The original documents are located in Box C35, folder "Presidential Handwriting, 3/1/1976" of the Presidential Handwriting File at the Gerald R. Ford Presidential Library.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

948

~~SECRET~~

ACTION
March 1, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: Brent Scowcroft

SUBJECT: Instructions for the U.S. Delegation to the New York Session of the Third UN Conference on the Law of the Sea

The third substantive session of the Third UN Conference on the Law of the Sea is scheduled to convene in New York on March 15, 1976, for an eight week period. The Chairman of the NSC Under Secretaries Committee has forwarded you the report of the Committee at Tab B indicating that the NSC Interagency Task Force on the Law of the Sea has reviewed the existing instructions for the Law of the Sea negotiations, recommending that they remain in force as the basic guidance for the U.S. Delegation to the New York session of the UN Law of the Sea Conference. This recommendation is concurred in fully by the fifteen U.S. agencies that have participated in the NSC Under Secretaries Committee's work on the law of the sea, including State, Defense, Treasury, Commerce, Interior, Transportation, and the Office of Management and Budget.

The following paragraphs review for your information U.S. objectives in the Conference, our position on principal issues in the negotiations and problems requiring Conference resolution before agreement can be reached in 1976 on an international oceans treaty. The NSDM for your approval at Tab A would reaffirm the existing instructions for the Law of the Sea Conference and emphasize areas in the negotiations -- principally national security issues (freedom of navigation) and marine resources (the regime for the deep seabed) -- which will require careful attention by the U.S. Delegation.

U.S. Objectives in the Conference

As a major ocean user, the United States has important interests at stake in the Conference, including the safeguarding of U.S. strategic

~~SECRET~~/XGDS

mobility and capabilities; freedom of navigation for U.S. naval ships and commercial shipping; worldwide access to fossil fuels and hard minerals; orderly exploitation and conservation of marine resources, including coastal and high-seas fisheries; protection of the marine environment from pollution; and access to the oceans for scientific research (including defense research).

The forthcoming New York session is central to the success or failure of the Law of the Sea Conference. The oceans interests of the United States can best be protected -- and in some cases can only be protected -- by a comprehensive multilateral treaty on the oceans. However, many nations -- including the United States -- are moving toward unilateral action to protect their strategic and economic interests in the oceans. Most recently, this has taken the form of national claims to fisheries jurisdiction in the 200-mile economic zone in advance of agreement on this issue in the Conference. Mexico and Iceland declared such zones this year. Both houses of the Congress have passed 200-mile interim fisheries legislation. Our objective is to delay enactment of this legislation until after the New York session of the LOS Conference, with an implementation date in 1977, to allow a final opportunity for this issue to be settled favorably in the Conference. The NSDM at Tab A underscores the importance of timely international agreement on the law of the sea in light of the growing unilateral pressures.

Success in the New York session will depend on the necessary accommodation of differing positions among the participants and, in turn, on our ability to advance our negotiating positions so as to command majority support by other nations while safeguarding U.S. interests. Virtually all agencies have indicated that the existing instructions on the law of the sea negotiations provide the U.S. Delegation with a realistic negotiating position and sufficient flexibility to realize substantial progress at New York consistent with protection of fundamental U.S. oceans interests.

The Conference -- Developments, Problems and Issues

The first substantive session of the Conference was held during the summer of 1974 at Caracas; the second session was held at Geneva during the spring of last year. At the close of the Geneva session, a single negotiating text prepared by Conference Committee chairmen covering all Conference issues was distributed. While not formally agreed to by the delegates, the

text comes close to meeting U.S. objectives on a 12-mile territorial sea, a 200-mile economic zone with broad coastal state jurisdiction over the living and non-living resources of our coastal margin areas, free and unimpeded transit of straits used for international navigation, freedom of navigation in the economic zone, and a reasonable archipelago regime.

Problems and issues that remain to be resolved during the forthcoming negotiating session, together with the U.S. position thereon, are summarized for your information at Tab C. The most difficult of these is the structure and functions of the new international organization dealing with the resources of the deep seabed, principally, the manganese nodules, beyond national jurisdiction. Until recently, our position differed greatly from that of the LDCs.

The U.S. objective in the negotiations on the deep seabed is to obtain a system which guarantees non-discriminatory access by U.S. firms to deep seabed minerals under reasonable conditions coupled with security of tenure, and with fair and reasonable rates of return of investment to deep seabed mining operators. Within this framework, we have sought to accommodate the often conflicting interests of all Conference participants.

Many developing countries in the Group of 77 have been seeking a strong international organization, with broad discretionary powers. Under this concept, individual states and their nationals would in effect be excluded from deep seabed mining operations, except under the most stringent and unattractive conditions.

