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Authority EG 12958  
By AR NARA Date 01/27DECLASSIFIED  
PA/HO Department of State  
E.O. 12958, as amended  
July 12, 2005

MEMORANDUM

THE WHITE HOUSE  
WASHINGTON~~CONFIDENTIAL~~ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: GENERAL HAIG 

SUBJECT: UN Law of the Sea Conference: Formulation of Straits Item on Agenda

The UN Seabed Committee charged with preparations for the 1973 law of the sea conference is meeting now in Geneva. The US Delegation has achieved satisfactory formulations of all agenda items with the exception of free transit through straits. There is an unresolved split between Defense and State/Commerce/Interior as to how to handle the problem. Acting Secretary Irwin has forwarded the memorandum at Tab A for your decision.

In negotiations on this agenda item, the United States has found itself pitted against a group of developing countries and straits states, led by Spain, who have sought to exclude mention of free transit from the agenda. However, during negotiations in recent weeks, the following compromise, proposed by Spain, has been reached on this item:

"4. Straits Used for International Navigation

4.1 Innocent Passage

4.2 Other related matters, including the Question of the Right of Transit."

State, Commerce and Interior

All members of the US Delegation with the exception of the Defense representatives believe this compromise formulation should be accepted, and State, Commerce and Interior support this position believing:

-- the compromise will protect our ability to negotiate free transit through straits in the 1973 conference;

-- we can treat the compromise as a positive achievement in that it would be clear that free transit is one of the items for negotiation at the conference;

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-- if the compromise is rejected this summer, it is likely that the issue will come to a vote in the UN General Assembly this fall where the US will run the risk of a formulation being adopted under circumstances more prejudicial to our position;

-- if the agenda is not settled by the time of the UN General Assembly this fall, it is possible that the UN will vote to postpone the start of the law of the sea conference; this in turn could lead to additional unilateral law of the sea claims detrimental to U.S. resource and security interests.

#### Defense Position

Defense is opposed to accepting the compromise formulation because it believes that:

-- although the drafting of the conference agenda is on the surface procedural, it has become a matter of substance to the United States and the countries opposing us;

-- there is an existing right to transit through straits which we do not need to bargain on. Failure to insist on a non-prejudicial agenda formulation -- i.e., Free Transit -- would be seen as US capitulation on the transit issue. This is a fundamental part of your oceans policy, a point repeatedly emphasized to the seabeds committee;

-- while acceptance of the compromise would permit us to negotiate the issue, it would adversely prejudice the outcome of these negotiations;

-- acceptance of the compromise is not necessary to the continued work of the Seabeds Committee, inasmuch as the agenda would go forward to the General Assembly with a specific reservation by the United States on the straits issue.

#### My View

There can be no doubt that this sort of foul-up shows the United Nations in its very worst light, with a group of developing countries and special interest states attempting to keep the United States from inserting an item in what the General Assembly has voted should be a comprehensive list of agenda items.

At the same time, this is in fact a matter more of procedure than of substance; free transit would be a subject for negotiation at the law of the sea conference; and I am not certain that Defense is correct in stating that our ability to negotiate the item would be impaired.

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I recommend that you approve the State/Commerce/Interior position that would have the US Delegation accept the straits agenda item as now formulated:

APPROVE ✓ DISAPPROVE \_\_\_\_\_

However, if you agree with Defense that we should not accept the current compromise in that it will impair our ability to negotiate the vital US interest of free transit through straits, the Delegation will be instructed not to accept the compromise formulation.

APPROVE \_\_\_\_\_ DISAPPROVE \_\_\_\_\_

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