

AIRMS OF INDUSTRY

The free enterprise organisation



(By Hand)

February 17 1982

Hon Douglas Hurd CBE MP
Minister of State
Foreign and Commonwealth Office
Downing Street
London SW1A 2AL

Dear Minister of State,

Last week Donald Denman, who is preparing a paper for us on the Law of the Sea, visited the United States and had discussions with Ambassador Malone who is the President's representative at the United Nations on this matter.

As a result of Ambassador Malone's concern about Britain's position on this matter, which will be before the United Nations next month, Professor Denman has written to the Prime Minister. He has stressed that the United States are very concerned at the intended world policy on this matter and believe that the draft Convention could be equally harmful to Britain, the Western democracies and Japan.

I am enclosing the material that Professor Denman sent to the Prime Minister: a memorandum following a discussion with Ambassador Malone, Admiral Bruce Harlow and Admiral W.C. Mott; a statement from the Office of the President's Press Secretary; a paper from Ambassador Malone and a Fact Sheet also from the Office of the President's Press Secretary.

Because of the urgency of the matter, Professor Denman and I would very much welcome the opportunity of a discussion on this matter at which Professor Denman will present more detailed information.

It is our intention to publish a paper by Professor Denman on the Law of the Sea, with a press conference, at the end of next week.

Yours sincerely
Michael Ivens

Michael Ivens

40 Doughty Street, London WC1N 2LF Tel: 01-405 5195

Sir John Reiss, B.E.M., President of the Council; John Lyle, Chairman of the Council,
H. G. Starley, C.B.E., Vice-President; Sir Frank Taylor, D.Sc.(Hon.), F.I.C.E., Vice-President; Adam K. Bergius, D.S.C., (Chairman, Scotland),
J. G. Cluff, R. W. Dean, Sir John Foster, K.B.E., Q.C., W. R. B. Foster, Ian Gilbert, E. J. Gordon Henry, J. P. Hourston, C.A., Justin Kornberg, G. N. Mobbs,
Lawrence Orchard, C.B.E., T.D., Sir Neil Shanks, M.C., Mrs. Nora Tew, I.D.D.A., Brian Trafford, Thomas Tudor, Michael E. Waters, Col. W. H. Whitbread, T.D.,
Scottish Committee: Adam K. Bergius, D.S.C., Chairman; M. J. G. Wyse, M.B.E., Deputy Chairman; P. A. Barns, Graham, C. H. K. Finlayson, E. J. Gordon Henry,
Mrs. M. Hook, John E. Milne, James Moore, R. B. Weatherstone, H. A. Whitson, C.B.E., B.A.

Director: Michael Ivens

Airms of Industry—a company limited by guarantee. Registered in England No. 457622
VAT Reg. No. 244 6295 51

Registered office: 40 Doughty Street, London WC1N 2LF

LAW OF THE SEA REVISIONS OF DRAFT CONVENTION

Memorandum following a discussion with
Ambassador Malone of the US Government
and Admiral Bruce Harlow and Admiral
W.C. Mott of the US Navy at Washington
D.C. on 9 February, 1982.

1. The review of the current draft Convention of the United Nations' Law of the Sea undertaken by the US Government since March 1981 leaves the US Government much disturbed by the intended world policy for handling the immense wealth of the mineral resources on the sea floor of the deep oceans.
2. The US Administration has a double concern. What it sees in the draft Convention as harmful to the US is also, in the view of the US, no less harmful to Britain and the Western democracies and Japan. It is imperative that the call for revision should not therefore be seen as coming from the US alone, as if the US were concerned only for her own interests.
3. There are two main aspects of the proposed Law of the Sea Convention - one covers the navigation of the seas, the other exploitation of the resources of the sea and the seabed. Both are of equal importance in the long run for the United States and for Britain. Concentration on navigation aspects has, in the past, overshadowed the strategic importance of access to the deep sea minerals. Hence the urgent case to review the proposals.

4. The draft policy for exploiting mineral resources also has two broad divisions. One recognises the Sovereign right of coastal states over the resources of contiguous coastal waters and their seabed (i.e. territorial seas, exclusive economic zones, continental shelves, and so on), and the other covers the vast mineral resources of the deep oceans which lie beyond the national jurisdictions. The US criticism and concern is directed to the latter aspect of the draft Convention.