Since the summer of 1975, however, the lesser developed countries (LDCs) have informally indicated a willingness to compromise on many of their extreme positions relating to the regime for the deep seabed. We attribute their increased flexibility to their concern that if they do not move some distance toward the U.S. position, we might well move ahead in 1976 with unilateral deepsea mining legislation -- a step which would not be in the overall interests of the LDCs. Whether the LDCs follow-through and commit themselves formally to a position of flexibility and reasonableness will not be known until the New York session is well underway. For this reason, the NSDM at Tab A recognizes the evolving situation in the Conference on this issue and calls for the U.S. Delegation to submit any requests for proposed new instructions or revisions to current instructions relating to the regime for the deep seabed via the NSC Under Secretaries Committee for consideration.

Protection of our national security interests -- in particular, retention of the maximum degree of freedom of navigation, including unimpeded transit through, under and over straits used for international navigation -- is a fundamental U.S. objective in the Conference. Your NSDM guidance to the Delegation reaffirms the importance attached to gaining international acceptance of provisions accommodating U.S. national security interests on freedom of navigation and other reasonable uses of the seas.

I recommend, as in the past, you assign responsibility to the Chairman, NSC Under Secretaries Committee for backstopping the Law of the Sea negotiations and that you direct the Chairman of the U.S. Delegation to report to you on the results of the negotiations upon conclusion of the New York session of the Conference. The NSDM at Tab A would do this.

RECOMMENDATION

That you approve the NSDM at Tab A providing guidance to the U.S. Delegation for the forthcoming session of the UN Law of the Sea Conference.

APPROVE_____ DISAPPROVE_____

original approved + returned to NSC

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

~~SECRET~~/XGDS

National Security Decision Memorandum

TO: The Secretary of State
The Secretary of the Treasury
The Secretary of Defense
The Secretary of the Interior
The Secretary of Commerce
The Chairman, NSC Under Secretaries Committee

SUBJECT: Instructions for the U.S. Delegation to the New York Session of the Third United Nations Conference on the Law of the Sea

The President has reviewed the Chairman, NSC Under Secretaries Committee's memorandum of February 13, 1976, concerning instructions for the U.S. Delegation to the New York session of the Third UN Conference on the Law of the Sea.

In light of growing pressures in the United States and in a number of foreign countries to move unilaterally on several important issues under consideration in the Law of the Sea (LOS) Conference, the President underscores the importance attached to gaining broad international acceptance during negotiations in 1976 of U.S. oceans policy positions on national security issues, marine resources, scientific research, marine pollution, the regime for the deep seabed, and peaceful resolution of disputes.

The President concurs in the recommendation of the NSC Under Secretaries Committee that NSDMs 260 and 288 continue to serve as the basic instructions for the U.S. Delegation to the UN Law of the Sea Conference.

The President reaffirms the importance attached to gaining international acceptance of law of the sea provisions accommodating U.S. interests on freedom of navigation; unimpeded transit through, under and over inter-

national straits; and archipelagoes and other reasonable uses of the high seas. Subject to the consent of the senior Department of Defense representatives on the Delegation, the Chairman of the U.S. Delegation is authorized to exercise existing authority on these national security issues.

Recognizing the evolving nature of the negotiations in the LOS Conference on issues relating to the regime for the deep seabed and its resources, the President requests the Chairman of the U.S. Delegation to submit any requests for proposed new instructions or revisions to current instructions on this issue via the Chairman, NSC Under Secretaries Committee for consideration. In this context, the President has assigned responsibility to the Chairman, NSC Under Secretaries Committee for backstopping the UN negotiations on the law of the sea.

The Chairman of the U.S. Delegation is requested to submit a report on the results of the negotiations via the Chairman, NSC Under Secretaries Committee, to the President, upon completion of the March-May 1976 session of the Law of the Sea Conference.

Brent Scowcroft

cc: The Secretary of Transportation
The Director, Office of Management and Budget
Assistant to the President for Economic Policy
The Chairman, Joint Chiefs of Staff
The Director of Central Intelligence
The Director, National Science Foundation

THE DEPUTY SECRETARY OF STATE

WASHINGTON

NSC UNDER SECRETARIES COMMITTEE

~~CONFIDENTIAL~~
NSC-U/DM-109I

February 13, 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Draft Instructions for the New York Session of the Law of the Sea Conference

On October 10, 1975 you directed me to submit for your consideration any recommended changes to the current instructions to the United States Delegation for the next session of the United Nations Conference on the Law of the Sea to be held in New York, March 15 to May 7, 1976.

