SUBJ: SEABED TREATY: PROBLEMS AND PROSPECTS

1. OUR OBJECTIVE OF OBTAINING UNGA ENDORSEMENT OF SEABED TREATY HAS FACED SEVERAL PROBLEMS WHICH HAVE ALREADY MADE IT DOUBTFUL THAT WE CAN OBTAIN ENDORSEMENT (OR FUNCTIONAL EQUIVALENT) WITHOUT EXERTING MORE PRESSURE AND CREATING MORE ILL-WILL THAN OBJECTIVE IS WORTH. WE HAVE IN MIND THAT EVEN IF WE ARE ABLE TO GET A POSITIVE RESOLUTION VOTED BY THIS GA, WE WOULD STILL NEED A SUFFICIENTLY FAVORABLE ATMOSPHERE SO THAT WHEN TREATY WAS OPEN FOR SIGNATURE IT WOULD HAVE GOOD PROSPECTS OF GETTING SUBSTANTIAL NUMBER OF RATIFICATIONS FAIRLY SOON. IF TREATY IS "RAILROADED" THROUGH GA IN FINAL DAYS OVER OBJECTIONS OF ANY SUBSTANTIAL GROUP, WE MIGHT FACE A RELUCTANCE TO RATIFY OR EVEN SIGN ON PART OF MANY SMALLER COUNTRIES WHO COULD FEEL THAT TREATY IS COMPLICATED DOCUMENT, PARTICIPATION OF WHICH WOULD BRING THEM NO BENEFIT SO LONG AS NUCLEAR POWERS HAVE SIGNED IT. BUT WHICH COULD SOMEHOW PREJUDICE THEIR POSITION ON COMPLEX LAW-OF-THE-SEA OR
SEABED QUESTIONS WHICH THEY SCARCELY UNDERSTAND.

2. DIFFICULTIES ON PATH OF TREATY MAY BE GROUPED UNDER THREE HEADINGS:

A. PROBLEMS INVOLVING ARTICLE III (VERIFICATION):

B. PROBLEMS INVOLVING USE IN ARTICLE I AND II OF "CONTIGUOUS ZONE" FROM 1958 GENEVA CONVENTION TO DEFINE AREA EXEMPT FROM PROHIBITION:

C. COSMETIC CHANGES SUCH AS SWEDISH AMENDMENT WHICH CALLS FOR OPERATIVE PARAGRAPH ON CONTINUED NEGOTIATIONS:

3. WE BELIEVE MOST PROBLEMS ASSOCIATED WITH VERIFICATION ARTICLE WILL BE MET BY REDRAFT OF ARTICLE III NEGOTIATED WITH CANADA. IT IS OUR IMPRESSION THAT CANADIAN EFFORT TO SELL THIS REDRAFT IS GOING RATHER WELL, AND IF ACCEPTED BY SOVIETS WITHOUT DAMAGING DELETIONS COULD SOLVE VERIFICATION QUESTION. WE NOTE, HOWEVER, THAT NEITHER US DEL NOR CANADIAN DEL YET HAS ANY CLEAR REACTION FROM BRAZIL, AND IT MAY BE SEVERAL DAYS BEFORE WE CAN BE CONFIDENT THAT SERIOUS BRAZILIAN OBJECTIONS WILL NOT PERSIST.

4. MOST SERIOUS DIFFICULTY AT THIS POINT APPEARS TO BE PROBLEM INVOLVING "CONTIGUOUS ZONE." THIS PROBLEM WAS RAISED AT GENEVA BY ARGENTINES WHO RECEIVED SOME SUPPORT THERE FROM UAR, ETHIOPIA, BRAZIL, NIGERIA, AND PAKISTAN AFTER APPROXIMATELY ONE WEEK OF DEBATE IN FIRST COMITEE, NEPAL, ECUADOR, EL SALVADOR, TANZANIA, AND UK HAVE JOINED IN OBJECTING TO REFERENCE TO 1958 CONVENTION WHILE BRAZIL AND NIGERIA HAVE UNDERLINED THEIR PREVIOUS CRITICISM. BELGIUM HAS ALSO SUGGESTED A REVISION AND DUTCH BOTH IN NATO AND PRIVATELY TO US DEL HAVE VOICED CRITICISM. THIRTEEN SPEAKERS IN FIRST COMITEE DEBATE HAVE NOT OBJECTION BUT NONE HAS ENDORSED FORMULATION IN TREATY AND SEVERAL, NOTABLY MEXICO AND YUGOSLAVIA, HAVE PRIVATELY INDICATED SYMPATHY WITH ARGENTINE POSITION.

