

61905

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NATIONAL SECURITY COUNCIL MEETING

TUESDAY, JUNE 29, 1982

TIME AND PLACE: 11:00 - NOON
Cabinet Room

SUBJECT: Law of the Sea

PARTICIPANTS

The President
The Vice President

State

Deputy Secretary Walter J. Stoessel
Under Secretary James L. Buckley

Treasury

Secretary Donald T. Regan
Mr. Marc E. Leland

OSD

Deputy Secretary Frank C. Carlucci
Dr. Fred C. Ikle

Justice

Attorney General William French Smith

Interior

Secretary James G. Watt

Commerce

Secretary Malcolm Baldrige

Labor

Secretary Raymond J. Donovan

Transportation

Secretary Andrews L. Lewis, Jr.

Energy

Deputy Secretary W. Kenneth Davis

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DECLASSIFIED
NLRR M08-135 #61905
BY RW NARA DATE 6-14-10

CIA

Mr. William J. Casey

OMB

Mr. William Schneider

USUN

Mr. Kenneth Adelman

JSC

General John W. Vessey, Jr.

CEA

Mr. Murray Weidenbaum

OPD

Mr. Ed Harper

LOS Representative

Mr. James Malone

White House

Mr. Edwin Meese III
Judge William P. Clark
Mr. Richard G. Darman
Adm John M. Poindexter

NSC

Mr. Michael Guhin
Col Michael Wheeler

MINUTES OF MEETING

Mr. Clark outlined the areas of consensus -- on not signing the LOS convention and on trying to get some allies to come along with us -- and the issues for consideration:

1. Should we decide not to sign the convention now or later?

2. Should we participate in the remaining conference process?
3. Should we encourage improving the convention?

He asked State for its assessment of the chances for getting some alternative deep seabed mining arrangement outside the convention.

Deputy Secretary Stoessel noted that the chances do not look good. The FRG is waivering; the UK is uncertain but might go along; Japan and France are negative. He said we should make an effort to see if key allies will come along with us, and we should also make a last effort with allies to see if improvement in the convention is possible.

Mr. Casey asked about the views of industry, particularly the deep seabed mining consortia.

Mr. Malone noted that some are very interested in and want an alternative to the LOS convention.

Mr. Meese said that we need to take a more aggressive posture, use whatever leverage possible toward an alternative arrangement, and get there first outside the convention. The more aggressive we are, the more others may reconsider their interests in the convention. We should not accept mining under the convention as inevitable but try to shape the future.

Secretary Watt supported that.

Mr. Clark noted that the first issue concerns whether to make the decision now or later on signing the convention.

Secretary Lewis said that the convention has some value and provisions of interest to us, and we should be in the rest of the process rather than have it go ahead without us. He added that we should try to improve the present convention and that a decision against signing now could hinder or impact adversely on that process.

Deputy Secretary Stoessel said that we should say soon that we do not plan to sign and certainly before the Drafting Committee in July. This would not preclude a further effort to improve the convention.

Secretary Lewis said he agreed on timing.

The President summarized the consensus that we should make the decision now on not signing the convention but not release a statement until we consult with our allies.

23

Mr. Clark turned to the issue of whether the US should participate in the remaining conference process.

Deputy Secretary Stoessel said that we should continue to participate but at the expert level.

Mr. Adelman supported participation in the Drafting Committee.

Deputy Secretary Carlucci said we should take part.

Secretary Watt opposed any participation in the process.

Secretary Donovan also opposed any participation on grounds that it would be unproductive and send a wrong signal.

Attorney General Smith supported State on participation, but added that it all relates to where we are on an alternative arrangement: if we are to participate, we should make clear our fundamental position against the deep seabed mining parts of the convention.

Secretary Baldrige said that a statement against signing will avoid any misreading of our intention. The benefit of participation may not be big, but we should be there to protect our interests in non-seabed provisions, including our important interests in not having the convention interpreted or changed in a way that would conflict with our law on fisheries. We have nothing to lose by participation.