The NSC Interagency Task Force on the Law of the Sea has reviewed the existing instructions for the Law of the Sea Conference in NSDM 288 dated March 24, 1975, NSDM 260 dated June 24, 1974 and other consistent NSDMs in the light of the negotiations at the Geneva session and anticipated developments. No new instructions are considered necessary at this time to enable the US Delegation to carry out the resolve to help successfully conclude the Conference in 1976, if possible. The Members of the Under Secretaries Committee concur that no new instructions are necessary at this time although there are several issues which could require future referral to you.

If any issues arise which require your decision, these issues, together with options and the recommendations of the Under Secretaries Committee will be forwarded to you.

Robert S. Ingersoll

Robert S. Ingersoll
Chairman

~~CONFIDENTIAL~~
GDS

00628

U.S. Position on
Principal Issues in the Law of the Sea

I. Background

1976 is probably a decisive year for the law of the sea (LOS) negotiations. Pressures are mounting world-wide for unilateral claims to coastal ocean areas and resources due to the slow pace of the multilateral negotiations. The third substantive session of the Conference meets in New York from March 15 - May 7 with the possibility of another 6-8 week session later in 1976 if the Conference so decides.

The U.S. is attempting to achieve an acceptable treaty protecting its vital interests, including:

-- maintaining freedom of navigation and other uses in the emerging 200-mile coastal economic zones and in that part of the high seas beyond -- for submarines, surface vessels, military aircraft and oil tankers -- and unimpeded transit through, over, and under straits used for international navigation;

-- providing effective management of living and non-living coastal resources;

-- protecting the marine environment;

-- facilitating oceanographic research;

-- ensuring access to deep seabed mineral resources under reasonable conditions; and

-- establishing procedures for peaceful, third-party compulsory dispute settlement.

To achieve these objectives, the U.S. is coordinating closely with the U.S.S.R., the U.K., Japan, France and the FRG to develop common positions and agreed tactics.

II. Present Situation

The main accomplishment of the Conference so far has been the production of an informal single negotiating text on almost all issues, presented in a personal capacity by the

responsible officers of the Conference. The U.S. wants to revise or amend the single text without recourse to voting. Our intersessional efforts with other nations have concentrated on the development of an acceptable package of amendments.

III. Major Issues

A. Freedom of Navigation

The single text is basically satisfactory on straits and archipelagoes. The U.S. should resist efforts, particularly by Spain and some Arab States on straits and by Indonesia and the Philippines on archipelagoes, to further restrict navigation and overflight. With respect to freedom of navigation in the 200-mile zone, there is a great danger that a large number of developing countries will push very hard for greater rights. The U.S. will endeavor wherever possible to limit coastal State jurisdiction to resource control, i.e., to prohibit "creeping jurisdiction." For example, the U.S. will continue to seek high seas rights for other uses in the zone to protect our SOSUS system for the detection of submarines.

B. Marine Resources

Coastal nations will acquire exclusive jurisdiction in the LOS treaty over coastal fisheries and offshore petroleum in their 200-mile zones. Difficulties remain with respect to where the outer limit of the continental margin will be where it extends beyond 200 miles, and whether there will be revenue sharing in the area beyond 200 miles. Many coastal States would include, in addition, exclusive rights over all living resources, including tuna, and the right to prohibit other countries from establishing installations on the continental shelf. The U.S. and others have insisted upon coastal State duties to the international community as a corollary to new coastal State rights, including a coastal State obligation to license foreign fishing in the zone when the coastal State is unable to harvest the stocks; an exception to coastal State rights over living resources to enable international management of highly migratory species such as tuna; and host State control over anadromous species such as salmon, even in areas beyond the zone.

C. Marine Pollution

The U.S. will seek to balance international and coastal State interests in the regulation of pollution of the marine environment. Many coastal States seek broad powers to set and enforce environmental standards throughout a 200-mile zone adjacent to their coasts. This would be a particular problem with regard to vessel-source pollution, since such coastal State powers could seriously hamper navigation in the zone. The U.S. supports international environmental standards for seabed-source and vessel-source pollution and has opposed pollution zones, although we have certain fallback authority in that regard. One of the most vigorous proponents of a pollution zone is Canada. Canada recently indicated (i) support for U.S. straits objectives and (ii) not to insist on coastal State standard setting in a pollution zone in return for U.S. support for greater coastal State jurisdiction with respect to pollution from ships in ice-covered areas of the Arctic and a coastal State right to set pollution standards in the territorial sea outside of straits.