5. ORIGINAL ARGENTINE OBJECTION WAS BASED ON THEIR FEAR THAT USE OF "CONTIGUOUS ZONE" TO DEFINE COASTAL STRIP WOULD ENHANCE STATUS IN INTERNATIONAL LAW OF CONCEPT EM.
BODIED IN 1958 CONVENTION THAT MAXIMUM TOTAL WIDTH OF TERRITORIAL WATER AND CONTIGUOUS ZONE SHOULD BE 12 MILES.

6. ARGENTINE DEL IN GENEVA POINTED OUT CORRECTLY THAT CONTIGUOUS ZONE WAS CONCEIVED OF AS SOMETHING LYING BEYOND TERRITORIAL WATERS; AND WAS THUS FUNDAMENTALLY INCOMPATIBLE WITH ANY TERRITORIAL WATERS OF MORE THAN 12 MILES. THEY ARGUED THAT DISCLAIMER CLAUSE WAS INVALIDATED BY INITIO BY INCLUSION IN ARTICLE I OF CONTIGUOUS ZONE CONCEPT, ARGENTINE OBJECTION HAS, OF COURSE, BEEN ECHOED BY OTHER 200 MILE COUNTRIES SPEAKING IN COMITE I (ECUADOR AND EL SALVADOR) AND WE CAN EXPECT THAT CHILE AND PERU WILL TAKE SAME LINE. THE "SOLIDARITY" THEN CAME INTO PLAY TO ENCOURAGE DELEGATIONS LIKE BRAZIL AND MEXICO TO SUPPORT ARGENTINE OBJECTIONS. IF PROBLEM HAD STOPPED THERE WITH PROSPECT OF ABSENTEE VOTE FROM 2 OR 3 COUNTRIES TO ANY POSITIVE RESOLUTION, IT WOULD HAVE BEEN BAD ENOUGH. OTHER AFRICAN AND ASIAN DELS HAVE, HOWEVER, NOW BEGUN TO ECHO ARGENTINE OBJECTIONS IN A WAY WHICH ALMOST CERTAINLY WILL BECOME Cliche FORMULA AS DEBATE PROCEEDS. THEY WAY THAT INDIRECT DEFINITION OF COASTAL STRIP IN TREATY IS NOT ONLY UNNECESSARY BUT ALMOST CERTAINLY IS EVIDENCE OF OUBLIOUS MOTIVES. SINCE MANY DELEGATIONS HERE ARE SMALL, HARRASSED WITH MULTIPLE PROBLEMS, AND LACK LEGAL EXPERTISE, IT IS EASY FOR THEM TO CONCLUDE THAT SUPERPOWERS MUST HAVE SOME CONCEALED OBJECTIVE BEHIND THIS COMPLICATED FORMULA EVEN THOUGH THEY CANNOT SEE WHAT THIS OBJECTIVE IS. EVEN SUCH SOPHISTICATED ALLIES
SECTION 2: OF THE GREAT DICTATE

AS UK AND NEDERLANDS DO NOT FIND OUR EXPLANATIONS CONVINCING, POSITION OF UK AS CLOSE ALLY OF US WHICH SHARES OUR BASIC SECURITY OUTLOOK AND OBJECTIVES ON LAW-OF-THE-SEA QUESTIONS IS MOST NOTEWORTHY, AND THEY HAVE FORMALLY INDICATED DESIRE TO TABLE SIMPLE LANGUAGE UNLESS WE STRONGLY OBJECTIVE (USUN A-2805) ALL OUR EXPLANATIONS, WHETHER TO SOPHISTICATED OR UNSOPHISTICATED DELEGATIONS, END WITH THEIR ASKING WHY IF DISCLAIMER CLAUSE IS GOOD ENOUGH FOR OTHERS IT ISN'T GOOD ENOUGH FOR US AND WHY WE FEEL COMPULSED TO PROTECT OUR LAW-OF-THE-SEA POSITION IN SUCH AN ELABORATE FASHION.

