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Authority WMD 969030
By AB NARA Date 9/30

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E.O. 12958, as amended
July 12, 2005

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DEPARTMENT OF STATE

AIRGRAM

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PRIORITY
HANDLING INDICATOR

TO : USUN New York
INFO: Amembassy LONDON
Amembassy MOSCOW
U.S. Mission GENEVA
U.S. Mission NATO

FROM : Department of State

DATE: MAR 10 7:07 PM '70

SUBJECT: UN Seabeds Committee Mtg., March 2-28, 1970:
INTERNATIONAL REGIME

BACKGROUND

General Assembly Resolution 2574 (XXIV), adopted in December 1969, requests the Seabeds Committee to submit to the next session of the General Assembly in September 1970 (a) a draft statement of principles to promote the exploration and exploitation of seabed resources beyond the limits of national jurisdiction; (b) recommendations regarding the economic and technical conditions and the rules for the exploitation of the resources of this area in the context of the regime to be set up; and (c) a report on international machinery to promote the exploration and exploitation of seabed resources beyond the limits of national jurisdiction.

The General Assembly asked the Committee to expedite the preparation of a comprehensive and balanced set of principles. The U.S. Government accepts these requests as realistic and desirable, and understands that (a) and (b) will be the primary topics of the discussion March 2-28. We assume (c) awaits the SYG report, and therefore that detailed comment on machinery now would be premature.

We also recognize that it is desirable for the U.S. to be, and appear to be, responsive to the concerns of others as these have emerged, without of course jeopardizing the nation's substantive interests in the matter.

Attachment

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FORM DS-323
4-62

Drafted by: IO:UNP:SMCintyre/OES:JSimsarian Contents and Classification Approved by: IO - Joseph N. Greene, Jr.
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S/FW - Sullivan, PM - From

1970 MAR 10 PM 8:01
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Within the U. S. Government a concerted effort is being made to obtain an early decision on the U. S. position regarding the location of the seabed boundary. Compelling domestic, as well as international, factors will be taken into account in this decision and the Delegation's strategy and tactics in the Seabeds Committee must be such as to retain full maneuverability for the successful presentation of a position on the boundary when it becomes available.

We further recognize that there is a close relationship between our positions on the boundary and on the principles governing a regime, in that the details of each will have a bearing on the prospects of international agreement on the other--and on both.

Although the Government is also studying the details of a regime that might be acceptable, this is not and cannot be completed before the end of March.

GUIDANCE

We believe that the guidance in State 133845 of August 9, 1969 and CA-4439 of August 7, 1969 furnished the Delegation for the August 1969 Seabeds Committee meeting with the refinements set out below, equips the Delegation to move or to tread water at the March session, as necessary.

The Delegation should draw on the President's Foreign Policy Report, and the Legal Adviser's speech of February 18, in any private discussions of General Assembly Resolution 2574(A) regarding the desirability of new Law of the Sea Conference. FYI. Note that the speech does not say whether the Treaty should be prepared in the UN, at a Conference, or both. END FYI.

As appropriate or as necessary the Delegation may express regret that the Secretary-General's paper on pollution called for by Resolution 2467(B) (XXIII) will not be ready until next Summer. We recognize that this means there will be little discussion of pollution at the March meeting. This is a subject on which we, like others, are anxious for progress.

The Delegation should make clear that the United States places great importance on the need to establish an international regime

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which will insure and encourage the peaceful, stable, cooperative development of seabed mineral resources. We recognize this means the creation of some international machinery, and we have given some of our ideas on this question at the August session. The Delegation should be attentive to reactions of other countries to these proposals. We recognize that regime issues are complex and will not be solved overnight. The Delegation may indicate that U. S. experts are now working on models for both registering and licensing machinery.

As pointed out at the beginning of this paper, the principal task of the Seabeds Committee is now to develop a set of principles which may be referred to the 25th General Assembly for approval. The Delegation should work toward agreement at the March meeting on a set of principles along the lines indicated below, building on the synthesis achieved at the August 1969 session of the Seabeds Committee.

