**Appendix Seven**

Secretary of State’s Letter of Submittal to the President,

September 23, 1994

Department of State,

*Washington, September 23, 1994*.

The President,

*The White House*.

The President: I have the honor to submit to you the United Nations Convention on the Law of the Sea, with Annexes, done at Montego Bay, December 10, 1982 (the Convention), and the Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, with Annex, adopted at New York, July 28, 1994 (the Agreement), and signed by the United States on July 29, 1994, subject to ratification. I recommend that the Convention and the Agreement be transmitted to the Senate for its advice and consent to accession and ratification, respectively.

The Convention sets forth a comprehensive framework governing uses of the oceans. It was adopted by the Third United Nations Conference on the Law of the Sea (the Conference), which met between 1973 and 1982 to negotiate a comprehensive treaty relating to the law of the sea.

The Agreement, adopted by United Nations General Assembly Resolution A/RES/48/263 on July 28, 1994, contains legally binding changes to that part of the Convention dealing with the mining of the seabed beyond the limits of national jurisdiction (Part XI and related Annexes) and is to be applied and interpreted together with the Convention as a single instrument. The Agreement promotes universal adherence to the Convention by removing obstacles to acceptance of the Convention by industrialized nations, including the United States.

I also recommend that Resolution II of Annex I, governing preparatory investment in pioneer activities relating to polymetallic nodules, and Annex II, a statement of understanding concerning a specific method to be used in establishing the outer edge of the continental margin, of the Final Act of the Third United Nations Conference on the Law of the Sea be transmitted to the Senate for its information.

The Convention

The Convention provides a comprehensive framework with respect to uses of the oceans. It creates a structure for the governance and protection of all marine areas, including the airspace above and the seabed and subsoil below. After decades of dispute and negotiation, the Convention reflects consensus on the extent of jurisdiction that States may exercise off their coasts and allocates rights and duties among States.

The Convention provides for a territorial sea of a maximum breadth of 12 nautical miles and coastal State sovereign rights over fisheries and other natural resources in an Exclusive Economic Zone (EEZ) that may extend to 200 nautical miles from the coast. In so doing, the Convention brings most fisheries under the jurisdiction of coastal States. (Some 90 percent of living marine resources are harvested within 200 nautical miles of the coast.) The Convention imposes on coastal States a duty to conserve these resources, as well as obligations upon all States to cooperate in the conservation of fisheries populations on the high seas and such populations that are found both on the high seas and within the EEZ (highly migratory stocks, such as tuna, as well as “straddling stocks”). In addition, it provides for special protective measures for anadromous species, such as salmon, and for marine mammals, such as whales.

The Convention also accords the coastal State sovereign rights over the exploration and development of non-living resources, including oil and gas, found in the seabed and subsoil of the continental shelf, which is defined to extend to 200 nautical miles from the coast or, where the continental margin extends beyond that limit, to the outer edge of the geological continental margin. It lays down specific criteria and procedures for determining the outer limit of the margin.

The Convention carefully balances the interests of States in controlling activities off their own coasts with those of all States in protecting the freedom to use ocean spaces without undue interference. It specifically preserves and elaborates the rights of military and commercial navigation and overflight in areas under coastal State jurisdiction and on the high seas beyond. It guarantees passage for all ships and aircraft through, under and over straits used for international navigation and archipelagos. It also guarantees the high seas freedoms of navigation, overflight and the laying and maintenance of submarine cables and pipelines in the EEZ and on the continental shelf.

For the non‑living resources of the seabed beyond the limits of national jurisdiction (i.e., beyond the EEZ or continental margin, whichever is further seaward), the Convention establishes an international regime to govern exploration and exploitation of such resources. It defines the general conditions for access to deep seabed minerals by commercial entities and provides for the establishment of an international organization, the International Seabed Authority, to grant title to mine sites and establish necessary ground rules. The system was substantially modified by the 1994 Agreement, discussed below.

The Convention sets forth a comprehensive legal framework and basic obligations for protecting the marine environment from all sources of pollution, including pollution from vessels, from dumping, from seabed activities and from land-based activities. It creates a positive and unprecedented regime for marine environmental protection that will compel parties to come together to address issues of common and pressing concern. As such, the Convention is the strongest comprehensive environmental treaty now in existence or likely to emerge for quite some time.

The essential role of marine scientific research in understanding and managing the oceans is also secured. The Convention affirms the right of all States to conduct marine scientific research and sets forth obligations to promote and cooperate in such research. It confirms the rights of coastal States to require consent for such research undertaken in marine areas under their jurisdiction. These rights are balanced by specific criteria to ensure that coastal States exercise the consent authority in a predictable and reasonable fashion to promote maximum access for research activities.

The Convention establishes a dispute settlement system to promote compliance with its provisions and the peaceful settlement of disputes. These procedures are flexible, in providing options as to the appropriate means and fora for resolution of disputes, and comprehensive, in subjecting the bulk of the Convention’s provisions to enforcement through binding mechanisms. The system also provides Parties the means of excluding from binding dispute settlement certain sensitive political and defense matters.