7. US DEL HAS TAKEN STRONG LINE HERE ON GREAT DIFFICULTY WE WOULD FACE IN REVISIN ARTICLE I WHICH REPRESENTS AGREED CONCLUSION TO DIFFICULT NEGOTIATION WITH SOVIETS. BUT IF CHANGES IN ARTICLE I ARE NOT IN FACT POSSIBLE, IT IS MORE THAN PROBABLE THAT WE WILL FAIL TO REACH OUR OBJECTIVE OF ENDORSEMENT FOR TREATY BY THIS GAT AND IT IS OUR ESTIMATE THAT WE ARE NOT LIKELY TO BE ABLE EVEN WITH UNLIMITED TIME TO OVERCOME SUSPICION AND RESERVATIONS OR A SUB-
STANTIAL NUMBER OF STATES AND TREATY WOULD THUS BE UNLIKE-  
LY TO GAIN GENERAL ACCEPTANCE AT NEXT GA.

8. ROSCHIN AND OTHER SOVS HAVE TOLD US ON SEVERAL OCCASIONS THAT REVISION TO SIMPLER LANGUAGE IN ARTICLE I WOULD POSE NO PROBLEMS FOR THEM. IT IS THUS CLEAR TO ALL INFORMED DISARMAMENT OFFICIALS THAT PRESENT LANGUAGE IS NOT DICTATED BY POSITIONS OF EITHER SOVS OR OF US ALLIES. WE HAVE TAKEN LINE THAT IT WOULD BE MOST REGRETTABLE IF OFFER BY NUCLEAR POWERS TO ACCEPT LIMITATIONS IN SEABED TREATY IS REJECTED HERE BY NON-NUCLEAR STATES; BUT IF US MAINTAINS ITS INFLEXIBLE AND SOLITARY STAND ON WORDING OF ARTICLE I, WE JUDGE THAT ONUS FOR FAILURE OF TREATY WILL IN FACT COME BACK ON US.

9. ARGENTINE DELEGATION IS ANXIOUS TO PLAY POSITIVE ROLE IN DISARMAMENT NEGOTIATIONS AND APPEARS GENUINELY REGRET-  
FUL THAT THIS PROBLEM HAS ARISEN. SINCE THEY FIRST DREW ATTENTION TO IT, IT SEEMS LIKELY ANY CHANGE WHICH MET THEIR NEEDS COULD BE SOLD TO OTHER RELUCTANT DELEGATIONS WITHOUT SUGGESTING PRECISE LANGUAGE OF POSSIBLE REVISIONS WE WOULD URGE CONSIDERATION OF FOLLOWING ELEMENTS, SOME COMBINATION OF WHICH MIGHT WELL SATISFY ARGENTINES:

A. INCLUSION IN ARTICLE I OF EXPLICIT REFERENCE TO "12 MILE" WIDTH OF COASTAL STRIP.

B. SIMPLIFICATION OF ARTICLE I TO REMOVE FROM IT WORDS "CONTIGUOUS ZONE" AND REFERENCE TO 1958 CONVENTION. COASTAL STRIP WOULD BE MENTIONED IN ARTICLE I BUT DEFINED ONLY IN ARTICLE II.

C. INCLUSION IN ARTICLE I, IF "CONTIGUOUS ZONE" IS RETAINED, OF SOME DISCLAIMER PHRASE OR SENTENCE.

D. STRENGTHENING OF DISCLAIMER CLAUSE (ARTICLE II, PARA. 2) BY SPECIFIC REFERENCE TO "CONTIGUOUS ZONE" AND 1958 CONVENTION.