On the assumption that the discussion of the principles which should be incorporated in the declaration will be based on the synthesis set out in paragraphs 85-97 of the Seabeds Committee Report (Doc. A/7622), the following guidance is provided with reference to the numbered paragraphs of that report (copy attached):

85. Agreed. We continue to accept the concept that there is an area of the seabed and ocean floor and the subsoil thereof which is beyond the limits of national jurisdiction. We are not yet, however, as indicated above, prepared to discuss the location of the boundary. We are not prepared to yield to Latin American pressure to eliminate the reference to the establishment of an internationally agreed boundary. FYI. The Delegation should bear in mind that we will eventually wish to introduce our boundary position, when formulated, in the general discussions in the Seabeds Committee. END FYI.

86. This is acceptable as stated.

87. We can accept the first proposition. As for "property rights", we could accept such a reference in the first part, to read "exclusive sovereign or property rights". The key clause in the first part that permits this is "except as may be provided in a regime". As to the second proposition, we can agree that

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no one may acquire property rights over any part of the area itself; however, we must assure that exploiters, nevertheless, enjoy secure property rights to the resources they exploit, and that, under a regime, they can receive exclusive property rights to resources within a specified area for a specified time.

88. The Delegation is now authorized to accept the "common heritage of mankind" principle. We believe that the phrase can and should be used in the conceptual sense rather than one having or sought to be endowed with the force of law. We assume that indication of our acceptance can be conveyed consistently with the positions we have already taken and with the guidance in this message. The Delegation should assure that the record indicates our interpretation of this principle as follows: It reflects the idea that States may not claim sovereignty over the area, and that the responsibility for dealing with problems affecting the use of this area rests with the international community. Above all, while not a rule of property law in itself, the principle is a solemn admonition to States that peaceful uses of the area may only be sanctioned or prohibited as provided by international law and international agreement.

89. We agree. The Delegation should continue to make clear that until new and more specific rules are agreed, existing principles of international law, including the United Nations Charter, apply.

90. The purpose of the whole exercise is ultimately to provide new rules of international law, by treaty.

91. We agree. The Delegation should repeat the U. S. interpretive statement as appropriate.

92. The Delegation should note that this principle obviously is not restricted by the limits of national jurisdiction over the exploration and exploitation of the natural resources of the seabed, but should apply to the broadest possible area of the seabeds. A consensus seems to be emerging in the CCD on the geographic scope of the draft Seabeds Arms Control Treaty, and there is no need to get into the problem in the Seabeds Committee.

93. We agree. The words "legal" and "international" are acceptable; the word "agreed" is essential. A phrase such as "including appropriate international machinery" is acceptable. The last paragraph of this Airgram is particularly relevant here.

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94. We agree.

95. On dissemination, our position remains as expressed in August by John R. Stevenson in the Legal Subcommittee.

"In considering elements (ii) and (iii), it is necessary to consider element (v) at the same time. In some States all oceanographic activities are conducted under a national scientific program, while this is not the case in others. I know that many members of this committee are familiar with the oceanographic activities conducted by private universities and institutions in the United States.

"While, as I shall indicate shortly, we are prepared to support dissemination provisions with respect to national scientific programs, in the case of research by private institutions, we have a long tradition of independence and believe we should do no more than provide that states shall encourage their nationals to follow similar practices.

"Turning then to the substance of elements (ii) and (iii), we would favor principles providing for timely dissemination of plans for and results of national scientific programs concerning the area beyond the limits of national jurisdiction. We would not favor a rigid publication requirement since the burden of publication cannot realistically be imposed in all cases.

"The international scientific community and, I might add, particularly the oceanographic community, has a highly developed system for disseminating information peculiarly suited to particular needs: it includes books, articles in learned journals, circulation of monographs, visits of scientists, and world oceanographic data centers. We would do well to avoid tampering with either the precise method or the precise time for such dissemination, limiting ourselves here--as in other cases--to the underlying general statement of principle."

The Delegation is authorized to accept language that scientific research should not be the basis for claims for rights of exploitation. The Delegation is authorized to accept a reference such as

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"including developing countries" in the "international cooperation" section, but should avoid specific language on "strengthening their research capabilities." The Delegation should not agree to a firm obligation regarding prior communication of scientific research programs.