Further analysis of provisions of the Convention’s 17 Parts, comprising 320 articles and nine Annexes, is set forth in the Commentary that is enclosed as part of this Report.

The Agreement

The achievement of a widely accepted and comprehensive law of the sea convention—to which the United States can become a Party—has been a consistent objective of successive US administrations for the past quarter century. However, the United States decided not to sign the Convention upon its adoption in 1982 because of objections to the regime it would have established for managing the development of seabed mineral resources beyond national jurisdiction. While the other Parts of the Convention were judged beneficial for US ocean policy interests, the United States determined the deep seabed regime of Part XI to be inadequate and in need of reform before the United States could consider becoming Party to the Convention.

Similar objections to Part XI also deterred all other major industrialized nations from adhering to the Convention. However, as a result of the important international political and economic changes of the last decade—including the end of the Cold War and growing reliance on free market principles—widespread recognition emerged that the seabed mining regime of the Convention required basic change in order to make it generally acceptable. As a result, informal negotiations were launched in 1990, under the auspices of the United Nations Secretary-General, that resulted in adoption of the Agreement on July 28, 1994.

The legally binding changes set forth in the Agreement meet the objections of the United States to Part XI of the Convention. The United States and all other major industrialized nations have signed the Agreement.

The provisions of the Agreement overhaul the decision-making procedures of Part XI to accord the United States, and others with major economic interests at stake, adequate influence over future decisions on possible deep seabed mining. The Agreement guarantees a seat for the United States on the critical executive body and requires a consensus of major contributors for financial decisions.

The Agreement restructures the deep seabed mining regime along free market principles and meets the US goal of guaranteed access by US firms to deep seabed minerals on the basis of reasonable terms and conditions. It eliminates mandatory transfer of technology and production controls. It scales back the structure of the organization to administer the mining regime and links the activation and operation of institutions to the actual development of concrete commercial interest in seabed mining. A future decision, which the United States and a few of its allies can block, is required before the organization's potential operating arm (the Enterprise) may be activated, and any activities on its part are subject to the same requirements that apply to private mining companies. States have no obligation to finance the Enterprise, and subsidies inconsistent with GATT are prohibited.

The Agreement provides for grandfathering the seabed mine site claims established on the basis of the exploration work already conducted by companies holding US licenses on the basis of arrangements “similar to and no less favorable than” the best terms granted to previous claimants; further, it strengthens the provisions requiring consideration of the potential environmental impacts of deep seabed mining.

The Agreement provides for its provisional application from November 16, 1994, pending its entry into force. Without such a provision, the Convention would enter into force on that date with its objectionable seabed mining provisions unchanged. Provisional application may continue only for a limited period, pending entry into force. Provisional application would terminate on November 16, 1998, if the Agreement has not entered into force due to failure of a sufficient number of industrialized States to become Parties. Further, the Agreement provides flexibility in allowing States to apply it provisionally in accordance with their domestic laws and regulations.

In signing the agreement on July 29, 1994, the United States indicated that it intends to apply the agreement provisionally pending ratification. Provisional application by the United States will permit the advancement of US seabed mining interests by US participation in the International Seabed Authority from the outset to ensure that the implementation of the regime is consistent with those interests, while doing so consistent with existing laws and regulations.

Further analysis of the Agreement and its Annex, including analysis of the provisions of Part XI of the Convention as modified by the Agreement, is also set forth in the Commentary that follows.

Status of the Convention and the Agreement

One hundred and fifty-two States signed the Convention during the two years it was open for signature. As of September 8, 1994, 65 States had deposited their instruments of ratification, accession or succession to the Convention. The Convention will enter into force for these States on November 16, 1994, and thereafter for other States 30 days after deposit of their instruments of ratification or accession.

The United States joined 120 other States in voting for adoption of the Agreement on July 28, 1994; there were no negative votes and seven abstentions. As of September 8, 1994, 50 States and the European Community have signed the Agreement, of which 19 had previously ratified the Convention. Eighteen developed States have signed the Agreement, including the United States, all the members of the European Community, Japan, Canada and Australia, as well as major developing countries, such as Brazil, China and India.

Relation to the 1958 Geneva Conventions

Article 311(1) of the LOS Convention provides that the Convention will prevail, as between States Parties, over the four Geneva Conventions on the Law of the Sea of April 29, 1958, which are currently in force for the United States: the Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205 (entered into force September 10, 1964); the Convention on the High Seas, 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82 (entered into force September 30, 1962); Convention on the Continental Shelf, 15 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311 (entered into force June 10, 1964); and the Convention on Fishing and Conservation of Living Resources of the High Seas, 17 U.S.T. 138, T.I.A.S. No. 5969, 559 U.N.T.S. 285 (entered into force March 20, 1966). Virtually all of the provisions of these Conventions are either repeated, modified, or replaced by the provisions of the LOS Convention.

Dispute Settlement

The Convention identifies four potential fora for binding dispute settlement:

• The International Tribunal for the Law of the Sea constituted under Annex VI;

• The International Court of Justice;

• An arbitral tribunal constituted in accordance with Annex VII; and

• A special arbitral tribunal constituted in accordance with Annex VIII for specified categories of disputes.

