Our primary objective is to have a conference of plenipotentiaries dealing with subjects described below in paras (a) and (b) no later than in the first half of 1972.

(a) Establishment of a small Preparatory Committee, preferably not to exceed 25 or so member countries, charged with working out, in cooperation with the SYG, the procedures for the Preparatory Conference (see para (b) below), and a preliminary substantive position on territorial sea, straits,

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fisheries, seabeds (including boundaries) and seabed related marine pollution, or at least clarification of the issues involved in these subjects. India is interested in forming a Preparatory Committee and might be persuaded to take the lead in the General Assembly. However, should the situation appear to be favorable, there would be obvious advantages to US leadership with the active support of India. The Committee should reflect the major LOS interests and should be reasonably representative geographically. It should begin its work in January or February 1971, or as soon thereafter as possible.

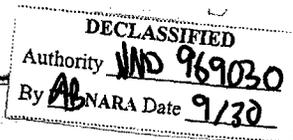
The role of the Preparatory Committee is likely to be limited with respect to seabeds because we expect that the Seabeds Committee will continue to function and that it will have primary responsibility for developing the substantive position on this subject for the Preparatory Conference. (See para (b) below re the conference and para (c) below re the Seabeds Committee.)

(b) A LOS Preparatory Conference to be held in 1971, preferably before the 26th GA, in which all members of the United Nations and its specialized agencies would be included. The purpose would be to draft texts of treaties on the territorial sea, straits, fisheries, seabeds (including boundaries) and seabed related marine pollution. The Preparatory Conference should act by 2/3rds vote of those present and voting. It should be followed by a full scale diplomatic conference on LOS to arrive at and provide for signature of the final treaties as soon as possible after the Preparatory Conference (preferably with a target date of no later than June 1972). Our preliminary view is that the Preparatory Conference should proceed through Working Groups on (1) territorial waters and straits, (2) fisheries, and (3) seabeds and seabed related marine pollution. It should be permitted to continue in session or reconvene if necessary to complete preparations for the diplomatic conference.

(c) The Delegation should make every effort to achieve the objectives contained in paras (a) and (b) above. We would strongly prefer to keep substance focussed in the Preparatory Committee and Conference. However, if it is apparent that the Seabeds Committee will continue, then its work should be made as relevant and productive as possible to the work of the Preparatory Committee and Preparatory Conference. In this event the resolution should also include instructions to the Seabeds Committee to convene in February Working Groups of experts to develop

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recommendations concerning the scope and character of a seabeds regime, the area to which it is to apply, the rules that would govern exploration and exploitation and that would safeguard the marine environment from pollution and avoid conflicts among users, the distribution of benefits from seabed exploitation, and the machinery necessary to implement the regime and its rules; and prepare during its March meeting a report for the use of the Preparatory Conference setting forth its recommendations on these matters or summarizing the alternatives it believes to be worthy of further consideration. Its work should be clearly aimed at preparing for the Preparatory Conference.

2. The Delegation should avoid inferences that these international conferences would reopen existing conventions. The Delegation should make clear that the aim is to fill present voids in international law. The Delegation may refer to the President's Statement of February 18, 1970 (Report to Congress on US Foreign Policies for the 1970s), that as man's uses of the oceans grow international law must keep pace.

3. If in the early stages the Delegation determines that there is little support for the continuation of the Seabeds Committee it may propose that all of the work described under (c) above be undertaken by the Preparatory Committee. In either case, it should be made clear that the convening of the Preparatory Conference is not contingent on the completion of substantive reports prepared either by the Seabeds Committee or the Preparatory Committee.

4. The Delegation should:

(a) Seek support for our substantive positions without, however, negotiating on them, and

(b) Stress dangers to individual countries and to international community of further unilateral assertions of jurisdiction and of delay in reaching agreement on a seabeds regime. The Delegation should point out to other delegations that unilateral assertions of jurisdiction over the oceans and seabeds are not in the interest of the world community at large. Such actions produce friction between states. The great majority of LDCs, the land-locked or shelf-locked countries (which number

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about 40) and countries with small coast lines are all adversely affected by unilateral extensions of jurisdiction.* It is equally disadvantageous to countries with worldwide maritime and military interests such as US, UK and Soviet Union. Some countries' worldwide interests will increase in the future and might well find themselves seriously disadvantaged by a 200 mile territorial sea around the world. Brazil could be an example.

5. The USG would not favor extending beyond this session of the General Assembly the attempt to reach a separate agreement on principles since in the context of negotiations on the draft treaty appropriate principles would be drafted. If it appears that it may be possible to reach agreement at this General Assembly on legal principles consistent with instructions described in CA 3955 of July 24, 1970, the Delegation should work to achieve this result. If principles were agreed by this General Assembly, the way would be cleared for full attention to be devoted to negotiating a seabeds treaty. This negotiation should be begun as soon as possible, and in any case no later than in the Preparatory Committee and the Preparatory Conference, preferably taking the US draft as the basis. If the Seabeds Committee does meet in March, other members must come to grips with the issues and send experts to the Committee if discussions with other delegations on the US Draft are to be meaningful.

6. The Delegation should make clear we want high priority given to development of international agreements of appropriate scope on all aspects of marine pollution. The Delegation should refer to the President's Statement of May 23, 1970, in which he said that it is necessary to establish general rules to protect the ocean from pollution. The Delegation should not indicate, however, that we are proposing that marine pollution as a general, separate subject be dealt with in the LOS context; rather our proposal is limited to seabed related pollution.

*Delegation should clearly distinguish foregoing from States' sovereign rights to explore and exploit to depths of exploitability under Article 1 of the Geneva Continental Shelf Convention of 1958.

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7. The Delegation should seek to foster the continuation of the narrowing of differences between a number of Afro-Asians and the United States which resulted from introduction of our draft seabeds treaty.
8. The Delegation should make every effort to gain support for our seabeds treaty. It should indicate we would welcome suggestions and comments from other countries. We recognize the treaty will have to be revised. The Delegation should seek to persuade others that the draft might serve as a basis for further deliberations in Preparatory Committee and in Preparatory Conference.
9. If the approach of this paper does not find widespread support, and if there is no hope of convening a Preparatory Conference before 1972, the Delegation should attempt to have the Seabeds Committee instructed along the lines described above, and in terms that will insure the participation of experts in duly authorized representative working groups. If the Preparatory Conference cannot be scheduled for 1971, the Delegation should during the present Assembly seek to ensure that a Preparatory Committee is established in order to prepare for a plenipotentiary conference to be convened no later than in the first half of 1972.
10. The Delegation should resist efforts to enlarge the Seabeds Committee, but should generally avoid involvement in the rotation of membership on the Seabeds Committee. It should consult with the Department on any instances where inclusion or exclusion of a particular country through rotation would impinge seriously on United States interests.
11. The Delegation should use the tactics it deems appropriate to achieve the objectives set forth above.

IRWIN HILL, ACTING

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