96. We agree.

97. No reference to the rights of coastal states in "this area" can be accepted, particularly with respect to scientific research. However, the Delegation should be careful to avoid any comment which would foreclose an intermediate zone solution to the boundary question; it may simply note that this question can only be resolved in connection with the resolution of the boundary question, and should not be dealt with in a general statement of principles. With respect to liability, the following language is authorized:

"There shall be liability for damages resulting from the exploration and exploitation of this area. Specific internationally agreed rules shall be established in furtherance of this principle."

Beyond this, the Delegation should reserve our position. FYI. The Delegation is not authorized to state a view one way or the other on state responsibility or absolute or strict liability. END FYI.

The Delegation is also authorized informally to explore with other Delegations technical aspects of a workable regime which may be created for the area of the seabeds beyond national jurisdiction. We will be interested in learning views of other delegations on institutional framework, criteria, rules and procedures of possible forms of machinery described by the Secretary-General in Document A/7622 and on the position put forward by the Delegation at the August 1969 session of the Seabeds Committee. In this connection, members of the Delegation will be prepared to discuss U. S. experience in offshore mineral resource development which may have applicability for a deep seabed regime. We believe that informal discussions will help lay a realistic basis for considering at the August session the Secretary-General's forthcoming report on machinery in accordance with General Assembly Resolution 2574(C). If the question of scientific research is

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raised in these private discussions, the Delegation should be noncommittal and state that this matter is being studied by the U. S. Government.

Further instructions will be sent to the Delegation as additional U.S. positions are worked out. We do not wish to run the risk of the General Assembly writing principles in September on its own because the Seabeds Committee failed to produce a draft as instructed by the General Assembly in Resolution 2574. Consequently, the Delegation should make every possible effort to secure agreement on principles, and should not hesitate to recommend language to us which would help accomplish this result, bearing in mind, however, the importance of keeping open all our options on the boundary issue.

The Delegation should not attempt to secure agreement on particular kinds of machinery, except it may continue to oppose an international operating agency. This is not intended to prevent the Delegation from exploring the advantages and disadvantages of differing kinds of machinery. The Delegation is encouraged to make recommendations to Washington based on such explorations as to desirable forms of machinery.

ROGERS

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ATTACHMENT TO

AIRGRAM _____

DATED _____



REPORT OF THE COMMITTEE
 ON THE
 PEACEFUL USES OF THE SEA-BED
 AND THE OCEAN FLOOR
 BEYOND THE LIMITS
 OF NATIONAL JURISDICTION

GENERAL ASSEMBLY

OFFICIAL RECORDS : TWENTY-FOURTH SESSION

SUPPLEMENT No. 22 (A/7622)

UNITED NATIONS

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Sub-Committee away from a generalized approach towards the task of devising specific formulas for a number of defined ideas. It is to be noted, however, that the multiplicity of formulations on a single point, whether those in the report of the Informal Drafting Group or those suggested by various delegations during the course of the August session, could prima facie be construed as denoting differences of opinion. While this might be the case with regard to certain elements, it is not so for a number of others; various formulations contain similar ideas and do sometimes overlap. The variety of formulations is due in this connexion to differences in emphasis and as to scope. In certain instances it is to be observed that part of the membership of the Committee finds itself attached to particular concepts with which in varying degrees the other part does not concur.

84. At this stage of the Sub-Committee's deliberations, the practicability of underscoring "areas of agreement" or "areas of disagreement" might be questioned, since none of the formulations have so far been endorsed. Yet it could be considered suitable to attempt a synthesis of the related formulations in order to determine in so far as possible common denominators. These denominators could in no way be construed as an acceptance by the Sub-Committee that they constitute an adequate basis for the elaboration of a balanced and comprehensive declaration of principles.

85. It appeared at the outset that the Legal Sub-Committee accepted as implied in resolutions 2340 (XXII) and 2467 A (XXIII) that there is an area of the sea-bed and ocean floor and the subsoil thereof which is beyond the limits of national jurisdiction. There was, however, no agreement on the inclusion in the draft of a reference to the establishment of a precise boundary for this area.

Legal status

86. A common denominator on this item would be the concept that the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, shall not be subject to national appropriation by any means and that no State shall exercise or claim sovereignty or sovereign rights over any part of it.