5. Attached to this Memorandum is a statement from Ambassador Malone who is leading the US delegates at the Law of the Sea Conference in March 1982. The statement sets out simply the US grounds for concern over the terms of the current draft Convention. It also refers to proposals already made by the US Government and sent to the UK Government for a revision of the draft Convention so as to remove its defects. The US calls her allies to support her stand in their own interests. It is a matter of utmost urgency to bring the US criticisms to the attention of the relevant industrial interest^S in Britain and to urge the Government to instruct its spokesman at the forthcoming Law of the Sea Conference to support the American revisions or something like them. Public opinion in Britain is ill-informed of the facts of the Law of the Sea draft Convention, its tremendous implications for the future and its dangers.

6. The American criticisms, as stated by Ambassador Malone, can be related in detail to the specific Articles of the draft Convention which gives rise to them. To do so would result in a technical detailed analysis - necessary and suitable for

preparing to present the case in plenary and formal debate - but an exercise which could confuse the issues for the layman and for those who need only grasp the main lines of contention to see how necessary it is to support the US. Nevertheless, it could help lay understanding to have the following broad examples of the main features of the proposed policy which underlie the US misgivings.

- 7.(a) There is to be set up the International Seabed Authority governed by an Assembly and an executive organ called the Council and assisted by a number of ad hoc Commissions.
- (b) The Authority shall have absolute and exclusive control over the resources of the seabed of the deep oceans (to be called the Area) and shall engage in mining and other activities itself through an operative organ - the Enterprise.
- (c) Access to the deep sea resources will therefore be barred to industrialists of the world and to all national institutions, except through the portals of the Authority. Its administration will be entirely bureaucratic and, inevitably, politicised; a policy which could not possibly be in accord with sound economic development and private enterprise.
- (d) The draft Convention gives sanction to the Authority in the most ambiguous terms; to act, for example, "on behalf of mankind as a whole"; for "the benefit of the international community"; for "the healthy development of the world economy"; and to administer the area as the "common heritage of mankind".
- (e) The draft Convention is inherently contradictory. It

requires the Authority to avoid discrimination and yet, time and time again for various reasons, the Authority is given a mandate to discriminate in favour of developing countries, the land-locked and the geographically disadvantaged. To take one example, compensation must be paid to developing countries which suffer adversity from activities in the Area; but no provision is made for similar compensation to other countries which are likewise affected.

- (f) The terms on which mining contracts can be granted would not be tolerable in any free market and fair economy. For every potential mining area found contractors will be expected to offer a second area to the Enterprise or to a developing country and to provide data, scientific knowledge and a full ranging technology and training of personnel to go with it. The industrialist will be required therefore to give his secrets away to his competitors and to train the competitors in the use of them against him. The transfer of technology, apart from giving competitors an unjust advantage, could mean the free international distribution of patents with all that that entails for loss of rights. Moreover by such disclosure international security could be threatened.
- (g) A contractor is faced not only with the uncertainty of what those onerous demands might lead to, but should he prolong negotiations beyond what the Authority judges to be a reasonable time, he is likely to face an arbitration procedure and have terms dictated to him or suffer heavy

penalties if he refuses to comply.

- (h) The Enterprise would come to exercise an absolute monopoly over at least one half of the deep seabed resources of the world and with the privileges accorded to it would hold a most unjust advantage over all other operators, especially private concerns.
- (i) The construction and voting arrangements for the Assembly, the Council and the other organs of the Authority would put those nations whose technical knowledge, economies and industrial structures have the most to give to development of the deep seabed resources of the world at a most serious disadvantage. The voting powers of America in the Assembly for ~~entry~~ ^{Access to} entry would be the same as that of the Gambia or of Malta. Voting for the 36 members of the Council is deliberately pre-conditional in favour of the developing countries and the Eastern (Socialist) European Region. The voting formula refers to "an equitable geographical distribution of seats" and defines this as meaning that each region shall have at least one member and that the regions shall be by name, Africa, Asia, Eastern Europe (Socialist), Latin America and Western Europe. Where is the USA, Australia, Canada and Britain? Other facets of the formula require, for example, four members from major importers of minerals, one of which must be from the Eastern (Socialist) European Region.
- (j) After 20 years, the Assembly shall call a review

conference. The review conference will have power to amend the articles of the Convention by a voting system, similar to that used at the Third UN Conference of the Law of the Sea - that is upon a two thirds vote of the members of the Conference. The decision would be binding upon the dissenting members who would already be committed as members of the Assembly. Thus the future could be taken wholly out of the hands of one third of all participating nations.

8. The purpose of this Memorandum is to draw attention to those proposals in the draft Convention of the Law of the Sea which are so adverse to the best interests of Britain and her allies, especially the USA, and to inform public opinion, industry and Parliament in the hope that immediate action will be taken by Government to instruct Britain's spokesman at the Law of the Sea Conference in March to support the USA and call for a revision of policy for handling the future winning and development of the resources of the seabed of the deep oceans.

