Rule of Law Committee
for the Oceans

President Ronald Reagan on the Law of the Sea Convention:

His Decisions, Directives and Criteria for Success

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Comments from President Reagan's Foreign Policy Advisors

This year two key officials of the Reagan Administration who supported the President's requirement for changes in the deep seabed mining provisions as the condition for U.S. participation in the Convention have the Convention as modified by the 1994 Agreement on Implementation:

George P. Shultz, Secretary of State, 1982-1988:

It surprises me to learn that opponents of the treaty are invoking President Reagan's name, arguing that he would have opposed ratification despite having succeeded on the deep sea-bed issue. During his administration, with full clearance and support from President Reagan, we made it very clear that we would support ratification if our position on the sea-bed issue were accepted.

(letter to Senator Richard Lugar, Ranking Minority Member, Senate Foreign Relations Committee)

Ambassador Kenneth Adelman:

This seabed mining regime reflects free-market principles. It offers companies the legal certainty needed for large-scale, long-term investments; protects existing claims of U.S. firms; and reinforces international law on territorial waterways. It locks in U.S. off-shore economic rights as it expands our rights over resources in a 200-mile exclusive economic zone, 200-mile continental shelf, and in a shelf beyond 200 miles off Alaska.

This LOS treaty, a product of slow-motion yet effective diplomacy, was worth the wait. I'd never thought I'd say it, but -- here goes! -- the Senate should now ratify it.

(Commentary article "Scuttle Diplomacy", Wall Street Journal May, 2007)

Opinion of Davis Robinson and Abraham D. Sofaer, State Department Legal Advisers under President Reagan (and all other all former Legal Advisers 1977-2000):

[T]he Reagan Administration's objection to the LOS Convention, as expressed in 1982 and 1983, was limited to the deep seabed mining regime. The 1994 Implementing Agreement that revised this regime, in our opinion, resolved that objection and has binding legal effect in its modifications of the LOS Convention.

(Letter to Senator Richard Lugar, then-Chairman, Senate Foreign Relations Committee)

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President Reagan and the LOS Convention

Even before he was elected President, Ronald Reagan expressed his concern that the terms of the draft Convention on the Law of the Sea could deter investment and participation by American industry in the exploration and exploitation of deposits of critical and strategic minerals on the deep ocean floor. One of his first acts after taking office was to instruct the US delegation to the negotiations to delay the process while he ordered a thorough evaluation of the Draft Convention to determine how the Convention affected US interests, what changes should be sought in the text and and whether the US should seek those changes by returning to the negotiations.

One year later, President Reagan applied the results of the review by sending the US delegation back to the negotiations with a list of six criteria that were both necessary and sufficient for him to submit the final Convention to the Senate of the United States with his recommendation for approval.

In 1982, after the conclusion of the final negotiating session of the Third U.N. Conference on the Law of the Sea, the Reagan Administration officially decided that the results of the negotiating session did not fulfill the six criteria established by the President and that they could not be fulfilled through the remaining information activities leading to the adoption of the convention and its final act. His decision was that the United States would not become a party to the Convention on the Law of the Sea and his reasons were his objections to the provisions of the part of the Convention that established the system by which the exploitation of the minerals of the seabed beyond the limits of national jurisdiction was to be managed.

In 1990, both supporters and opponents of the Convention's seabed provisions failed to achieve widespread recognition of their positions. After receiving indications that changes to the Convention were possible and that the changes could well fulfill all of the US objections, the Secretary General convened consultations among key states to discuss prospects for modifying the convention and achieving the support and participation of the industrialized nations,

Deep Seabed Mining: US Interests

Deep seabed mining is the recovery of minerals from the deep ocean floor far from shore and beyond the limits of national jurisdiction. Deposits with potential for exploitation include polymetallic nodules containing nickel, copper and cobalt, iron and manganese crusts enriched with cobalt and deposits of sulfide minerals high in copper, zinc and gold.

As with land-based deposits, seabed miners require exclusive rights to develop a site sufficient for decades of operation, international recognition of title to the recovered minerals and a predictable regulatory system that does not impose unduly burdensome requirements on an already difficult and costly operation.

Beyond the needs of U.S. companies that may undertake deep seabed mining, the united States has interests in seeing that new intergovernmental organizations recognize the political and economic interests and contributions and the need to ensure that such organizations operate efficiently and within the bounds of mandate.

