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DEPARTMENT OF STATE
AIRGRAM

POL 33-8

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 SUBJECT : Law of the Sea (LOS)
 REF : A-3447

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SUMMARY. Preparations for the 1973 LOS Conference, in which some vital US interests are at stake, are now entering a critical phase. There are some doubts -- to which we should not contribute -- that the Conference can be held on schedule. Indeed, there are several countries, particularly in Latin America, that would probably prefer that it not be held at all, but a majority of countries seem to feel that the conference will be held in 1973 even though it may not conclude all its work that year. This message summarizes developments at the recent UN Seabed Committee meeting and requests (a) the assistance of addressees in supporting our positions with host governments, as well as (b) additional reporting and analysis of host government attitudes. It provides only a brief summary of LOS events to date. Embassy personnel intending to have substantive LOS discussions with officials of host government are urged to review the referenced Airgram, US speeches and additional information on specific LOS subjects sent to the post so that they can fully understand and thus explain and defend the important and complicated issues and positions. We will be sending a more detailed report of proceedings at the March Seabed Committee meeting as well as summaries of important bilateral discussions with foreign representatives. END SUMMARY

Action Taken: **(1)**

Date: _____
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Drafted by: **IO/UNP:SMcIntyre/OEskin:avw** Drafting Date: **4/28/72** Phone No.: **20573** Contents and Classification Approved by: **L - John R. Stevenson**

Clearances: See last page of Airgram

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The UN Seabed Committee, which is in fact the preparatory committee for the 1973 LOS Conference, met in New York February 28-March 30, 1972. The Committee made only limited progress in its work, principally because procedural problems occupied so much of the Committee's attention. Nevertheless, there was wide-ranging discussion of substantive issues, and delegates expressed their countries' needs and desires in increasingly specific terms. In some areas the Committee made modest progress; in others there was no movement. The Committee agreed that there should be two sets of meetings in 1973 on LOS, the first a five-week session in the Spring and the second an eight week session in the Summer. (One or both of these meetings might be part of the 1973 Conference itself.) These meetings will be subject to UNGA approval this Fall.

Subcommittee I on the seabed regime moved forward seriously and effectively, owing in great part to its strong Chairman (Engo, Cameroon). Subcommittee II is responsible, inter alia, for developing a "comprehensive list of subjects and issues" which could perhaps later become a basis for the Conference agenda. Work on the list moved at a snail's pace because of regional bloc politics and the delaying tactics of some IAs. Subcommittee III on marine pollution and scientific research succeeded only in agreeing on a program of work.

Seabeds: At the March meeting, Subcommittee I held a detailed, structured discussion of the international regime. More definitive national views were expressed than at previous sessions. The US and a number of other countries indicated continued support for an intermediate seabed zone of mixed national and international rights and obligations. In order to meet the desires of many coastal states, the US Delegation indicated a willingness to agree to greater coastal state control over resources management in the area than we had earlier indicated. We also reiterated our flexibility on using different criteria, including a mileage distance from shore, for the outer limit of the intermediate zone.

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Subcommittee I established a working group on the status, scope and basic provisions of the proposed seabed regime based on the Declaration of Principles (UNGA Resolution 2749). The working group is to draw up points of agreement and negotiate points of substance on which no agreement exists. The Subcommittee is expected to create additional working groups on international machinery and other subjects at its Summer 1972 session. Several delegations strongly and emotionally criticized legislation now before the US Congress which would authorize licensing by the US of mineral exploitation in the deep seabed prior to the establishment of the international regime. They maintain that such legislation would make a mockery of the concept that the deep seabed resources are the common heritage of all mankind. The US Representative made clear that the Executive Branch has not taken any position on the legislation and that US companies, while carrying on exploratory recovery of manganese nodules, are not commercially exploiting deep seabed resources at this time. We will forward shortly to all posts a more detailed Airgram explaining the significance and background of this issue.

Kuwait, supported by 13 other delegations, including the PRC, introduced on the last day of the March session a resolution calling for a moratorium on all activities looking to commercial exploitation of the deep seabed and for a decision of the Committee to deny legal validity to all arrangements made by commercial exploitation of deep seabed resources prior to the establishment of the regime. There was no substantive discussion of the resolution, which is similar, but even more far-reaching than the moratorium resolution on seabed exploitation adopted by the UNGA in 1969 over the opposition of the US and a number of other countries. The Kuwait resolution will probably be discussed at the Summer 1972 session of the Committee.

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The List of Issues: The 25th UNGA (1970) directed the Committee to draw up a "comprehensive list of LOS subjects and issues". Despite intensive work during the 1971 and 1972 meetings of the Committee, no agreed list has emerged. The failure to reach agreement is due at least in part to the conscious delaying tactics of certain states which believe that delay will enhance achievement of their objectives. At the March session many LDCs produced a long list, which is generally satisfactory except for a few crucial formulations prejudicial to our objectives. The list was co-sponsored by 56 countries (53 LDCs plus Iceland, Spain and Yugoslavia). We have sent a separate instruction to a number of addressees requesting an approach on the list question in order to insure neutral formulations.

The formulation on straits is very harmful. It reads: "Straits: (a) straits used for international navigation; (b) innocent passage". This is prejudicial to the position of such countries as the US which draw a sharp distinction between the concepts of innocent passage and free transit through international straits. By mentioning only innocent passage we might, if the list were later to become the basis for the agenda for the 1973 Conference, find it difficult to even get a hearing for our views on need for free passage. Similarly, the formulation on "exclusive economic zone" is very harmful. It is prejudicial to our efforts to negotiate an acceptable accommodation between, on the one hand, coastal state interests in resources beyond the territorial sea and, on the other, international community interests in such matters as other uses of the area (e.g., navigation and overflight, rational fisheries management, and scientific research). This formulation must be made neutral.