Secretary Lewis concurred with State.

Mr. Schneider said that some would see participation as undermining our rejection of the convention.

Mr. Meese asked whether participation could be limited to the non-seabed portions of the convention and whether we could make that clear. He said that we will not get improvements in the convention anywhere near meeting the President's six objectives.

Mr. Malone said that such participation would be possible and would be essentially in a defensive posture on the non-seabed portions. This would avoid giving any wrong signals.

Deputy Secretary Davis said we should decide now on signing and then participate in the process. Of the areas to protect, oil rights are also important.

Secretary Regan said we should keep technical people there.

Mr. Casey agreed.

Mr. Harper supported Mr. Meese on how to avoid giving a wrong signal while still being able to monitor the situation.

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Mr. Casey asked what US seabed miners will do.

Secretary Baldrige said that most US deep seabed miners will probably go under a foreign flag if the convention comes into force with key countries.

Secretary Lewis supported that view.

Mr. Weidenbaum said that others may get confused signals as that was what he was getting.

Mr. Meese supported participating in the process in a defensive mode but not in the deep seabed mining area.

Secretary Watt agreed and also said that we should not seek improvements in the convention.

Mr. Buckley confirmed that there will be no license to seek changes at the upcoming conference meetings.

General Vessey said we should participate.

The President asked about the implications of our refusal to sign on deep seabed mining and whether we could then go ahead outside the convention.

Mr. Meese said we would not be bound by the convention but it may become customary international law.

Mr. Darman agreed that the risk is that the convention will become customary international law in this sense as well and, if so, that would be enforceable in a US court. We have no practical choice of going it alone; we need a treaty or another group.

Mr. Malone said there are problems to getting an alternative regime but that is are our only hope.

Attorney General Smith clarified that if we have not agreed, then US citizens are not bound in except in narrow circumstances.

Secretary Watt said mining firms would be very reluctant to go ahead outside the convention if it became customary international law.

Attorney General Smith agreed that would create uncertainty and such firms would be cautious.

The President summarized the consensus -- that we should not sign the convention but should continue participation at a technical level to protect our interests in a defensive posture -- and asked at what point we talk about seabed mining with our allies.

Mr. Meese said that there would be no participation in the seabed mining area at all and that he believes the regime will fall on its own weight. He outlined the agreed approach.

Deputy Secretary Stoessel supported seeking to improve the convention.

Mr. Meese disagreed and said that we should not hold out a false hope of improvements or signing if we got them since there is no chance of getting changes meeting the six objectives. We would send mixed signals by seeking or encouraging changes.

Mr. Malone said the chances for changes are slight and we should not prejudice chances for an alternative arrangement.

The President noted we should try to persuade our allies to join us.

Mr. Malone said we could ask our allies about improvements and then see, and do that at one round at the highest level.

Secretary Watt disagreed.

Mr. Buckley said the FRG, Canada, Australia, New Zealand and Norway believe changes can be made and, as a courtesy, we should at least go back to them to see if they can show us that. The gesture will improve our capacity to show them the problems in the convention and the bases for a Reciprocating States Agreement.

Mr. Meese questioned whether this thinking got us where we are in the first place. He said it will not change one item and any hope for us is not with the convention but in getting our allies to join with us in an alternative arrangement. We need to cut the convention idea off right now. Our allies will respect us.

Mr. Adelman said we have two agreed tracks: expert level participation in the process and political approaches toward an alternative arrangement.

Deputy Secretary Carlucci supported Mr. Meese.

The President said that Mr. Adelman stated it accurately -- we should try to convince others to join us in not signing. If that fails, others will go without us.

Mr. Clark introduced the issue on signing the Final Act and participation in the Preparatory Commission.

Secretary Watt said we will need to persuade our allies not to sign the convention as their tendency will be to sign.