The 1994 Agreement on Implementation was negotiated to address and meet both the substantive and political interests identified by president Reagan in his directions to the US Delegation to the final session of the LOS Conference.

including the United States. After additional consultations, leading to the negotiation of an agreed set of changes, the 1994 Agreement on the Implementation of Part XI of the LOS Convention was opened for signature in 1994 and came into force simultaneously with the LOS Convention on November 16, 1994.

Now, as the Convention on the Law of the Sea progresses through the Senate, opponents have sought to expand and change the position taken by President Reagan to encompass positions that he never endorsed and which, if true, would position him as a duplicitous diplomat - a characteristic no one, supporter or opponent, would ever ascribe to him. The truth is best told in President Reagan's own words on the following page, as he spoke them in his January 29, 1982 statement in advance of the final session of the LOS Conference.

On July 9, 1982, President Reagan noted that the Convention adopted in New York on April 30th did not meet the criteria he had set forth in January. As a result, the United States would not become a party to it. He began by reviewing his earlier statement:

> *On January 29 of this year, I reaffirmed the United States commitment to the multilateral process for reaching such a treaty and announced that we would return to the negotiations to seek to correct unacceptable elements in the deep seabed mining part of the draft convention. I also announced that my administration would support ratification of a convention meeting six basic objectives.*

With regard to the Convention as adopted, he said:

> *We have now completed a review of that convention and recognize that it contains many positive and very significant accomplishments. Those extensive parts dealing with navigation and overflight and most other provisions of the convention are consistent with United States interests and, in our view, serve well the interests of all nations.*

President Reagan gave some thought to ratifying the Convention without the seabed mining provisions, but the "package deal" nature of the Convention and its prohibition against reservations made that impossible. As he wrote in his diary: "decided in NSC meeting-will not sign the 'Law of the Sea' Treaty even without seabed mining provisions."[1] In his formal statement he went on to say:

> *Our review recognizes, however, that the deep seabed mining part of the convention does not meet United States objectives. For this reason, I am announcing today that the United States will not sign the convention as adopted by the conference, and our participation in the remaining conference process will be at the technical level and will involve only those provisions that serve United States interests.*

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[1] Since the Law of the Sea Convention explicitly disallows reservations to any part of its contents, a US reservation to the deep seabed mining provisions would have left the US in the position of either being subject to the seabed mining provisions in spite of the reservation or being a non-party because of an invalid instrument of ratification. This made an attempt to ratify with a reservation to the seabed mining provisions less attractive than not ratifying at all.

President Reagan's Statement on the LOS Convention, January 29, 1982

The world's oceans are vital to the United States and other nations in diverse ways. They represent waterways and airways essential to preserving the peace and to trade and commerce. they are major sources for meeting increasing world food and energy demands and promise further resource potential. They are a frontier for expanding scientific research and knowledge; a fundamental part of the global environmental balance; and a source of beauty, awe and pleasure for mankind.

Developing international agreement for this vast ocean space, covering over half the earth's surface, has been a challenge confronting the international community. Since 1973, scores of nations have been actively engaged in the arduous task of developing a comprehensive treaty for the world's oceans at the Third United Nations Conference on the Law of the Sea. The United States has been a major participant in this process.

Serious questions have been raised in the United States about parts of the draft convention and, last March, I announced that my Administration would undertake a thorough review of the current draft and the degree to which it met U.S. interests in the navigation, overflight, fisheries, environmental, deep seabed mining, and other areas covered by that convention. We recognize that the last two sessions of the conference have been difficult , pending the completion of our review. At the same time, we consider it important that a Law of the Sea treaty be such that the United States can join it. Our review has concluded that while most of the provisions of the draft convention are acceptable and consistent with U.S. interests, some major elements of the deep seabed mining regime are not acceptable.

I am announcing today that the United States will return to those negotiations and work with other countries to achieve an acceptable treaty. In the deep seabed mining area, we will seek changes necessary to correct those unacceptable elements and to achieve the goal of a treaty that will:

- Not deter development of any deep seabed mineral resources to meet national and world demand;
- Assure national access to these resources by current and future qualified entities to enhance U.S. security of supply, to avoid monopolization of the resources by the operating arm of the international authority, and to promote the economic development of the resources;
- Provide a decision making role in the deep seabed regime that fairly reflects and effectively protects the political and economic interests and financial contributions of participating states;
- Not allow for amendments to come into force without approval of the participating states, including, in our case, the advice and consent of the Senate;
- Not set undesirable precedents for international organizations; and
- Be likely to receive the advice and consent of the Senate. In this regard, the convention should not contain provisions for the mandatory transfer of technology and participation by and funding for national liberation movements.