The co-sponsors of the list attempted to force their product down the throats of the other participants, but this effort failed and a number of amendments were submitted by the US and others. The Chairman of the Committee is now engaged in consultations in New York in order to get an agreed list. We are continuing to urge acceptance of a neutral, non-prejudicial formulation on all items.

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Fisheries: The major issues are: (a) Should coastal state management authority be limited as we advocate, to those species of fish that the coastal state has the competence to manage (i.e., coastal and anadromous* stocks) and limited to the actual range of such stocks, leaving the wide-ranging oceanic stocks to management by international or regional organizations? Or should coastal state fishery authority extend over a broad zone regardless of the distribution of fish and over-all species, even those that range in the area beyond that which the coastal state can effectively exercise control (i.e., highly migratory oceanic species such as tuna)? (b) Should coastal state preference to the harvest of fish off its coast be limited to its capacity to utilize, as we advocate? Or should the coastal state be given the authority to prevent full utilization of such stocks by being able to prevent access by distant-water fishermen to stocks that clearly could support higher yields?

The species approach is reflected in the US draft Article III presented last August at the LOS preparatory (Seabeds) committee. Many developing coastal states criticized our article in part because of the primary role it gives to international and regional fisheries organizations in regulating coastal species and because of other constraints limiting coastal state controls over coastal species. In light of these comments, we expressed at the March meeting our willingness to consider giving the coastal state greater control over coastal and anadromous species than we had previously. (C.f. The important speech by Ambassador Donald McKernan on March 29, sent by RefAir, with French or Spanish translations where appropriate, in which he spelled out our present position.) The changes made, reflected in McKernan's speech, include (a) de-emphasis of the roles of international and regional organizations in favor of greater coastal state control, and (b) elimination of major restrictive requirements on how

*The anadromous species is characterized by fish that spawn and return to the same fresh waters of a state, but range widely in the oceans during a significant portion of their life cycle. An example is salmon.

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coastal states exercise control over coastal stocks. We clarified, but did not change, our position that the United States favors a negotiated settlement of the question of historic fisheries (i.e., the rights of distant-water fishermen off the coasts of other states). Additionally, the species approach was explained in detail, stressing the different treatment to be accorded to coastal and anadromous species on the one hand and to highly migratory stocks on the other.

As a matter of collateral interest, Canada proposed a technical conference of fisheries experts to be held in the Spring of 1973. The US countered that a working group on fisheries should be set up promptly within the framework of the Seabed Committee in order to avoid any delay in drafting treaty articles on fisheries for the LOS Conference. Subsequently, the FAO Committee on fisheries accepted the Canadian invitation to hold a technical fisheries conference in Canada. Responding in part to our concerns, the Canadians agreed that the conference should be held early in 1973. This would permit the Seabed Committee at its March 1973 meeting to take into account the conclusions of the technical conference.

Territorial Seas and Straits: There were no changes in national positions at the March meeting. The 12-mile limit appears to be acceptable to most countries, but major differences remain with respect to straits. We continue to insist on the objective of free transit through and over international straits as a sine qua non to agreement on a 12-mile territorial sea.

PRC Role: The PRC took an active role as a new member in Committee. They indicated privately they were anxious to learn and found LOS more complex than they had anticipated. They used the Committee to make polemical attacks on US, USSR, and Japan, and to make clear their territorial claims to the Senkaku Islands

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and elsewhere in the East China Sea. They identified themselves with the LDCs wherever possible, giving the LDCs strong support.

Action Requested: We continue to attach the highest importance to achievement of US ocean objectives. We believe it essential that the Conference date (1973) not slip; if it should, we are convinced that the problems will become more difficult to resolve and there are likely to be further unilateral extensions of jurisdiction over ocean space.

In the past the embassies have provided valuable help, particularly in furnishing the Department with information on developments. In the period ahead we will have to rely increasingly on (a) additional reporting and analysis of host government attitudes, and (b) carrying forward the dialogue on issues with host governments. In contacts between now and the July-August session of the Committee, embassies should at every appropriate opportunity encourage support for our positions, in particular on the need for the 1973 Conference. Posts should draw upon the material we have already furnished, as well as the information contained in this message. In addition, where needed, we are sending specific instructions on particular issues to selected embassies. We are prepared to send teams to capitals where this would be useful; also, where it appears that a particular situation warrants it, we would be willing to consider direct communications at a high level. We welcome embassy recommendations as to the most effective means of persuading their host governments on our LOS positions.

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If they have not already done so, we request that Chief of Mission designate a high level political officer to follow LOS. Department should be informed as to which officer is designated.

ROGERS

Clearances: (all in draft)

IO - Mr. Herz <i>J</i>	L/OA - Mr. Pitman <i>SM</i>
EUR/CAN - Mr. Johnson <i>SM</i>	S/FW - Mr. Brittin <i>SM</i>
NEA/RA - Mr. Chase <i>SM</i>	ARA - Miss Ridgway <i>SM</i>
AF - Col. Critz <i>SM</i>	EA/RA - Capt Long <i>SM</i>
DOD - Col. Fedele <i>SM</i>	
Commerce - Messrs. Johnson, Larkins <i>SM</i>	
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