87. This concept though acceptable to all was considered by some as not sufficiently comprehensive. For the latter, the following idea should be included that except as may be provided in a régime, no State shall claim or exercise or grant exclusive rights over any part of this area, but there was no agreement as to the inclusion in the draft that no one may acquire property rights over any part of the area by use, occupation or any other means.

88. The over-all concept that the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction are the common heritage of mankind (or part of the common heritage of mankind) was widely supported but not acceptable to all.

Applicability of international law, including the United Nations Charter

89. On this item it has been possible to detract as a common denominator that there are principles and norms of international law which apply to the sea-bed and ocean floor and subsoil thereof beyond the limits of national jurisdiction.

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90. There was however no agreement as to the extent to which the rules of existing international law apply or should be applied in the future or as to whether any rules of existing international law apply to economic activities in the exploration and exploitation of the area.

Reservation exclusively for peaceful purposes

91. A common denominator in this regard has emerged in the sense that a declaration of principles would contain, in accordance with resolution 2467 A (XXIII), the idea that the sea-bed and ocean floor shall be reserved exclusively for peaceful purposes.

92. There was, however, no agreement on the nature of the references in the declaration to the geographic limits of application of this principle or to the scope of the prohibition of activities.

Use of the resources for the benefit of mankind as a whole irrespective of the geographical location of States taking into account the special interests and needs of the developing countries

93. An agreement seems to have emerged on the need for the establishment of a régime as well as on the use of the resources for the benefit of mankind irrespective of the geographical location of States and taking into account the special interests and needs of the developing countries. The qualification of that régime is still to be agreed upon as well as the scope of the applicability. Whether the régime shall be characterized as legal, international or agreed remains to be decided on, but it was agreed that the régime should be legally binding. Similarly, whether the régime shall apply to the area or only to resources is a matter still to be settled. No agreement has yet been reached on the main features of such a régime. Thus, for example, the question of the most appropriate and equitable application of benefits obtained from the exploration, use and exploitation of this area to the developing countries, which was underlined by a number of delegations, is still under consideration.

Freedom of scientific research

94. This principle was acceptable in general, as well as the notion of the promotion of international co-operation in the conduct of scientific research. The idea that freedom of scientific research in this area shall be assured to all without discrimination and that States shall promote international co-operation in the conduct of scientific research and that there shall be no interference with fundamental scientific research carried out with the intention of open publication appeared able to command agreement, on the understanding that it would be necessary to be able to distinguish clearly scientific research from commercial exploration. One element in this distinction was agreed to be the subsequent making available or communication of results.

95. Differences still remain as to the relation between freedom of scientific research and the possible obligations regarding prior communication of programmes and subsequent communication of results, as well as differences as to whether the notions of accessibility or availability on the one hand or dissemination on the other should be employed. There is still no agreement on the inclusion of the

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idea that such research should not be the basis for claims for rights to exploitation. The suggestion regarding strengthening the research capabilities of the developing countries is still to be further considered.

Reasonable regard for the interests of States in their exercise of the freedom of the high seas

Question of pollution and other hazards and obligations and liability of States involved in the exploration, use and exploitation

96. It can be assumed that the concepts of reasonable regard for the interest of all States and non-infringement of the freedoms of the high seas and no unjustifiable interference with the exercise of those freedoms are not contested. Furthermore, there exists general acceptance of the necessity for the adoption of appropriate safeguards against the dangers of pollution. The adoption of appropriate safeguards to protect the living resources of the marine environment as well as of safety measures concerning activities in the area were not objected to.

97. On the extent of the rights of coastal States with regard to activities, including scientific research and exploration undertaken in the area, there is yet no agreement. The question of liability for damage caused by activities in the area is still under consideration.

Item 2 of the programme of work: Consideration of the legal aspects of the report submitted by the Secretary-General pursuant to resolution 2467 C (XXIII) regarding international machinery (A/AC.138/12 and Corr.1 and Add.1 and Add.1/Corr.1)

Postponed

Item 3 of the programme of work: Consideration of the legal aspects of a long-term and expanded programme of oceanic exploration and research (Note by the Secretary-General, document A/AC.138/14 and Corr.1)
(English only)

Postponed

98. Owing to the insufficiency of time the Sub-Committee decided to postpone consideration of these two items until its next session.