A State, when adhering to the Convention, or at any time thereafter, is able to choose, by written declaration, one or more of these means for the settlement of disputes under the Convention. If the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration in accordance with Annex VII, unless the parties otherwise agree. If a Party has failed to announce its choice of forum, it is deemed to have accepted arbitration in accordance with Annex VII.

I recommend that the United States choose special arbitration for all the categories of disputes to which it may be applied and Annex VII arbitration for disputes not covered by the above, and thus that the United States make the following declaration:

The Government of the United States of America declares, in accordance with paragraph 1 of Article 287, that it chooses the following means for the settlement of disputes concerning the interpretation or application of the Convention:

(A) a special arbitral tribunal constituted in accordance with Annex VIII for the settlement of disputes concerning the interpretation or application of the articles of the Convention relating to (1) fisheries, (2) protection and preservation of the marine environment, (3) marine scientific research, and (4) navigation, including pollution from vessels and by dumping, and

(B) an arbitral tribunal constituted in accordance with Annex VII for the settlement of disputes not covered by the declaration in (A) above.

Subject to limited exceptions, the Convention excludes from binding dispute settlement disputes relating to the sovereign rights of coastal States with respect to the living resources in their EEZs. In addition, the Convention permits a State to opt out of binding dispute settlement procedures with respect to one or more enumerated categories of disputes, namely disputes regarding maritime boundaries between neighboring States, disputes concerning military activities and certain law enforcement activities, and disputes in respect of which the United Nations Security Council is exercising the functions assigned to it by the Charter of the United Nations.

I recommend that the United States elect to exclude all three of these categories of disputes from binding dispute settlement, and thus that the United States make the following declaration:

The Government of the United States of America declares, in accordance with paragraph 1 of Article 298, that it does not accept the procedures provided for in section 2 of Part XV with respect to the categories of disputes set forth in subparagraphs (a), (b) and (c) of that paragraph.

Recommendation

The interested Federal agencies and departments of the United States have unanimously concluded that our interests would be best served by the United States becoming a Party to the Convention and the Agreement.

The primary benefits of the Convention to the United States include the following:

• The Convention advances the interests of the United States as a global maritime power. It preserves the right of the US military to use the world’s oceans to meet national security requirements and of commercial vessels to carry sea‑going cargoes. It achieves this, *inter alia*, by stabilizing the breadth of the territorial sea at 12 nautical miles; by setting forth navigation regimes of innocent passage in the territorial sea, transit passage in straits used for international navigation, and archipelagic sea lanes passage; and by reaffirming the traditional freedoms of navigation and overflight in the EEZ and the high seas beyond.

• The Convention advances the interests of the United States as a coastal State. It achieves this, *inter alia*, by providing for an EEZ out to 200 nautical miles from shore and by securing our rights regarding resources and artificial islands, installations and structures for economic purposes over the full extent of the continental shelf. These provisions fully comport with US oil and gas leasing practices, domestic management of coastal fishery resources, and international fisheries agreements.

• As a far-reaching environmental accord addressing vessel source pollution, pollution from seabed activities, ocean dumping and land-based sources of marine pollution, the Convention promotes continuing improvement in the health of the world’s oceans.

• In light of the essential role of marine scientific research in understanding and managing the oceans, the Convention sets forth criteria and procedures to promote access to marine areas, including coastal waters, for research activities.

• The Convention facilitates solutions to the increasingly complex problems of the uses of the ocean—solutions which respect the essential balance between our interests as both a coastal and a maritime nation.

• Through its dispute settlement provisions, the Convention provides for mechanisms to enhance compliance by Parties with the Convention's provisions.

• The Agreement fundamentally changes the deep seabed mining regime of the Convention. It meets the objections the United States and other industrialized nations previously expressed to Part XI. It promises to provide a stable and internationally recognized framework for mining to proceed in response to future demand for minerals.

The United States has been a leader in the international community’s effort to develop a widely accepted international framework governing uses of the seas. As a Party to the Convention, the United States will be in a position to continue its role in this evolution and ensure solutions that respect our interests.

All interested agencies and departments, therefore, join the Department of State in unanimously recommending that the Convention and Agreement be transmitted to the Senate for its advice and consent to accession and ratification respectively. They further recommend that they be transmitted before the Senate adjourns *sine die* this fall.

The Department of State, along with other concerned agencies, stands ready to work with Congress toward enactment of legislation necessary to carry out the obligations assumed under the Convention and Agreement and to permit the United States to exercise rights granted by the Convention.

Respectfully submitted,

Warren Christopher.

Sen. Treaty Doc. 103-39, pp. V–XI; 104 Cong. Rec. S14468, Oct. 6, 1994; 6 US State Dep’t Dispatch Supp. No. 1, Feb. 1995, at 2; 7 Geo. Int’l Envtl. L. Rev. 79 (1994); 34 ILM 1397–1400 (1995), *available at <*https://www.foreign.senate.gov/imo/media/doc/treaty\_103-39.pdf>.