D. Scientific Research

The question is the extent of coastal State control over marine scientific research in the 200-mile zone and whether it is possible to distinguish between resource and non-resource related research. Most coastal nations want to require consent before research may be undertaken in their economic zone. The U.S. supports a system of scientific research within the economic zone under which the research may be conducted if certain obligations designed to protect coastal State interests in the zone, including a sharing of data and participation in the project by scientists of a coastal State, are fulfilled. Beyond this zone, the U.S. supports complete freedom of scientific research. At the present time, a compromise seems to be emerging whereby resource-related research is subject to coastal State consent and non-resource related research is subject to specified obligations.

E. Deep Seabeds

The single text provisions on the deep seabed are unsatisfactory and a major breakthrough on this subject is needed if the Conference is to succeed. Considerable

diplomacy will be required to cope with developing world demands for applying "new world economic order" principles to the deep seabed.

All States agree that a new international organization should be created and that there will be a sharing of revenues from deep seabed mining for international community purposes. We believe that this is important to provide stability for the exploitation of deep seabed minerals (manganese nodules containing copper, cobalt, nickel, and manganese).

The single text largely reflects the view of the extremists among the developing countries which support the concept of a strong authority which would have the sole right to exploit the area. Many countries strongly support giving the international organization broad discretion to control every aspect of deep seabed-related activities from scientific research to marketing of the metals, including price and production controls.

The U.S. position is that all States should have assured access to exploit the resources of the deep seabed. Under this approach, there would be no discretion in the international organization to deny bona fide applications or set price or production levels. Only a small number of States have so far accepted all of the U.S. positions in regard to the nature and powers of the new organization. We are exploring means of accomplishing a compromise on these issues and have noted some recent developing country interests (e.g., Brazil) in reaching an accommodation.

F. Peaceful Resolution of Disputes

Following the Geneva session, the President of the Conference issued a single text based on the alternatives produced by the informal working group on dispute settlement. Although some of the hard-line Latins will attack the President's right to produce such a text, we are hopeful that the text will serve as a basis for future negotiations and will enable us to attain our objective of comprehensive and binding third party settlement of disputes. Without provisions for dispute settlement, the Law of the Sea treaty will be subject to misinterpretation and abuse of rights.

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: March 1, 1976 Time:

FOR ACTION: cc (for information):
✓ Jim Cannon
✓ Max Friedersdorf
✓ Jack Marsh
✓ Rogers Morton
FROM THE STAFF SECRETARY

DUE: Date: Tuesday, March 2 Time: 10 A.M.

SUBJECT:

Instructions for the U.S. Delegation to the New York Session of the Third UN Conference on the Law of the Sea

ACTION REQUESTED:

___ For Necessary Action
___ Prepare Agenda and Brief
X For Your Comments
X For Your Recommendations
___ Draft Reply
___ Draft Remarks

REMARKS:

Friedersdorf - concurs
Marsh - concurs
Morton - concurs
Cannon - concurs

up 3/2

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James E. Connor
For the President

THE WHITE HOUSE

WASHINGTON

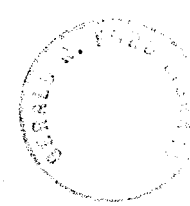
March 2, 1976

MEMORANDUM FOR: JAMES E. CONNOR

FROM: MAX FRIEDERSDORF

SUBJECT: Instructions for the U.S. Delegation to the New York Session of the Third UN Conference on the Law of the Sea

The Office of Legislative Affairs concurs with subject instructions. and the President approve Tab A.



THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: March 1, 1976 Time:

FOR ACTION:
Jim Cannon
Max Friedersdorf
Jack Marsh
Rogers Morton
FROM THE STAFF SECRETARY

cc (for information):

DUE: Date: Tuesday, March 2 Time: 10 A.M.

SUBJECT:

Instructions for the U.S. Delegation to the New York Session of the Third UN Conference on the Law of the Sea

ACTION REQUESTED:

____ For Necessary Action

____ Prepare Agenda and Brief

X For Your Comments

X For Your Recommendations

____ Draft Reply

____ Draft Remarks

REMARKS:

No objection

SECRET ATTACHMENT

March 2, 1976

No problems with this.

George Humphreys, Domestic Council

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James E. Connor
For the President

C. F.

February 19, 1976

MR PRESIDENT:

U.S. Military Relationship with Egypt
Brent Scowcroft's memo dated 2/17/76

Staffing of the attached memorandum resulted in the following:

Jack Marsh - Concurs with TAB "A"

Phil Buchen - No legal objections.

Max Friedersdorf - Concurs with NSC.

Jim Connor

up 2/19

Tab A signed and original pkg returned to NSC 2/19