E. SUBSTITUTION OF "SEABED ZONE" FOR "CONTIGUOUS ZONE" THROUGHOUT ARTICLES I, II, AND III; DELETION OF REFERENCE TO 1958 CONVENTION IN ARTICLE I; AND RESTRUCTURING OF
ARTICLE II PARA 1 SO THAT IT ESTABLISHES OUTER LIMIT OF "SEABED ZONE" AS VERTICALLY BENEATH LINE 12 MILES OUTWARD FROM BASELINES DRAWN IN ACCORDANCE WITH THE PROVISIONS OF PART I, SECTION II OF THE 1958 CONVENTION. THIS IS IDEA MENTIONED BY BELGIAN DEL. ARGENTINE DEL HAS TOLD US PRIVATELY THAT THEY COULD ACCEPT RETENTION OF REFERENCES TO "CONTIGUOUS ZONE" AND 1958 CONVENTION IN ARTICLE II PARA GGM THEY HAVE BEEN DISCOURAGING US FROM HOPING THAT ANY STRENGTHENING OF DISCLAIMER CLAUSE (ARTICLE II PARA 2) WOULD MEET THEIR NEEDS.

10. THEY ARE ANXIOUS TO TABLE AMENDMENTS THEMSELVES IF IT DOES NOT APPEAR LIKELY THAT US WILL BE ABLE TO MEET THEIR REQUIREMENTS. WE HAVE SUCCESSFULLY DISCOURAGED THIS SO FAR BUT ARGENTINES ARE LIKELY TO FEEL THAT THEIR POSITION IS BEST PROTECTED BY FORMAL TABLING OF AN AMENDMENT EVEN THOUGH THEY RECOGNIZE THAT SUCH ACTION WOULD COMPLICATE POSSIBILITIES OF NEGOTIATING SOMETHING ACCEPTABLE TO CO-CHAIRMEN.

11. THIRD GROUP OF PROBLEMS WHICH TREATY STILL FACED ARE THOSE OF LESS SUBSTANTIVE CHARACTER SUCH AS SWEDISH AMENDMENT. THIS PROPOSAL HAS BEEN WIDELY ENDORSED BOTH IN GENEVA AND IN NEW YORK, BUT IF WE ARE ABLE TO MEET ALL OR ALMOST ALL OF FOREGOING PROBLEMS, IT IS NOT LIKELY THAT MANY DELEGATIONS HERE WOULD OPPOSE TREATY SIMPLY BECAUSE OF US RELUCTANCE TO CONVERT WHAT IS NOW PREAMBULAR PARAGRAPH INTO OPERATIVE PARAGRAPH. SINCE, HOWEVER, WE MAY WELL NOT BE ABLE TO GIVE COMPLETE SATISFACTION ON ABOVE PROBLEMS, IT IS POSSIBLE THAT GOING SOME DISTANCE TOWARDS SWEDISH AMENDMENT COULD TIP THE BALANCE WITH A SUBSTANTIAL NUMBER OF DELEGATIONS. A SECOND SUGGESTION IN THIS CATEGORY IS FOR SOME ENDORSEMENT IN PREAMBLE OF CONCEPTS TAKEN OVER FROM DEBATE HERE IN SEABED COMITE (SEE USUN 4156).
SECTION 3: OF 3 USUN 4311

HAS PARTICULARLY RESONANCE HERE WHERE THERE HAS BEEN WIDESPREAD DISSATISFACTION WITH US AND SOVIET POSITION IN SEABED DISCUSSIONS AND ANY GESTURE WE COULD MAKE IN THIS AREA COULD HAVE SIGNIFICANT IMPACT ON CONSIDERABLE NUMBER OF DUBIOUS DELEGATIONS. WE RECOGNIZE THIS MAY LEAD TO PRESSURE TO INSERT REF TO "COMMON HERITAGE OF MANKIND."