D.R. Denman,
D.Sc., Ph.D., M.A., M.Sc.,
FRICS.

14 February 1982

FOR RELEASE AT CONCLUSION OF
THE BRIEFING, EXPECTED ABOUT

STATEMENT BY THE PRESIDENT

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; 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 great source of beauty, awe and pleasure for mankind.

Developing international agreement for this vast ocean space, covering over half of the earth's surface, has been a major 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 Law of the Sea. The United States has been a major participant in this process.

Serious questions had 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 United States 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 in and support it. Our review has concluded that while most provisions of the draft convention are acceptable and consistent with United States 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:

- o will not deter development of any deep seabed mineral resources to meet national and world demand;
 - o will 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;
-
- o will 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;
 - o will 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;
 - o will not set other undesirable precedents for international organizations; and
 - o will 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 private 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 the Secretary of State and my Special Representative for the Law of the Sea Conference, in coordination with other responsible agencies, to embark immediately on the necessary consultations with other countries and to undertake further preparations for our participation in the Conference.

FOR RELEASE AT CONCLUSION OF
THE BRIEFING, EXPECTED ABOUT

FACT SHEET

UNITED STATES LAW OF THE SEA POLICY

Today the President announced his decision that the United States will return to the negotiations at the Third United Nations Conference on the Law of the Sea and work with other countries to achieve an acceptable treaty for the world's oceans. This follows a comprehensive interagency review of United States Law of the Sea objectives and interests as they relate to the current draft convention.

Preparations for the Third United Nations Conference on the Law of the Sea began in 1969. The first substantive session of the conference was convened in Caracas, Venezuela, in 1974. Ten sessions of the conference have been held since then to develop a consensus agreement on provisions covering the full range of ocean interests. These include:

- o exploration and exploitation of deep seabed mineral resources;
- o extent and nature of coastal state jurisdiction over living resources;
- o extent of coastal state jurisdiction over the resources of the continental margin;
- o limits of the territorial sea;

- o navigation and overflight rights on the high seas, in territorial seas, in straits and in archipelagoes;
- o delimitation of boundaries between opposite and adjacent states;
- o the rights of landlocked and geographically disadvantaged states;
- o protection of the marine environment;
- o freedom on marine scientific research; and
- o peaceful settlement of disputes

Over 150 nations have participated in this effort. By 1980, the conference had reached agreement on all but four outstanding issues: the delimitation of the outer edge of the continental margin, participation of regional organizations in the treaty, establishment of a preparatory commission, and grandfather rights for existing deep seabed miners. Most participants expected that the negotiations would conclude in 1981.

Serious concerns had been raised within the United States, however, specifically with respect to the deep seabed mining provisions of the draft convention. The proposed treaty has some unacceptable elements. Consequently, on March 2, 1981, the Administration announced that it was initiating a comprehensive review of United States law of the sea policy.

The United States sought to ensure that there was sufficient time for the review of the proposed draft convention before negotiations were concluded. The conference proceeded with technical drafting work and discussion of several outstanding issues during a five week session in March-April 1981. In August 1981 the conference reconvened in Geneva for five weeks during which the United States aired a series of substantive concerns with respect to the deep seabed provisions of the draft convention. The United States sought to elicit candid reactions to areas of its concern and to explore the kinds of solutions that could reasonably be expected to result from further negotiations. The next session of the conference begins in early March.

United States concerns about the draft convention center on those issues of access, development decision-making, and other provisions noted in the President's statement. Particular elements of the deep seabed provisions that give rise to U.S. concerns include:

policy-making in the seabed Authority would be carried out by a one-nation, one-vote Assembly;

the Executive Council which would make the day-to-day decisions affecting access of U.S. miners to deep seabed minerals would not have permanent or guaranteed representation by the United States, and the United States would not have influence on the Council commensurate with its economic and political interests;

- o a Review Conference would have the power to impose treaty amendments on the United States without its consent;
- o the treaty would impose artificial limitations on seabed mineral production;
- o the treaty would give substantial competitive advantages to a supranational mining company -- the Enterprise;
- o private deep seabed miners would be subject to a mandatory requirement for the transfer of technology to the Enterprise and to developing countries;
- o the new international organization would have discretion to interfere unreasonably with the conduct of mining operations, and it could impose potentially burdensome regulations on an infant industry; and
- o the treaty would impose large financial burdens on industrialized countries whose nationals engaged in deep seabed mining and financial terms and conditions which would significantly increase the costs of mineral production.

