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FROM: Department of State

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Enclosed is a summary and analysis of the March 1-26 meeting of the Law of the Sea Conference Preparatory Committee prepared by the U.S. Delegation and the Department. This summary and analysis should provide important background information to addressees in contacts with host government officials responsible for law of the sea matters. The next meeting of the Committee is scheduled for July 19 - August 27 in Geneva.

ROGERS

Enclosure:

As stated.
SUMMARY AND ANALYSIS

March 1971 Meeting LOS Conference

Preparatory Committee

A. Organization of Committee on Principal Issues

1. On March 26, the enlarged UN Seabeds Committee (86 members), which serves as Preparatory Committee for the 1973 LOS Conference, completed the first of two sessions planned for this year. The Committee reached agreement on its fundamental organization and the general mandates of its Subcommittees and held two weeks of general debate on procedure and substance.

2. The first two weeks of the session were devoted to organizational arrangements including the setting up of three subcommittees of the whole under the main committee: (1) seabeds regime, (2) other related matters (e.g., territorial seas, straits, fisheries), and (3) marine environment and scientific research. The main committee under Chairman Amerasinghe of Ceylon will constitute essentially a steering group under which the subcommittees, and their Working Groups which we hope to see established, will engage in the drafting of treaty articles to be presented to the 1973 Law of the Sea Conference. Ambassador Amerasinghe has proved himself an extraordinarily able chairman of the Seabeds Committee over the last three years, and we are especially pleased by his re-election.

3. Subcommittee I on Seabeds Regime, is chaired by Dr. E.E. Seaton of Tanzania who has proved himself very able during the 25th GA and who is also the author of the only draft seabed convention produced so far by a developing country. The key question remaining with regard to this subcommittee is whether it will be able to consider the limits of national jurisdiction over the seabed (boundaries), at the same time as it develops a seabed regime.

It is our view and that of the Soviets and other developed countries that drafting treaty articles containing a regime to govern the exploration and exploitation of the deep seabed is impossible without at the same time considering the definition of the area to which it is to apply.

While the mandate of the subcommittee does not specifically extend to the seabed boundary question, it is not prohibited from dealing with it. We can expect, nevertheless, that at
the July-August meeting the Latin Americans will attempt to
get the Africans and Asians to agree that the seabed
boundary issue should be dealt with together with other
ocean boundary questions in Subcommittee II which is chaired
by a Latin American from a "200-mile" territorial sea
country.

4. The first task of Subcommittee II will be to "draw up
a list" of those oceans matters on which it will draft
treaty articles. It is our view that work on certain of
these treaty provisions should begin even before the compilation
of the list (which could be a dilatory maneuver) is completed.
For example, the question of a new regime for high seas fisheries
(including certain coastal state preferences therein) needs
to be dealt with as soon as possible and there is general
agreement that work should begin in this respect.

The Latin Americans can be expected to attempt to delay the
substantive work of this Subcommittee by insisting that full
agreement be achieved on the list of subjects to be dealt
with prior to commencing substantive work on any of them.
Galindo Pohl (El Salvador) is Chairman of Subcommittee II and
may not be particularly effective. However, he is not personally
a militant 200-miler and has confided to the Legal Adviser
his strong desire to find a basis for accommodation between
the US and Latin American positions.

The US favors narrow limits of absolute national jurisdiction,
but is willing to concede to the coastal state certain pre-
ferences off its shores with respect to marine resources and
the prevention of pollution. The Latin Americans, on the
other hand, want much greater coastal state control over a
broad adjacent area. Nine Latin American countries claim
jurisdiction of one sort or another out to 200 miles.

5. Subcommittee III which will deal with questions of marine
pollution and scientific research, is chaired by van der Essen
(Belgium). While we are quite anxious to deal with certain
outstanding marine pollution problems in this Subcommittee,
we feel that any extensive consideration of scientific research
in this forum can only result in restrictions of its freedom.
2. Developments at the March Session

1. The development of the foregoing organization was achieved in two weeks of informal meetings taking up one-half of the March session. The Africans would not agree to a formal meeting of the Committee until they were satisfied that the organizational arrangements including African Chairmanship of the Regime Subcommittee. The long procedural dispute was really a continuation of the fight which had begun last January in New York; and, while the three Subcommittees described above were in fact organized, working Groups of limited composition (considerably less than 86) to do the actual drafting were not set up at the March session.

2. Fortunately, in the very last days of the meeting, a number of Africans in particular questioned the absence of working groups. It is hoped that we shall be able in the first days of the July-August meeting to establish small working groups to begin the actual drafting of treaty articles on such priority matters as seabeds regime and boundary, and fisheries. It is virtually impossible for an 86-member committee to engage in such drafting.

3. A further development during the period of procedural conflict was the gradual coalescence of the developing countries in the so-called Group of 77. Developing countries which began by meeting in regional groups eventually came to see their interests in the oceans as one of concern to developing countries generally.