A THIRD COSMETIC SUGGESTION WOULD HAVE THE DISCLAIMER CLAUSE REMOVED FROM ARTICLE II, WHERE IT SEEMS TO SOME TO RELATE ONLY TO BASELINES QUESTIONS, AND GIVE IT STATUS OF INDEPENDENT ARTICLE APPLYING TO ENTIRE TREATY.

FOREGOING CATALOG OF PROBLEMS MAY SEEM RATHER DISHEARTENING, BUT PICTURE WOULD NOT BE COMPLETE WITHOUT NOTING SEVERAL POSITIVE FACTORS. OUR MOST SERIOUS PROBLEMS IN GENEVA DERIVED FROM HYPER-ACTIVITY OF CANADIAN DEL DURING PERIODS WHEN FOCUS OF ACTION WAS IN MOSCOW OR WASHINGTON. REDRAFT OF ARTICLE III NEGOTIATED WITH US HAS
BEEN PLEASANT SURPRISE TO IGNATIEFF AND HE IS NOW EXERTING ALL HIS ENERGIES TO SECURE GA ENDORSEMENT OF TREATY. LEADERS OF NON-ALIGNED, SUCH AS SHAHI (PAKISTAN) AND KOLO (NIGERIA) WHO ARE CHAIRMAN AND VICE-CHAIRMAN OF FIRST COMITEE ARE ANXIOUS FOR THIS GA TO PRODUCE SOME RESULTS IN DISARMAMENT FIELD AND THEY SEE SEALED TREATY AS ONLY POSSIBILITY. HUSAIN (INDIA) FEELS SAME WAY AND GARCIA ROBLES (MEXICO) IS AT LEAST CAREFULLY NEUTRAL, READY TO BOARD BANDWAGON IF ONE APPEARS. HOSTILITIES AND SUSPICIONS TOWARD "SUPERPOWERS" AMONG NON-ALIGNED WERE RIFE AT OPENING OF GA BUT HAVE BEEN SUBSTANTIALLY REDUCED BY SUCH POSITIVE DEVELOPMENTS AS OPENING OF SALT AND US-SOVIET RATIFICATION OF NPT. WE THEREFORE DO NOT FACE UNMANAGEABLE SITUATION IN WHICH EMOTIONS ARE DOMINANT BUT RATHER ONE IN WHICH MOST DELEGATIONS WILL LOOK AT AMENDMENTS WE MAY SUGGEST IN SERIOUS, POSITIVE FRAME OF MIND.

14. PERHAPS MOST SERIOUS PROBLEM IS MECHANICAL ONE OF LIMITED TIME AVAILABLE FIRST TO AGREE WITH SOVIETS ON TEXTS OF CHANGES TO OCT 30 DRAFT, AND THEN TO ELICIT SUPPORT OF INFLUENTIAL DELEGATIONS FOR FINAL REVISION. UNLESS WE ARE ABLE TO BEGIN FINAL SELLING JOB DURING WEEK OF DEC 4, IT IS UNLIKELY WE CAN OBTAIN SATISFACTORY RESULT IN VOTING ON DISARMAMENT RESOLUTIONS WHICH SHOULD COME ABOUT DEC 11 OR 12. WE DO NOT HAVE TO HAVE FINAL TEXT OF ALL CHANGES IN HAND BEFORE BEGINNING THIS SELLING JOB. BUT WE DO HAVE TO HAVE CLEAR IDEA WHAT THESE CHANGES ARE TO BE AND SHOULD BE ABLE TO TABLE REVISED TEXT NO LATER THAN DEC 5. WE WILL BE ABLE TO CONTINUE ON PRESENT AMBIGUOUS LINE OF ACTION FOR REMAINDER OF THIS WEEK, NEITHER PRESSING NOR ABANDONING OUR BASIC OBJECTIVE. OUR DECISION WHETHER TO CONTINUE EFFORT OR TO ACCEPT REFERRING TREATY BACK TO CCD SHOULD, HOWEVER, BE MADE WITHIN NEXT FEW DAYS IN LIGHT OF WHATSOEVER CAN BE DONE REGARDING ABOVE PROBLEMS. YOST