The deep seabed offers a potentially important alternative source of minerals. While current world demand and metals markets do not justify commercial-scale development at this time, multinational consortia have invested substantial amounts to develop technology and to prospect. When economic factors become favorable, deep seabed mining is likely to be an important undertaking.

The draft Law of the Sea Treaty is fundamentally defective because it:

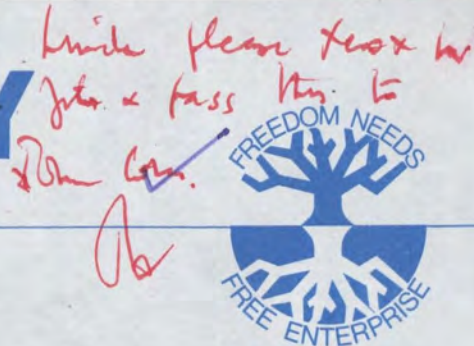
- artificially limits deep seabed mineral production and provides for discretion and discrimination if there is competition for limited production allocations;
- discourages private investment in deep seabed mineral production because of: lack of certainty in the granting of mining contracts, mandatory technology transfer requirements, and burdensome financial requirements;
- creates a privileged supranational competitor -- the Enterprise -- whose advantages could make it extremely difficult, if not impossible, for private ventures -- absent national subsidies -- to compete. A supranational monopoly over deep seabed mineral production could thus result;
- fails to provide grandfather rights for existing investment in deep seabed mineral development;
- establishes a decision-making system so structured that US and other potential deep seabed mineral producers and consumers will be unable effectively to influence important policy and operational decisions;
- provides for a review conference which, after five years of negotiation, may adopt amendments to the deep seabed mining regime that would automatically enter into force for the US upon approval by two-thirds of the States Parties;
- allows participation by and funding for liberation groups;

The United States has prepared proposals to correct these problems. These proposals have been given to the UK delegation. The United States hopes that the UK will strongly support the US proposals.

Without a unified UK-US position a treaty will be adopted which will probably put an end to the prospects for deep seabed mining. With a unified UK-US position the Western allies will support these changes and it will be possible to make the Law of the Sea Treaty acceptable.

AIMS OF INDUSTRY

The free enterprise organisation



For release: Noon, Wednesday, February 24 1982

SIGNING THIS U.N. CONVENTION WOULD BE DISASTROUS
America V. Rest of the World would be
propaganda victory for Soviet Union

Britain should join the United States in rejecting or amending the draft text of the Law of the Sea at the United Nations' Conference next month, states Professor Donald Denman in a paper for Aims of Industry. The Conference starts on March 8 and finishes on April 13.

The proposed policy would set up a giant UN Quango to be called "The Enterprise" which would come to exercise an absolute monopoly over at least one half of the deep seabed resources of the world. The proposed law has been written in favour of the developing countries and the Soviet Union and Eastern bloc countries. A warning paper, "The Law of the Sea Convention. Need to think again before we sign"* has been written by Professor D.R. Denman, former head of the Department of Land Economy at the University of Cambridge, and a foremost expert on this subject. It is published by Aims of Industry and an early copy has been sent to the Prime Minister, the Foreign Office and the Minister of Energy.

"Britain and its Western allies should not leave America to stand alone on this issue," said Michael Ivens, Director of Aims of Industry. "That is one reason why we have published Professor Denman's paper. It would be disastrous if the outcome of the UN Conference became America V. the Rest of the World. This would be a propaganda gift to the Soviet Union.

m.f.

"The Law of the Sea Convention. Need to think again before we sign", by D.R. Denman: Aims of Industry, 40 Doughty Street, London WC1N 2LF; free with postage (12½p).

40 Doughty Street, London WC1N 2LF Tel: 01-405 5195

Sir John Reiss, B.E.M., *President of the Council*, John Lyle, *Chairman of the Council*,
H. G. Starley, C.B.E., *Vice-President*, Sir Frank Taylor, D.Sc.(Hon.), F.I.O.B., *Vice-President*, Adam K. Bergius, D.S.C., (*Chairman, Scotland*),
J. G. Cluff, R. W. Dean, Sir John Foster, K.B.E., Q.C., W. R. B. Foster, Ian Gilbert, E. J. Gordon Henry, J. P. Hourston, C.A., Justin Kornberg, G. N. Mobbs,
Lawrence Orchard, C.B.E., T.D., Sir Neil Shields, M.C., Mrs. Norah Tew, I.D.D.A., Brian Trafford, Thomas Tudor, Michael E. Wates, Col. W. H. Whitbread, T.D.,
Scottish Committee: Adam K. Bergius, D.S.C., *Chairman*, M. J. G. Wylie, M.B.E., *Deputy Chairman*, P. A. Barns-Graham, C. H. K. Finlayson, E. J. Gordon Henry,
Mrs. M. Hook, John E. Milne, James Moore, R. B. Weatherstone, H. A. Whitson, C.B.E., B.A.