4. Another development involves the coalescence of the land-locked and shelf-locked* countries which began to organize themselves informally and held secret meetings. This new group formed by Koh (Singapore) and Prohaska (Austria) wants our support, but cautions us strictly against embracing them publicly for fear that such an embrace could destroy them as a group.

5. The second two weeks of the meeting were devoted to general debate in the main committee and organizational sessions of the Subcommittees. General debate began with Arias Schreiber (Peru) laying down in the strongest terms the gospel of

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*Shelf-locked countries are those whose continental margins abut those of their neighbors in all directions at less than 200 meters depth of water.
unilateralism, i.e., the right of the coastal state to
determine its own limits of national jurisdiction over
ocean space in accordance with its political, economic and
geographic interests.

6. Zegers (Chile), although a "200-mile", took a more
moderate view; and privately some of the Latin Americans
such as Argentina, Guatemala and Mexico, as well as a
number of Afro-Asians, criticized the high-handed tactics
of Schreiber. Nevertheless, a number of speakers mentioned
the unilateral approach as a viable alternative to resolving
outstanding oceans problems through broad international
agreements. In this respect "unilateralism" achieved a res-
pectability at the March session which it did not previously
enjoy.

7. Perhaps the most important speech of the session was that
of Pardo (Malta) who in a three-hour presentation gave his
prescription for a new international order for the oceans.
(Pardo initiated UN consideration of these issues by a
speech before the 22nd General Assembly in 1967.) Pardo
advocated a single treaty which would define the limits of
national jurisdiction over ocean space and describe norms
governing activities in the area beyond national jurisdiction.
He proposed a new international institution in which there
would be a balancing of interests and voting power to deal
with the oceans as a whole beyond national jurisdiction. He
singled out fisheries as the most valuable ocean resource
today and pointed out that effective management of world
fisheries was needed.

Perhaps most importantly, Pardo advocated a single over-all
clearly defined outer limit of national jurisdiction recognizing
and satisfying the totality of coastal state interests -- 200
miles. At the same time, Pardo stated that coastal state rights
within 200 miles would be limited by general and specific
international norms established by treaty and subject to
judicial review. These norms would be related to such questions
as marine pollution and scientific research. Pardo stated that
navigation could no longer be exercised without regulation,
but regulation of navigation must remain of a general nature
administered through international institutions.

8. In our general debate speech, we sought to be accommodating
despite considerable provocation by the Latin Americans. This
approach won the US plaudits and permitted debate to continue
on a serious level. We detailed US views on substance with
respect to seabeds and marine pollution. With regard to seabeds,
we emphasized the balancing of interests (coastal/non-coastal;
developed/developing) contained in our draft convention and pointed out that nations would have to assess their national interests and then accommodate those interests to others in order to achieve international agreement which would avoid conflict and at the same time encourage seabed exploitation on behalf of all mankind.

9. A serious tactical problem emerging is that the hard line 200 mile Latins such as Brazil urged an extreme seabed regime with one-nation one-vote. If they gain support for this from the Group of 77, it could result in developed countries being forced to support a wide limit of national jurisdiction so as to protect themselves against an international regime which would be weighted against them. Our presentation thus pointed out that an international regime drawing revenues only from an area beyond 200 miles would have only limited benefits for developing countries since most oil and gas is probably located within 200 miles. While our statement was well-received, many delegations clearly wished more time to study the problem. With regard to marine pollution, we emphasized our commitment to achieve international agreements which would preserve the marine environment.

10. Ceylon and a few other delegations indicated a willingness to consider the trusteeship concept contained in our draft seabeds convention. Belgium and Denmark supported our convention, while some Latin Americans and Kuwait were critical. By and large, however, there was little specific comment on our seabed proposals. Other nations are still considering our ideas and are not yet ready to comment in detail. Even Seaton (Tanzania) has privately complained that he cannot get Africans to comment on his own draft seabed treaty. At the same time, LDCs are increasingly vocal on the need to "participate" in exploration and exploitation of ocean space -- i.e., not just share in the benefits. Ceylon, Kuwait, Brazil and India all spoke on the need for any international organization to set up not only to administer the seabed but to exploit it directly.

11. Most delegations strongly favor increased coastal state fishing rights without complex procedures, although most statements in favor of broad exclusive fishing zones came from the Latin Americans. The general view appears to support greater coastal state fishing preferences on the high seas than are contained in our present position on fisheries set out in Article 34.
C. Conclusion

While specific accomplishments at this session were thus modest, most delegates felt that it was necessary to go through the process of sorting things out before the Committee could engage in the process of accommodation that will be essential to the success of its work. We consider that as a result of the March session, there is a greater chance that the July-August session can make significant progress on substance, although it is widely recognized progress will be difficult.