Mr. Meese said that the Final Act is a technical question and we can sign it without prejudicing anything.

The meeting ended at noon.

61907

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NSC
6/29/82
11:00 am
Law of the Sea

~~SECRET~~

DECLASSIFIED
NLRR MD9-135 #61907
BY RW NARA DATE 6-14-10

USC-LOS
6/29/82

Start
1102

Clark - introductory comments (VP... Regan... Meese... Baker... Deaver
absent at start - Meese & Regan come in by 11:05)

Stoessel - views of allies (FRG... British... French... Japanese... Italians
& Belgians) => doesn't look promising that we can bring
them along on to points/alternative regime/improvements ... but
do recommend making effort

Clark - other comments

Casey - (asks Q)

Jim Malone - there is interest on alternative regimes

Meese - take aggressive posture ... use all leverage we can ... make
it a priority of our foreign policy - don't passively
accept inevitable (James Watt ... supports)

Clark - move to issues - 1st ... only Trans.

Lewis - defer decision

Clark - all others say decide now

Stoessel - even if we say we won't sign, we can make
effort to amend

President - (restate his understanding of issue)

Clark - issue #2 not quite so easy (participating in process)

Stoessel - at technical level

Abelman - only for drafting

Carlucci - we agree w/ State

Walt - don't mislead others

Danovan - don't send wrong signals

French - agree w/ State ... but it depends on whether we're doing what Ed Meese pointed out

Baldrige - don't have to worry about signals being misinterpreted

Lewis - agree w/ State

Schneider - don't undercut clarity of purpose

Meese - Q: can we have relatively low-level, limited participation in those areas we want to protect?

Malone - yes ... technical expert level ... defensive posture only

Davis - protect what's there

Reagan - only technical

Casey - (mumble)

Harper - Meese's position good

Casey - what can we do in moving on mining?

Baldrige : US companies probably go under foreign flag
Malone : even this not promising — push alternative regime

Casey : Question ... strong pressure ... unilateral

Baldrige : strong pressure is a staff statement ... I've not observed it yet

Lewis : foreign flag

Casey :

Weidenbaum : we may not send confusing signature, but it is confusing to me

Meese : no - I think we shouldn't seek changes in deep seabed

Wall : but we send technical people ... none in mining

Stressel : still feel we should go out individually to key countries to

Buckley : nobody can suggest substantive stages

~~Casey~~ : should participate

President : if we don't sign and the Treaty's approved, what does it mean? ... and who thought of this

Meese : to be argued in World Court

Dorman : customary US law ... ultimately enforceable in US court — need alternative legal framework, which can't be established by going alone

Malone : concurs ... which is why we need to push for alternative regime

French: if we do not agree, law will be binding only in narrow circumstances

Stoessel: but companies won't proceed because of risk

Resident: (restate understanding of where the discussion's leading to)

Meese: don't participate ... deep seabed mining ... suggest

- ① immediate, firm announcement
- ② high priority on alternative
- ③ technical staff, all but seabed
- ④ Final Act

Stoessel: last approach to key countries re: amendments
— chances minimal, but worth effort

Meese: this is at odds w/ getting reciprocating states agreement

Malone: speaking now as special rep — one last consultation before moving to alternative regime

Watt: what would be forum for reopening negotiation
[exchange between Malone & Watt] then between Buckley & Watt — we've received signals from 5 countries that changes can be made ...]
[Meese: this kind of strategy got us into LOS where we are now

[Adelman: 2-track system ... expert level ...
political level]

Clark: somewhat consolidated issues — anyone else?

Carlucci: associate w/ Ed's position

Clark: take under consideration?

President: anybody else feel free oceans closing
where we were getting along fine
before? — do we continue
to try to persuade others to join us in
not signing?

Clark: move to final issue

Stoessel: —

Wesse: (explains what signing of Final Act is)

Walt: agree ... if clear want sign Convention

Clark: under submission