Director: Michael Ivens

Aims of Industry—a company limited by guarantee. Registered in England No. 457622
VAT Reg. No. 244 6295 51

Registered office: 40 Doughty Street, London WC1N 2LF

We have asked for meetings with the Foreign Office and the Ministry of Energy on this matter."

"The UN Enterprise would hold a most unjust advantage over all other operators, especially private concerns," states Professor Denman. The voting powers of America or Britain would be the same as Gambia or Malta. The voting formula for the 36 members of the Council is based on regions of Africa, Asia, Eastern Europe (Socialist), Latin America and Western Europe.

The proposed laws would bar access on the deep sea resources to anyone "except through the portals of the authority".

As Professor Denman points out, "For every potential mining area found, contractors will be expected to offer a second area to the Enterprise or to a developing country and to private data, scientific knowledge and a full ranging technology and training of personnel to go with it. The industrialist will be required therefore to give his secrets away to his competitors and to train the competitors in the use of them against him. The transfer of technology, apart from giving competitors an unjust advantage, could mean the free international distribution of patents with all that that entails for loss of rights."

"There is a movement to include among the voting members of the world Convention," points out Professor Denman, "liberation groups and other such bodies devoid of proper national status and this movement should be countered."

Britain and America should not quit the Law of the Sea Conference, states Professor Denman, but they should look for arrangements which will not create an international authority monopoly, and "will preclude all amendments to an established Convention without the approval of all participating states," and prevent the transfer of scientific knowledge and technology possessed by private firms to others likely to compete against them.

- End -

Enclosure: "The Law of the Sea Convention:
Need to think again before we sign"

Further information: Ken Daly 01 405 5195 (evenings: 0342 712 779)
Michael Ivens 01 405 5195 (evenings: 01 722 2311)
Donald Denman 02233 57725 or 01 458 6080