The United States remains committed to the multilateral treaty process for reaching agreement on law of the sea. If working together at the conference we can find ways to fulfill these key objectives, my administration will support ratification.

I have instructed my Secretary of State and my Special Special Representative for the Law of the Sea Conference [James L. Malone, Chairman of the U.S. Delegation], in coordination with other responsible agencies, to embark immediately with other countries and to undertake further preparations for our participation in the conference.

Source: Department of Sate Bulletin, March 1982, pp 54-55.

Such was the situation on December 10, 1982 when the Convention was opened for signature and signed by 119 nations, including many industrialized nations but not the United States and four other countries with seabed mining interests. Ratification proceeded slowly, however, and in 1986, John Negroponte, then Assistant Secretary for Oceans and International Environmental Affairs, commented on the outlook for eventual participation by the United States in the Law of the Sea Convention:

> *A discussion of U.S. law of the sea policy would not be complete without some reference to deep seabed mining. Our position on Part XI of the 1982 UN Law of the Sea Convention is well known. The objections we have raised with respect to part XI are strongly held. Suffice it to say, we do not believe that the international political climate exists which would be conducive to addressing our objections adequately at this time. This does not mean that the United States has despaired of achieving a regime with broad support in the international community. We believe that it will take time for many to grasp fully the changing realities. Due to recent economic trends, significant development of deep seabed resources is not likely to occur until well into the next century at the earliest. One cannot help but wonder whether the interests of the international community are well served by developing a detailed mining code and bringing into being an elaborate bureaucracy to administer it when no industry exists and when the basic economic, technical, and environmental conditions affecting this new activity are largely unknown and unknowable at this time. It is not inconceivable to me that some day those responsible for LOS policy in other capitals around the world will increasingly come to appreciate the implications of these realities and seek to accommodate our interests and concerns. At this juncture, patience is probably our most effective tool to achieve a broadly based regime. Source: John Negroponte, Presentation to the 10th Annual Seminar of the Center for Ocean Law and Policy, Charlottesville, VA*

The patience of which Ambassador Negroponte spoke paid off in 1990 when both developing and industrialized countries proposed the initiation of consultations that they believed would lead to a revision of the Convention that would meet U.S. requirements as stated by President Reagan. The resulting Agreement was concluded in 1994 and it did, in fact, fulfill President Reagan's objectives for an acceptable LOS Convention.

Summary of the Responses to the Six Reagan Criteria Contained in the 1994 Agreement on Implementation

Issue	Solution
Not Deter Development	• Provision for production limits is void; • Prohibition of subsidies or burdens for seabed mining relative to land-based mining; • Authority must develop rules for exploration and development of new mineral resources within two years of request.
Assure National Access	• Contract approval based on clearly specified and objective criteria; • Contractor has access to commercial arbitration of contract disputes and Applicant has access to Seabeds disputes Chamber to challenge denial of contract; • Enterprise is required to operate under same contracts as private firms; • Initial operation of the Enterprise is required to be through joint ventures with contractors.
Decision Making Role	• Guaranteed permanent Council seat for United States; • Council concurrence is required for Assembly decisions on matters of substance (Assembly may accept the Council's recommendation or return it for further consideration, but may not amend it); • Consensus in the Council is required for the most critical decisions, particularly amendments to the regime, rules, regulations and procedures and distribution of revenues; • Chambered Voting with majority required in each interest group chamber required for other substantive decisions in Council.
Allow US to Block Amendments	• Amendments to non-seabeds part of the Convention are not binding on US without Senate advice and consent and US ratification; • Amendments to Seabed Mining provisions must be approved by consensus of the Council, allowing the US to block them.
Not Set Undesirable Precedents	• Creation of Finance Committee with US seat and decisions by consensus to approve budget of the Authority and recommend financial decisions to the Council; • Provision for financing first Enterprise operation is deleted; • Requirement for secretariat to be of minimum size.
Issues identified as threatening Senate approval	• Technology Transfer: The provisions that permitted mandatory technology transfer have been voided; • National Liberation Movements: Only states have role in the organs of the Authority; Distribution of revenues is subject to consensus of both the Finance Committee and the Council, giving US a veto.

A more extensive analysis of the 1994 Agreement on Implementation may be found in the American Journal of International Law, "The 1994 Agreement and the Convention", Vol 88 (1994), pp 687-696. by Bernard Oxman.