**THE LAW
OF THE
SEA CONVENTION**

**Need to think again
before we sign**

D. R. DENMAN

FEBRUARY 1982

AIMS OF INDUSTRY

The free enterprise organisation

THE LAW OF THE SEA CONVENTION

Need to think again before we sign

1. Member nations of the UN Third Law of the Sea Conference were last year about to sign the text of a world Convention when the USA Government called a halt and asked for time to review the draft text. That review has now taken place and the Law of the Sea Conference is due to meet again next month. The American caution stands on solid grounds. Constructive proposals have been made to amend the draft Convention in the light of the review. Britain's attitude is of the utmost importance to America, ourselves and our allies. The case to support the Americans is a strong one and carries with it the need for a better informed public opinion.
 2. There are two main aspects of the proposed Law of the Sea Convention—one covers the navigation of the seas and the other the exploitation of the resources of the sea and the seabed. Both are of equal importance in the long run to the United States and to Britain. Concentration on the navigation aspects of the Convention had in the past overshadowed the strategic importance to the industrial nations of access to the deep sea minerals. Hence the urgent case to review the current proposals and the draft Convention that embodies them.
 3. The proposed policy for exploiting the vast minerals resources of the deep oceans also has two broad divisions. One recognises the sovereign right of coastal states over the resources of contiguous coastal waters and their sea bed (i.e. territorial seas, exclusive economic zones, continental shelves and so forth) and the other covers the vast wealth of mineral resources of the deep oceans which lie beyond the national jurisdictions. America's concern, which should also be Britain's, arises from what is proposed in the latter aspect of the draft Convention and for the following more specific reasons.
 4. (a) There is to be set up the International Seabed Authority governed by an Assembly and an executive organ called the Council and assisted by a number of ad hoc Commissions.
(b) The Authority shall have absolute and exclusive control over the resources of the seabed of the deep oceans (to be called the Area) and shall be engaged in mining and other activities itself through an operative organ—the Enterprise.
(c) Access to the deep sea resources will therefore be barred to industrialists of the world and to all national institutions, except through the portals of the Authority. Its administration will be entirely bureaucratic and, inevitably, politicised; a policy which could not possibly be in accord with sound economic development and private enterprise.
(d) The draft Convention gives sanction to the Authority in the most ambiguous terms; to act, for example, "on behalf of mankind as a whole"; for "the benefit of the international community"; for "the healthy development of the world economy"; and to administer the area as the "common heritage of mankind".
- (e) The draft Convention is inherently contradictory. It requires the Authority to avoid discrimination and yet, time and time again for various reasons, the Authority is given a mandate to discriminate in favour of developing countries, the land-locked and the geographically disadvantaged. To take one example, compensation must be paid to developing countries which suffer adversity from activities in the Area; but no provision is made for similar compensation to other countries which are likewise affected.
 - (f) The terms on which mining contracts can be granted would not be tolerable in any free market and fair economy. For every potential mining area found contractors will be expected to offer a second area to the Enterprise or to a developing country and to private data, scientific knowledge and a full ranging technology and training of personnel to go with it. The industrialist will be required therefore to give his secrets away to his competitors and to train the competitors in the use of them against him. The transfer of technology, apart from giving competitors an unjust advantage, could mean the free international distribution of patents with all that that entails for loss of rights. Moreover by such disclosure international security could be threatened.
 - (g) A contractor is faced not only with the uncertainty of what those onerous demands might lead to, but should he prolong negotiations beyond what the Authority judges to be a reasonable time, he is likely to face an arbitration procedure and have terms dictated to him or suffer heavy penalties if he refuses to comply.
 - (h) The Enterprise would come to exercise an absolute monopoly over at least one half of the deep seabed resources of the world and with the privileges accorded to it would hold a most unjust advantage over all other operators, especially private concerns.
 - (i) The construction and voting arrangements for the Assembly, the Council and the other organs of the Authority would put those nations whose technical knowledge, economies and industrial structures have the most to give to development of the deep seabed resources of the world at a most serious disadvantage. The voting powers of America in the Assembly for example would be the same as that of the Gambia or of Malta. Voting for the 36 members of the Council is deliberately pre-conditioned in favour of the developing countries and the Eastern (Socialist) European Region. The voting formula refers to "an equitable geographical distribution of seats" and defines this as meaning that each region shall have at least one member and that the regions shall be by name, Africa, Asia, Eastern Europe (Socialist), Latin America and Western Europe. Where is the USA, Australia, Canada and Britain? Other facets of the formula require, for example, four members from major importers of minerals, one of which must be from the Eastern (Socialist) European Region.
 - (j) After 20 years, the Assembly shall call a review conference. The review conference will have power to amend the articles of the Convention by a voting system, similar to that used at the Third United Nations Conference of the Law of the Sea—that is upon a two thirds vote of the members of the Conference. The decision would be binding upon the dissenting members who would already be committed as members of the Assembly. Thus the future could be taken wholly out of the hands of one third of all participating nations.

- (k) Pending the signing of the Convention, leading industrial nations including Britain have taken steps to regulate by law the lifting of mineral resources from the deep seas. Parliament, in Britain, for example has recently passed the Deep Sea Mining (Temporary Provisions) Act 1981. The present draft Convention fails to secure to private and national interests who will have committed vast sums and effort to the deep sea floor as sanctioned by these recent laws, a proprietary right to the workings so established.
 - (l) There is a movement to include among the voting members of the world Convention liberation groups and other such bodies devoid of proper national status and this movement should be countered.
5. There should be no question of either America or Britain quitting the Law of the Sea Conference and its negotiations for a world Convention. But a just stand supported, it is hoped, by the other industrial nations should ensure a better balanced outcome by providing a revised text that:
- (ii) will facilitate rather than deter the development of deep seabed mineral resources to meet both specific national needs and world demand;
 - (ii) avoid the monopolisation of the deep sea resources by the Enterprise or such other organ of an international authority;
 - (iii) will ensure a decision-making process over the deep sea bed that is balanced and fair and reflects and protects the political and economic interests and financial commitments of all participating states;
 - (iv) will preclude all amendments to an established Convention without the approval of all participating states;
 - (v) prevent the mandatory transfer of patents, scientific knowledge and technology possessed by private firms and institutions to others likely to compete against them;
 - (vi) duly recognise and secure the proprietary rights of operators over installations for mining the deep sea floor prior to the signing of the Convention.



Assistant Secretary of State

Washington, D.C. 20520

TO: Admiral Mott

FROM: OES - Ambassador Malone

Attached is the paper I promised you for Professor Denman.

LAW OF THE SEA REVISION OF DRAFT CONVENTION

Memorandum following a discussion with Ambassador Malone of the United States Government and Admiral Bruce Harlow and Admiral W.C. Mott of the US Navy at Washington D.C. on 9 February, 1982.

1. The review of the current draft Convention of the United Nations' Law of the Sea undertaken by the US Government since March 1981 leaves the US Government much disturbed by the intended world policy for handling the immense wealth of the mineral resources on the sea floor of the deep oceans.
2. The US Administration has a double concern. What it sees in the draft Convention as harmful to the US is also, in the view of the US, no less harmful to Britain, the western democracies and Japan. It is imperative that the call for revision should not therefore be seen as coming from the US alone, as if the US were concerned only for her own interests.
3. There are two main aspects of the proposed Law of the Sea Convention - one covers the navigation of the seas, the other the exploitation of the resources of the sea and the seabed. Both are of equal importance in the long run for the United States and for Britain. Concentration on navigation aspects has, in the past, overshadowed the strategic importance of access to the deep sea minerals. Hence the urgent case to review the proposals.

4. The draft policy for exploiting mineral resources also has two broad divisions. One recognises the Sovereign right of coastal states over the resources of contiguous coastal waters and their seabed (i.e. territorial seas, exclusive economic zones, continental shelves, and so on), and the other covers the vast mineral resources of the deep oceans which lie beyond the national jurisdictions. The US criticism and concern is directed to the latter aspect of the draft Convention.

5. Attached to this Memorandum is a statement from Ambassador Malone who is leading the US delegates at the Law of the Sea Conference in March 1982. The statement sets out simply the US grounds for concern over the terms of the current draft Convention. It also refers to proposals already made by the US Government and sent to the UK Government for a revision of the draft Convention so as to remove its defects. The US calls her allies to support her stand in their own interests. It is a matter of utmost urgency to bring the US criticisms to the attention of the relevant industrial interests in Britain and to urge the Government to instruct its spokesman at the forthcoming Law of the Sea Conference to support the American revisions or something like them. Public opinion in Britain is ill-informed of the facts of the Law of the Sea draft Convention, its tremendous implications for the future and its dangers.

6. The American criticisms, as stated by Ambassador Malone, can be related in detail to the specific Articles of the draft Convention which gives rise to them. To do so would result in a technical detailed analysis - necessary and suitable for

preparing to present the case in plenary and formal debate - but an exercise which could confuse the issues for the layman and for those who need only grasp the main lines of contention to see how necessary it is to support the US. Nevertheless, it could help lay understanding to have the following broad examples of the main features of the proposed policy which underlie the US misgivings.

- 7.(a) There is to be set up the International Seabed Authority governed by an Assembly and an executive organ called the Council and assisted by a number of ad hoc Commissions.
- (b) The Authority shall have absolute and exclusive control over the resources of the seabed of the deep oceans (to be called the Area) and shall engage in mining and other activities itself through an operative organ - the Enterprise.
- (c) Access to the deep sea resources will therefore be barred to industrialists of the world and to all national institutions, except through the portals of the Authority. Its administration will be entirely bureaucratic and, inevitably, politicised; a policy which could not possibly be in accord with sound economic development and private enterprise.
- (d) The draft Convention gives sanction to the Authority in the most ambiguous terms; to act, for example, "on behalf of mankind as a whole"; for "the benefit of the international community"; for "the healthy development of the world economy"; and to administer the area as the "common heritage of mankind".
- (e) The draft Convention is inherently contradictory. It

requires the Authority to avoid discrimination and yet, time and time again for various reasons, the Authority is given a mandate to discriminate in favour of developing countries, the land-locked and the geographically disadvantaged. To take one example, compensation must be paid to developing countries which suffer adversity from activities in the Area; but no provision is made for similar compensation to other countries which are likewise affected.

- (f) The terms on which mining contracts can be granted would not be tolerable in any free market and fair economy. For every potential mining area found contractors will be expected to offer a second area to the Enterprise or to a developing country and to provide data, scientific knowledge and a full ranging technology and training of personnel to go with it. The industrialist will be required therefore to give his secrets away to his competitors and to train the competitors in the use of them against him. The transfer of technology, apart from giving competitors an unjust advantage, could mean the free international distribution of patents with all that that entails for loss of rights. Moreover by such disclosure international security could be threatened.
- (g) A contractor is faced not only with the uncertainty of what those onerous demands might lead to, but should he prolong negotiations beyond what the Authority judges to be a reasonable time, he is likely to face an arbitration procedure and have terms dictated to him or suffer heavy

penalties if he refuses to comply.

- (h) The Enterprise would come to exercise an absolute monopoly over at least one half of the deep seabed resources of the world and with the privileges accorded to it would hold a most unjust advantage over all other operators, especially private concerns.
- (i) The construction and voting arrangements for the Assembly, the Council and the other organs of the Authority would put those nations whose technical knowledge, economies and industrial structures have the most to give to development of the deep seabed resources of the world at a most serious disadvantage. The voting powers of America in the Assembly for example would be the same as that of the Gambia or of Malta. Voting for the 36 members of the Council is deliberately pre-conditioned in favour of the developing countries and the Eastern (Socialist) European Region. The voting formula refers to "an equitable geographical distribution of seats" and defines this as meaning that each region shall have at least one member and that the regions shall be by name, Africa, Asia, Eastern Europe (Socialist), Latin America and Western Europe. Where is the USA, Australia, Canada and Britain? Other facets of the formula require, for example, four members from major importers of minerals, one of which must be from the Eastern (Socialist) European Region.
- (j) After 20 years, the Assembly shall call a review

conference. The review conference will have power to amend the articles of the Convention by a voting system, similar to that used at the Third United Nations' Conference of the Law of the Sea - that is upon a two thirds vote of the members of the Conference. The decision would be binding upon the dissenting members who would already be committed as members of the Assembly. Thus the future could be taken wholly out of the hands of one third of all participating nations.

8. The purpose of this Memorandum is to draw attention to those proposals in the draft Convention of the Law of the Sea which are so adverse to the best interests of Britain and her allies, especially the USA, and to inform public opinion, industry and Parliament in the hope that immediate action will be taken by Government to instruct Britain's spokesman at the Law of the Sea Conference in March to support the USA and call for a revision of policy for handling the future winning and development of the resources of the seabed of the deep oceans.

D.R. Denman,
D.Sc., Ph.D., M.A., M.Sc.,
FRICS.

14 February 1982.

The draft Law of the Sea Treaty is fundamentally defective because it:

- artificially limits deep seabed mineral production and provides for discretion and discrimination if there is competition for limited production allocations;
- discourages private investment in deep seabed mineral production because of: lack of certainty in the granting of mining contracts, mandatory technology transfer requirements, and burdensome financial requirements;
- creates a privileged supranational competitor -- the Enterprise -- whose advantages could make it extremely difficult, if not impossible, for private ventures -- absent national subsidies -- to compete. A supranational monopoly over deep seabed mineral production could thus result;
- fails to provide grandfather rights for existing investment in deep seabed mineral development;
- establishes a decision-making system so structured that US and other potential deep seabed mineral producers and consumers will be unable effectively to influence important policy and operational decisions;
- provides for a review conference which, after five years of negotiation, may adopt amendments to the deep seabed mining regime that would automatically enter into force for the US upon approval by two-thirds of the States Parties;
- allows participation by and funding for liberation groups;

The United States has prepared proposals to correct these problems. These proposals have been given to the UK delegation. The United States hopes that the UK will strongly support the US proposals.

Without a unified UK-US position a treaty will be adopted which will probably put an end to the prospects for deep seabed mining. With a unified UK-US position the Western allies will support these changes and it will be possible to make the Law of the Sea Treaty acceptable.

STATEMENT BY THE PRESIDENT

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; 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 great source of beauty, awe and pleasure for mankind.

Developing international agreement for this vast ocean space, covering over half of the earth's surface, has been a major 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 Law of the Sea. The United States has been a major participant in this process.

Serious questions had 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 United States 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 in and support it. Our review has concluded that while most provisions of the draft convention are acceptable and consistent with United States interests, some major elements of the deep seabed mining regime are not acceptable.

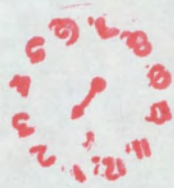
I am announcing today that the United States will return to those negotiations and work with other countries to achieve an acceptable treaty. In the deep seabed mining area, we will seek changes necessary to correct those unacceptable elements and to achieve the goal of a treaty that:

- o will not deter development of any deep seabed mineral resources to meet national and world demand;
- o will 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;

- 14
- o will 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;
 - o will 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;
 - o will not set other undesirable precedents for international organizations; and
 - o will 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 private 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 the Secretary of State and my Special Representative for the Law of the Sea Conference, in coordination with other responsible agencies, to embark immediately on the necessary consultations with other countries and to undertake further preparations for our participation in the Conference.



10 FEB 1968

16 February 1982

Law of the Sea Conference

I wrote to you on 10 February enclosing correspondence from Mr Simon Webley of the British-North American Research Association.

I now enclose a copy of a letter which the Prime Minister has received from Professor Denman. As you will see, this also urges that we should support the American case for amendments to the draft Law of the Sea Convention. Perhaps you could take this into account in considering my earlier letter and let me have advice and a draft reply for the Prime Minister to send to Professor Denman.

(A. J. COLES)

Francis Richards Esq
Foreign and Commonwealth Office.